Approved Ivan Sand 2/6/86
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by REPRESENTATIVE IVAN SAND at
Chairperson

1:30 ~~XXX~~ a.m./p.m. on FEBRUARY 4, 1986 in room 521-S of the Capitol.

All members were present except: Rep. Elizabeth Baker, excused
Rep. George Dean, excused

Committee staff present: Mike Heim, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Gloria M. Leonhard, Committee Secretary

Conferees appearing before the committee:

Ms. Janet Stubbs, Homebuilders Assn. of KS. HB's 2659 and 2660
Mr. Clark Lindstrom, J.A.Peterson Co., Shawnee Mission, KS. HB's 2659 and 2660
Mrs. Rosemary O'Neil, Topeka, HB's 2659 and 2660
Ms. Karen McClain, Kansas Assn. of Realtors, HB's 2659 and 2660
Mr. Stephen N. Paige, Kansas Dept. of Health and Environment, HB's 2659 and 2660
Ms. Joan B. Watson, Commissioner, Rehabilitation Services, SRS, HB 2660
Mr. Ray Petty, Kansas Advisory Committee on Employment of the Handicapped, HB's 2659 and 2660
Ms. Jean Barbee, Asst. Exec. Dir., Kansas Lodging Assn., HB 2660

Chairman Sand called for introduction of new legislation.

Ms. Mary Hack, Revisor of Statutes Office, explained to the committee proposed legislation (5RS2236) concerning the cost of medical care and treatment of prisoners. (See Attach. I.)

Rep. Clinton Acheson made a motion to accept the proposed legislation as a committee bill. Rep. Samuel Sifers seconded the motion. The motion carried.

Chairman Sand called for hearings on HB 2659 and HB 2660.

Mr. Mike Heim, Staff, reviewed the background of HB's 2659 and 2660 regarding group home zoning and handicapped accessibility. Mr. Heim said the proposals had come out of 1985 interim Proposal No. 46. Mr. Heim reviewed recommendations of the interim committee. (See Staff Overview for HB 2659 and HB 2660. Attachment II.)

Ms. Janet Stubbs, Executive Director for the Homebuilders Assn. of Kansas, appeared in support of HB 2659 and HB 2660. (See Attachment III.) Ms. Stubbs distributed "Topeka Apartment Survey." (See Attachment IV.) Ms. Stubbs requested the committee to amend the dates in Section 4 of HB 2660 in Lines 71 and 74 from December to July 1, 1986.

A committee member asked what would be required to meet the needs of the handicapped for accessibility to recreation. Ms. Stubbs said ramps to club houses and wider doors to accommodate wheel chairs would probably meet these needs.

Ms. Stubbs introduced Mr. Clark Lindstrom, Property Manager for J. A. Peterson Companies, Shawnee Mission, Kansas, who expressed several concerns with the legislation proposed in HB's 2659 and 2660. (See Attachment V.)

Mrs. Rosemary O'Neil, Topeka resident, appeared as a handicapped person to ask the committee to make public buildings as accessible as possible. (See Attachment VI.)

Ms. Karen McClain, Director, Governmental Affairs, Kansas Assn. of Realtors, requested the committee to support the passage of HB 2660. (See Attachment VII.)

Mr. Stephen N. Paige, Kansas Department of Health and Environment, pointed out strengths and weaknesses of HB 2660 and said the Kansas Department of Health and Environment is not opposed to passage of the bill. (See Attachment VIII.)

Ms. Joan B. Watson, Commissioner, Rehabilitation Services, Social and Rehabilitation Services, appeared on behalf of Dr. Robert C. Harder, Secretary, SRS. Ms. Watson said that HB 2660 does not fully meet the needs of the disabled; that SRS supports Section 8 of the bill; that SRS is not comfortable with the standards of the Uniform Building Code; that SRS supports and encourages proposals presented this date. (See Attachment IX.)

Mr. Ray Petty, Legislative Liaison, Kansas Advisory Committee on Employment of the Handicapped, appeared and pointed out several problems with the language of HB's 2659 and 2660. (See Attachment X.)

Ms. Jean Barbee, Asst. Executive Director, Kansas Lodging Assn., testified that they have been unable to find building codes or statistics that would substantiate a need for a 10% requirement; that they have a problem with Section 8 of HB 2660; that they would recommend the exemption of hotels and motels from Section 8, re requirement of handicapped access to recreational facilities. (See Attach. XI.)

A committee member asked if there is a study of cities available which would specify "Handicapped needs."

Chairman Sand appointed Rep. Phil Kline, Rep. Mary Jane Johnson, and Rep. Robert D. Miller to serve on a Sub-Committee to look into problems remaining in connection with HB's 2659 and 2660. Chairman Sand asked the Sub-Committee to work closely with Mr. Ray Petty, KACEH, and Ms. Janet Stubbs, Homebuilders Association, in reaching compromises.

The hearings on HB 2659 and HB 2660 were closed.

The minutes were approved as presented for the meeting of January 30, 1986.

The meeting adjourned.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE 2-4-86

NAME	ADDRESS	REPRESENTING
KAREN McClain	TOPEKA	KS. ASSOC. OF REALTORS
Rosemary O'Neil	Topeka	KS Head Injury Assoc.
Harold Sloan	Topeka	The associated Landlords of KS
Steve Paige	Topeka	Kans Dept. of Health & Environ.
Rebecca Crenshaw	"	Cemetery Assoc.
Jean Barbee	Topeka	Kansas Lodging Assn.
Judy Anderson	Wichita	City of Wichita
Rodney Watson	Topeka	SRS — Rehabilitation Svc.
Kerry Humphrey	Topeka	KMHI
[illegible]		KSN
Ray Petty	Topeka	KACEH

Copy to Mary Hack
1-27-86

Rec 1-27-86

COMMISSIONERS
ROSALYS M. RIEGER
DARRELL WESTERVELT
MARJORIE J. MORSE

RILEY COUNTY
BOARD OF COUNTY COMMISSIONERS

Riley County Office Building
110 Courthouse Plaza
Manhattan, Kansas 66502
(913) 537-0700

January 23, 1986

ATTACHMENT I-A

Representative Ivan Sand
State Capitol Building
Topeka, Kansas 66612

Dear Representative Sand:

At the luncheon meeting of the Riley County Commission and members of our legislative delegation we discussed with you the need to have Kansas Statute 19-4444 amended. This is one of the statutes regarding the consolidated law enforcement agency which at the present time pertains only to Riley County.

The statute reads in part "all costs incurred by the agency or department for medical care and treatment of prisoners held within the county shall be paid from the county general fund." We would like to have the statute amended by adding "but only after determination has been made that the prisoner has no other resources."

This change would bring the law into compliance with those affecting the other counties, for in 1981 the Kansas Supreme Court determined in Dodge City Medical Center v. Board of County Commissioners in Gray County, Kansas that"...taxpayers of the county should not pay where the patient, with primary responsibility, has other resources."

Enclosed are copies of both the Kansas Statute 19-4444 and the Supreme Court Ruling.

This suggested wording is just that: a suggestion. Any change would be agreeable as long as the intent is maintained.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
OF RILEY COUNTY, KANSAS

Marjorie J. Morse
Chair

Rosalys M. Rieger
Member

Darrell Westervelt
Member

BCC/imc

encl: 2

Attachment I-A
2-4-86
Hs. Local Gov.

subsection (b) and one such city is a city of the first class and the other city is a city of the third class, each such city and the county shall levy a tax for the costs of the law enforcement agency and department commencing with the levy for 1979, in an amount computed as follows:

(1) When the budget for the law enforcement agency and department is established for the next year, the levy for the city of the first class shall be computed in accordance with subsection (a);

(2) the levy for the city of the third class then shall be fixed at a rate higher or lower than its previous mill levy for such purpose, by an amount equal to the net increase or decrease in the mill levy rate that the levy of the city of the first class bears to that of its levy for the previous year;

(3) the county then shall levy a tax at a mill rate sufficient to pay the remaining portion of the budget of the law enforcement agency and department.

History: L. 1972, ch. 91, § 20; L. 1974, ch. 132, § 5; L. 1975, ch. 172, § 5; L. 1978, ch. 104, § 2; L. 1979, ch. 52, § 134; L. 1981, ch. 128, § 1; July 1.

