

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Senator Montgomery at
Chairperson

9:08 a.m./~~p.m.~~^{XXX} on Tuesday, February 12, 1985 in room 531-N of the Capitol.

All members were present except: Senator Gaines and Senator Mulich who were excused.

Committee staff present: Mike Heim, Theresa Kiernan, Emalene Correll, Lila McClaflin

Conferees appearing before the committee: Jean Schulte, Municipal Accounting System, Adm.
Ernie Mosher, League of Municipalities
Lynn House, City of Overland Park
Lyle H. Dresher, City Manager of Wamego, Ks.
Bill Ramsey, City of Olathe, Olathe, Ks.
Alan Alderson, Kansas Parks & Recreation

The Chairman called the meeting to order.

Senator Allen moved to approve the minutes of the, February 7, 1985 meeting. The motion was seconded by Senator Daniels. The motion carried.

Jean Schulte addressed some concerns that the municipal accounting section of Topeka, have with S.B. 59. His written statement is a part of these minutes. (See attachment 1) He stated that S.B. 59 would be generally of more use for smaller cities. The larger cities would probably set up internal service funds, which he believed implied authority already exists.

Ernie Mosher, stated he did not see this bill being used only for smaller cities, it would be most helpful to middle size cities.

After discussion on the language in the bill, it was suggested by the Chairman, that Mr. Mosher and some one from the Municipal Accounting System, Dept. of Adm. work out language that would be agreeable to both parties and bring it before the committee on February 12, 1985.

Hearings were opened on S.B. 75. This bill would authorize cities to establish a general capital improvements fund, from current, budgeted revenues.

Jean Schulte stated they agreed that cities should have a plan for capital improvements, but they were not sure another fund was needed. His remarks are a part of these minutes. (See attachment 2)

Ernie Mosher, appeared in support of this bill. He stated the bill is supported by the League of Kansas Municipalities. His written statement is a part of these minutes. (See attachment 3) Lynn House, City of Overland Park, Lyle Dresher, City Manager of Wamego, Ks. and Bill Ramsey, City of Olathe, all spoke in favor of the bill.

A request was made by Alan Alderson, to introduce a bill concerning recreation commissions in cities and school districts, relating to increases in mill levies. (Attachment 4) Senator Allen moved to introduce the bill. Senator Bogina seconded the motion. The motion carried.

Senator Winter ask the committee to introduce a bill concerning the law enforcement by cities to collect delinquent real estate taxes. Senator Winter moved to introduce the bill. Seconded by Senator Bogina. The motion carried.

The meeting adjourned until 9:00, on Wednesday, February 13, 1985.

Sen. Montgomery
Senator Montgomery, Chairperson

HEARING ON SENATE BILL NO. 59, FEBRUARY 12, 1985

Jean Schulte, Municipal Accounting Section

Senate Bill No. 59 would be generally more useful for the smaller cities. The larger cities would probably set up Internal Service Funds (for which we believe implied authority already exists) for motor pools, data processing, etc. that would charge the users rates sufficient to cover operating costs and replacement of equipment.

We have reservations about the latitude allowed by the amended language "Moneys may be budgeted or transferred by the annual budget to such fund from any source which may be lawfully utilized for such purpose including the proceeds of tax levies, including rental or other equipment use charges on the various departments and agencies of the city, sufficient to finance new and replacement equipment."

The following equipment reserve/equipment purchase funds are already authorized:

- Noxious Weed Capital Outlay (K.S.A. 2-1318)
- Bridge and Street Machinery (K.S.A. 68-141g)
- Ambulance or Emergency Medical Service (K.S.A. 12-110d)
- Sewage Reserve (K.S.A. 12-610)
- Depreciation Reserve (K.S.A. 12-825(c))
- Fire Equipment, Law Enforcement, Ambulance (K.S.A. 12-110b)
- Special Recreation Facilities Reserve (K.S.A. 79-2925)

If another fund is needed, we suggest that the language be changed to: "Moneys shall be budgeted as an appropriation to such fund from the general fund or federal revenue sharing fund subject to legal expenditure." No other funds should be included, we feel, because allowing any other source may infringe on the law prohibiting diversion of funds (K.S.A. 79-2934).

For the sake of reference, we believe this fund should be named the "Special Equipment Reserve Fund."

We noted in our review that the Noxious Weed Capital Outlay Fund (K.S.A. 2-1318) and the tax-levy fund for fire, law enforcement and ambulance equipment (K.S.A. 12-110b) do not contain the language to exempt them from the budget law as are the other funds listed above. We suggest this matter be addressed by additional legislation.

