Approved August 14, 1985
Date

MINUTES OF THE House COMMITTEE ON Transportation.

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

1:30 ~~a~~.m./p.m. on February 7, 1985 in room 519-S of the Capitol.

All members were present except: Representatives Adam, Brown and Spaniol, all excused.

Committee staff present:

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

Conferees appearing before the committee:

Mr. Robert W. Storey, Union Gas System, Inc.
Mr. Brian Moline, Kansas Corporation Commission
Mr. Bill Edds, Kansas Department of Revenue
Ms. Suzette Schwartz, Kansas Public Transit Association

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

Mr. Bob Storey, representing Union Gas System, Inc., testified in support of HB-2020. (See Attachment 1) Mr. Storey explained various problems and concerns over the subject matter contained in HB-2020.

He told the Committee a public utility has to offer service to each and every customer which requests service within the certificated area serviced by the utility. Mr. Storey said in regard to the Johnson County Industrial Airport situation that testimony by Johnson County at the KCC hearing was to the effect that it intended to drill gas wells and to serve natural gas to the patrons of the Industrial Airport, and not to any other patron of Johnson County who requested such service. At the present time Union has to serve each and every customer in Johnson County and the Industrial Airport where it has a certificate of authority. He went on to say that if Johnson County were deemed to be a municipal utility, it could choose to operate that utility only to the Industrial Airport and refuse service to anyone else in the area.

Mr. Storey said another problem which arises by a county becoming a municipal utility is that under the law a city may operate a municipally-owned utility within three miles of the corporate city limits. He said this means Johnson County could conceivably go three miles into an adjoining county and operate a municipal utility, i.e., Douglas County, Miami County, and Wyandotte County.

A third problem, Mr. Storey said, which arises in instances such as this is if an entity such as Johnson County is allowed to operate as a municipal utility, unregulated, and decides to terminate its service, what happens to the patrons of the area in question, such as the Industrial Airport.

Mr. Storey said one of the most important problems arising from a proposal such as this, is the question of what is going to happen to the rates and who is going to pay the rates of the utility which is being forced out of a territory by a small and unregulated entity deciding to serve only a limited portion of the rate payers. Mr. Storey reported that if Union Gas were deprived of serving the Industrial Airport, it would result in a monetary loss of approximately $62,828.00 per year. Such a situation would probably cause an increase in the rates of the regulated utility.

Another problem referred to by Mr. Storey is the fact that a small, unregulated entity operating in the utility business cannot guarantee that its customers will receive an adequate supply of natural gas in the peak seasons.

Following Mr. Storey's testimony, the meeting was opened to questioning by the Committee.

Representative Snowbarger asked if they are convinced HB-2020 is needed. Mr. Storey said it cleans the law up, and he believes the bill is needed.

Representative Knopp asked if Union Gas is strictly a distribution company, and if they have any interest in the price a supplier is paying. Mr. Storey said they are a distribution company, and they intervene in every court case Northwest has in Washington for rate increases, and oppose them.

Mr. Brian Moline of the Kansas Corporation Commission was recognized and said he wished to clarify that there are municipality gas utilities in Kansas. Most municipal utilities are electric and some own their own generation and some buy it. He said the municipal gas utilities would differentiate from the proposed Johnson County utility in two respects; 1) those in existence serve all comers, they don't discriminate, and 2) they don't try to utilize their own production, they enter into long-term contracts for supplies.

The hearing on HB-2020 was concluded.

Mr. Bill Edds of the Kansas Department of Revenue briefed the Committee on legislation they wished to request. The request included a list of mainly technical amendments pertaining to various vehicle registration and titling provisions. (See Attachment 2)

A motion was made by Representative Ott to introduce as a Committee bill, the legislation requested by the Department of Revenue and request that it be referred back to the Committee. The motion was seconded by Representative Justice. Motion passed.

Mr. Edds then briefed the Committee on a request for legislation which would either amend or repeal K.S.A. 75-124 providing for issuance of identification plates and cards to foreign consular officers. He said they are requesting that such plates not bear the words "Consul," "Diplomat," or similar indicators of diplomatic or consular status. (See Attachment 3)

A motion was made by Representative Snowbarger to introduce the Department of Revenue request on consular plates as a Committee bill and request that it be referred back to the Committee. The motion was seconded by Representative Erne. Motion passed.

Mr. Edds referred to HB-3070 which was enacted by the 1984 Legislative Session amending K.S.A. 1983 Supp. 79-3401 concerning "agricultural ethyl alcohol". (See Attachment 4)

Mr. Edds said the Department of Revenue is requesting the Committee re-examine the policy laid down in 1984 Session HB-3070. He said a Florida Supreme Court decision indicates provisions in a Florida statute which are similar to those in the Kansas statute discriminate against foreign commerce under the United States Constitution's foreign commerce clause.

MINUTES OF THE House COMMITTEE ON Transportation,

room 519-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 7, 1985

Committee discussion ensued concerning ethanol and the matter of Brazilian alcohol coming into the United States.

The motion was made by Representative Ott that legislation which would avoid the commerce clause conflict be introduced as a Committee bill and request that it be referred back to the Committee. The motion was seconded by Representative Schmidt. Motion passed.

Ms. Suzette Schwartz of the Kansas Public Transit Association, presented a request for legislation to the Committee, which would allow public transportation properties receiving public transportation Section 18 and 9 federal funding to receive state assistance for the transportation of the elderly and handicapped. (See Attachment 5)

Chairman Crowell asked if this would require a large sum of money. Ms. Schwartz said they are requesting $250,000 which would come from the General Fund.

The motion was made by Representative Knopp to introduce this legislation. The motion was seconded by Representative Sutter. Motion passed.

Representatives Erne and Freeman requested to be recorded as voting "no".

The meeting was adjourned at 2:20 p.m.

Rex Crowell

Rex Crowell, Chairman

# GUEST LIST

COMMITTEE: Transportation DATE: 2-7-85

PLEASE PRINT

| NAME | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| KRIS E. MCKINNEY | | Dept. of Revenue |
| D. WAYNE ZIMMERMAN | TOPEKA | THE ELECTRIC CO.s ASSOC OF KS. |
| ED DE SOIGNIE | TOPEKA | KDOT |
| Paul R. GUEVARA | Topeka | KDOT |
| Mike Gammon | " | Ks. Railroad Association |
| H Duncan | Topeka | Dept of Rev |
| Bill Eder | " | " |
| ~~Ken Robertson~~ | TOPEKA | KPL/GSC |
| Randy Beerbower | Columbus Ks | Empire District Elec. |
| John Danna | Topeka | AP |
| Richard D. Kready | " | KPL/GSC |
| Brian Neal | " | KCC |
| Jim Fluherty | " | KCC |
| Michael Woolf | Lawrence | Intern-Sen. Morris |
| Susie Schwartz | Topeka | Kansas Public Transit Ass'n |
| Russell Waesche | Kansas City | Kansas Public Transit Assoc. |
| Chris Albert | Salina | Kansas Public Transit Assc. |
| Marcia Bernard | Kansas City | Kansas Public Transit Assn. |
| Ralph Rudd | Topeka | Kansas Public Transit Assoc. |
| MIKE VIAISON | WICHITA KS | Kansas Public Transit Ass'n |
| Jerry Coonrod | TOPEKA | KCPE |
| Leroy Jones | Overland Park | B.L.E. |
| Lon Stanton | TOPEKA | NORTHERN NAT. GAS |
| Kay Bergen | Hutchinson, KS | ACE |
| Donna Barker | " | " |
| Ed Fuller | Osage City, Ks. | ACE |
| Mary ELLA SIMON | TOPEKA | LG. of Women Voters |

TESTIMONY CONCERNING HOUSE BILL 2020
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION & UTILITIES
PRESENTED BY BOB W. STOREY
REPRESENTING UNION GAS SYSTEM, INC.

MEMBERS OF THE COMMITTEE:

I wish to thank you for the opportunity to appear today on behalf of Union Gas System, Inc. (Union) to direct to you certain remarks concerning HB 2020. I wish to point out to the committee that the main thrust of my remarks will be directed to the Kansas Corporation Commission's (KCC) jurisdiction over municipal utilities, and more specifically the extension of that particular legislation.

As many of you know, part of HB 2020, which is before you at this time, arose out of Proposal No. 43, which was studied this last summer by the Special Committee on Transportation as an interim study. This originated with Senate Bill 818, which was heard in the 1984 session by the Senate Transportation and Utilities Committee, and which then ultimately referred the matter to the summer session, when it then became Proposal No. 43.

For those of you who were not on the select committee this summer, I want to give a brief outline of how this matter came before you in the form of HB 2020.

First, I should state that, as I am sure all of you know, HB 2020 attempts to clarify the provisions of K.S.A. 66-104 in determining what is intended by the statute to encompass a "municipal" utility. The language contained in HB 2020 makes

2/7/85
Attachment 1

clear that in adopting K.S.A. 66-104 the intent of the legislature was to define a municipally-owned utility as one which is operating solely within the city limits of a particular city or within three miles thereof.

The question arose on what is a municipality under the utility laws of the State of Kansas, a matter which arose in 1983 and was initiated by Johnson County toward Union Gas System, Inc. On or about May 18, 1983, Union received a communication, dated May 16, 1983, from the County Commissioners of Johnson County, demanding that Union remove its equipment from the Airport by September 1, 1983, and discontinue service on that same date to those patrons located within the Airport. See attached Exhibit "A."

Later in May, on behalf of Union, I met in Olathe, Kansas, to discuss this matter with the Executive Director of the Airport and with Gerald E. Williams, who at that time was counsel for the Airport. At that meeting I advised Johnson County, on behalf of Union, that a utility could not abandon the service of natural gas to its customers in any area of Kansas where it held a Certificate of Convenience and Necessity, without the express and written approval of the KCC. I also advised them at that time that Union had no intention of filing for an abandonment of the authority. Johnson County was advised, too, that Union was ready, willing, and able to serve the area; and if there had been any problems that had arisen because of the service or the supply of natural gas, then Union was willing to sit down and discuss these matters and to work out whatever problem had arisen between

the two parties. Union was notified by Johnson County that there had been a gift by a citizen of Johnson County of certain natural gas wells located within approximately two miles of the Industrial Airport; that the county intended to drill other wells on land owned or leased by Johnson County; and that it would be its own supplier and distributor of natural gas to the patrons of the Airport. At that time Johnson County was operating under the premise that it could become a municipal utility, and would not be subject to the KCC's jurisdiction as provided for in K.S.A. 66-131(a). At that time Union advised Johnson County that in its opinion Johnson County could not become a municipal utility, since the law referred only to cities, and Johnson County was not a city in any sense and was not subject to the benefits of the statute relating to municipal utilities.

In any event, after receiving that notification from Johnson County, Union advised the KCC that it had received a letter from Johnson County ordering it to terminate all service to Johnson County, but that Union did not intend to do so, unless it was ordered to do so by the KCC, since Union did not have the authority to abandon the service without such order from the KCC. A letter from Union was sent to Mr. Brian Moline, General Counsel of the KCC, advising him of this information. A copy of that letter is attached as Exhibit "B."

On or about July 1, 1983, Union received a letter from Mr. Brian Moline (copy attached as Exhibit "C"), which stated in effect that Union was required to continue to serve the area and

follow all orders and tariffs of the KCC until further order of the KCC.

In response to that, and on or about July 21, 1983, an application to terminate the Certificate of Convenience and Necessity of Union was filed with the KCC by Johnson County.

In response to this, Union filed a motion to dismiss the application of Johnson County to terminate the certificate of Union, alleging that the KCC had no jurisdiction over the subject matter, since the only proper party to file a petition to abandon authority would be the one holding the certificate itself, i.e., Union.

Without going into all the details of the KCC hearing, I will state that on January 19, 1984, the KCC issued an order denying the application of Johnson County to terminate Union's certificate, and also an order determining that Johnson County was not a municipal utility, pursuant to the Kansas statutes.

You will notice that as the case developed on the application to decertify Union, other issues became prevalent in this case, and particularly the question of "What is a municipal utility?" Proposal No. 43 delved into this matter, and as a result HB 2020 was introduced at the request of the interim committee, which rejects the position of Johnson County and supports that of both the Kansas Corporation Commission and Union Gas, in stating that a municipal utility was intended to be a city-owned or city-operated utility, confined within the city limits of said city or within three miles thereof.