Cross References to Related Sections:

Aggregate tax levy limitation exemptions, see 79-5011.

19-4443a. 1982 budget increase; purpose; resolution; protest. For fiscal year 1982 only, in addition to the annual budget increase authorized by K.S.A. 19-4443, the agency shall be authorized, by resolution, to increase its budget by a sum not to exceed $175,250. The increase authorized by this section shall be used for one or more of the following purposes: Salary and associated benefits relating to the employment of additional law enforcement officers for patrol purposes; purchase of additional vehicles and equipment; insurance, fuel and maintenance expenses for any such additional vehicles; training expenses for such additional officers; and other associated costs of hiring such additional officers. The resolution shall be published once each week for three consecutive weeks in the official county newspaper. If within 60 days after the date of the last publication of the resolution, a petition signed by not less than 5% of the qualified electors in the county is filed with the county election officer, no increase shall be made under the provisions of this section without the question of increasing the same having been submitted to and been approved by a majority of the qualified electors in the county voting at the next primary or general election.

History: L. 1981, ch. 128, § 2; July 1.

19-4444. Approval of expenditures and claims; cost of medical care of prisoners paid from county general fund. The agency shall approve all expenditures to be made by and claims to be paid on behalf of such agency and the law enforcement department and shall certify the same to the board of county commissioners of the county to be allowed from the funds provided for the operation of such agency and department, except that all costs incurred by the agency or department for medical care and treatment of prisoners held within the county shall be paid from the county general fund.

History: L. 1972, ch. 91, § 21; L. 1975, ch. 172, § 6; July 1.

19-4445. Abandonment of operations under act; abolishment of agency, when; transfer and disposition of property, moneys and supplies; records; officers of county and cities. Any county operating under the provisions of this act may abandon such operation in the same manner as that provided in K.S.A. 19-4426 for the adoption of the provisions of the act, except that the word "abandon" instead of the word "adopt" shall be used in the petition or resolution and upon the ballot and in the election proclamation. If a majority of the votes cast at the election upon such proposition shall be in favor of abandoning operations under the provisions of this act, the law enforcement agency and department shall be abolished on January 1, next following the date of such election. All equipment and supplies purchased by such agency and department shall be transferred to the county, and all other moneys, equipment and supplies donated or contributed to or acquired by such agency and department shall be disposed of pursuant to an agreement entered into by the board of county commissioners of such county and the governing body of each city within such county. In cities having no city marshal or chief of police such officer shall be appointed in like manner as that now provided by law for the filling of vacancies in such office. A sheriff shall be appointed in such county in the

See last page

was being placed in a room at the Police Department and talking to an individual whom had told me that he was the County District Attorney. He began to ask me questions about the shoting. I do not remember to this day what I told that person.

"Also I talked to the police that was in the room with him. I do not remember what I told them either. After three (3) days in jail, I was told that my son had die. I asked the officials at the jail to allow to attend the furnual and that said no, that it would be a bad thing for me to do.

"But I did not kill my son intentionally, it was an accident. My son was drunk on alcohol and dope. He would have never did what he done if he wasn't in that shape. I raised that boy and love him, I would never hurt him intentionally or none of my childerns.

"I am not a criminal, I have never been in trouble in all my forty some years. I'm not a violent person. The individuals whom was at my home doing this accident can tell you the truth of the matter. I did not kill my son, he die of an accident so help me God."

[6] The version of the facts appearing in the affidavit, the only one appearing in the record, could support verdicts of voluntary manslaughter or involuntary manslaughter or innocence of a crime. The record before us includes no "strong evidence" of the intent necessary to support a second-degree murder conviction, although a jury could infer intent or malice. *Cf. State v. Jensen*, 197 Kan. 427, 417 P.2d 273 (1966) ("implied" and "express" malice discussed).

Lastly we find the statement of petitioner's trial counsel concerning his client's understanding of the facts and the law, a statement made when the guilty plea was entered:

"THE COURT: . . . do you feel that Mr. [Clinkingbeard] knows what he is doing?

"[DEFENSE COUNSEL]: *I believe Melvin Clinkingbeard does know*, your Honor—

. . . .

". . . *what he is doing*, and I do and have mentioned throughout these hearings and he does not understand reading and writing but he does comprehend, I am satisfied, *and does know that he did shoot Martin Dewayne Buell, that as a result of that shooting the victim died, and it was through the use of a shotgun as alleged in the Information.*" (Emphasis added.)

We find this statement insufficient either to show a factual basis for the plea or to prove a knowing and voluntary guilty plea.

On the record before us, we are compelled to find petitioner's guilty plea was not knowingly made. The denial of relief to petitioner is reversed. The case is remanded to the trial court with direction to set aside the conviction and sentencing, to allow withdrawal of the guilty plea, and for further proceedings consonant with that action.

WEST KEY NUMBER SYSTEM

6 Kan.App.2d 731

DODGE CITY MEDICAL CENTER,
Appellee,

v.

BOARD OF COUNTY COMMISSIONERS IN GRAY COUNTY, Kansas,
Appellant.

No. 52275.

Court of Appeals of Kansas.

Oct. 2, 1981.

Board of county commissioners appealed from a judgment of the Ford District Court, Don C. Smith, J., holding it liable for medical expenses rendered by hospital to suspect wounded during his apprehension. The Court of Appeals, Foth, C.J., held that: (1) a sheriff has a duty to furnish medical attention to a prisoner in need thereof

while in his custody, and at the county's expense if the prisoner is indigent and no other source of funds is available; (2) suspect who was apprehended by sheriff's deputy in commission of a felony and who was taken to hospital after being seriously wounded by deputy in effecting his arrest was "in custody" while hospitalized so as to subject county to liability for payment of medical expenses, despite facts that he was not under guard while hospitalized and not formally arrested until he left the hospital; and (3) fact that in suspect's criminal case he was not given credit against his sentence for time spent in the hospital did not determine that he was not "in custody" during that time so as to render county not liable, under doctrine of collateral estoppel, for medical expenses, as neither party to suit was a party to the state's prosecution of suspect, and neither was in privity with either party, so that the doctrine of collateral estoppel was inapplicable.

Affirmed.

1. Counties ⇐139
Prisons ⇐17

A sheriff has a duty to furnish medical attention to a prisoner in need thereof while in his custody, and at the county's expense if the prisoner is indigent and no other source of funds is available.

2. Counties ⇐139

Suspect who was apprehended by sheriff's deputy in commission of a felony, and who was taken to hospital after being seriously wounded by deputy in effecting his arrest, was "in custody" while hospitalized so as to subject county to liability for payment of suspect's hospital expenses, despite facts that he was not under guard while hospitalized and not formally arrested until he left the hospital.

3. Judgment ⇐648

Fact that in suspect's criminal case he was not given credit against his sentence for time spent in the hospital did not determine that defendant was not "in custody" during that time so as to render county not liable, under doctrine of collateral estoppel, for defendant's medical expenses, as neither party to suit by hospital against county for payment of such funds was a party to the state's prosecution of suspect and neither was in privity with either party, so that the doctrine of collateral estoppel was inapplicable.

4. Counties ⇐139

Hospital was not required to show that state Department of Social and Rehabilitative Services would not have paid bill for suspect wounded during his apprehension by sheriff's deputy before county would be liable for care of suspect on the basis that he was "in custody" during his period of hospitalization.

Syllabus by the Court

1. A sheriff has a duty to furnish medical attention to a prisoner in need thereof while in his custody, and at the county's expense if the prisoner is indigent and no other source of funds is available. (Following *Mt. Carmel Medical Center v. Board of County Commissioners*, 1 Kan. App.2d 374, Syl. ¶ 4, 566 P.2d 384 [1977].)

2. Where a suspect is apprehended in the commission of a felony, felled by an officer's gunshots, and taken to a hospital by the sheriff, the suspect is "in custody" while hospitalized for the purpose of determining the county's liability for his medical expenses even though he has not been formally arrested or kept under guard.

3. The state department of social and rehabilitation services is not a source of funds for medical services which must be exhausted before a county incurs liability for care of an indigent in the custody of the sheriff.

Curtis E. Campbell, County Atty., and Ken W. Strobel, Dodge City, for appellant.