HEARING ON SENATE BILL NO. 75, FEBRUARY 12, 1985

Jean Schulte, Municipal Accounting Section

We agree that cities should have an orderly plan for capital improvements. We doubt, however, that another fund is needed.

There already exists four special improvement funds:

(K.S.A. 79-1950a) - General and special improvement levies in lieu of bond issues in certain first class cities. Limit of 3 mills.

(K.S.A. 79-1950b) - Special improvement fund in cities under 200,000. Limit of 1/10 mill and limit on accumulated balance. Must be reimbursed from proceeds of bonds. Exempt from budget law.

(K.S.A. 13-10,140) - Special improvement fund for cities greater than 150,000 and less than 200,000. Limit on accumulated balance of \$500,000. Must be reimbursed from proceeds of bonds. Exempt from the budget law.

(K.S.A. 68-590) - Special highway improvement fund. Transfer limited to 25% of the fund or division thereof budgeted for roads, bridges, highways or streets. Exempt from budget law.

We note that the first three improvement funds are not uniformly applicable and therefore subject to the provisions of Home Rule. Therefore, cities can use Home Rule to accomplish the same purpose as proposed by S.B. 75.

(Attachment 2)

2/12/85

SB 75—City Capital Improvements Fund

Purpose: To authorize cities to establish a general capital improvements fund, from current, budgeted revenues.

Background: There is no single state law that generally authorizes cities to establish a capital improvements fund, which could be used to finance a variety of public improvements. Several special statutes exist which can be used for specified purposes, such as for buildings. However, the basic thrust of Kansas laws has been to effectively require the financing of public improvements by the issuance of debt. Kansas cities will need to continue to rely on debt financing in the future, given the quantity of the existing infrastructure problem. However, legislation to facilitate meeting current capital improvement needs from current revenue, to the maximum extent possible, appears advisable, especially to meet deferred maintenance and repair.

It is possible that cities, under their constitutional home rule powers, may now accomplish this general objective, although charter ordinance amendments to some cash basis and budget laws would appear necessary, which has not been standard operating procedure to date. As a matter of state public policy, there is an advantage to specific legislation authorizing such capital improvement planning and financing.

Explanation: SB 75 is broadly written to permit maximum local discretion. It permits a city, by ordinance of the governing body, to establish a capital improvements fund to be used to finance current and future capital improvements, including the repair, restoration or rehabilitation of existing public facilities. Moneys credited to the fund, directly or by transfer, would have to be budgeted. To assure the use of the fund for planned purposes, an officially adopted capital improvement plan is required.

The bill does not authorize a property tax; however, a separate property tax could be levied for this fund by home rule ordinance. The tax could be within or outside the local tax lid, as locally determined. Any such tax would be subject to a voter petition for a referendum, under the Constitution or K.S.A. 12-137.

Under subsection (c), moneys could not be credited to the capital improvement fund unless budgeted, except for reimbursed expenses.

Receipts and expenditures of the reserve fund must be shown in the annual budget. (Lines 46-50).

Subsection (d) provides that any unneeded moneys in the reserve fund may be retransferred, subject to budget procedure requirements.

Advantages. SB 75 would assist cities in the orderly planning and financing of public infrastructure needs and could facilitate meeting current needs from current revenues.

It provides an incentive for cities to annually revise and adopt a capital improvements program.

Since budgeted transfers could be made, it would permit charging the cost of an improvement from a single fund, rather than two or more funds.

It is likely that the fund will be used primarily for expensive repair and rehabilitation work, with major new improvements financed by bonds.

Passage of this bill is supported by the League of Kansas Municipalities. It is a policy objective set forth in the League's convention-adopted Statement of Municipal Policy and has been approved by the League governing body.

SENATE BILL No. 75

By Committee on Local Government

1-24

0017 AN ACT relating to cities; authorizing the establishment of a
0018 special capital improvements fund.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. (a) The governing body of any city, which has
0021 formally approved a multi-year capital improvement plan setting
0022 forth the public improvement and infrastructure needs of the city
0023 on a prioritized basis, may establish, by adoption of an ordi-
0024 nance, a capital improvements fund. The ordinance establishing
0025 such fund, and any amendments thereto, may provide for the
0026 transfer of moneys from other city funds available for improve-
0027 ment purposes to the capital improvements fund, including
0028 moneys in the city's federal general revenue sharing fund and
0029 general fund. Any general property tax specifically levied for the
0030 use of such fund shall be authorized by ordinance adopted under
0031 the provisions of section 5 of article 12 of the Kansas constitution.