Enclosed with this testimony as Exhibit "D" is a copy of the application filed by Johnson County with the KCC to terminate the Certificate of Convenience and Necessity, and as Exhibit "E," a copy of the legal memorandum filed by Union. Exhibit "F" is a copy of the order of the KCC denying the application of Johnson. These documents are enclosed for your review, and hopefully they will provide some background for the purpose of HB 2020. I know the documents are rather cumbersome, and I would be happy at any time at a later date to answer any questions you may have after you have had time to review the same.

Now let us first address the issue of enlarging the law to allow counties, or other entities, to become municipal utilities under the Kansas statutes.

As stated in the statutes, and as I am sure you are aware, any utility which operates within the corporate limits of a city, or within three miles thereof, is not deemed to be subject to the jurisdiction of the KCC, except for the filing of tariffs. This means that any utility within a city's limits, or within three miles thereof, may become a municipal utility by simply obtaining a charter from the city and filing tariffs with the KCC. The KCC then has no jurisdiction over the service or rates of the municipal utility, and the utility operates pretty much as its own entity, subject only to the charter which was issued by the city.

In Senate Bill 818 Johnson County asked the legislature to include the following language:

> The term municipality means: (1) any city, and (2) any county designated as an urban area pursuant to K.S.A. 19-3524 and amendments thereto.

The last part of the language relating to urban counties is the new language; and, of course, the only county in the state of Kansas designated as an urban county today is Johnson County. If that law were enacted, or if in fact this proposal is looked upon favorably, to enlarge the term of municipality, then Johnson County could become a municipal utility within the confines of Chapter 66 of the Kansas Statutes Annotated. The problems facing the legislature in looking favorably upon a request of this type are numerous, and I will attempt to elaborate briefly upon those problems to which public utilities to date have no definable answers.

First, I am sure you are aware that a public utility has to offer service to each and every customer which requests service within the certificated area that the utility services. Failure to do so will result in sanctions from the KCC. In Union's opinion, a municipal utility is subject to the same rules and regulations, even though it is not subject to the jurisdiction of the KCC. As a matter of fact, in the brief which was filed by Union in the case referred to above, it sets out many cases which cite that a municipal utility may not pick and choose to whom it offers service. The testimony by Johnson County at the KCC hearing was to the effect that it intended to drill gas wells and to serve natural gas to the patrons of the Industrial Airport, and not to any other patron of Johnson County

who requested such service. At the present time, Union has to serve each and every customer in Johnson Coumnty and the Industrial Airport where it has a certificate of authority. This means that if Johnson County were deemed to be a municipal utility, it could operate that utility only to the Industrial Airport and refuse service to anyone else located in that area. This would mean, of course, that Union would have to bear the burden of serving the other customers, although it would lose the revenue from the Industrial Airport; and Union would still have to be under the jurisdiction of the KCC and would have to file for approval of any and all rates and service to that entity.

The next problem that arises by a county becoming a municipal utility is that under the law a city may operate a municipally-owned utility within three miles of the corporate city limits. Taken in its broadest sense, this means Johnson County could conceivably go three miles into an adjoining county and operate a municipal utility, i.e., Douglas County, Miami County, and Wyandotte County. I am sure the legislature understands that this was not the intention of the law, and that a county should not be subject to an adjoining county's operating a public utility within its confines.

The third problem which arises in instances such as this is, if an entity such as Johnson County is allowed to operate as a municipal utility, unregulated, and decides to terminate its service, what happens to the patrons of the area in question, such as the Industrial Airport, if the municipality decides to pull out? If Union has <u>not</u> been allowed to serve the

area, then is that certificated utility supposed to come in and pick up the business where the municipal utility failed, and to suffer the consequences of any losses of revenue or expenses of reentering and providing service?

Perhaps the last and most important of the problems arising from a proposal such as this before you is the question of who is going to pay the rates of the utility which is being forced out of a territory by a small and unregulated entity deciding to serve only a limited portion of the rate payers. In this case, as testified before the KCC and before the legislature regarding Senate Bill 818, if Union Gas were deprived of serving the Industrial Airport, it would result in a monetary loss of approximately $62,828.00 year. In answer to the question above, I can only state that Union would be forced to file an application with the KCC to increase its rates by that figure, and that amount would be added onto the bills of those customers in Johnson County who reside outside of the Industrial Airport and are being served by Union. Johnson County would have no obligation to make sure that the other rate payers did not receive increased utility bills. As a matter of fact, by taking over the Industrial Airport it would substantiate the fact that the rates for the other rate payers would be raised.

Last, and perhaps again one of the most important problems which arise in legislation of this type, is the fact that a small, unregulated entity, such as Johnson County, operating in the utility business cannot guarantee that its customers will receive an adequate supply of natural gas in the

peak seasons. A certificated utility, such as Union, is under an obligation to make sure that its customers receive an adequate supply of natural gas during the peak winter season; and Union has submitted such plans as curtailments and interruptible gas supply clauses to the KCC to make sure that the residential customers of its territory receive adequate natural gas to survive during the long winter months in the state of Kansas.

It has become increasingly popular within the state of Kansas to drill one's own gas well, or a small number of gas wells, and then to find a group of consumers to purchase said gas at a rate which hopefully is lower than the rate for gas supplied by a public utility. A lower rate is not always the case, and I submit to you that in the long run the gas is never cheaper because of all the problems which arise. However, there are still some persons and companies who believe that there is enough local production of gas in certain parts of the state of Kansas to adequately supply all of the customers within that particular area. We submitted evidence from the Grant Oil Company at the Senate hearing on Senate Bill 818 (copy attached as Exhibit "G") which shows that in the opinion of Mr. William F. Grant, President of that company, there is enough gas provided for in the Johnson County leases as the present time for full production and to provide for at least 240 days. I know there are always questions and discussions about reserves. In my opinion there has never been a way to evaluate the actual reserves of natural gas or oil within the state of Kansas, and I doubt if there ever will be a study which will determine with any certainty exactly

what reserves are contained in certain oil or gas pools. We can state, however, that in Union's opinion there is not adequate gas provided for in the leases held by Johnson County, even if the drilling were expanded and additional leases were obtained, to adequately meet the demands of the patrons of the Industrial Airport in the peak season.

In addressing this committee, I do not wish to confine this testimony to the Johnson County problem, but rather to enlarge it to discuss what we consider the doctrine of "cream skimming" in the industry of the suppliers of natural gas. This name arises from the fact that it has become popular, and is becoming increasingly popular in this state, for a producer or a small purchaser of natural gas out of certain leases or certain pools to attempt to sell that gas, either to small cities, industrial airports, or to individual users, and circumvent those purchases being made from a public utility. This in theory is fine; however, it is very dangerous. I am sure this committee can, and will, through its studies, determine that this is not in the best interest of the public to subdivide all of the territories throughout the state of Kansas, with small entities hopefully to use local production and to be able to sell and purchase natural gas at a reduced price.

Public utilities throughout this state have a large investment in their plants, and over the years have developed equipment, pipelines, and gas-purchase contracts, to make sure that all of the patrons within its territory are adequately served. Whether or not it is a popular belief in Kansas, gas

contracts to purchase an adequate supply of natural gas from interstate pipelines is a necessity to make sure that the needs of the public for natural gas in the peak seasons can be supplied. Union could not purchase enough gas from local producers in the state of Kansas in the territory it serves to guarantee that its customers would have an adequate supply of natural gas in the peak seasons. I submit to you that I do not believe any other gas utility operating in the state of Kansas would be able to do so, without the guarantee of an adequate supply of natural gas from the interstate pipelines.

If the public utilities are constantly going to be tapped by the smaller entities, and if the smaller entities continually break off and serve some of the best areas in the state of Kansas (such as the Industrial Airport in Johnson County, or a large factory located in another city or county), then that public utility is going to be forced to increase its rates to the other rate payers in its territory, simply because of the equipment which has been purchased in anticipation of serving the given certificated area, and for the maintenance of such service, which is a large expense of any public utility. It is a common belief throughout the state of Kansas by the rate payers that public utilities are getting rich from their operations throughout the state. I can truthfully say for Union that the rate of return which is being earned by the private investor is not substantial enough to obtain the necessary capital from outside investors which is required in an investor-owned utility to be able to operate adequately.

You all know that it is popular in this state to complain about high utility rates, and to offer suggestions on how to lower said rates. Mainly it comes from buying local production of gas or from reducing the expenses of the company. We also know that it is in the producer's best interest to sell all of the natural gas which it can sell in the state of Kansas to public utilities and to others; and I am almost certain that the producers are in favor of any legislation which lets them sell more gas. Union is in complete sympathy with the producer of natural gas in the state of Kansas, and wishes that it were possible to purchase all of the gas produced in our state and to keep it in this state for intrastate sales. However, after being in the business for a number of years, we also know that is an impossible dream.

The only thing that this committee and legislature would do in widening the scope of municipally-owned utilities and taking them outside the jurisdiction of the KCC, so that you could form a small utility in any given area with the approval of the KCC, would be to guarantee to the other rate payers of the state of Kansas that: (1) their rates would be increased, and (2) they would not be guaranteed an adequate supply of gas in the winter peak seasons in our state. It is not fiction to state that if a supply of gas to Union from Northwest Central Pipeline Company were not available, then Union would not be able to serve the territory for which it holds a Certificate of Convenience and Necessity, and it would have to file application to abandon the same. If in fact Union were not able to purchase or maintain

purchase of a large supply of gas from Northwest Central, then in most likelihood it would not be able to have a gas contract with Northwest Central guaranteeing a certain volume of NCF per year, and again would not be able to maintain its service.

If the legislature allows an entity such as Johnson County to do what they cannot do now, and to do what was requested by Senate Bill 818 and Proposal No. 43, then I submit to you that complete chaos would pervade at least the natural gas in the state of Kansas, which will not be beneficial to the rate-payers of this state.

It is my understanding that this committee has heard evidence that Union Gas System, Inc. would not cooperate with Johnson County in attempting to purchase the natural gas which would be produced by the county from the leases which were given to them by the benefactor referred to earlier in this testimony. Attached to this testimony as Exhibit "G," is a copy of a letter dated January 19, 1984, which was addressed to Mr. Gerald E. Williams, who was then representing Johnson County, from Mr. Brian J. Moline, General Counsel of the Kansas Corporation Commission. In that letter you will note that the Kansas Corporation Commission requested that Johnson County and Union Gas try to negotiate this matter, to resolve the same in a satisfactory manner to the benefit of both parties. Attached is Exhibit "H," which is a letter dated January 25, 1984, as my response to Mr. Gerald Williams, pointing out the requests contained in the January 19 letter from Mr. Moline on behalf of the KCC. In that I requested that Johnson County and Union Gas

sit down and try to determine if it would be feasible for the two entities to try to get together to somehow comply with the KCC wishes. I suggested in the letter to Mr. Williams that we discuss two possibilities: (1) that of Union Gas purchasing some of the gas which was being produced on the leases owned by Johnson County, or (2) that Union Gas transport the gas for the county in accordance with the transportation charge contained in its tariff, which is presently on file and approved by the Kansas Corporation Commission. I can only state that I received no response from Johnson County, nor any encouragement to enter into negotiations. As a matter of fact, at a later time when I was discussing this matter with some of the principals from Johnson County, I was advised that they wanted to transport and sell their own gas and had no desire to negotiate on either of these two alternatives. Therefore, Union at that point was left with no place to go except to continue to resist Johnson County's attempts to remove the utility from the territory herein discussed.

After the decision by the KCC, Johnson County filed an action in Johnson County District Court, requesting that the decision of the KCC be overturned and that Johnson County be deemed a municipality regardless of what was contained in K.S.A. 66-104. Union filed a motion to dismiss the lawsuit; and the court ultimately dismissed the lawsuit, for the reason that Johnson County had not timely exhausted its administrative remedies before filing an action in the District Court of the State of Kansas. At a later hearing by the county on a motion to

modify, the court ruled that the only issue which was presently before the court was whether or not Union Gas owed Johnson County any moneys for the salvage value of the pipe which was originally laid by the United States government and deeded to Johnson County, and which was being used and maintained within the confines of the Industrial Airport by Union Gas to serve the patrons therein. The court requested Johnson County to amend its pleading to encompass that issue. I discussed this matter later with counsel from Johnson County, and was advised that they were not interested in judicating this issue, but rather still intended to attempt to have Union Gas removed from serving the Industrial Airport, and intended to serve the area themselves and were going to proceed along that line. I assume they are still doing so by opposing HB 2020.