Glen I. Kerbs, of Patton & Kerbs, Dodge City, for appellee.

Before FOTH, C. J., and ABBOTT and PARKS, JJ.

FOTH, Chief Judge:

The Board of County Commissioners of Gray County, Kansas, appeals from a judgment holding it liable for $3,205.00 in medical expenses for services rendered by the plaintiff Dodge City Medical Center, a partnership, to one Russell Lopez.

The case was submitted on stipulated facts showing that on March 20, 1978, a Gray County deputy sheriff came upon Lopez in the midst of committing a burglary. When called upon to surrender, Lopez opened fire. The deputy returned the fire with a riot gun, seriously wounding Lopez. The deputy summoned an ambulance and the sheriff. The sheriff drove Lopez in the ambulance to the Dodge City Regional Hospital, where he was treated by the plaintiff doctors. No formal arrest was made then or at any time during Lopez's three-week stay in the hospital, nor was he under guard.

On April 10, as requested, the treating physician called the Gray County sheriff's office and advised that Lopez would be released the next day. A complaint was promptly filed charging him with burglary, attempted theft, and aggravated assault on a police officer. The next day, as Lopez was discharged, the Gray County sheriff arrested him. At his first appearance before a magistrate he was found to be indigent.

The Dodge City hospital received partial compensation from the state Department of Social and Rehabilitation Services. The medical center which provided the actual medical services, tried the Veterans Administration but was turned down because of the source of Lopez's injuries. It did not attempt to secure payment from SRS.

[1] The county's liability under these circumstances is largely controlled by *Mt. Carmel Medical Center v. Board of County Commissioners*, 1 Kan.App.2d 374, 566 P.2d 384 (1977). There a prisoner in the county jail was injured while effecting an escape. We held:

> "A sheriff has a duty to furnish medical attention to a prisoner in need thereof while in his custody, and at the county's expense if the prisoner is indigent and no other source of funds is available." Syl. ¶ 4.

We further held that the prisoner's status as an escapee did not affect the result when a deputy on the scene acquiesced in the injured prisoner's being taken to a hospital. Neither did it matter that the prisoner was not under guard while hospitalized. It was the deputy's duty to take the prisoner into custody when he came upon him, and in the eyes of the law the prisoner was "in custody" while hospitalized with the deputy's concurrence.

In this case the trial court found that Lopez was in the custody of the Gray county sheriff while hospitalized, that he was indigent, and that there was no other source of funds available for his treatment. Those findings meet the *Mt. Carmel* test and impose liability if supported by the stipulated facts. The county concedes indigence, but contests the finding of custody and the unavailability of other funds.

[2] We agree Lopez was "in custody." He was apprehended in the commission of a felony. Had he not been injured there is no question but that pursuant to duty the sheriff would have taken him to jail and not to the hospital. "The right and duty of sheriffs to make arrests without without warrant for crimes committed in their presence . . . may be conceded." *Marsh v. Express Co.*, 88 Kan. 538, 542, 129 P. 168 (1913). See also, K.S.A. 19-813; 5 Am.Jur.2d, Arrest § 24. Here, as in *Mt. Carmel*, the fact he was not under guard is not controlling. Lopez was severely wounded; the odds against his "escape" from the hospital were long; had he attempted to do so he would no doubt have been pursued; the doctors were to advise the sheriff when he was ready to leave; and he was formally arrested when he did leave. For all practical purposes Lopez was in the sheriff's custody at all times. Had the deputy said "you're under arrest" instead of merely calling for Lopez's surrender, or had the sheriff uttered those words a time before committing him to the doctor's care, the fact of

custody would be clear. We cannot avoid reaching the same conclusion simply because those words, implied by all the circumstances, were not actually spoken.

[3] The county also contends on this issue that the medical center should be bound by the determination in Lopez's subsequent criminal case, where he was not given credit against his sentence for the time spent in the hospital. This determined, it argues, that he was not in custody during that time. It seeks to invoke the doctrine of collateral estoppel, citing *Goetz v. Board of Trustees*, 203 Kan. 340, 454 P.2d 481 (1969) for the proposition that an issue once litigated may not be relitigated by the parties of their privies. The problem is that neither party to this suit was a party to the state's prosecution of Lopez, and neither is in privity with either party. We hold the doctrine of collateral estoppel inapplicable.

[4] Finally, the county says the medical center didn't show that SRS wouldn't have paid its bill, and therefore didn't establish that "no other source of funds is available" as required by *Mt. Carmel*. We think resort to SRS was not required. Lopez was concededly indigent. An indigent may, however, have other resources available. Children, for example, may be indigent and yet have parents with both an obligation and the ability to defray medical expenses. Or the indigent, child or adult, may have medical insurance or a claim against a tortfeasor. Lopez apparently had a right to medical treatment from the Veterans Administration, lost only because his injuries were caused by gunshot. It was this type of source this court had in mind when it limited the county's obligation to those cases where no other source of funds was available. The thought was, taxpayers of the county should not pay where the patient, with primary responsibility, has other resources.

Here, the only other resource the county points to is a state agency, also tax supported, with an obligation to supply certain services for certain citizens meeting certain standards of need. Whether it had any obligation to pay medical bills for Lopez does not appear. It was asserted and not disputed that SRS might have paid as much as one-third of the bill, but if it did so the medical center would have precluded from seeking the balance from any other source. Whether this is so is irrelevant. The first public body with an obligation to pay for Lopez's care was the county, which requested it and which had the obligation to see that it was furnished.

Affirmed.

WEST KEY NUMBER SYSTEM

6 Kan.App.2d 735

M & W DEVELOPMENT, INC. Appellee,

v.

EL PASO WATER COMPANY, INC., Appellant.

No. 52333.

Court of Appeals of Kansas.

Oct. 2, 1981.

Real estate developer brought suit against privately owned water utility for breach of contract. The Sedgwick District Court, Division No. 8, Nicholas W. Klein, J., found utility to be in breach and granted judgment for $151,826.07, and utility appealed and developer cross-appealed. The Court of Appeals, Abbott, J., held that: (1) even though record contained substantial competent evidence to support trial judge's finding that utility breached contract by not issuing notes to developer in repayment of matured advancements to finance extension of water line, there was no material breach of contract warranting rescission where contract was fully executed except for utility's promised repayment of matured advances; (2) proper amount of damages that should have been awarded developer was $19,707.89, representing principal and interest payments which notes, had they

HOUSE BILL NO. _____

By Committee on Local Government

ATTACHMENT I-B
2/4/86

AN ACT relating to countywide law enforcement in certain counties; concerning the cost of medical care and treatment of prisoners; amending K.S.A. 19-4444 and repealing the existing section.

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

Section 1. K.S.A. 19-4444 is hereby amended to read as follows: 19-4444 . The agency shall approve all expenditures to be made by and claims to be paid on behalf of such agency and the law enforcement department and shall certify the same to the board of county commissioners of the county to be allowed from the funds provided for the operation of such agency and department, except that all costs incurred by the agency or department for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources.

Sec. 2. K.S.A. 19-4444 is hereby repealed.

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

RE: PROPOSAL NO. 46 — GROUP HOME ZONING AND HANDICAPPED ACCESSIBILITY STANDARDS*

The proposal called for the Special Committee on Local Government: (1) to review the issue of the state requiring cities and counties to permit group homes for the physically and mentally disabled or retarded in areas zoned for single family housing, and (2) to review the law relating to the accessibility of apartment units and temporary lodging facilities for the handicapped.

The proposal was suggested for study by the chairmen of both the House and Senate Local Government Committees. The proposal incorporates two separate topics and the report is structured to reflect these two distinct issues.

Background — Group Home Zoning

The group home zoning study was prompted by 1985 H.B. 2275 which passed the House and was held over in the Senate Local Government Committee. The bill, as amended by the House Committee of the Whole, would authorize group homes for the physically handicapped, mentally retarded, or other developmentally disabled persons to be located in any area where single family dwellings are permitted. The bill as introduced covered the mentally ill as well but this provision was stricken by the House Local Government Committee. Any zoning ordinance or regulation or restrictive covenant prohibiting group homes in any area zoned for single family dwellings is declared invalid. Group homes shall be subject to all other nondiscriminaroy regulations such as regulatory codes, subdivision regulations, special or conditional use permit regulations.