0032 (b) Moneys in such capital improvements fund may be used
0033 to finance, in whole or in part, any public improvement need set
0034 forth in the adopted capital improvement plan, including the
0035 repair, restoration and rehabilitation of existing public facilities.
0036 The ordinance may provide that disbursements from such fund
0037 may be made for engineering and other advance public im-
0038 provement plans and studies and that reimbursements shall be
0039 made to the fund from future revenue from bond proceeds,
0040 special assessments or state or federal aid available for the
0041 completed project.

0042 (c) Except for such reimbursed expenses, no moneys shall be
0043 credited to such special fund except as may be budgeted an-
0044 nually, or transferred from other budgeted funds. Such fund shall
0045 not thereafter be subject to the provisions of K.S.A. 79-2925 to

by the annual
budget

.SB 75

2

0046 79-2937, inclusive, and amendments thereto. In making the
0047 budgets of such cities, the amounts credited to, and the amount
0048 on hand in, such special fund and the amount expended there-
0049 from shall be shown thereon for the information of the taxpayers
0050 of such cities. Moneys in such fund may be invested in accord-
0051 ance with the provisions of K.S.A. 10-131, and amendments
0052 thereto, with interest thereon credited to such fund.

0053 (d) If the governing body of any city determines that money
0054 which has been transferred to such special fund or any part
0055 thereof is not needed for the purposes for which so transferred,
0056 the governing body, by adoption of a resolution, may transfer
0057 such amount not needed to the general or other fund from which
0058 it was derived and such transfer and expenditure thereof shall be
0059 subject to the budget requirement provisions of K.S.A. 79-2925 to
0060 79-2937, inclusive, and amendments thereto.

0061 Sec. 2. This act shall take effect and be in force from and
0062 after its publication in the statute book.

By _____

AN ACT concerning recreation commissions in cities and school districts; relating to increases in mill levies; validating certain levies; amending K.S.A. 1984 Supp. 12-1908, and repealing the existing section.

Section 1. K.S.A. 1984 Supp. 12-1908 is hereby amended to read as follows: 12-1908. (a) Except as otherwise provided in subsection (b), when the provisions of this act have been adopted by an election, the commission shall certify annually, and not later than 20 days prior to the date for the publishing of the budget of the city or school district, whichever is applicable, its budget to the city or school district, which shall levy a tax sufficient to raise the amount required by such budget and an amount to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the city or school district, but in no event more than one mill or the amount set out in the petition provided for in K.S.A. 12-1904, and amendments thereto. When the petition has been submitted to a city and school district jointly, the budget shall be certified to the city or school district, whichever is larger, and the tax shall be levied by such city or school district, but such levy shall not be considered a levy of such city or school district in determining the aggregate levy of such city or school district under any of the statutes of this state. At any time after the making of the first tax levy pursuant to this act, the amount of such tax levy may be reduced or the authority to levy the tax may be revoked by a majority of the electors voting at an election called pursuant to a petition and conducted in the same manner as that prescribed by K.S.A. 12-1904, and amendments thereto for the petition and the election authorizing the levy. If the petition submitted is for the purpose of reducing the mill levy and not for the purpose of revoking the authority to levy the tax, it shall state the mill levy reduction desired. Upon revocation, all property and money belonging to the recreation commission shall become the property of the city or school district levying the tax under this section.

(b) After any city or school district or both, acting jointly, has begun to operate a supervised recreation system, if the recreation commission of a particular school district or city or of a city and school district jointly determines that the budget should be increased to adequately meet the needs of the city or school district, such recreation commission may submit a proposed program with the budget for carrying out the same to the levying authority which may levy a tax sufficient to raise the amount required by the expanded budget and an amount to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-774, and amendments thereto for the financing of redevelopment projects upon property located within the city or school district, but not to exceed one mill. Such levy may be made annually in an amount not to exceed the amount set forth in the resolution authorizing the same and shall be in addition to the one mill authorized by K.S.A. 12-1904, and amendments thereto. Any city of the first class or any school district located in Harvey county or any school district operating a recreation commission within the cities of Lawrence, Hutchinson or Wellington may levy for a recreation commission located therein and to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon proerty located within the city or school district a tax in an amount not to exceed one mill in addition to those levies authorized herein and in K.S.A. 12-1904, and amendments thereto. Any levy in addition to the one mill levy authorized by K.S.A. 12-1904, and amendments thereto, shall not be considered a levy of such city or school district in determining the aggregate levy of such city or school district under any of the statutes of this state but shall be in addition to all other levies authorized by law and shall not be subject to limitations prescribed by law.