Union has attempted in this testimony to set out some of the problems and concerns which it has over the subject matter contained in HB 2020. We hope this legislative body today will take a strong look at all the evidence submitted, and ultimately recommend favorable consideration of HB 2020.

Thank you for allowing us to present this testimony. If there are any questions I can answer on behalf of Union, I will be more than happy to do so.

Respectfully submitted,

BOB W. STOREY

EXHIBIT 1
MAY 18 1983

JOHNSON COUNTY KANSAS

# Office of the Board of County Commissioners

JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS 66061
782-5000

May 16, 1983

Union Gas, Inc.
P.O. Box 347
Independence, KS 67301

Re: Gas Service at Johnson County Industrial Airport, Johnson County, Kansas

Dear Sirs:

The purpose of this letter is to inform you that the Board of County Commissioners of Johnson County, Kansas, intends to accept natural gas leases in the area surrounding Johnson County Industrial Airport and will set up a municipally-owned utility at the Airport. In accordance with Kansas law, the Board will comply with K.S.A. 66-131a. The Board demands that you remove your equipment by September 1, 1983, and discontinue service on that same date.

The distribution and transmission lines at the Johnson County Industrial Airport are the property of the County by virtue of the deed from the United States of America. The Board would be receptive to negotiations on the sale of the meters and odorizing equipment prior to the above date.

If the Board could be of any further assistance, please do not hesitate to call.

Very truly yours,

William E. Franklin

William E. Franklin
Chairman of the
Board of County Commissioners
of Johnson County, Kansas

cc: Joe Dennis, Executive Director, Johnson County Industrial Airport
Gerald E. Williams, Esq.

WEF/csn

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

EXHIBIT "B"

**Bob W. Storey**
LAW OFFICES

913/232-9383

SUITE 310 • COLUMBIAN TITLE BLDG. • 820 QUINCY • TOPEKA, KS 66612

May 27, 1983

Mr. Brian Moline
Kansas Corporation Commission
State Office Building, 4th Floor
Topeka, KS 66612

Re: Johnson County Industrial Airport

Dear Brian:

As you may or may not know, Union Gas System, Inc. has been notified by the Johnson County Industrial Airport Authority to withdraw all of its equipment by September 1, 1983, since the county intends to operate its own "municipal" utility to provide natural gas for the patrons now leasing space on the industrial airport site.

After numerous conversations and researching, I had a meeting with the principals in Olathe concerning the matter and was advised that, in their opinion, Johnson County is a municipality and is not regulated by the Kansas Corporation Commission. Therefore, it does not need to appear before that body other than to file rules, regulations and tariffs as provided for in K.S.A. 66-131a.

At the present time there are numerous statutes which state a municipal utility cannot provide service where a certificated common carrier is providing service without a hearing before the Corporation Commission. There is no "accurate" definition of whether or not a county is considered a municipality under the law and therefore eligible to operate a municipal utility.

In other words, this is quite a vague area and I have advised Union Gas there is no way it can discontinue service in this area since that would be abandonment of service which is in violation of the Kansas laws and the rules and regulations of the Commission, so we are in somewhat of a dilemma.

I do want to point out that we do not agree with Johnson County that they are a municipality and may operate their own utility. We take the position that Union is a certificated provider in that area and we intend to provide service to the patrons of the industrial park unless, after a full hearing, we are ordered by the court or by the Commission to discontinue service.

It is the opinion of those involved in Johnson County that they do not need to appear at any time before the Kansas Corporation Commission or keep them advised of any activities unless they need assistance as provided in the statute previously cited.

In any event, I am enclosing the following statutes which deal with municipal utilities, definition of municipalities, and other related information for your purview: K.S.A. 10-101, K.S.A. 19-101, K.S.A. 66-131, K.S.A. 66-104, K.S.A. 10-1203, and K.S.A. 12-825j. Also enclosed for your purview is a Legal Memorandum I sent to Bill Reeder on May 20, 1983.

I have contacted the Commissioners and asked for a meeting once you have reviewed the documents I am forwarding to you. I would appreciate your calling me as soon as you have looked at the same so we can set up the meeting.

Thank you for your assistance.

Very truly yours,

BOB W. STOREY

BWS:kh
Enclosures
cc The Hon. Michael Lennen
Mr. Richard (Pete) Loux
Mr. Phillip Dick
Mr. William Reeder

EXHIBIT "C"

State of Kansas



State Corporation Commission
Fourth Floor, State Office Bldg.
Ph. 913 296-3355
TOPEKA, KANSAS 66612-1571

RECEIVED
JUL 8 1983

July 1, 1983

Mr. Bob W. Storey
Suite 310
Columbian Title Bldg.
820 Quincy
Topeka, KS 66612

Dear Mr. Storey:

I am in receipt of your letter of May 27, 1983, also a copy of Gerald Williams letter to Don Low of May 31, a copy of which is enclosed. Both letters touch on the question of the intent of the Johnson County Industrial Airport Authority to operate its own "municipal" gas utility in an already certificated area. The proposed action of Johnson County gives rise to two related questions:

(1) Does Johnson County constitute a municipality for purposes of operating a municipal utility?

(2) If so, may a municipality unilaterally create a municipal utility to serve all or part of an already state certificated territory?

Assuming that Johnson County constitutes a "municipality" for purposes of K.S.A. Chapter 66, it does not necessarily follow that Johnson County may unilaterally order Union Gas to terminate or abandon service to a certificated territory. Indeed, the opposite is true.

Under K.S.A. 19-101a(a) (1982 Supp.), counties shall be subject to all acts of the legislature which apply uniformly to all counties. Certification of a public utility by the K.C.C. is an act of the legislature applied uniformly under K.S.A.66-101.

> The regulation of public utilities, including the fixing of rates is a legislative function. The legislature has seen fit to delegate its authority, with broad powers, to the State Corporation Commission. (G.S. 1949, 66-101) Southwestern Bell Tel. Co. v. State Corporation Commission, 192 Kan. 39 at 46 (1963).

K.S.A. 19-101a, granting powers of home rule to counties, was enacted in 1974. Since then, only one case dealing with county home rule powers has been decided. In Missouri Pacific Railroad v. Board of Greely County Comm'rs,231 Kan. 225 (1982), the court affirmed the trial court which found a Greely County resolution restricting the consturction of dirt embankments by the railroad invalid as a contravention of the county home rule powers. The court noted that the legislature may reserve exclusive jurisdiction to regulate in a particular area when an intent is clearly manifested by state law to pre-empt a particular field by uniform laws made applicable throughout the state. Id. at 227. Whether the state has pre-empted the field to the exclusion of local legislation depends not only on the language of the statutes, but upon the purpose and scope of the legislative scheme. Id. at 228. The court held the resolution invalid because it conflicted with the grant of authority in the state statutes which authorizes a railroad to acquire additional land for the purpose of "cuttings and embankments" and "change the roadbed, or road line or any part thereof, for the purpose of shortening the line, or to overcome natural obstacles. Id. at 232.

Under K.S.A.66-104 and 66-131 the K.C.C. has exclusive jurisdiction to permit common carriers and public utilities that are neither municipally owned or operated and located within the municipality's corporate limits (or within three miles outside such limits) nor principally within any city or principally operated for the benefit of such city to transact business in Kansas. In the instant case Union Gas is neither a municipal utility nor operating principally within any city and is, therefore, under the exclusive jurisdiction of the K.C.C. Union Gas' certification pursuant to the requirements of K.S.A.66-101, 66-104, and 66-131 must be deemed an act of the legislature. Prior to termination of service or abandonment it is necessary to obtain the permission of the K.C.C. State v. Kansas Postal Tel.-Cable Co., 96 Kan. 298, 250 P.544 (1915). In order for the K.C.C. to grant such permission it must be shown that no other lawful interest is materially affected. City of McPherson v. State Corporation Commission, 174 Kan. 407, 257 P.2d 123 (1953).

> The public convenience and necessity or lack thereof is best established by proof of the conditions existing in the territory to be served and it is the province of the Public Service Commission to draw its own conclusions and form its own opinion from the proof of the conditions in the territory. Missouri-Kansas-Texas Rld. Co. v. City of Savonburg, 186 Kan. 120, 348 P.2d 1015 (1960).

I conclude, therefore, that while Johnson County may well constitute a "municipality" for purposes of Chapter 66, only the state corporation commission may alter, terminate or allow abandonment of all or part of a certificated territory. The Commission, therefore, shall require Union Gas to continue to serve and follow all Orders and Tariffs of the Commission. Either Union Gas or Johnson County may, by appropriate filing, seek to have the certificate of convenience and necessity altered, terminated, or abandoned.

Finally, it should be noted that, under K.S.A.10-1203, if Johnson County as a municipal utility issues revenue bonds to acquire, construct, reconstruct, alter, repair, improve, extend or enlarge any plant or facility where the same utility service is being furnished by a private utility, such issuance must first be approved by this Commission.

Sincerely,

Brian J. Moline
General Counsel

BJM:gs

cc: Gerald Williams
Don Low
Commissioners

EXHIBIT "D"

BEFORE THE STATE CORPORATION COMMISSION
OF STATE OF KANSAS

In the Matter of the Application of JOHNSON COUNTY, KANSAS, to terminate the Certificate of Convenience and Authority to transact business of Union Gas Systems, Inc. upon the Johnson County Industrial Airport Property.

RECEIVED
JUL 28 1983

JOHNSON COUNTY, KANSAS
Johnson County Courthouse
Olathe, Kansas,

APPLICANT

UNION GAS SYSTEMS, INC.,
122 West Mrytle
P.O. Box 347
Independence, KS 67301

RESPONDENT

Docket No. _____

APPLICATION TO TERMINATE CERTIFICATE OF CONVENIENCE

COMES NOW Johnson County, Kansas, and in support of its Application to terminate the certificate of convenience as above-captioned, states and alleges as follows:

1. Johnson County, Kansas, is the fee title owner of certain property generally described as the Johnson County Industrial Airport, said property previously being known as the Olathe United States Naval Air Station. The United States Naval Air Station was deactivated and was deeded from the United States of America to Johnson County, Kansas, pursuant to the terms of a Quit Claim Deed dated November 13, 1973, as instrument number 970705, and recorded of record in the Register of Deeds of Johnson County, Kansas, on the 20th day of November, 1973, in Book 492, Page 346-367; that a copy of said Deed is attached to the Application marked as Exhibit "A" and incorporated by reference as if fully set out herein.

2. Johnson County, Kansas, received additional property from the United States of America pursuant to a Quit Claim Deed



State Corporation Commission
Rec'd JUL 21 1983 A.P.M.
Secretary

dated November 3, 1976, recorded August 12, 1977, at Book 1246, Page 520 et. seq., said Deed being incorporated by reference as Exhibit "B". Additional property was received from the United States of America pursuant to the terms of a Quit Claim Deed dated September 29, 1980, and recorded in the Register of Deeds on October 1, 1980, in Book 1609, Page 92, said property also being previously deeded from the United States of America, said Deed is incorporated by reference as Exhibit "C" as if fully set out herein.

3. That the Johnson County Industrial Airport is operated under the direction and control of the Johnson County Airport Commission as provided for in K.S.A. 3-301 et. seq. and amendments thereto. A portion of the Johnson County Industrial Airport is dedicated and devoted exclusively to aviation oriented activities and the balance of the property is reserved and presently being developed as an office and industrial park.

4. That pursuant to the terms of the Deeds from the United States of America to Johnson County, Kansas, the County owns fee title to the real estate and all improvements located thereon. The County owns and operates the water and sewer system. The Government had previously owned and operated a utility distribution systems including gas, water, electrical, telephone and sewer. All of these facilities were deeded to the County.

5. On January 21, 1970, the Respondent, Union Gas Systems, Inc., received a Certificate of Convenience from the Kansas Corporation Commission shown as Docket No. 88,472-U which allowed said Respondent to serve the United States Naval Air Station with a natural gas supply and that pursuant to said Order of the Corporation Commission, the Commission retained jurisdiction of the subject matter and the parties for the purpose of entering such further orders as it may deem necessary.

6. That as the owner of the natural gas distribution system,

the Applicant has been responsible for the costs and liability of maintaining said distribution system and further has paid for the enlargement to said system by and through contracting with Union Gas Systems. Johnson County, Kansas, is the owner of all of the natural gas distribution system located within the boundaries of the Johnson County Industrial Airport with the exception of the meters located at the distribution point of each user and the gas odorizer located on the north side of said industrial property.