The bill requires that the physical structure of the group home must be generally compatible with the other physical structures in the surrounding neighborhood. No group home, after the effective date of the act, could be located within 1,000 feet of another group home in areas zoned exclusively for single family dwellings unless the governing body approved a closer location.

Group home is defined in H.B. 2275 as any dwelling occupied by eight or fewer physically handicapped, mentally retarded, or other developmentally disabled persons and may include four staff residents, except the total number of residents shall not exceed ten.

The supplemental note for H.B. 2275 states that the bill was supported by the House Speaker and House Minority Leader (who both requested the bill), the Association of Community Mental Health Centers, the Topeka Resource Center for the Handicapped, Families for Mental Health, Inc. of Johnson County, Kansas Advocacy and Protective Services for the Developmentally Disabled, Inc., Kansas Association of Rehabilitation Facilities, the Mental Health Association of Johnson County, the Villeges, Inc. of Topeka, and others.

Hs. Local Gov.
2/4/86
Attachment II

The 1978 act requires the display of the international symbol of access to the physically handicapped at the entrance of buildings and facilities that are in compliance with standards established pursuant to the 1978 act. The statutes provide for the waiver or modification of the 1980 American National Standards Institute specifications in certain circumstances; authorize the Attorney General or any person, agency, or governing body responsible for enforcement of the statutes to apply for a temporary or permanent injunction restraining any individual, corporation, or partnership from violating the specifications; provide that an aggrieved physically handicapped person is not required to be a party to an injunctive action; make willful violations of the terms of an injunction or court order subject to a civil penalty in an amount determined by the court; allow for the collection of reasonable expenses and investigation fees by the Attorney General or a county or district attorney; authorize any person, agency, or governing body to refer evidence of violation of the standards to the Attorney General or county or district attorney; and define terms used in the 1978 statutes. K.S.A. 58-1310 contains definitions of terms used in the 1978 statutes which may also have been intended by the Legislature to apply to the 1968 laws, although no such application is made in the statutes.

It is from the definition of "public building or facility" as it appears in K.S.A. 58-1310 that 1985 S.B. 369 arose. This definition includes any building, structure, recreation area, street, curbing, or sidewalk, and access thereto, which is used by the public or in which physically handicapped persons may be employed, and which is constructed, purchased, leased, or rented by the use of private funds, including rental apartment complexes and temporary lodging facilities which contain 20 units or more, except that the provisions shall apply to only 10 percent of apartment and temporary lodging units and shall not apply to recreational facilities provided by an apartment complex or temporary lodging facility for the use of its tenants or lodgers. During the 1985 Session, the Home Builders Association of Kansas requested that K.S.A. 58-1310 be amended to reduce the percent of apartment and temporary lodging units required to be accessible to the handicapped from 10 percent to 1 percent. The result was S.B. 369.

Testimony presented to the Senate Committee on S.B. 369 indicated there is not a market for the amount of rental handicapped accessible units required by current law, that financing is more difficult to obtain when some units in a rental complex cannot be rented because there is not a demand for handicapped equipped units, and that the requirements of K.S.A. 58-1310 conflict with the nationally recognized building codes widely adopted by cities in Kansas. S.B. 369 was held in the House Committee on Local Government at the end of the 1985 Session.

The bill was opposed during the last session by the city of Olathe, the Home Builders Association of Kansas, and the League of Kansas Municipalities. Opponents said this matter was best left to local decision makers, and, since a number of group homes have already been located in municipalities, there is no need for state involvement. The bill was said to violate principles of home rule.

Background — Handicapped Accessibility

The second subject included under the heading of Proposal No. 46 is a review of the laws relating to the accessibility of apartment units and hotel and motel facilities to the physically handicapped. This portion of Proposal No. 46 was requested by the House Committee on Local Government as a result of hearings on 1985 S.B. 369.

The current Kansas statutes that relate to accessibility for the physically handicapped in public buildings and facilities, and in certain apartment complexes and hotels and motels are found in two separate acts — K.S.A. 58-1301 through 58-1305, enacted in 1968, and K.S.A. 15-1306 through 15-1310, enacted in 1978.

The 1968 statutes concern all public and governmental buildings and facilities. In general, these statutes require that such buildings and facilities, as well as additions thereto, conform to the 1980 American National Standards Institute (ANSI) specifications for making buildings and facilities accessible to and usable by the physically handicapped. The intent of the Legislature, as set forth in K.S.A. 58-1303, is to make all public and governmental buildings and facilities accessible and functional for the physically handicapped to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned. The statutes set out the several entities that are responsible for enforcement of the 1968 act, i.e., the Secretary of Administration for construction or renovation when state funds are used; the State Board of Education, through plan approval, for all school building construction or renovation; the appropriate governing body when county, municipality, or other political subdivision funds are utilized; and for all other construction or renovation, the county or district attorney of the county in which the building or facility is located. The 1968 act is not applicable to any governmental or public buildings or facilities that were in existence or under construction prior to January 1, 1979, but is applicable to any major renovation contracted after December 31, 1978.

TESTIMONY

FOR

HOUSE LOCAL GOVERNMENT

FEBRUARY 4, 1936

ATTACHMENT III
2-4-86

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR OF THE HOME BUILDERS ASSOCIATION OF KANSAS.

I AM APPEARING TODAY IN SUPPORT OF HOUSE BILLS 2 59 AND 2 60, THE PRODUCT OF AN EXTENSIVE INTERIM STUDY.

THE INTERIM COMMITTEE REPORT CONTAINS EXCELLENT BACKGROUND INFORMATION REGARDING BOTH THE 1968 AND 1978 STATUTES AS WELL AS SB 369 OF THE 1985 SESSION.

HB 2 59 AND HB 2 60 ARE THE RESULT OF INPUT FROM NUMEROUS GROUPS AND INDIVIDUALS AND ARE A COMPROMISE BY BOTH PROPONENTS AND OPPONENTS.

MY ORGANIZATION MET WITH REPRESENTATIVES OF THE HANDICAPPED AND SOME WICHITA LEGISLATORS AFTER THE SEPTEMBER INTERIM HEARINGS REVEALED POOR COMMUNICATION BETWEEN THE APARTMENT RENTAL COMMUNITY AND THE INDIVIDUALS RESPONSIBLE FOR AIDING THE HANDICAPPED TO FIND HOUSING.

THE APARTMENT MANAGERS HAD UNITS FOR THE HANDICAPPED OF WHICH THE WICHITA GROUPS WERE UNAWARE AND ADVISED THE SAME HANDICAPPED REPS OF THEIR EAGERNESS TO RENOVATE OTHERS IF THERE WAS A MARKET DEMAND TO BE MET.

MR. CLARK LINDSTROM FROM WICHITA WILL SPEAK TO YOU ON THE WICHITA SITUATION.

AFTER THE INTERIM COMMITTEE RECOMMENDATIONS WERE MADE, HBAK AGREED TO MEET AND DISCUSS AREAS OF CONCERN WITH MR. RAY PETTY OF THE KANSAS ADVISORY COMMITTEE FOR THE EMPLOYMENT OF THE HANDICAPPED.

MR. PETTY WAS PARTICULARLY CONCERNED WITH USING THE UNIFORM BUILDING CODE REQUIREMENTS FOR THE CONSTRUCTION OF KITCHENS IN UNITS FOR THE HANDICAPPED. ALTHOUGH HE VOICED NO CONCERN ABOUT THE NUMBER REQUIREMENTS OF THE UBC, IE 21-99 1 UNIT, 100 TO 199 OR ANY AMOUNT OVER 100 REQUIRES 2 UNITS. HE DID ASK CONSIDERATION OF CONSTRUCTION

Attachment III
2-4-86

OF HANDICAPPED ADAPTABLE KITCHEN UNITS USING THE NUMBERS OF THE UBC.

