

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Senator Montgomery at
Chairperson

9:07 a.m./~~pm~~ on Wednesday, February 13, 1985 in room 531-N of the Capitol.

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

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

Conferees appearing before the committee: Henry Beseau, City Manager, St. Marys, KS.
Paul Sasse, City of Independence, Ks.
Chris McKenzie, League of Municipalities
Bill Ervin, Dept. of Administration

The Chairman called the meeting to order.

Chris McKenzie, explained the amendments on S.B. 59, which he and Bill Ervin, Dept. of Administration had worked out. There was committee discussion on these amendments.

The Chairman called attention to S.B. 75, he announced that he and Senator Steineger had both talked with Fred Allen, Kansas Association of Counties, to see if counties would be interested in such a bill at this time. Mr. Allen told him the counties might be interested at another time. He would have to check it out with his membership. Mr. McKenzie and Mr. Ervin said they were in agreement with the amendments as presented.

The following action was taken on S.B. 59. Senator Salisbury moved to accept the amendments. Senator Allen seconded the motion. The motion carried. Senator Allen moved to report the bill favorably for passage. Senator Salisbury seconded the motion. The motion carried. Senator Steineger will carry the bill.

The following action was taken on S.B. 75. Senator Salisbury moved to accept the amendments to the bill. Senator Langworthy seconded the motion. The motion carried. Senator Ehrlich moved to report the bill favorably for passage. Senator Allen seconded the motion. The motion carried. Senator Ehrlich will carry the bill.

Hearings were opened on S.B. 76. Mike Heim reviewed Attorney General, Opinion No. 85-5, concerning the enforcement of delinquent special assessments, which possible, could cause some constitutional problems.

Chris McKenzie, testified in favor of S.B. 76, his written statement is a part of these minutes. (See attachment 1) A question and answer period followed his testimony.

Paul A. Sasse, City Manager, of Independence, KS., spoke in favor of the bill, his written testimony is also a part of these minutes. (Attachment 2)

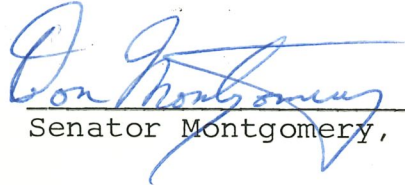
CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:07 a.m./~~XXX~~ on Wednesday, February 13, 1985

Henry Beseau, City Manager, of St. Marys, Ks, said he'd had some experience in the matter of abandoned property they had put on some special assessments and had to wait for the property to be sold in order to recoup their money. He would support the bill.

Senator Daniels moved to accept the minutes of the February 12, meeting. Senator Allen seconded the motion. The motion carried.

The meeting adjourned until Tuesday, February 19, 1985.



Senator Montgomery, Chairperson



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL / 112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Senate Committee on Local Government
FROM: Chris McKenzie, Attorney/Director of Research
DATE: February 13, 1985
SUBJECT: Senate Bill 76

The League appreciates the introduction of SB 76 by the Committee. For a number of years, the League has received requests from its member cities to seek legislative authorization of an alternative procedure for recovering the cities' expenses and costs as a result of undertaking the abatement of public nuisances, the removal of noxious weeds, and the removal of dangerous structures. SB 76 is designed to authorize cities to recover such costs and expenses by bringing an action in district court rather than through the special assessment collection process. Following is a further explanation of the need for the bill:

1. Background

K.S.A. 12-1617(e), 12-1617(f) and 12-1755 authorize cities to abate public nuisances, remove noxious weeds and remove dangerous structures after giving personal notice to the owner of the offending property. In such cases, if the owner fails to respond and correct the problem, the city takes action. Each of the above statutes authorize the city to attempt to recover the city's costs by certifying the outstanding amount to the county clerk for collection as a special assessment. It is common, however, for the owners of property charged with such assessments to refuse to pay. In those cases, the city must wait for the county to foreclose on the property for the delinquent special assessments and other taxes before it has any chance of recouping any of its expenses. Under the current Kansas law, three years and ten months must pass before a foreclosure action can be commenced for delinquent taxes and assessments.

In the case of condemned dangerous structures, it is also common for the owner of such property to simply abandon it and refuse to pay the special assessments and taxes altogether. In that event, the tax foreclosure sale price is likely to be less than the city's costs of removal. Since the proceeds of such sales must be apportioned among the various taxing jurisdictions, the city rarely recovers a significant amount of its costs.