7. That Johnson County, Kansas, is the beneficiary of certain oil and gas leases which have been dedicated from James L. Osborn, Jr. to the County; said leases consisting of partially drilled and undeveloped leases in the immediate vicinity; that the County is desirous of completing a gathering system to provide for the transportation of the "local gas" to the Johnson County Industrial Airport for the sale and consumption within the limits of the Johnson County Industrial Airport. In addition to the sale of "local gas" to the consumers at the Johnson County Industrial Airport, the Applicant intends to contract with Cities Service (Northwest Pipeline) for a secondary supplemental supply of gas to be sold to the users at the Johnson County Industrial Airport.

8. That the County is a "municipality" under the laws of the State of Kansas and as such is exempt from jurisdiction of the Kansas Corporation Commission except as for those provisions contained in K.S.A. 66-131(a) which provides for the filing of tariffs and rules and regulations restricting connections or attachments to their system for residential, commercial or industrial structures in respect to heat loss standards and energy efficient ratios.

9. That the County has attempted to prepare such tariffs, but is unable to do so until the Certificate of Convenience by Union Gas has been terminated by the Corporation Commission. It is necessary for the County to determine

what contracts rates will be set by Cities Service and that said rates can then be incorporated into the rates of the County to be charged the consumer at the Airport.

10. That the County has put Union Gas Systems, Inc. on notice of their intent to operate the facilities within the limits of the Johnson County Industrial Airport.

11. That it would be in the public interest of the local landowners upon which the existing oil and gas leases are held, general County interests due to the creation of revenues, and the tenants at the Johnson County Industrial Airport because of lower rates to terminate the Certificate of Convenience held by Union Gas Systems, Inc. and to allow Johnson County, Kansas, to operate its municipal gas utility for all tenants located within the limits of the Johnson County Industrial Airport.

12. That the County has reason to believe that there are natural gas reserves on the north portion of the Johnson County Industrial property and is desirous of developing those reserves in conjunction with the local reserves as deeded from Osborn to the County.

WHEREFORE, the Applicant prays the Kansas Corporation Commission for an Order terminating the Certificate of Convenience and Authority to Transact Business of Union Gas Systems, Inc. on the property generally described as the Johnson County Industrial Airport and further for an Order determining that Johnson County, Kansas, is a "municipality" under the laws of the State of Kansas and may operate such gas utility within the limits of the Johnson County Industrial Airport without the authority and control of the Kansas Corporation Commission except as provided for in K.S.A. 66-131(a).

JOHNSON COUNTY, KANSAS

By: William E. Franklin
WILLIAM E. FRANKLIN, Chairman of
the Board of County Commissioners
of Johnson County, Kansas

ATTEST:

Donald J. Carry
Donald J. Carry, County Clerk
by Janice Hunter, Deputy
( S E A L )

STATE OF KANSAS, COUNTY OF JOHNSON) ss.

William E. Franklin, Chairman of the Board of County Commissioners of Johnson County, Kansas, of lawful age, being first duly sworn, on oath deposes and says:

That Johnson County, Kansas, is the Applicant above-named; that on behalf of said County he has read the foregoing Application, knows the contents thereof, and that the statements therein contained are true.

William E. Franklin
WILLIAM E. FRANKLIN, Chairman of the Board of County Commissioners of Johnson County, Kansas

SUBSCRIBED AND SWORN to before me this 21st day of July, 1983.

NANCIE RICHARDSON
NOTARY PUBLIC
STATE OF KANSAS
My Appointment Expires:
11-22-1984

Nancie Richardson
Notary Public

PREPARED BY:

G. E. Williams
GERALD E. WILLIAMS
GAGE & TUCKER
9401 Indian Creek Parkway
P.O. Box 25830
O.P., KS 66225 642-8022

Philip S. Harness
PHILIP S. HARNESS
Assistant County Counsellor
Johnson County Courthouse
Olathe, KS 66061 782-5000

ATTORNEYS FOR APPLICANT, JOHNSON COUNTY, KANSAS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Application to Union Gas Systems, Inc., Attn: William Reeder, President, 122 West Mrytle, P.O. Box 347, Independence, KS 67301 and to Bob W. Storey, Suite 310, Columbian Title Building, 820 Quincy, Topeka, KS 66612, this 21st day of July, 1983, by depositing same in the United States Mail, postage prepaid.

G. E. Williams
GERALD E. WILLIAMS

EXHIBIT "E"

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of JOHNSON COUNTY, KANSAS, to terminate the Certificate of Convenience and Authority to transact business of Union Gas System, Inc. upon the Johnson County Industrial Airport Property.

JOHNSON COUNTY, KANSAS
Johnson County Courthouse
Olathe, Kansas,

APPLICANT

UNION GAS SYSTEM, INC.
122 West Myrtle
P. O. Box 347
Independence, KS 67301

RESPONDENT

Docket No. 138,498-U

LEGAL MEMORANDUM

FACTS

On or about January 21, 1970, Union Gas System, Inc. (hereinafter referred to as Respondent) received a Certificate of Convenience and Necessity from the Kansas Corporation Commission (hereinafter referred to as Commission), referenced as Docket No. 88,472-U, which authorized Respondent to serve areas of Johnson County, Kansas, including the United States Naval Air Station near Olathe, Kansas, as a natural gas supplier.

Sometime in 1973 the United States Naval Air Station abandoned the premises and deeded the property through the United States government to Applicant, which is presently the owner in fee of the property which is designated as the Johnson County Industrial Airport (hereinafter referred to as Airport). A portion of the Airport is designated for aviation purposes, and a portion thereof is designated as an office and industrial park.

Since the takeover of the naval base by Applicant, Respondent has been the supplier of natural gas for the patrons in the industrial park, and continues to serve that area today along with other areas in Johnson County. As a result of having obtained authority to serve the area, Respondent installed

necessary pipelines for the transportation and service of natural gas into the area, and installed meters to perfect a reading on the natural gas used by each consumer. Since that time Respondent has maintained the gas pipeline system and the meters, and is presently doing so today.

As of this date Respondent is still a duly certificated public utility subject to the jurisdiction of the Commission as defined by K.S.A. 66-104.

On or about May 18, 1983, Respondent received a communication dated May 16, 1983, signed by William E. Franklin, Chairman of the Board of County Commissioners of Johnson County, Kansas. This letter demanded that Respondent remove its equipment by September 1, 1983, and discontinue service on that same date to those patrons located within the Johnson County Industrial Airport. (See attached Exhibit "A.")

On or about May 24, 1983, Respondent's counsel, Bob W. Storey, met with Mr. Joe Dennis, Executive Director of the Airport, and Gerald E. Williams, Esq., who is counsel for that entity, in Olathe, Kansas, to discuss this matter. At that time Respondent advised the Applicant's representatives that Respondent could not abandon the service of natural gas to the patrons of the Airport without the permission of the Commission, which has regulatory control over Respondent as a public utility. At the same time Respondent also advised Applicant that Respondent had no intention to terminate its service to the Airport customers; that Respondent had the authority to perform said service; and that it had spent much time and gone to considerable expense to maintain service in that area. Respondent stated further that it would be happy to discuss any problems which had arisen and possible solutions to the same. Respondent was notified that the Airport had its own supply of gas through an alleged gift by a citizen of Johnson County of certain natural gas wells; that it intended to drill other wells on land owned or leased by Applicant; and that it would be its

own supplier and distributor of natural gas to the patrons of the Airport.

As a result of that meeting, Respondent, through its counsel, Bob W. Storey, wrote a letter on May 27, 1983, to Mr. Brian Moline, General Counsel of the Commission, Topeka, Kansas. That letter set out that Respondent had been notified to terminate all service to Johnson County, but that Respondent did not intend to do so until so ordered by the Commission. Copy of this letter is attached as Exhibit "B."

On or about July 1, 1983, Respondent received through its counsel, Bob W. Storey, a letter from Mr. Brian Moline (copy attached as Exhibit "C") which stated in effect that Respondent was required to continue to serve the area and follow all orders and tariffs of the Commission until further order of the Commission. It stated further that the Certificate of Convenience and Necessity could not be terminated, canceled, abandoned, or altered without specific approval of the Commission or the filing of a proper application.

On or about July 21, 1983, an application to terminate the Certificate of Convenience was filed with the Commission by Applicant, through William E. Franklin, Chairman of the Board of County Commissioners of Johnson County. In this application the Applicant asked the Commission to cancel the Certificate of Convenience and Necessity held by Respondent to serve the area in question. (Attached as Exhibit "D.")

On or about July 29, 1983, a Motion for Enlargement of Time was duly filed by Respondent, requesting that an additional thirty-day period (or until September 1, 1983) be allowed for Respondent to answer or otherwise plead to the application filed by the Airport. (See Exhibit "E.")

By order of the Commission dated August 16, 1983, copy of which is attached as Exhibit "F," Respondent was given until September 1, 1983, to answer or otherwise plead to the allegations contained in the application herein.

This Legal Memorandum was duly and properly filed with the Commission September 1, 1983, in support of Respondent's Motion to Dismiss.

## QUESTIONS OF LAW

1. Does the Commission have jurisdiction over the application herein filed?
2. Is Applicant clothed with the authority to file an application requesting the Commission to abandon or to cancel the authority of a duly certificated utility, such as Respondent?
3. Does the application filed herein meet the criteria of a formal or informal complaint under the rules and regulations of the Commission or the statutes of the State of Kansas?
4. Is Applicant or the Johnson County Industrial Airport or the Johnson County Airport Commission a municipality under the laws of the State of Kansas?
5. Can a municipally-owned utility offer partial service to a territory in which it serves, without offering that same service to the other patrons of the territory.
6. Can the Commission issue dual certificates of authority to serve the same area?
7. Can the Commission cancel the authority of a duly certificated public utility, except upon the request of the utility or upon the action of the Commission itself by the issuance of a show-cause and later order canceling said certificate?

## ARGUMENT

1. Jurisdiction

In order for the Commission to have jurisdiction over the application filed herein, the applicant must show that it is clothed with the authority to file said application; that the allegations contained in the application meet the criteria

contained in the Kansas Statutes Annotated and the Kansas Administrative Rules; and that the parties are the proper parties to appear on the application.

There is no question that Respondent is subject to the jurisdiction of the Commission as a public utility defined under K.S.A. 66-101 and 66-104. It is a well-established rule that a public utility which holds a Certificate of Convenience from the Commission may not abandon that certificate without the express permission of the Commission.

In The State, ex rel., v. Telephone Company, 102 K. 318, it was said by the Court:

> To avoid a possible misunderstanding, it may be added that it does not follow from anything here decided that where by mutual arrangement a connection has been established between two or more local exchanges, by which their subscribers are brought into communication with each other without charge other than such as is included in the payment of rent, such service may be discontinued (or that an additional charge may be exacted for its continuance) without the consent of the utilities commission.

Further, in the case of The State, ex rel. v. Postal Telegraph Company, 96 K. 298, it was said by the Court:

> How is the public utilities commission to discharge its important duties if the puiblic service companies may quit business here, there, or anywhere in the state without an opportunity for the commission to determine the propriety of such a course? (Page 305).

And, lastly, in The State of Kansas, ex rel., v. The Trego County Cooperative Telephone Company, 112 K. 701, the Court reiterated that a public utility may not abandon its authority without permission of the public utilities commission. The Court said:

> The fact that the defendants' lines were originally designed for mutual service only and that they never applied for and never received a certificate of convenience from the public utilities commission, as prescribed by section 31 of the Public Utilities Act, General Statutes of 1915, section 8359, is no defense to an action in mandamus requiring the restoration of a public service in which the defendants were engaged and to which their property was devoted for several years, when such service was discontinued without the consent of the public utilities commission.

These cases clearly show that no public utility may abandon its authority without first an application having been filed before the Commission, and the Commission then issuing an order authorizing the utility to abandon such territory.

In this particular case, the respondent has not filed such application. At a matter of fact, it does not intend to abandon the authority; and it is ready, willing, and able to serve the territory which is authorized by its certificate from the Commission, which is the subject matter of this alleged application.

Applicant has no authority to file the alleged "application" under the laws of the State of Kansas and the rules of the Commission. More specifically, we would point out that under K.A.R. 82-1-204, sub. (e), the definition of applicant is as follows:

> 'Applicant' means any party on whose behalf an application for authority or permission, which the commission is authorized by law to grant or deny, is made.

The applicant herein has already stated that it needs no authority to operate as a municipal utility from the Commission, and the application which it has filed in this matter does not seek authority or permission for it to operate as a utility. Rather, it seeks an order of the Commission to cancel or abandon the certificate of the respondent, which does not fall under the auspices of subsection (e) of 82-1-204.