TO CONSTRUCT A KITCHEN ADAPTABLE ACCORDING TO ANSI GUIDELINES, WE BELIEVE WE WOULD BE REQUIRED TO DO THE FOLLOWING:

1. PROVIDE THE REQUIRED TURN AROUND SPACE.
2. A 30 INCH SECTION OF KITCHEN COUNTER WHICH COULD BE LOWERED TO A HEIGHT OF 28 OR 30 INCHES FROM THE USUAL 36 INCH HEIGHT.
3. LOWERING OF THE SINK TO THE SAME HEIGHT AS THE 30 INCH SECTION OF COUNTER.
4. REMOVE ALL CABINETS UNDER SINK AND 30 INCH SECTION OF COUNTER.
5. INSTALL A STOVE WITH FRONT CONTROLS.
6. INSTALL EITHER A SIDE-BY-SIDE REFRIGERATOR OR OVER-UNDER.
7. OVEN MUST EITHER BE SELF-CLEANING OR LOCATED BESIDE THE 30 INCH SECTION OF COUNTER.
8. A SHELF UNDER THE TOP CABINETS WHICH WOULD BE WITHIN REACH OF A WHEELCHAIR OCCUPANT.

THE UBC DOES NOT SPEAK TO KITCHENS FOR HANDICAPPED.

THE HBAK HAS ADVISED MR. PETTY THAT WE AGREE TO A COMPROMISE AND WILL CONSTRUCT ANSI ADAPTABLE KITCHEN UNITS IN THE SAME NUMBER REQUIRED BY THE UBC.

ALTHOUGH THIS WOULD REQUIRE CONSIDERABLE ADDITIONAL EXPENSE IF A HANDICAPPED RENTER DESIRES A FULLY MODIFIED UNIT, WE BELIEVE MOST WILL NOT REQUIRE A FULL MODIFICATION.

THIS WOULD PERMIT RENTAL OF THESE UNITS TO NON-HANDICAPPED OCCUPANTS WITHOUT RENT CONCESSIONS OR RENTAL TO HANDICAPPED INDIVIDUALS NOT WANTING A TOTAL ANSI UNIT.

THIS WOULD BE ECONOMICALLY FEASIBLE FOR THE LANDLORD AND OTHER TENANTS AND IS, WE BELIEVE, THE MOST LOGICAL APPROACH FOR EVERYONE CONCERNED.

THE BATHROOM SPECIFICATIONS OF THE UNIFORM BUILDING CODE ARE ATTACHED TO THIS TESTIMONY TO BE USED AS REFERENCE.

THE UBC BATHROOM PROVISIONS APPEAR TO MEET THE REQUESTS OF THE HANDICAPPED GROUPS FROM WHOM WE HAVE HEARD.

THE ANSI GUIDELINES WOULD REQUIRE AN IN-TUB AND IN-SHOWER SEAT WHICH IS NOT MENTIONED IN THE UBC.

IN ADDITION, I AM ENCLOSING A COPY OF A TOPEKA SURVEY WHICH WAS SUBMITTED PREVIOUSLY AND MR. LINDSTROM WILL ADDRESS THE WICHITA RENTAL MARKET SURVEY HE CONDUCTED.

WE WOULD ASK THAT THE COMMITTEE CONSIDER AMENDING THE DATES IN SECTION 4 TO JULY 1, 1986 IN LINE 71 AND LINE 74.

Access to Buildings and Facilities

Sec. 1213. Buildings containing more than 20 dwelling units or 20 guest rooms shall be accessible to the physically handicapped by a level entry, ramp or elevator. The number of dwelling units or guest rooms accessible to the physically handicapped shall be not less than the following:

21 through 99 — one unit
100 and over — one, plus one for each additional 100 units or fraction thereof

To determine the total number of accessible units, more than one structure on a building site shall be considered as one building. Habitable rooms, bathrooms, toilet compartments, halls and utility rooms in units that are required to be accessible to the physically handicapped shall be accessible by level floors, ramps or elevators, and doorways to such rooms shall have a clear unobstructed width of not less than 32 inches.

Toilet facilities in accessible units shall comply with Section 511.

Chapters 13-16
NO REQUIREMENTS

surface such as portland cement, concrete, ceramic tile or other approved material which extends upward onto the walls at least 5 inches. Walls within water closet compartments and walls within 2 feet of the front and sides of urinals shall be similarly finished to a height of 4 feet and, except for structural elements, the materials used in such walls shall be of a type which is not adversely affected by moisture.

In all occupancies, accessories such as grab bars, towel bars, paper dispensers and soap dishes, etc., provided on or within walls, shall be installed and sealed to protect structural elements from moisture.

Showers in all occupancies shall be finished as specified above to a height of not less than 70 inches above the drain inlet. Materials other than structural elements used in such walls shall be of a type which is not adversely affected by moisture.

Access to Toilets and Other Facilities

Sec. 511. (a) **Access to Water Closets.** Each water closet stool shall be located in a clear space not less than 30 inches in width and have a clear space in front of the water closet stool of not less than 24 inches.

Where toilet facilities are provided on any floor where access by the physically handicapped is required by Table No. 33-A, at least one such facility for each sex or a separate facility usable by either sex shall comply with the requirement of this section. Except in dwelling units and guest rooms, such facilities must be available to all occupants and both sexes. All doorways leading to such toilet rooms shall have a clear and unobstructed width of not less than 32 inches. Each such toilet room shall have the following:

1. A clear space of not less than 44 inches on each side of doors providing access to toilet rooms. This distance shall be measured at right angles to the face of the door when in the closed position. Not more than one door may encroach into the 44-inch space.
2. Except in dwelling units and guest rooms, a clear space within the toilet room of sufficient size to inscribe a circle with a diameter not less than 60 inches. Doors in any position may encroach into this space by not more than 12 inches.
3. A clear space not less than 42 inches wide and 48 inches long in front of at least one water closet stool for the use of the handicapped. When such water closet stool is within a compartment, entry to the compartment shall have a clear width of 32 inches when located at the end and a clear width of 34 inches when located at the side. A door, if provided, shall not encroach into the required space in front of the water closet. Except for door swing, a clear unobstructed access not less than 48 inches in width shall be provided to toilet compartments designed for use by the handicapped.
4. Grab bars near each side or one side and the back of the toilet stool securely attached 33 inches to 36 inches above and parallel to the floor. Grab bars at the side shall be 42 inches long with the front end positioned 24 inches in front of the water closet stool. Grab bars at the back shall be not less than 24 inches long for room installations and 36 inches long where the water closet

is installed in a stall. Grab bars shall have an outside diameter of not less than 1 1/4 inch nor more than 1 1/2 inches and shall provide a clearance of 1 1/2 inches between the grab bar and adjacent surface. Grab bars need not be provided in Group R, Division 1 apartment houses.

5. When it can be established that the facilities are usable by a person in a wheelchair, dimensions other than those above shall be acceptable.

(b) **Access to Lavatories, Mirrors and Towel Fixtures.** In other than Group R, Division 3; Group M; Group R, Division 1 apartment houses and Group B, Divisions 2 and 4 storage occupancies, toilet room facilities shall be as follows:

1. Except for the projection of bowls and waste piping, a clear unobstructed space 30 inches in width, 29 inches in height and 17 inches in depth shall be provided under at least one lavatory.
2. Where mirrors are provided, at least one shall be installed so that the bottom of the mirror is within 40 inches of the floor.
3. Where towel and disposal fixtures are provided, they shall be accessible to the physically handicapped and at least one shall be within 40 inches of the floor.

(c) **Water Fountains.** Where water fountains are provided, at least one shall have a spout within 33 inches of the floor and shall have up-front, hand-operated controls. When fountains are located in an alcove, the alcove shall be not less than 32 inches in width.

(d) **Telephones.** Where public telephones are provided, at least one shall be installed so that the handset, dial and coin receiver are within 54 inches of the floor. Unobstructed access within 12 inches of the telephone shall be provided. Such access shall be not less than 30 inches in width.

Compressed Gases

Sec. 512. The storage and handling of compressed gases shall comply with the Fire Code.