2. Explanation

K.S.A. 79-2015 presently authorizes the State of Kansas to collect any taxes, fees, interests and penalties which it levies by bringing an action in district court as the state would to collect a personal debt. That statute, a copy of which is attached, was enacted by the legislature in 1959.

(Attachment 1)

2/13/85

President: Peggy Blackman, Mayor, Marion • Vice President: Ed Eilert, Mayor, Overland Park • Past President: Jack Alexander, Commissioner, Topeka • Directors: Robert C. Brown, Commissioner, Wichita • John L. Carder, Mayor, Iola • Richard B. Chesney, City Manager, El Dorado • Constance M. Conyac, Commissioner, Stockton • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Donald L. Hamilton, City Clerk/Administrator, Mankato • Carl D. Holmes, Mayor, Plains • John E. Reardon, Mayor, Kansas City • David Retter, City Attorney, Concordia • Melly K. Schmidt, Mayor, Hays • Deane P. Wiley, City Manager, Garden City • Executive Director: E.A. Mosher

SB 76 would grant cities the right to bring similar actions in district court for the collection of the outstanding amount due the city for the abatement of public nuisances, removal of noxious weeds or removal of dangerous structures. This would be an alternative method to the present special assessment procedure.

Please note that in the case of dangerous structures, SB 76 contains language in lines 89 through 91 which would preclude the commencement of such actions unless the proceeds of any insurance policy in which the city has created a lien (pursuant to K.S.A. 1984 Supp. 40-3901 et seq.) are insufficient to cover the city's expenses. Current law also requires the sale of all salvageable material from the structure before the city's expenses may be recovered through the special assessment procedure. The amendment in lines 89 through 91 simply add the additional requirement that the city exhaust all insurance proceeds before beginning such actions.

In a recent Attorney General Opinion (No. 85-5), the Attorney General concluded that K.S.A. 79-2015 does not authorize a city to collect special assessments in the same manner as a personal debt of the property owner. Further, the Attorney General concluded that state statutes generally provide that such assessments are to be levied against real property benefitted, and that they are to be collected in the same manner as other taxes. In other words, in the absence of a specific statutory authorization, cities may only attempt to make themselves whole by recovering expenses through the special assessment procedure.

The League believes that SB 76 will remove a significant financial burden from the shoulders of city taxpayers for the expense of abating nuisances, removing weeds and removing dangerous structures. At the same time, it preserves the existing special assessment procedure for those cities which choose to continue using it. We urge your favorable consideration of this legislation.

CM:gs

Attachment

79-2015. Actions for debt to collect taxes, fees, interest and penalties, when; remedies. The taxes, fees, interest and penalties, levied and assessed by any state law administered by the director of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time same shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the director of revenue. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax: *Provided*, That the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes.

History: L. 1959, ch. 402, § 1; April 1.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 16, 1985

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 85- 5

David C. All
City Attorney
6th & School
P.O. Box 489
Augusta, Kansas 67010

Re: Taxation--Collection and Cancellation of Taxes--
Action for Debt to Collect Taxes

Synopsis: K.S.A. 79-2015 does not authorize a city to collect special assessments in the same manner as a personal debt of the property owner. State laws generally provide that such assessments are to be levied against the real property benefited, and are to be collected by initiating a tax foreclosure action under K.S.A. 79-2801 *et seq.* Cited herein: K.S.A. 12-608, 12-6a10, 79-2015, 79-2801.

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Dear Mr. All:

You request our opinion as to the remedies available to a municipality for the enforcement of delinquent special assessments. Specifically, you advise that the City of Augusta is experiencing a "short fall" in the payment of special assessments which threatens to leave the city without means to pay bond and interest payments, and ask whether K.S.A. 79-2015 authorizes the city to collect such assessments in the same manner as a personal debt of the property owner. If that statute does not provide such authority, you request our opinion as to whether there is any other provision where-by the city may proceed against the property owner personally.

K.S.A. 79-2015 prescribes remedies available for the collection of state taxes. Specifically, that statute provides as follows:

"The taxes, fees, interest and penalties, levied and assessed by any state law administered by the director of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time same shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the director of revenue. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax: Provided, That the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes."
(Emphasis added.)

Special assessments are not "state taxes," nor are they assessed by any state law administered by the Secretary of Revenue. Therefore, in our judgment, K.S.A. 79-2015 does not authorize a city to collect special assessments in the same manner as a personal debt of the property owner.