If the Commission elects to treat this as a complaint, we would submit the following arguments. Complaints are defined by K.A.R. 82-1-220 as follows:

> Complaints. (a) Any mercantile, agricultural, manufacturing organization or society, any body politic, municipal organization, or any taxpayer, firm, corporation or association may initiate, by the filing of a formal complaint, proceedings, in which the rates, joint rates, fares, tolls, charges, rules, regulations, classifications, or schedules of any public utility or common carrier are alleged to be unreasonable, unfair, unjust, unjustly discriminatory, unduly preferential, or that any service performed or to be performed is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained. Parties other than those hereinabove enumerated may file complaints if they have an interest in the subject of

the action involved and if this interest can be shown by their complaint.

The regulation goes on to cite formal and informal complaints. Without lengthening this matter, we can determine that this application, if defined as a complaint, would be a formal complaint, since it has been written and filed before the Commission. However, it is interesting to note that the application does not cite that the public utility (in this case, Respondent) has been discriminatory, unreasonable, unjust, etc., in any of the service or rates offered by it. Merely, the applicant wants the authority abandoned so that it can serve the territory itself.

Further, we would bring the Commission's attention to K.A.R. 82-1-204 (f) wherein it states:

> 'Complainant' means any person who complains to the commission of anything done or failed to be done in contravention or violation of the provisions of any statute or other delegated authority administered by the commission, or of any orders, rules, or regulations issued or promulgated thereunder, or any other alleged wrong over which the commission may have jurisdiction.

It is plain to see by these rules and regulations that a complaint is filed by a complainant that alleges a wrongdoing, or unreasonable act, or unjust or discriminatory action, which the Commission has authority to rectify. In this particular case, it is not alleged that Respondent has done anything wrong; therefore, this proceeding cannot be called a complaint, and the Commission would have no jurisdiction over the same.

The last area of the law and rules and regulations which would give the Commission jurisdiction over this matter would be if the Commission decided on its own initiative to conduct an investigation. Under K.A.R. 82-1-237 (c) it states, and we quote:

> Upon the initiation of an investigation. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by any public utility, common carrier or any other party under its jurisdiction, which the commission may believe is in violation of law or of any order of the commission. The commission may

> institute such other investigations as are required or authorized by law whenever the same are deemed to be necessary. It may, also, through its own legal staff or otherwise, secure and present such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

We would point out that in this particular case the Commission has not initiated its own investigation, or has seen fit to conduct an investigation into the practices of a duly-certificated public utility, the Respondent. Therefore, since it has not conducted its own investigation, and the application before it is not a proper one, it does not have jurisdiction over this matter.

2. Is Applicant clothed with authority to file an application requesting the Commission to abandon or to cancel the authority of a duly-certificated utility such as Respondent?

As previously stated, the only parties who have the authority to file an application to abandon the certificate of a public utility which holds such a Certificate of Convenience and Necessity from the Commission would be the certificated utility itself. That would have to be done by the proper filing of an application, and the presenting of sufficient evidence before the Commission to validate such abandonment of authority; or by the Commission, upon its own initiative, which would be in the form of an investigation into whether the utility was performing under the terms of its certificate. The matters contained in the purported application do not involve either of the two situations herein discussed. Therefore, the third party does not have the authority to file pleadings to terminate the certificate of a public utility merely because it wants to go into competition with said utility.

3. Does the application filed herein meet the criteria of formal or informal complaint of the rules and regulations of the Commission under the statutes of the State of Kansas?

As herein discussed, there are two types of complaints which may be filed before the Commission. These would be an informal complaint or a formal complaint. An informal complaint is one which is received either orally, by letter, or by other

writing. A formal complaint is one which must be in writing and shall comply with the requirements of the Commission rules and regulations (see K.A.R. 82-1-237). For the elimination of argument, it would be determined here that the alleged application filed herein, if in fact it has any standing at all, would be classified as a formal complaint. If this matter is to be treated as a complaint, then it has to meet the criteria of K.A.R. 82-1-237 (b). We do not believe the purported application has met the criteria of said K.A.R., for the reason that the allegations contained therein would have to establish a prima facie case for action by the Commission. As well defined by the rules and prior cases, a complaint could be to the services, rates, etc., of a certificated carrier and not to the fact that the complaint should be initiated because another utility desires to compete with the certificated carrier. In addition thereto, by the filing of a formal complaint, the provisions of K.A.R. 82-1-204 (f) would have to be met, which states in essence that:

> 'Complainant' means any person who complains to the commission of anything done or failed to be done in contravention or violation of the provisions of any statute or other delegated authority administered by the commission, or of any orders, rules, or regulations issued or promulgated thereunder, or any other alleged wrong over which the commission may have jurisdiction.

In order for the Applicant herein to become a complainant, it must be recognized as a public utility. The Court in the case of City of Piqua v. Public Utilities Commission, 320 N. E. 2d 661, said:

> Term 'public utility,' in statute permitting a public utility to file a complaint with the Public Utilities Commission protesting an alleged duplication of service by another public utility, does not include a public utility which is owned or operated by a municipal corporation.

In that particular case, the City of Piqua, the appellant, owned and operated a municipal power system which generated and distributed electric energy. Appellant had been supplying electricity to the Upper Valley Joint Vocational School until the school's Board of Trustees terminated the service

arrangement and entered into a contract to receive electricity from Dayton Power and Light Company, the appellee. Considering appellee's proposed action to be a duplication of its preexisting, the appellant filed a complaint with the Public Utilities Commission requesting an order preventing appellee from furnishing electric energy to the school. The Court further said in that case:

> "... the provisions of Section 4905.261 Revised Code do not apply to a municipally owned utility and that this statute conferred no jurisdiction upon the commission to act in disputes of this nature.

The law R. C. 4905.261, in pertinent part, reads as follows:

> Whenever a public utility proposes to furnish or furnishes electric energy to a consumer and which consumer is being furnished or was being furnished electric energy by another public utility, the latter public utility may file a complaint with the public utilities commission protesting the furnishing of service by the other public utility. ... The commission upon finding that the complaining public utility has been furnishing or will furnish an adequate service to such consumer and that the public utility complained against will duplicate facilities of the complainant, shall order the public utility complained against not to furnish electric energy to such consumer.

The Court accordingly held that the term "public utility" as used in R. C. 4905.261 does not include a public utility which is owned or operated by a municipal corporation. Such municipal utility may not file a complaint with the Public Utilities Commission pursuant to R. C. 4905.261 protesting an alleged duplication of service by another public utility.

The complainant herein, Applicant, does not complain of any of the necessary elements contained in subparagraph (f). Therefore, Applicant does not meet the criteria of a complainant, which means in effect that there is no formal complaint before the Commission.

4. Is Applicant or the Johnson County Industrial Airport or the Johnson County Airport Commission a municipality under the laws of the State of Kansas?

It is well documented that a truly owned and operated municipal utility is not subject to the jurisdiction of the Commission, except as hereinafter provided in K.S.A. 66-133 and K.S.A. 66-131a. K.S.A. 66-104 states, and we quote:

> Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as hereinafter provided in K.S.A. 66-133. (and the provisions of K.S.A. 66-131a).

It is interesting to note that this section speaks of cities and not counties, nor airport authorities, nor airport commissions, nor industrial airport parks.

The Court said in the case of Holton Creamery Company v. G. H. Brown, 137 K. 418, as follows:

> The regulation and control of utility rates and services supplied by an electrical power and water plant owned and operated by a municipality is vested in the city government, subject to judicial review of the reasonableness of the same city ordinances pertaining thereto.

(See Public Utilities v. Knsas City Power & Light Company, 139 K. 842, and Kansas Gas & Electric Company v. City of McPherson, 146 K. 614.)

It is interesting to note that in all of these cases, also, the law refers to municipally-owned utilities within the corporate city limits, or three miles thereof. There is no mention of a county being defined as a municipality and authorized to operate a municipal utility. The query would be that if a county is a municipality and is authorized to operate a municipal utility, how can the term within three miles of the corporate city limits be defined, since it is to be found nowhere in the statute books.

It is true that in Chapter 10 of Kansas Statutes Annotated, entitled Bonds and Warrants, and more specifically, K.S.A. 10-101, a municipality is defined as:

> 'Municipality,' as used in this chapter and all acts amendatory thereto, unless otherwise expressed in such amendment, shall mean and include every corporation and

quasi corporation empowered to issue bonds in payment of which taxes may be levied.

The applicant herein seems to be hanging its hat on the fact that a municipality has been defined in this statute. However, we would point out to the Commission that Chapter 10 of K.S.A., is entitled Bonds and Warrants, and as municipalities are defined in that particular section of the statute book, it is as it relates to the power to issue bonds, either by a city or by a county. For the purposes of a public utility or a municipally-owned utility as defined by Chapter 66 of the Kansas Statutes Annotated, there is no such definition; and to the knowledge of this writer there has not been an occasion where a county itself has been able to operate as a municipally-owned utility.

The Court has said in many instances that a county under the laws of the State of Kansas is not treated as a municipality. This is well set out in the case of Silver v. Clay County, 76 K. 228, 91 Pac. 55, where the Court held:

> Counties are involuntary quasi-corporations and are mere auxiliaries to the state government and partake of the state's immunity from liability. They are in no sense business corporations.

This law was reiterated in the case of Clapham v. The Board of County Commissioners of the County of Miami, 158 K. 685, 149 P. 2d 344, where the Court held that the county was not liable for damages for the death of the plaintiff's husband, which was alleged to have resulted from the negligence of the defendant. The Court reiterated the law which was applied in Silver v. Clay County and further cited Shawnee County v. Jacobs, 79 K. 76, 99 Pac. 817, and other related cases, which find that a county is not liable for the damage and is not treated as a private corporation, but as an arm or auxiliary of the State. I would like to quote from McQuillin on Municipal Corporations, 1971 Revised Volume, Volume 1, Sect. 2.23, General considerations. McQuillin states:

So-called 'quasi-municipal' corporations have been

> defined and cnsidered in general in a preceding subdivision of this chapter.' Whether a particular corporation is (1) a municipal corporation in the strict sense of the term, or is (2) a quasi-municipal corporation, is sometimes answered differently in the several states, and even in the same state the decisions sometimes are in conflict as to whether a particular corporation is a municiapl corporation in the strict sense of the term or is a quasi-municipal corporation. Municipal corporations, using the term in its strict sense, include, unless otherwise provided by the constitution or a statute, as a general rule, only incorporated cities, villages and towns. Counties, it is generally held, are not included, nor are townships, unincorporated towns, unincorporated villages, or districts created by or pursuant to statute, such as drainage districts, irrigation districts, and the like.

It is recognized in McQuillin that a county is not in the strictest sense of the word a municipality. Therefore, it may not operate as a municipal utility.

5. May a municipally-owned utility offer partial service to a territory without offering the same service to the other patrons of the territory?

In the application which has been filed herein by Applicant, it states that Applicant is the owner of the land which encompasses the Johnson County Industrial Airport, and that entity is operated by the Johnson County Airport Commission under the auspices of the Applicant itself. By the terms of the application filed, Applicant desires to have the Certificate of Convenience and Necessity of Respondent terminated, so that Applicant may serve the patrons of the Industrial Airport of Johnson County. Nowhere in the application does it state, nor do we believe it will be indicated by any of the evidence offered by the applicant, that it intends to offer service as a municipally-owned utility to all of the citizens of Johnson County, which is required by law of other municipally-owned utilities. Therefore, it could not meet the criteria of being a municipally-owned utility, unless it would offer service to the entire area of Johnson County. The Applicant itself is without the expertise, equipment, and natural gas to provide service to the entire county of Johnson; and the Commission would have jurisdiction over this matter by the requirements of K.S.A.

66-131a, which requires a municipally-owned utility to file its tariffs. Such tariffs would have to reflect service to the entire population of Johnson County, and not just to that restricted area known as the Industrial Airport.

Even though we are speaking of a municipal utility, it is well founded in law that a public utility may not offer partial service to its customers and that jurisdiction is in the public utility commission to mandate that a full, reasonable service is offered to all rate payers. The Commission has jurisdiction over a municipal utility, as it relates to the filing of tariffs and under the statutes which already have been cited herein. Therefore, it would follow that the Commisson may demand that a municipal utility offer full service to its customers.