Premises Identification

Sec. 513. Approved numbers or addresses shall be provided for all new buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

APARTMENT	#UNITS	#HC ACCES.	RENT 1 BR	RENT 2 BR	RAMPS	LARGE ENOUGH BATH	LARGE ENOUGH KITCHEN	COMMENTS
rlington	30	0			NONE			Have stairs to all units.
Brookwood Terrace	109	20	$345.00 + Elec		NONE	NO	YES	All on ground floor, Accessible for entry only There are 0 made especiall for handicapped.
Candletree	320	0			NONE		Kitchen is a walk through	Wish they did. They have had several handicapped ask for apartments there. They have a patio access on all ground floor units but main entry door and other doors are not wide enough
Chalet	234	0			NONE			They have had 2 handicappe living there before. They widened the front door for them but had complaints of the bathroom door not wide enough or large enough to get turned around in. Bathroom door could be widened if needed but could do nothing as far as enlarging the bathroom or kitchen for wheelchair operations.
El Camino	19	0			NONE			
La Casa Grande	191	4	$280.00 Plus Electric	$365.00	NONE	NO	YES	All doors are large enough to enter with a wheelchair.
Mount Vernon	115	0			NONE			They have one lady who has installed an electric chair on her own to get up and down the stairs to her apartment.

ATTACHMENT IV
2/4/86
Hs. Local Gov.

'ARTMENT	# UNITS	#HC ACCES.	RENT 1 BR	RENT 2 BR	RAMPS	LARGE ENOUGH BATH	LARGE ENOUGH KITCHEN	COMMENTS
Oakbrook	170	4			Ramps from ground to apartments.	YES	YES	They have 4 made just for the handicapped and they are all occupied at this time. They have installed ramps to apartments and widened the doors. The bathrooms and kitchens have all been converted to the level of reach for a person in a wheelchair.
Pines	180	60	$325.00	$380.00	Ramps from Parking lot to sidewalks.	YES	NO	They consider all ground floor units handicap accessible. They currently have 4 handicapped living there and have installed ramps from parking lot to the sidewalk for them. If the need arises, they would install more ramps.
Raintree	184	0			NONE			Stairs either up or down to all apartment units.
Regency	52	0			NONE			
Topeka Townhouse	126	126	$229.00	(ALL)	Elevators Outside ramps	YES	YES	These are all studio type apartments. They are larger than most The kitchen is wide open from all directions. Bathroom has an oversize door that attaches to a dressing room that is removed for wheelchair persons.

APARTMENT	# UNITS	#HC ACCESS	RENT 1 BR	RENT 2 BR	RAMPS	LARGE ENOUGH BATH	LARGE ENOUGH KITCHEN	COMMENTS
Warren House	160	0			NONE			Only entrance large enough is patio doors on ground floor.
Carriage House	282	0			NONE			There are 7 steps to every hallway leading to units.
Cedar Ridge	312	0			NONE			Doors are not large enough on front entrance.
Embassy-Eldorado	155	0			NONE			Stairs to all apartments. No outside entrance to ground floor. They set below ground level.
Fontainbleau	112	a few	$385	$470	Few Ramps outside for access to buildings.	NO	NO	Bathroom door large enough to get in but not turn around. Same with kitchen.
Whitehall	74	0			1 - Built by tenant			Patio has brick around it. They have one lady who is handicapped that lives there. She installed ramp from her apartment to sidewalk. She also replaced her entrance door on her own.
Westchester Village	119	20	$295 Pay all Utilities	$340	NONE	NO	NO	They have ground floor units with no stairways and patios. All doors are large enough for wheelchair. Currently they have 7 sheltered living persons who are supervised. These are mentally retarded citizens

APARTMENTS	# UNITS	#HC ACCESS	RENT 1 BR	RENT 2 BR	RAMPS	LARGE ENOUGH BATH	LARGE ENOUGH KITCHEN	COMMENTS
IGHLAND HOMES Buchanan Camelot Village Capital Square The Chartwell College Villas Eden Court Fairlawn Village The Snooty Fox Tamarron Tanglewood Trogan Villa Tyler XIII University Heights	500	9	Varies $250 up to $450 Depending on Complex, whether utilities are paid and/or furnished		NONE	NO	NO	There are only 9 that have large enough doors on the main entrance. Some have patios but most patios have steps up to the patio door. All of the apartments are not large enough in the bathroom or kitchen to accomodate the handicapped in wheelchairs. There is no turn around space. Three of the complexes have sunken living rooms, baths and dining rooms. Others have pushbutton door security systems with stairs down to hall.
HERITAGE MANAGEMENT Briarcliff Brandon Place Colonial Park La Colonia Luther Place I Luther Place II Park Place Plaza Ten Prospect Hills Weatherwood Square White Lakes Plaza	752	18	Varies Depending on Complex		NONE	YES SOME	YES SOME	The 18 units have bar rails in the restroom and doors wide enough to enter. Some of the other complexes have large enough restrooms and kitchens for wheelchairs but they have to go up stairs to the entry way.

APARTMENT	# UNITS	#HC ACCESS	RENT 1 BR	RENT 2 BR	RAMP	LARGE ENOUGH BATH	LARGE ENOUGH KITCHEN	COMMENTS
Misty Glen	216	48	$250 Plus all utilities	$295	NONE	NO	YES	Front door is not large enough for wheelchair. The 48 listed are all patio access units. These do have 1 small step on them.
Willow Run	64	6	$340	$450	YES	YES	YES	The 6 units have been built for handicapped. Large entry ways, kitchens and bathrooms.
Sheltered Living	10	10			YES	YES	YES	This complex is strictly for the mentally retarded and wheelchair handicapped

10000 West 75th Street
Shawnee Mission
Kansas 66204

DATE: FEBRUARY 4, 1986

TO: HOUSE COMMITTE OF LOCAL GOVERNMENT FROM: CLARK LINDSTROM

SUBJECT: HOUSE BILLS No. 2659 AND 2660

ATTACHMENT V
2-4-86

MY NAME IS CLARK LINDSTROM. I AM SENIOR PROPERTY MANAGER FOR J. A. PETERSON COMPANIES OUT OF SHAWNEE MISSION, KS.. MY COMPANY OWNES AND MANAGES OVER 4,000 LIVING UNITS THROUGHOUT KANSAS IN WICHITA, TOPEKA, LAWRENCE, AND THE KANSAS CITY AREA. I AM A MEMBER OF THE WICHITA AREA BUILDERS ASSOCIATION, A FORMER APARTMENT COUNCIL CHAIRMAN OF THAT ORGANIZATION, THE DEAN OF THE LOCAL REGISTERED APARTMENT MANAGERS SCHOOL AND AN ASSOCIATE MEMBER OF THE WICHITA CHAPTER OF THE INSTITUTE OF REAL ESTATE MANAGEMENT. MY PROFESSIONAL EXPERIENCE,OVER THE PAST THIRTEEN YEARS, INCLUDES PROPERTY MANAGEMENT OF APARTMENTS,MOTELS, SHOPPING CENTERS, AND OFFICE BUILDINGS.

I AM HERE TODAY TO GIVE TESTIMONY ON THE ABOVE NOTED HOUSE BILLS PERTAINING TO HANDICAPPED ACCESS. SPECIFICALLY HOW IT EFFECTS THE MULTI-FAMILY INDUSTRY.

OUR INDUSTRY CONTINUES TO EXPERIENCE SEVERE ECONOMIC TIMES. THIS IS PRIMARILY DUE TO HIGH INTEREST RATES, COST INCREASES, AND A GENERAL SLOWING OF THE MARKET. FEW, IF ANY APARTMENT COMMUNITIES BUILT IN THE LAST FIVE YEARS, WITHOUT GOVERNMENT SUBSIDY IN ONE FORM OR ANOTHER, CAN MAKE EXPENSES TO INCOME REFLECT POSITIVE CASH FLOWS.MULTI-FAMILY OWNERSHIP IS SIMPLY NOT AS ATTRACTIVE AS IT WAS A FEW YEARS AGO. IMPLEMENTATION OF UNFOUNDED REQUIREMENTS SIMPLY CONTRIBUTES TO FURTHER DISTRESSING OF OUR INDUSTRY.