(c) Any recreation commission established by a city, school district or both, acting jointly, which has been operating for at least three years on

the maximum levies authorized by K.S.A. 12-1904, and amendments thereto, and by subsection (b), may submit a proposed program, with the budget for carrying out the same, to the levying authority, which may then levy tax sufficient to raise the amount required by such budget and an amount to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located with the city or school district. Such levy may be made annually in an amount not to exceed the amount set forth in the resolution authorizing the same, shall not exceed one mill and shall be in addition to the levies authorized by K.S.A. 12-1904, and amendments thereto, and by subsection (b). Such levy shall not be considered a levy of such city or school district under any of the statutes of this state, but shall be in addition to all other levies authorized by law and shall not be subject to any limitations prescribed by law.

(d) In any city or school district in which a recreation commission has been established, before the levying authority shall make any additional levy authorized by subsection (c), it shall adopt a resolution reorganizing the recreation commission as follows: (1) Where the recreation commission was established by a city acting independently, five members shall be appointed as provided in K.S.A. 12-1907, and amendments thereto, two members shall be duly elected members of the city governing body and the city governing body shall appoint one member of the board of education of each school district the boundaries of which encompass any portion of the city; (2) where the recreation commission was established by a school district acting independently, five members shall be appointed as provided in K.S.A. 12-1907, and amendments thereto, two members shall be duly elected members of the board of education of such school district and the board of education shall appoint one member of the governing body of each city the boundaries of which encompass any portion of the school district; and (3) where the recreation commission was established by a city and school district jointly, five

members shall be appointed as provided in K.S.A. 12-1907, and amendments thereto, two members shall be duly elected members of the city governing body and two members shall be duly elected members of the board of education of the school district. Members ex officio of the recreation commission shall serve without compensation.

(e) Before the tax levying authority makes any additional levy authorized by this section, or any levy in excess of that previously authorized by resolution, the city or the school district, or both, shall adopt a resolution authorizing the making of the levy. Such resolution shall state the purpose for which the levy is made and shall be published once each week for two consecutive weeks in the official city newspaper or the official school district newspaper, whichever is appropriate. After publication, the additional tax levy may be made annually without an election unless a petition in opposition thereto is filed in accordance with this section. Such petition shall be signed by a number of the qualified electors of the city or the school district, equal in number to 5% of the qualified electors of the city or the school district who voted at the last preceding regular city or school district election and shall be filed with the city clerk or the county clerk, whichever is appropriate, within 60 days after the last publication of the resolution. If a valid petition is signed, no levy shall be made in excess of that being made prior to the adoption of the resolution unless and until the proposition has been submitted to and approved by a majority of the electors voting thereon at the next regular city or school district election, whichever is appropriate, or at a special election called for the purpose. After an election is held and a majority votes in favor of levying the tax, the tax may be levied.

(f) Any levy made pursuant to subsections (b) and (c) of this section prior to the effective date of this act shall be deemed to have been authorized by resolution of the city, school district or both, as required, and shall be a valid levy of such city or school district notwithstanding any failure to authorize the same by annual resolution.

Section 2. K.S.A. 1984 Supp. 12-1908 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 15, 1983

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ANTITRUST 296-5299

ATTORNEY GENERAL OPINION NO. 83- 143

Granville M. Bush,
Attorney at Law
111 East Avenue North
Lyons, Kansas 67554

Re: Cities and Municipalities -- Public Recreation
and Playgrounds -- Certification of Budget; Annual
Resolutions

Synopsis: A recreation commission established pursuant to
K.S.A. 12-1901 et seq., must certify its budget
annually to any school district which is to levy
a tax for the supervised recreation system. Any
additional mill levy, as authorized in K.S.A.
12-1908, as amended by L. 1983, ch. 68, necessary
for operation of the recreation system must be
approved by annual resolution of the school dis-
trict. Cited herein: K.S.A. 12-1215, 12-1901,
12-1902, 12-1906, 12-1908, as amended by L. 1983,
ch. 68, §1.

* * *

Dear Mr. Bush:

As legal counsel for the Lyons Recreation Commission and
U.S.D. No. 405, you request our opinion concerning whether
K.S.A. 12-1908(b) requires U.S.D. No. 405 to adopt a resolu-
tion each year authorizing an additional mill levy for opera-
tion of the recreation commission, if additional funding is
needed, or whether a resolution can be passed that authorizes
the additional levy for the current year and all succeeding

(Attachment 4)

2/12/85

years. It is your opinion that K.S.A. 12-1908 mandates the adoption of a resolution in each year in which any additional mill levy is deemed necessary. We agree.