In the case of New York & Queens Gas Co. v. McCall, 171 App. Div. 580; 219 N. Y. 84, 681, the Court said:

> Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render. To correct this disposition to serve where it is profitable and to neglect where it is not, is one of the important purposes for which these administrative commissions, with large powers, were called into existence, with an organization and with cuties which peculiarly fit them for dealing with problems such as this case presents, and we agree with the Court of Appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capriciou;s, but was based on very substantial evidence, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views of what may be reasonable or wise.

Even though this case speaks of public utilities, it is clear that the Commission has the jurisdiction, and even the mandate, to require reasonable service by a utility, be it municipal or public, to all of the customers who desire service from that utility.

This is not the first time this matter has been addressed. It was ruled specifically on in the case of Town of Wickenburg v. Sabin, 200 Pacific Reporter, 2d Series, page 342, 68 Ariz. 75. In that particular case, Sabin, a customer, had applied for service from the town of Wickenburg, which is a municipal utility; and the utility denied the service upon the grounds that it did not have to offer service to all of its customers.

The Court in that case said, and we quote:

> Public service corporations must treat all their consumers fairly and without unjust discrimination and give all of them the same service on equal terms at uniform rates without discriminating between customers similarly situated as to character of service rendered or charges made and as regards discrimination in rates or service in the public utility field, a municipal corporation stands in the same position as a private corporation.

The Court further went on to say:

> ... And a municipality undertaking to supply water to its inhabitants stands in no different relation as to the right to discriminate from that of private corporations.

In this case the Court cited the law on discrimination in McQuillin Municipal Corporations, 2d Ed., Vol. 4, Sec. 1829, which states:

> The rule forbidding unjust discrimination has been variously expressed: The charges must be equal to all for the same service under like circumstances. A public service corporation is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service. It 'must be equal in its dealings with all.' It 'must treat the members of the general public alike.' All patrons of the same class are entitled to the same service on equal terms. 'The law will not and cannot tolerate discrimination in the charges of these quasi-public corporations. There must be equality of rights to all and special privileges to none.' 'A person having a public duty to discharge is undoubtedly bound to exercise such office for the equal benefit of all.' All should be treated alike; equality of rights requires equality of service.' The duty owed to all alike involves obligations to treat all alike.' 'The common law upon the subject is founded on public policy which requires one engaged in a public calling to charge a reasonable and uniform price to all persons for the same

service rendered under the same circumstances.'

Again, the Court said here:

> As regards discrimination in the public utility field, the appellant, a municipal corporation, stands in the same position as a private corporation.

6. May the Commission issue dual certificates of authority to serve the same area?

It is well documented in both the statutes and case law that the powers given to the Commission are to promote the welfare and interests of the citizens of the state of Kansas, who rely on the furnishing of utilities either by public utilities or municipally-owned utilities, through the granting of a certificate by the Commission to serve an area. The canceling of a part of the territory granted by a certificate so that another purported municipally-owned utility can operate would not be in the best interests of the citizens of the state of Kansas, and would be confiscatory and discriminatory in eliminating part of the territory held by the certificated utility. If the certificate is not canceled, the end result could be that there would be a regulated public utility and an alleged municipal utility serving the same area. That would be contrary to the laws of the State of Kansas and the rules and regulations of the Commission.

It has been well recognized in Kansas law that the operation of dual certificates in the utility field could be disastrous to one utility, thereby down-grading the service offered to the patrons, which is the primary concern in granting a utility the right to serve a particular area. In the case of General Communications, Inc. v. State Corporation Commission, 216 K. 410, Syllabus No. 3, the Court said:

> The granting by the State Corporation Commission of a certificate of convenience to a radio common carrier, under the provisions of K.S.A. 66-1,144, does not constitute an invasion of the territorial integrity of an existing operator where the proposed services are not in duplication of the existing services.

The Court was saying in this language that the Commission by granting a Certificate of Convenience and Necessity

where another carrier was not operating did not force the issue of competition, and therefore did not endanger the public welfare. The Court was merely reiterating the fact that it could be disastrous to have dual certificates for utilities operating in the same area. The Court went on further to say in the General Communications case, as follows:

> Insofar as the cases discussed above stand for the proposition that a certificate should not be granted to another service, which will duplicate the existing service unless the regulatory authority first determines that existing service is inadequate and that the person operating the same is unable or refuses to provide such service, we agree.

This law is reiterated in the case of Kansas Gas & Electric Company v. Public Service Commission, 122 K. 462, 251 Pac., 1097. As the dual communications system points out, this theory was restated in the recent case of Central Kansas Power Company v. State Corporation Commission, 206 K. 670, at page 677, in which the Court said:

> The statutes authorizing the Commission to supervise and control corporate action in the utility field have been generally understood as an expression of the legislature's administrative policy, designed to protect against ruinous competition, to promote adequate and efficient service and to limit the waste attendant on unnecessary duplication of facilities designed for the same purpose in the same area.

In the Kansas Gas & Electric case above cited, the Court stated as follows:

> In determining whether such Certificate of Convenience should be granted (1) the public convenience ought to be the Commission's primary concern, (2) the interest of public utility companies already serving the territory secondary, and (3) the desires and solicitations of the applicant a relatively minor consideration. (Page 466.)

This language needs to be taken in context with paragraph 7, which sets out that the Commission's primary concern should be public convenience. If in fact the Respondent herein is properly serving the area in question, and is providing adequate service to all of the patrons of that area; and if it would be against the public interest to have two utilities serving the same area, then the Commission certainly does not

have the authority to cancel the certificate of the Respondent. If dual service existed, then the Commission does have the authority to rule that it would not be in the best interests of the public, and that Applicant, since it is not a municipality, does have the authority, or should not be issued a certificate to serve said area and the tariff filing should not be accepted by the Commission.

7. Does the Commission have the authority to investigate to determine if a public utility or a municipally-owned utility is capable of providing service to the patrons it should serve under all cnditions?

There is no question here that there is not enough gas in the wells given to Applicant by the donor, which have been described in the application, to sufficiently provide for the patrons it desires to serve during the peak winter months. If Applicant is allowed to prevail under its application and terminate the services of Respondent, then there will be no provider of natural gas which is capable of handling the needs of the patrons of the Industrial Airport Park. Further, there is no supply of natural gas immediately available to Applicant except by Northwest Pipeline Company, successor to Cities Service, which is controlled by the Federal Energy Regulatory Commission (FERC) of the United States government. It is not subject to jurisdiction by the Commission, and does not have to provide natural gas to Applicant unless it so desires or is so ordered by FERC. Therefore, Applicant is not guaranteed a regular supply of natural gas during the peak periods of use. The welfare of the patrons which it purports to serve is in grave danger if a regulated public utility, such as Respondent, is not available for providing said service.

## CONCLUSION

Respondent has shown by the above arguments and legal citations that the application filed herein by Applicant should be dismissed, because the Commission has no jurisdiction over the

same, and because there is no provision in the Kansas statutes or Kansas Administrative Rules and Regulations authorizing Applicant to do any filing before the Commission. The only authority for the abandonment of a Certificate of Convenience and Necessity would be by the person holding the certificate, or by the Commission on its own initiative. In addition, the best interests of the citizens of Johnson County will not be furthered by the canceling of the certificate of the respondent, since it has the only capable, efficient service to provide to the rate-paying customers of Johnson County. Applicant does not meet the criteria of a municipality under the terms of operating a municipally-owned utility, since it does not offer services to all the citizens of Johnson County which would be within its municipal bounds by the terms of the language used in the application.

Respectfully submitted,

BOB W. STOREY
Shadow Wood Office Park
5863 S. W. 29th Street
Topeka, Kansas 66614
Attorney for Union Gas System, Inc.

VERIFICATION

STATE OF KANSAS, COUNTY OF SHAWNEE, SS:

Bob W. Storey, of lawful age, being first duly sworn, on oath deposes and says:

That he is attorney for Union Gas System, Inc.; that he has read the above and foregoing Legal Memorandum and knows the contents thereof; and that the statements therein contained are true and correct to the best of his knowledge and belief.

BOB W. STOREY

Subscribed and sworn to before me this 1st day of September, 1983.

Notary Public

My appointment expires:

Edna Ferguson
STATE NOTARY PUBLIC
Shawnee County, Kansas
My Appointment Expires:
March 19, 1934

CERTIFICATE OF SERVICE

I, Bob W. Storey, do hereby certify that a copy of the foregoing Legal Memorandum was served on the following by first class United States mail, postage prepaid and properly addressed, this 1st day of September, 1983:

Gerald E. Williams
Gage & Tucker
9401 Indian Creek Parkway
P. O. Box 25830
Overland Park, Kansas 66225

Philip S. Harness
Assistant County Counselor
Johnson County Courthouse
Olathe, Kansas 66061

William E. Franklin, Chairman
Board of County Commissioners
Johnson County Courthouse
Olathe, Kansas 66061

Brian J. Moline, General Counsel
Kansas Corporation Commission
State Office Building, 4th Floor
Topeka, Kansas 66612

BOB W. STOREY

EXHIBIT "F"

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

BEFORE COMMISSIONERS: MICHAEL LENNEN, CHAIRMAN
RICHARD C. (PETE) LOUX
PHILLIP R. DICK

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF JOHNSON COUNTY, KANSAS, TO TERMINATE THE CERTIFICATE OF CONVENIENCE AND AUTHORITY TO TRANSACT BUSINESS OF UNION GAS SYSTEM, INC. UPON THE JOHNSON COUNTY INDUSTRIAL AIRPORT PROPERTY. | ) | DOCKET NO. 138,498-U |
| JOHNSON COUNTY, KANSAS, APPLICANT, | ) | |
| UNION GAS SYSTEM, INC., RESPONDENT | ) | |

ORDER

THE ABOVE-CAPTIONED MATTER COMES BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS FOR CONSIDERATION. HAVING REVIEWED ITS FILES AND RECORDS AND BEING DULY ADVISED IN THE PREMISES, THE COMMISSION FINDS AND CONCLUDES AS FOLLOWS:

1. ON JULY 21, 1983, JOHNSON COUNTY, KANSAS FILED AN APPLICATION TO TERMINATE UNION GAS SYSTEM'S CERTIFICATE OF CONVENIENCE AND AUTHORITY TO TRANSACT BUSINESS AS A PUBLIC UTILITY AT THE JOHNSON COUNTY INDUSTRIAL AIRPORT. THE APPLICANT ALLEGED IT IS THE BENFFICIARY OF OIL AND GAS LEASES LOCATED IN THE IMMEDIATE VICINITY OF THE AIRPORT PROPERTY. THE APPLICANT DESIRES TO TRANSPORT THIS GAS TO CONSUMERS THROUGH A DISTRIBUTION SYSTEM IT OWNS WHICH IS CURRENTLY USED BY THE RESPONDENT.

2. THE RESPONDENT, UNION GAS, FILED A MOTION TO DISMISS THE APPLICATION ON SEPTEMBER 1, 1983. RESPONDENT ALLEGED THE COMMISSION WAS WITHOUT JURISDICTION OVER THE APPLICATION AS FILED BECAUSE OF CERTAIN PROCEDURAL DEFECTS. RESPONDENT ALSO ALLEGED THE APPLICANT WAS WITHOUT AUTHORITY TO FILE AN APPLICATION REQUESTING THE COMMISSION TO REVOKE A CERTIFICATE. RESPONDENT ALSO ALLEGED THAT NEITHER JOHNSON COUNTY NOR THE JOHNSON COUNTY AIRPORT COMMISSION WAS A MUNICIPALITY UNDER THE LAWS OF THE STATE OF KANSAS.

3. The Commission, in an order dated October 4, 1983, requested the Respondent to address two additional issues prior to oral argument. Those issues were the application of K.S.A. 66-131 to this matter and whether the Commission has discretion to refuse to allow a municipality to operate in an area already served by a certificated public utility. The Applicant was requested to file a brief addressing these questions and those raised by the Respondent in its Motion to Dismiss.

4. Oral arguments were heard by the Commission on November 21, 1983. The Commission found that notice was proper and that it had jurisdiction to hear this matter.

5. The Commission believes the consideration of two issues will resolve this proceeding. The first is whether the Applicant can be a municipality for purposes of K.S.A. 66-104 and K.S.A. 66-131 and thus largely exempt from Commission jurisdiction. The second is whether the Applicant has presented evidence which would indicate that Union Gas System's certificate to serve Johnson County Industrial Airport should be terminated.