LAST WEEK I SURVEYED 15,877 UNITS IN THE WICHITA AREA. I FOUND 40 UNITS - HANDICAPPED ACCESSIBLE,16 WERE OCCUPIED BY HANDICAPPED INDIVIDUALS,18 WERE OCCUPIED BY NON-HANDICAPPED, AND 6 WERE VACANT. LANDLORDS AND MANAGERS ADVISED ME THAT OF THOSE UNITS OCCUPIED BY THE NON-HANDICAPPED,RENT

Hs. Local Gov.
Attachment V
2-4-86

10000 West 75th Street
Shawnee Mission
Kansas 66204

DATE: _____

TO: _____ FROM: _____

SUBJECT: _____

REDUCTIONS RANGING FROM $10-25 PER MONTH WERE NECESSARY TO OBTAIN A LEASES ON LESS DESIREABLE UNITS. THE NOTICIBLE ODD APPEARANCE AND INABILITY TO PROVIDE A BUILT-IN DISHWASHER FORCES US TO TAKE LOSSES. THE INCREASED DESIGN AND FIXTURE EXPENSES FOR THE HANDICAPPED ACCESSIBLE UNITS ULTIMATELY MUST BE PASTED TO THE OTHER RESIDENTS. THEREFORE WE ALL MUST PAY TO SUBSIDIZE THE GOOD INTENTIONS OF THE STATE. IF THIS POSITION IS FAIR, WHY AREN 'T THE OTHER GOODS AND SERVICES INDUSTRIES BEING REQUIRED TO PRODUCE HANDICAPPED ACCESSIBLE ITEMS? SHOULD 1 OR 10 OR 20 PERCENT OF ALL AUTOMOBILES BE MADE HANDICAPPED ACCESSIBLE?

I HAVE ORGANIZED AND PARTICIPATED IN FOUR MEETINGS TO INCLUDE MEMBERS OF MY INDUSTRY AND PROPONENTS OF THESE BILLS. EVERY TIME, COMMUNICATION IS IMPROVED, BUT WHEN I HAVE ASKED FOR THEIR "WAITING LISTS " OF HANDICAPPED INDIVIDUALS DESIRING APARTMENTS,THEY NEVER PRODUCE THEM. WHEN OUR INDUSTRY EXPRESSES A DESIRE TO HELP THEIR CAUSE AND CONCEED SECTION OF THIS LEGISLATION , THEY CHANGE THEIR POSITION WITHIN 24 HOURS. MS. STUBBS HAS OUTLINED THE POSITION OF THE APARTMENT INDUSTRY. WE DESIRE A BALANCED AND WORKABLE SOLUTION THAT WILL BENEFIT THESE INDIVIDUALS AND NOT TASK OUR PROFITS. I BELIEVE THE HANDICAPPED ORGANIZATIONS HAVE YET TO SHOW THE TRUE NEEDS AND DEMANDS OF ALL INVOLVED.

I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

ATTACHMENT VI
2-4-86
LOCAL GOVERNMENT

Mr. Chairman, members of the committee, I am Rosemary O'Neil, with the Kansas Head Injury Association. Three and one half years ago I joined the ranks of the handicapped. Since that time I have yet to meet a single handicapped person who does not wish to be a normal healthy taxpayer. However, they (we) all depend on you for your help to make public buildings as accessible as possible.

Please keep us in mind when you vote on this matter.

THANK YOU!!!

Attachment VI
2-4-86
Hs. Local Gov.

KANSAS ASSOCIATION OF REALTORS®

REALTOR®

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

ATTACHMENT VII
2-4-86

TO: THE HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 3, 1986

SUBJECT: HB 2660, HANDICAPPED ACCESSIBILITY

On behalf of the Kansas Association of REALTORS®, I come before you today to support passage of HB 2660.

The Kansas Association of REALTORS® recognizes the need for housing for the handicapped in communities. However, we also feel that the provisions and planning for apartments for the handicapped must be done in a logical manner, in a way that reflects the community in which the handicapped are to live.

The REALTOR® Legislative Policy states: "We are aware of the difficulties of the handicapped in finding housing appropriate to their specific needs. We recognize actions already taken by some governments to reduce impediments to handicapped persons in the acquisition of housing and urge the real estate industry to continue providing guidance for needed, cost effective solutions to the housing problems of the handicapped."

The current requirement of 10% handicap accessibility in apartment complexes of 20 units or more appears to have no logical or statistical basis. The record does not reflect why the 10% figure was chosen when the law was originally passed by this legislature. Current census figures do not reflect the fact that 10% of the population is handicapped.

Most important, few communites in the state of Kansas have anywhere near a handicapped population of 10%. It seems, then, that to require all apartment owners to have 10% of their units accessible for the handicapped places unfair business restrictions on those owners, if there is no market in the community for those units. Few persons who are not handicapped choose to live in these apartments. For nonhandicapped persons, these handicapped accessible facilities

Attachment VII
2-4-86
Hs. Local Gov.

are, at the very least uncomfortable and awkward. Given a choice, these prospective tenants look elsewhere for an apartment.

The REALTORS®, once again, realize the importance and benefits of the handicapped living in the community rather than in institutions. We feel that the adoption by the Interim Committee of the Uniform Building Code Standards is the appropriate step toward providing needed, cost effective solutions to the problem. Not only is the UBC a widely accepted code in the state of Kansas, its provisions for one handicap unit for between 21 and 100 units, and two units per hundred units thereafter, is a formula which apartment owners can live with. To leave the 10% figure in the statute puts an undue burden on persons trying to run a business.

Accordingly we ask that you adopt the recommendations of the Interim Committee, and pass HB 2660 favorably.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

ATTACHMENT VIII
2-4-86

TESTIMONY ON H.B. 2660

PRESENTED TO: The House Committee
on Local Government, February 4, 1986.

This is the official position taken by the Kansas Department of Health and Environment on H.B. 2660.

BACKGROUND INFORMATION:

The State of Kansas participated in the inspection of apartments for many years through the activities of the Food Service and Lodging Board. In the early 1970's the requirement for apartment licensing and inspections was deleted by the Kansas Legislature. Hotel and motel inspections, however, were retained and responsibilities for regulation were transferred to the Kansas Department of Health and Environment following abolition of the Food Service and Lodging Board in 1975. Standards for the accessibility of handicapped persons to apartments, hotels and motels has never been a prerequisite for licensing by the Kansas Department of Health and Environment.

Although information is unavailable it would seem that some municipalities may have addressed this issue by adopting standards locally.

STRENGTHS:

Passage of this bill would appear to improve the functional accessibility and convenience for handicapped persons utilizing certain apartments, hotels and motels.

WEAKNESSES:

The standards of the May 1, 1985 edition of the Uniform Building Code on which this bill is based may possibly conflict with standards adopted by municipalities at the local level.

DEPARTMENT'S POSITION:

The Kansas Department of Health and Environment is not opposed to passage of H.B. 2660.

FD/4

Attachment VIII
2-4-86
Hs. Local Gov.

State Department of Social and Rehabilitation Services

Rehabilitation Services

ATTACHMENT IX
2-4-86

Testimony pertaining to H.B. 2660

Mr. Chairman, members of the Committee: I am addressing you on the subject of House Bill 2660.

Very simply, House Bill 2660 does not fully meet the needs of the disabled. The bill specifies that apartments, motels, and hotels shall conform to standards of the Uniform Building Code. But the Uniform Building Code does not address the real requirements of accessibility.

On the other hand, the American National Standards Institute (ANSI) spells out standards for accessibility that are nationally recognized. The disabled need more than just a wide doorway. Bathrooms must be larger, kitchens must be larger, hallways must allow mobility, and there are a multitude of other considerations, such as mailboxes, ramps, sidewalks, parking spaces, curb cuts in parking lots or at sidewalks, laundry facilities, and recreation facilities.

We in Rehabilitation Services see these needs in the work place every day because many of our employees have a disability. Last week, we had an excellent opportunity to see their needs in a motel or hotel situation when our rehabilitation counselors met for a week of training. For five days, they were gathered in such a public facility. It does not take five days to see the problems they face.

Hs. Local Gov.
2-4-86
Attachment IX

And when you see the obstacles the disabled face in public, it takes little imagination to picture the same obstacles in their homes. Therefore, we encourage that any housing complex should provide at least some units that are fully accessible to the handicapped. Modifiable units are a second option.

Rehabilitation Services would like to see certain guidelines specified in the determination of lack of need for compliance with accessibility standards. The relevant data required must include information from:

1) The Rehabilitation Services counselor serving the municipality;
2) A facility such as an independent living center that serves the disabled in the municipality: OR
3) Appropriate advocacy groups in the municipality.