Whether this recreation commission was established pursuant to K.S.A. 12-1902 and 12-1906, the recreation commission has the responsibility of operating the recreation system and all the programs and services thereof. However, the recreation commission does not have the authority to levy a property tax. This authority is vested in the city or school district, or both, which created the supervised recreation system. Such authority is conferred in K.S.A. 12-1908, as amended by L. 1983, ch. 68, §1. Subsection (a) of this statute, in relevant part, provides:

"Except as otherwise provided in subsection (b), when the provisions of this act have been adopted by an election the commission shall certify annually, and not later than 20 days prior to the date for the publishing of the budget of the city or school district, whichever is applicable, its budget to the city or school district, which shall levy a tax sufficient to raise the amount required by such budget . . . but in no event more than one mill . . . provided for in K.S.A. 12-1904" (Emphasis added.)

Subsection (b) of the statute then provides:

"After any city or school district or both, acting jointly, has begun to operate a supervised recreation system, if the recreation commission of a particular school district or city or of a city and school district jointly determines that the budget should be increased to adequately meet the needs of the city or school district, such recreation commission may submit a proposed program with the budget for carrying out the same to the levying authority which may levy a tax sufficient to raise the amount required by the expanded budget . . . , but not to exceed one mill. Such levy shall be in addition to the one mill authorized by K.S.A. 12-1904" K.S.A. 12-1908, as amended by L. 1983, Ch. 68, §1. (Emphasis added.)

K.S.A. 12-1908(e), as amended, governs the procedure for levy of the additional mill, or fraction thereof, and provides:

"Before the tax levying authority make any additional levy authorized by this [section] the city or school district, or both, shall adopt a resolution authorizing the making of the levy." (Emphasis added.)

We note, first, that the amount of any additional levy authorized by 12-1908(b) is determined by the "expanded budget" submitted by the recreation commission to the tax levying authority, in this instance, a school district. Thus, the mill levy necessary to meet the "budget" submitted may vary from year to year as the fiscal needs of the recreation commission expand or constrict. Unless the monetary needs of the commission are fixed and the assessed valuation of the tax levying authority likewise is fixed, the taxing authority could not levy the exact same mill rate year after year. Instead, the obligation of the taxing district is "to raise the amount required by the expanded budget," which will, of necessity, require the presentation of the annual recreation system budget, application of the estimated assessed valuation of the district property and the setting of the necessary tax levy. As a practical matter, the only instance where the taxing district would be required to levy the same tax year after year is where the budget of the recreation system is so large as to repeatedly exceed the maximum two mill levy authorized by the statutes.

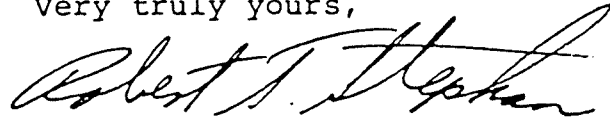
Neither the initial levy, nor the additional levy, is fixed for more than one year. Although neither may exceed one mill (nor together exceed two mills), the statutes do not require the levy of more than is necessary to cover the annual budget submitted by the recreation commission. That is, if the budget of the recreation system does not at least equal an amount requiring the one mill levy, the taxing authority is not required to levy one mill. The same is true, in our opinion, of the additional mill.

Secondly, the language of 12-1908(a) clearly contemplates an annual budget, an annual resolution, and an annual levy. The language of 12-1908(b) authorizes the additional levy and refers, not to a separate budget, but rather to an "expanded budget." The recreation commission, in fact, submits a single annual budget from which the determination of the necessity for an additional levy may be made. Such determination must, of course, be made each fiscal year.

Finally, we note that K.S.A. 12-1908(e), as amended, authorizes a protest style election in the case of the proposed additional levy. To conclude that the school district could adopt an additional levy from year to year in the form of a continuing resolution would deny the district patrons the right to annual notice of the additional levy and the right to petition for an election on the issue of whether such additional tax should be levied. Contrast this statutory scheme with that concerning certain library boards where authority for a continuing additional tax levy is specifically provided. See K.S.A. 12-1215(c), referring to "ensuing budget years." In the absence of specific statutory authority for a continuing levy, we would not be inclined to say that the legislature intended to reduce the patrons' notice and voting powers apparently authorized by K.S.A. 12-1908(e).

Therefore, any additional tax levy authorized by K.S.A. 12-1908(b) for the operation of recreation systems must be made annually by resolution of the taxing authority. The statute does not authorize the levy of any additional recreation systems tax on a continuing basis.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley O. Smoot
Deputy Attorney General

RTS:BJS:hle