6. The Commission is persuaded that Johnson County is not a municipality for purposes of the Public Utilities Act, K.S.A. 66-101, et seq. The exemption from Commission supervision provided in K.S.A. 66-104 is a narrow one and the plain language of that statute forecloses a construction which would allow a county to be a municipality. K.S.A. 66-104 provides in part:

> The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located outside of and more than three (3) miles from the corporate limits of such municipality, but nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of

SUCH CORPORATE LIMITS BUT WITHIN THREE (3) MILES THEREOF EXCEPT AS PROVIDED IN K.S.A. 66-131A.

IF A COUNTY WAS CONSIDERED A MUNICIPALITY THEN IT COULD EXTEND ITS UTILITY OPERATIONS THREE MILES BEYOND ITS CORPORATE LIMITS INTO ANOTHER COUNTY WITHOUT BECOMING A PUBLIC UTILITY SUBJECT TO COMMISSION JURISDICTION. SURELY THIS RESULT WAS NOT CONTEMPLATED BY THE LEGISLATURE.

7. K.S.A. 66-104 PROVIDES FURTHER:

EXCEPT AS HEREIN PROVIDED, THE POWER AND AUTHORITY TO CONTROL AND REGULATE ALL PUBLIC UTILITIES AND COMMON CARRIERS SITUATED AND OPERATED WHOLLY OR PRINCIPALLY WITHIN ANY CITY OR PRINCIPALLY OPERATED FOR THE BENEFIT OF SUCH CITY OR ITS PEOPLE, SHALL BE VESTED EXCLUSIVELY IN SUCH CITY, SUBJECT ONLY TO THE RIGHT TO APPLY FOR RELIEF TO THE CORPORATION COMMISSION AS HEREINAFTER PROVIDED IN K.S.A. 66-133 AND TO THE PROVISIONS OF K.S.A. 66-131A.

THIS SECTION OF THE STATUTE INDICATES A CLEAR LEGISLATIVE INTENT THAT THE HOME-RULE EXEMPTION TO COMMISSION SUPERVISION SHOULD APPLY ONLY TO CITIES. THE TERM MUNICIPALITY IS NOT DEFINED IN CHAPTER 66, BUT A READING OF THIS STATUTE AS A WHOLE LEADS TO THE CONCLUSION THAT A COUNTY IS NOT A MUNICIPALITY.

8. THE APPLICANT CONTENDS THAT THE DEFINITION OF A MUNICIPALITY SET FORTH IN K.S.A 12-825J SHOULD CONTROL. THAT STATUTE PROVIDES:

(A) ANY MUNICIPALITY WHICH OWNS OR OPERATES, OR WHICH HEREAFTER OWNS OR OPERATES, A UTILITY FURNISHING WATER, GAS OR ELECTRICITY IS HEREBY AUTHORIZED AND EMPOWERED TO ENTER INTO CONTRACTS FOR THE PURCHASE OF WATER, GAS OR ELECTRICITY FROM ANY PERSON, FIRM, CORPORATION OR OTHER MUNICIPALITY, UPON SUCH TERMS

AND CONDITIONS AS MAY BE DEEMED NECESSARY AND REASONABLE BY THE GOVERNING BODY OF SUCH MUNICIPALITY. ANY SUCH CONTRACT MAY INCLUDE AN AGREEMENT FOR THE PURCHASE OF WATER, GAS OR ELECTRICITY NOT ACTUALLY RECEIVED. NO SUCH CONTRACT SHALL BE MADE FOR A PERIOD IN EXCESS OF FORTY (40) YEARS, BUT RENEWAL OPTIONS IN FAVOR OF THE PURCHASING MUNICIPALITY MAY BE INCLUDED THEREIN. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE THE LEVY OF A TAX BY ANY MUNICIPALITY ENTERING A CONTRACT AS HEREIN PROVIDED.

(B) AS USED IN THIS ACT, THE TERM "MUNICIPALITY" SHALL MEAN AND INCLUDE ANY CITY, COUNTY OR TOWNSHIP.

THE DEFINITION SET FORTH IN SUBSECTION (B) IS CLEARLY LIMITED TO APPLY ONLY TO THAT ACT. K.S.A. 12-825J IS NOT APPLICABLE TO CHAPTER 66, PARTICULARLY SINCE THIS DEFINITION WOULD CONTRADICT THE CLEAR INTENT OF K.S.A. 66-104. THE COMMISSION CONCLUDES THAT K.S.A. 12-825J IS INTENDED TO STATUTORILY EMPOWER MUNICIPALITIES TO ENTER INTO LONG-TERM CONTRACTS FOR THE PURCHASE OF WATER, GAS, OR ELECTRICITY. A CITY, TOWNSHIP OR COUNTY CAN PROVIDE AND CONTRACT FOR UTILITY SERVICES BUT K.S.A. 66-104 WILL EXEMPT ONLY CITIES FROM OUR JURISDICTION.

9. THE CASES CITED IN BOTH PARTIES' BRIEFS UNIFORMLY STAND FOR THE CONCEPT THAT MUNICIPAL UTILITIES ARE BEYOND THE SCOPE OF COMMISSION SUPERVISION. SEE THE STATE, EX REL. V. THE WYANDOTTE COUNTY GAS CO., 88 KAN. 165 (1912); HOLTON CREAMERY CO. V. BROWN, 137 KAN. 418 (1933); BOARD OF PUBLIC UTILITIES V. KANSAS CITY POWER AND LIGHT, 139 KAN. 842 (1934); AND KANSAS GAS AND ELECTRIC CO. V. CITY OF MCPHERSON, 146 KAN. 614 (1937). NONE OF THESE CASES, HOWEVER, INVOLVE A COUNTY-OPERATED UTILITY. JUDICIAL GUIDANCE AS TO WHETHER A COUNTY CAN OPERATE A MUNICIPAL UTILITY FREE OF STATE REGULATORY CONSTRAINTS SIMPLY DOES NOT EXIST IN THIS STATE. THE RELEVANT STATUTES INDICATE THE LEGISLATURE DID

NOT CONTEMPLATE THIS SITUATION AND WE ARE RELUCTANT TO BROADEN THE SCOPE OF THE EXEMPTION WITHOUT CLEAR AUTHORITY TO DO SO.

10. EVEN IF A COUNTY COULD QUALIFY AS A MUNICIPALITY FOR PURPOSES OF CHAPTER 66 IT IS UNCLEAR WHETHER A SUB-UNIT OF A COUNTY, SUCH AS AN AIRPORT COMMISSION, COULD QUALIFY. THE COMMISSION DETERMINES IT NEED NOT REACH THIS ISSUE BY CONCLUDING A COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF THE PUBLIC UTILITIES ACT.

11. THE SECOND ISSUE IS WHETHER THE APPLICANT HAS DEMONSTRATED THAT THE TERMINATION OF UNION GAS SYSTEM'S CERTIFICATE WILL PROMOTE THE PUBLIC CONVENIENCE.

12. THE COMMISSION BELIEVES THE SAME CRITERIA USED WHEN A PUBLIC UTILITY APPLIES FOR A CERTIFICATE PURSUANT TO K.S.A 66-131 SHOULD APPLY TO AN APPLICATION REQUESTING THE TERMINATION OF AN EXISTING CERTIFICATE. IT HAS BEEN STATED THE COMMISSION'S PRIMARY CONCERN SHOULD BE THE PUBLIC CONVENIENCE. THE INTEREST OF PUBLIC UTILITIES ALREADY SERVING THE AREA IS A SECONDARY CONCERN. THE DESIRES AND SOLICITATIONS OF THE APPLICANT ARE A RELATIVELY MINOR CONSIDERATION. KANSAS GAS AND ELECTRIC CO. V. PUBLIC SERVICE COMMISSION, 122 KAN. 462, 251 P. 1097 (1927).

13. THE RECORD DOES NOT INDICATE THAT THE PUBLIC CONVENIENCE WILL BE FOSTERED BY TERMINATING UNION GAS SYSTEM'S CERTIFICATE. THE APPLICANT ASSERTS THAT THEY HAVE SUBSTANTIAL GAS RESERVES WHICH WILL PERMIT THEM TO OFFER GAS TO THE INDUSTRIAL AIRPORT CUSTOMERS AT LOWER RATES. THE APPLICANT ADMITTED AT ORAL ARGUMENT IT WOULD NOT RELY ON THESE RESERVES, BUT WOULD REQUIRE A SECONDARY SUPPLIER (TRANSCRIPT OF ORAL ARGUMENT, PP. 37-38).

14. THE POTENTIAL SAVINGS TO THE AIRPORT LESSEES ARE OUTWEIGHED BY THE ADVERSE EFFECTS THAT WILL FOLLOW THE TERMINATION OF UNION GAS SYSTEM'S CERTIFICATE. THE REVENUES LOST WILL BE REFLECTED IN HIGHER RATES FOR THE CUSTOMERS REMAINING ON

THE RESPONDENT'S SYSTEM. JOHNSON COUNTY HAS INDICATED AN UNWILLINGNESS TO SERVE ANY CUSTOMERS OTHER THAN THOSE ON THE AIRPORT PROPERTY (TRANSCRIPT OF ORAL ARGUMENT, PP. 42-43) AND SUGGESTS THIS TYPE OF DISCRIMINATION WOULD NOT BE UNJUST (APPLICANT'S BRIEF, P. 18). THE COMMISSION CONCLUDES IT WOULD NOT BE IN THE PUBLIC INTEREST TO PERMIT JOHNSON COUNTY TO SERVE A SELECT GROUP OF INDUSTRIAL CUSTOMERS ALREADY SERVED BY A PUBLIC UTILITY WHEN IT HAS NO INTENTION OF SERVING ANY OTHER CUSTOMERS.

15. THERE HAVE BEEN NO ALLEGATIONS THAT UNION GAS HAS SERVED THE CERTIFICATED AREA IN QUESTION EITHER INADEQUATELY OR INEFFICIENTLY. A SHOWING OF THIS TYPE IS NECESSARY TO PERMIT EITHER THE REVOCATION OF A CERTIFICATE OR GRANTING A CERTIFICATE WHEN SERVICE IS ALREADY AVAILABLE. IN GENERAL COMMUNICATIONS SYSTEM, INC., V. STATE CORPORATION COMMISSION, 216 KAN. 410, 532 P.2D (1975) THE KANSAS SUPREME COURT CONSIDERED THE LATTER SITUATION. THE COURT STATED THAT A CERTIFICATE SHOULD NOT BE GRANTED TO ANOTHER SERVICE WHICH WILL DUPLICATE EXISTING SERVICE UNLESS THE REGULATORY AUTHORITY FIRST DETERMINES THAT EXISTING SERVICE IS INADEQUATE OR THE PERSON OFFERING THAT SERVICE IS UNWILLING OR UNABLE TO PROVIDE SUCH SERVICE. 216 KAN. AT 421. THE COMMISSION FINDS THIS REASONING TO BE APPLICABLE TO THIS MATTER AND FINDS NO EVIDENCE IN THE RECORD TO INDICATE THE EXISTING SERVICE IS INADEQUATE. THE COMMISSION CONCLUDES THE PUBLIC CONVENIENCE WOULD NOT BE FURTHERED BY TERMINATING SERVICE THAT HAS BEEN EFFICIENT AND SUFFICIENT.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

JOHNSON COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF OPERATING A GAS UTILITY OUTSIDE THE COMMISSION'S AUTHORITY AND JURISDICTION PURSUANT TO K.S.A. 66-104 AND K.S.A. 66-131.

THE PUBLIC CONVENIENCE WILL NOT BE SERVED BY TERMINATING UNION GAS SYSTEM'S CERTIFICATE TO SERVE THE JOHNSON COUNTY INDUSTRIAL AIRPORT.

THE RESPONDENT'S MOTION TO DISMISS THE APPLICATION IS HEREBY GRANTED.

THE COMMISSION RETAINS JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER TO ENTER SUCH ORDER OR ORDERS AS IT SHALL DEEM APPROPRIATE.

DATED: JANUARY 19, 1984

LENNEN, CHMN.; LOUX, COM. DICK, COM.

Judith McConnell

JUDITH MCCONNELL
EXECUTIVE SECRETARY

SEAL

BJM:RAM

ORDER MAILED JAN 19 1984

EXHIBIT "G"

State of Kansas



State Corporation Commission
Fourth Floor, State Office Bldg.
Ph. 913/296-3355
TOPEKA, KANSAS 66612-1571

January 19, 1984

Gerald E. Williams
Gage & Tucker
9401 Indian Creek Parkway
P.O. Box 25830
Overland Park, Kansas 66225

RE: Johnson County Industrial Airport;
Docket 138,498-U

Dear Mr. Williams:

Enclosed is a copy of the Commission Order in the above captioned matter. I am also enclosing a copy of the Union Gas tariff per your request.