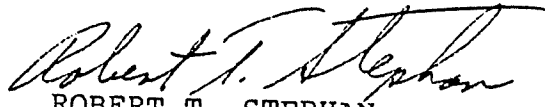
Having determined that K.S.A. 79-2015 does not provide for the collection of special assessments by imposing personal liability against the property owner, we address your question as to whether any other provision provides such authority. In this regard, we note that while numerous statutes authorize cities to levy special assessments for local improvements, such statutes generally provide that the assessments are to be levied against the real property benefited, and that they are to be collected "in the same manner as other taxes." (See, e.g., K.S.A. 12-608 and 12-6a10.) Other taxes levied against real property are collected by initiating a tax foreclosure action under K.S.A. 79-2801 et seq., and such an action is a proceeding in rem. See Phillips Petroleum Co. v. Moore, 179 Kan. 482, 489 (1956). We are unaware of any statute which makes a property owner personally liable for special assessments levied against real property. *

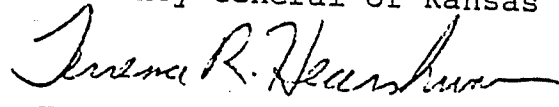
Even if the legislature enacted a law imposing such personal liability, or the governing body of a city passed (pursuant to

David C. All
Page Three

city home rule powers) an ordinance whereby special assessments could be levied and become a personal liability of the property owner, the constitutionality of such action is unclear. Although imposition of personal liability was upheld in A.T. & S.F. Rld. Co. v. Peterson, 5 Kan.App. 103 (1897), aff'd 58 Kan. 818 (1897), courts in other states, constituting a "slight weight of authority," have more recently held that statutes imposing personal liability for special assessments constitute a taking of property without compensation. (See 127 A.L.R. 551; 70 Am.Jur.2d, Special or Local Assessments §171.) Due to the conflicting decisions of various state courts, and the conclusion of at least one authority that there is "considerable weight . . . in favor of the denial of the fundamental power of the legislature to provide for . . . personal liability" (see 127 A.L.R. 551, 594), there appears to be some doubt as to whether the Kansas Supreme Court would affirm in all respects the conclusions it reached in 1897 in the Peterson case, supra.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm

Office of the City Manager

City Hall - 120 North Sixth Street
Independence, Kansas 67301

February 13, 1985

Senator Don Montgomery, Chairperson
Senate Committee on Local Governments
Statehouse
Topeka, Ks

Re: S.B.76, Collection of Certain Debts by Cities

Dear Senator Montgomery:

S.B. 76 provides an alternative method for cities to recover their costs for abating public nuisances, removing noxious weeds, and removing unsafe structures. The alternative included in S.B. 76 would give cities the same authority the State of Kansas currently has under K.S.A. 79-2015 for collecting delinquent taxes and fees through bringing of action in district court.

Under current statutes, if such health and safety hazards are not improved by the property owner after notice and public hearing, then these nuisances must be corrected by the City. The cost of performing this work is paid by the City and is placed as a special assessment against the property. Many of these properties are vacant or have no residents living on the property and already have outstanding taxes owed, with the specials becoming one more delinquent tax. It might be added that many of these properties are owned by residents of our City or County.

By current statutes, if the City recovers any cost through tax sale, it is after over four (4) years from the date the cost is incurred by the City and more commonly the property is sold at tax sale below the value of the cost of four (4) years of weed mowing or the cost of removing such unsafe and dangerous structures.

The reason for our concern is the magnitude of the costs; i.e., 1982, 1983, and 1984 assessed cost for weed mowing alone was \$14,901.08. This does not include any cost of removing unsafe structures which have been funded in the last several years from federal Community Development Funds which are not anticipated to be as available in future years. The cost for removal of unsafe structures each year is estimated at \$15,000 per year.

*Atch. 2
2/13/85*

The Honorable Don Montgomery
Chairperson, Committee on Local Governments
Page 2

The theme of this bill is simple, to require individuals to be responsible for maintenance and upkeep for their own property, and if this is not done allow the City an option in recovering its costs. It is our opinion that the general tax payer should not have to bear the burden for his neighbor not maintaining his property. Furthermore, the elected officials in our cities should have the option to either (1) bring an action through the courts, which in some cases provides the only remedy to recover such costs, or (2) to follow current statutes by placing special assessments on the property.

Sincerely yours,

Paul A. Sasse
City Manager

PAS/sr

Office of the City Manager

City Hall - 120 North Sixth Street
Independence, Kansas 67301

February 13, 1985

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Senate Committee on Local Governments
Statehouse
Topeka, Ks

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Chairperson, Committee on Local Governments
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