The Commissioners have directed that I include in this transmittal letter their commendation and encouragement to the efforts of Johnson County officials to find the best and most advantageous case for the subject gas deposits.

The Commissioners hope that negotiations between Union Gas and the Airport authority will resume in a spirit of cooperation. A number of alternatives to achieve the same ends exist including outright purchase by Union and negotiated transportation charges.

Yours very truly

Brian J. Moline
General Counsel
Kansas Corporation Commission

BJM:hb
cc: Bob Storey
Encl.

EXHIBIT "H"

COGSWELL, STOREY, GREEN & CHUBB
LAW OFFICES

GLENN D. COGSWELL
BOB W. STOREY, P.A.
T. L. GREEN
JANET A. CHUBB

SHADOW WOOD OFFICE PARK
5863 S.W. 29TH STREET
TOPEKA, KANSAS 66614
913/273-4550

January 25, 1984

Mr. Gerald E. Williams
Gage & Tucker
9401 Indian Creek Parkway
P.O. Box 25830
Overland Park, Kansas 66225

Re: Application of Johnson County, Kansas, to Terminate Certificate of Convenience and Authority of Union Gas System, Inc., Docket No. 138,498-U

Dear Jerry:

Now that our dispute in the above-entitled matter has been handled by an Order issued by the Kansas Corporation Commission, I wanted to get in touch with you on behalf of my client to suggest that we sit down with our clients and discuss the possibility of Union Gas and Johnson County working together in some manner. I think this is what the Commission desires by referencing the letter which was sent with the Order.

Perhaps the topic of conversation should be in the area of whether or not Union could transport gas for the County at a certain price, whether or not Union and the County could negotiate a fair price for the purchase of some of the gas, and other related issues.

If your client is interested in having such a meeting, please let me know and give me some dates which would be acceptable to your people.

I will await your reply.

Very truly yours,

BOB W. STOREY

BWS:kh

bcc The Hon. Michael Lennen
Mr. Richard (Pete) Loux
Mr. Phillip Dick
Mr. Harrison F. Johnson
Mr. William H. Reeder
Mr. Brian Moline

# MEMORANDUM

To: Members of the House Transportation Committee

Date: February 7, 1985

From: Kansas Department of Revenue

Re: Request for Legislation

The Kansas Department of Revenue requests one bill which will contain a number of amended statutory provisions necessitated by VIPS and other housekeeping matters. Statutes to be amended are:

1) K.S.A. 8-127 - change would include (1) a change from 15 to 30 days for the time period in which to register a vehicle which has been acquired by a new owner and (2) to clarify the 30 day time period in which to register the acquired vehicle to indicate that the 30 days include weekends and holidays.

2) K.S.A. 8-130 - would be amended to clarify that the register of title applications required to be maintained by the Division of Vehicles may be maintained on computer rather than on manual files or paper documents.

3) K.S.A. 8-133 - would be amended (1) to provide two personalized plates will be issued for passenger vehicles and trucks under 16,000 pounds and (2) provide that only one registration decal will be issued and that it will be displayed on the rear plate.

4) K.S.A. 1984 Supp. 8-135 - would be amended to provide that the present 30 day period for registering a new vehicle and for transferring a manufacturers certificate of origin or title upon sale of a vehicle would include weekends and holidays.

5) K.S.A. 8-141 - would be amended to provide that registration may be suspended when fees required by law have not been fully paid.

6) K.S.A. 8-142 - would be amended to make it unlawful to affix registration decals on a license plate in a position other than that prescribed by the director of vehicles.

7) K.S.A. 1984 Supp. 8-143 - would be amended to increase the transfer fee for corporations from $1.00 to $1.50 to make the same consistent with other transfer fees.

8) K.S.A. 8-143a - would be amended to eliminate the 10-day grace period for quarter payment truck registration. With this change all quarter pay registrations would be due on the first day of April, July and October.

9) K.S.A. 8-163 - would be amended to enable the Division of Vehicles to prescribe the manner in which applications for license plates with amateur radio call letters will be received. Change would enable processing to occur in the county.

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Attach. 2

10) K.S.A. 8-170 - would be amended (1) to change the transfer fee for antique vehicles from 50¢ to $1.50 to make it consistent with other vehicle transfer fees and (2) to revise other provisions relating to registration and titling of antique vehicles.

11) K.S.A. 1984 Supp. 8-172 - would be amended to allow processing of an application for registration of an antique vehicle to be made in the county treasurer's office.

12) K.S.A. 8-177a - would be amended to allow processing of an application for a Kansas national guard member license plate to be made in the county.

13) K.S.A. 1984 Supp. 8-177c - would be amended to allow processing of an application for an ex-prisoner of war license plate to be made in the county.

14) K.S.A. 74-2013 - would be amended to change the fee for a reissuance of a certificate of title from $1.00 to $3.50.

15) K.S.A. 74-2014 - statute allowing director of vehicles to destroy certain records would be amended to eliminate reference to (1) fee receipts which will be discontinued under VIPS, (2) all correspondence which will be maintained on computer files, (3) applications for reregistrations which will be maintained on computer files, and (4) engine file cards, registration name cards and title name cards which have all been discontinued. Change will also allow destruction of microfilmed applications of reregistration over three years old and destruction of applications for title and registration after they are microfilmed.

16) K.S.A. 79-5108 - would be amended to delete the reference in the statute pertaining to the registration renewal application having a detachable portion. The detachable part of the form has served no substantial benefit to vehicle owners. The form becomes separated on its own resulting in the loss of the data which the motor vehicle owner must have to receive a tax refund.

# MEMORANDUM

To: Members of the House Transportation Committee

Date: February 7, 1985

From: Kansas Department of Revenue

Re: Request for Legislation

During the last summer the Department of Revenue was notified by the United States Department of State, under authority of the Foreign Missions Amendments Act (P.L. 98-164), that the Office of Foreign Missions would initiate a new program of federal motor vehicle registration, titling, issuance of license plates, and liability insurance coverage for all diplomatic and consular vehicles in the United States. The State Department anticipated that the phased changeover from state systems to the federal program will take about 10 months to encompass all vehicles currently registered by diplomats and consuls in this country. Once all existing vehicles subject to this program have been registered by the Office of Foreign Missions, the states will be advised to discontinue licensing of diplomatic vehicles. Persons required to obtain registration through the Office of Foreign Missions are prohibited from registering their vehicles through any state system.

K.S.A. 75-124 presently provides for issuance of identification plates and cards to foreign consular officers. This statute should be amended accordingly or repealed.

One further consideration is that the statute presently includes honorary consuls. The new federal program will not include honorary consuls. The State Department has no objection to the states continuing to issue special license plates to these officials. However, they do request that such plates not bear the words "Consul," "Diplomat," or similar indicators of diplomatic or consular status.

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Attach. 3

# M E M O R A N D U M

To: Members of the House Transportation Committee

Date: February 7, 1985

From: Kansas Department of Revenue

Re: Request for Legislation

During the 1984 Legislative Session the Legislature enacted House Bill 3070 amending K.S.A. 1983 Supp. 79-3401 to add a definition of "agricultural ethyl alcohol" as follows:

> "A motor-vehicle fuel component with a purity of at least 99%, exclusive of any added denaturants, denatured in conformity with one of the methods approved by the United States Department of the treasury, bureau of alcohol, tobacco and firearms, and distilled in the United States of America from grain produced in the United States of America."

In addition a new section was added providing that in order to be eligible for the lower motor-fuels tax manufacturers, importers or distributors or agricultural ethynol to be blended in this state with motor-vehicle fuel must annually submit a certification under oath that their agricultural ethyl alcohol used, sold or delivered in Kansas conforms to the foregoing definition.

In Miller v. Publicker Industries, Inc., and Publicker Chemical Corporation, Case #65,839, the Florida Supreme Court ruled on October 11, 1984 that a similar Florida law violated the federal constitution. Chapter 84-353 limited the 4¢ a gallon tax exemption granted gasahol by section 212.63, Florida Statutes (1983), to gasahol containing "ethyl alcohol which is distilled from U.S. agricultural products or byproducts" only. In summary the court concluded that this provision constituted discriminatory taxation based upon the foreign origin of a product in violation of the import-export clause and likewise discriminates against foreign commerce in violation of the United States Constitution's commerce clause.

The Department of Revenue would request the Committee to reexamine the policy laid down in House Bill 3070 to avoid a similar court decision in this state.

2/7/85
Attach. 4

KANSAS PUBLIC TRANSIT ASSOCIATION

201 N. Kansas Ave. • Topeka, KS 66603 • (913)233-2011

POSITION OF
KANSAS PUBLIC TRANSPORTATION ASSOCIATION
ON STATE ASSISTANCE FOR
ELDERLY AND HANDICAPPED TRANSPORTATION

There is a need for expanded low-cost transportation for both elderly and handicapped citizens. The U. S. Department of Health and Human Services has indicated that between 10 and 40% of the elderly residing in nursing homes are estimated to be capable of returning to the community if appropriate services are available. Transportation services can make a big difference in the ability of older citizens and the handicapped to maintain an independent existence outside of institutional settings. Inadequate federal funding poses a substantial threat to the mobility of these individuals.

Section 18 and 9 federal funding has resulted in bus and van programs which carry Kansans in locations throughout the state. Section 18 provides funding for public transportation in towns with a population of under 50,000. There are over 160 city or county recipients of Section 18 funding. Section 9 funds transportation in cities over 50,000. These include Topeka, K.C. & Wichita. Section 18 and 9 require that elderly and handicapped individuals are not excluded from these services. This federal money cannot be used if there is a lack of local matching dollars. Furthermore, Section 9 operators are subject to a fixed federal operating cap which is forcing them to either simply maintain general operations or even worse, reduce these operations. While transit properties are experiencing increases in costs and decreases in federal financial assistance, elderly and handicapped programs are lost in the shuffle. Services go down and fares go up. To assist the elderly and handicapped, transit properties in Kansas must find another source of financial assistance.

Transit Systems across the country when faced with reduced federal funding requested state assistance. 40 states passed legislation to financially assist public transportation. State aid to public transportation has become the rule rather than an exception.

Below is a list of states providing assistance:

| | | |
|---|---|---|
| Alabama | Maine | Oklahoma* |
| Arizona | Maryland | Oregon |
| Arkansas | Massachusetts | Pennsylvania |
| California | Michigan | Rhode Island |
| Colorado* | Minnesota | South Carolina |
| Connecticut | Mississippi | Tennessee |
| Deleware | Missouri* | Texas |
| Florida | Montana | Vermont |
| Georgia | Nebraska* | Virginia |
| Illinois | Nevada | Washington |
| Indiana | New Jersey | West Virginia |
| Iowa* | New York | Wisconsin |
| Kentucky | North Carolina | |
| Louisiana | Ohio | |

*Rural States surrounding Kansas

The bill we are introducing to the Kansas Legislature will provide state financial assistance to over 160 city or county Transit properties enabling them to reduce fares paid by the elderly and handicapped and increase elderly and handicapped transportation services.

2/7/85
Attach. 5

Proposed

HOUSE BILL NO. _____

By

AN ACT establishing the Kansas elderly and handicapped transportation assistance act.

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

Section 1. This act shall be known and may be cited as the "Kansas elderly and handicapped transportation assistance act."

Sec. 2. It is hereby declared to be the purpose of this act to provide financial assistance to transportation systems which provide transportation services to the elderly and handicapped at rates below its costs to provide such services. It is in the interest of all the people of the state of Kansas to provide financial assistance to defray the costs incurred in providing transportation services to the elderly and the handicapped and to allow such transportation systems to continue to provide such services at a lower rate.

Sec. 3. When used in this act, transportation system means all public transportation properties receiving federal funding from the urban mass transportation administration under the provisions of sections 9 and 18 of the urban mass transportation act of 1964, as amended, and shall include, but not be limited to, street railways, subways and underground railroads, motor vehicles, trolley buses, motor buses and any combination thereof.

Sec. 4. (a) The secretary of the department of transportation shall allocate moneys, appropriated to the department for the purpose stated in section 2, to the transportation systems providing service to the elderly and handicapped at a reduced rate. Allocation of ~~funds~~ moneys shall be determined on the basis of ridership and cost.

(b) The secretary of the department of transportation shall adopt all rules and regulations necessary to implement the provisions of this act.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.