The person, agency, or governing body holding the authority to grant the waiver is not likely to have the necessary information readily at hand, and cannot make an accurate assessment of need without such assistance. So such information should be required as part of the data in the request for waiver.

Proposed legislation would apparently enable more consistent enforcement of the accessibility standards. Building inspectors, or others designated by the governing body of the municipality, can insure compliance prior to completion of construction or renovation. In the past, compliance was enforced after the fact; and therefore, frequently was NOT enforced.

Rehabilitation Services supports Section 8 in the bill; the section requiring any recreational facility in a handicapped accessible complex shall also be handicapped accessible. Living is not just surviving. The disabled must not be deprived of their right to associate with the able-bodied in a common area or to enjoy the facilities available to others.

Rehabilitation Services supports the passage of legislation to assure the accessibility of apartment complexes, hotels, and motels. But we are not comfortable with the standards of the Uniform Building Code. We prefer ANSI standards which will better serve the needs of the disabled. We are also apprehensive about the ease of circumvention of those standards through the waiver process. I want to stress the importance of input from rehabilitation counselors, independent living centers, and advocacy groups in the data collection for an application of waiver.

Joan B. Watson, Commissioner
Rehabilitation Services
Social and Rehabilitation Services
296-3911

February 4, 1986

for

Robert C. Harder, Secretary
Office of the Secretary
Social and Rehabilitation Services
296-3271

KANSAS DEPARTMENT OF HUMAN RESOURCES

ADVISORY COMMITTEE ON EMPLOYMENT
OF THE HANDICAPPED
1430 S.W. Topeka Avenue, Topeka, Kansas 66612-1877
913-232-7828 (V/TDD) 567-0828 KANS-A-N

John Carlin, Governor

Larry E. Wolgast, Secretary

ATTACHMENT X
2-4-86

To: House Local Government Committee
From: Ray Petty, Legislative Liaison, KACEH
Re: House Bills 2159 and 2660 which are concerned with the Kansas Accessibility Standards
Date: February 4, 1986

This hearing is concerned with proposed changes in the Kansas Accessibility Standards currently contained in K.S.A. 58-1301 et. seq. Two bills are being considered today. The first, House Bill 2659 has been described as a bill which cleans up the current statutes. Most if not all of the substantial changes are contained in House Bill 2660.

One clarification to this presumption of innocence in 2659 as it relates to 2660 is extremely important. If the law enacted by House Bill 2660 stands alone, without being incorporated into the K.S.A. 58-1301 et.seq., then I do not find language in HB 2660 which provides for the issuance of restraining injunctions for violating the standards. If this is the case, and in light of the current low level of compliance, an injunction section should be inserted.

With regard to HB 2660, let me say that a number of conferees on whatever sides there are in this situation have met, and I believe it is in the interest of progress to report that we did not disagree on everything that could be disagreed on. Nor did we agree on everything. I would like to focus first on what I believe to be our agreements.

1. The implementation date for in the bill is July 1, 1986 on line 54 but is January 1, 1987 in line 71. What we supposedly are doing here is trying to implement a law under which a reasonable number of reasonably outfitted dwelling units will be constructed. We would agree to an earlier date and would suggest July 1, 1986. The dates then in line 71 and 74 would need to be modified accordingly.

2. Some concern was expressed that building officials in some (I believe) smaller communities may not be as reasonable as their counterparts elsewhere. But I believe that there is no disagreement in principle that compliance must begin in the office when building permits are issued.

Attachment X
2-4-86
Hs. Local Gov.

3. Also with regard to number 2 above, the waiver process concerning lack of need is too vague. We certainly cannot accept a waiver being granted on the basis of someone's anecdotal impression that "hardly anyone is this town uses a wheelchair - except for old Harley down the street there." Nor does it seem reasonable that separate surveys be developed for two applications for building permits in the same community within a reasonable period of time, say a year. In other words if the lack of need is appropriately demonstrated, that demonstation will have enduring properties. More guidance is needed here.

We think it is important that disability advocates in the community be consulted with regard to the lack of need survey. Independent living centers, rehabilitation offices, and advisory groups on disability issues exist in many locales in Kansas. In our opinion, no lack of need waiver should be granted without the input of organizations such as these, where they exist.

Public notice should also be required when a lack of need waiver application is being processed.

4. I also believe that requiring common recreational facilities to be accessible is generally supported.

Before describing what we believe to be the weaknesses in the bill, let me remind the committee of Senate Bill 369 which this committee tabled last year. The Homebuilders sought to lower the number of accessible apartments required in apartment complexes of 20 or more units from 10% to 1%. Although that 1% figure did not precisely reflect the Uniform Building Code standard, it was the only provision in the statutes that was being targeted for change.

Today we find ourselves in a different situation. We have not disputed that the 10% was too high a figure. But we are concerned with the proposed utilization of the UBC as the accessibility code of record. It was not until the last meeting of the interim committee that the American National Standards Institute (ANSI) requirements were scrapped in favor of the UBC. And it was certainly not the case that the differences between the two had been given proper attention.

What is wrong with the UBC? Well, it does not address accessibility in kitchens of dwelling units. It does not require that grab bars be installed in bathrooms, nor does it require bracing in the bathroom walls for easy modification. The Homebuilders have indicated that they would agree to build the kitchens so that they could be adapted to meet ANSI standards. But what about the bathrooms?

It was my impression that the interim committee found the idea of adaptability attractive. In other words, you don't have to build units in such a fashion that they are

immediately usable. But you don't build in formidable barriers or leave out features which allow quick, economical adaptation so that they are usable units. The failure of the UBC to address the bathroom wall bracing in preparation for mounting grab bars is a good demonstation of its failure to come to grips with the adaptability concept.

There are other concerns as well. What about laundry rooms, mailboxes, the placement of light switches and electrical outlets - all of which are minor changes when properly planned. When ignored these are the barriers that we should all be trying to minimize. ANSI addresses these points; the UBC is silent. If the UBC is to remain as the standard in this bill, it must be supplemented by sections of ANSI - and more than kitchen modifiability is necessary.

The UBC also contains a loophole which says that "[w]hen it can be established that the facilities are usable by a person in a wheelchair, dimensions other than those above shall be acceptable." With the exception of door widths, a fraction of an inch probably won't make much difference. But several inches may. That's why ANSI went to such painstaking trouble to publish standards which will fit almost everyone who uses almost every wheelchair. Not just a slender woman who uses a slender chair. We question this kind of wording.

Another concern we have is that where we can understand to some extent a distinction between apartment buildings and "public buildings", that distinction is not nearly so understandable with reference to hotels and motels. Those are public accomodations and should be dealt with as such. We do not understand why hotels and motels have been lumped with apartment buildings.

During the interim, George Barbee, testifying for the Kansas Lodging Association, indicated that the American Hotel and Motel Association was working on a position paper on handicap accessibility of newly constructed hotels and motels. The draft version uses the ANSI specifications. According to Mr. Barbee, "it appears that the people preparing this position pap;er agree that the ANSI standards are probably the ones that are most practical. And a figure of 4-5% accessible units was mentioned.

I sincerely hope that the Kansas Lodging Association would agree to maintain ANSI standards in newly constructed hotels and motels. And that 5% would be an acceptable number of units. After all, most guest rooms won't have any kitchens to consider - bathrooms being the primary consideration. I have been to too many conventions with friends and colleagues who use wheelchairs where not enough accessible rooms were available.

Please contact our office if further information is needed. Thank you.

KANSAS LODGING ASSOCIATION

ATTACHMENT XI
2-4-86

DATE: February 4, 1986

TO: MEMBERS OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: Jean Barbee, Assistant Executive Director
KANSAS LODGING ASSOCIATION

RE: HB-2660

Mr. Chairman and Members of the Committee:

My name is Jean Barbee and I am the Assistant Executive Director of the Kansas Lodging Association.

As we expressed to the Legislative Interim Study Committee this summer, members of the Kansas Lodging Association recognize the need to accommodate travelling handicapped persons as they seek lodging in Kansas.

According to the president of the Society of the Advancement of Travel for the Handicapped, there are thirty-six million handicapped persons in the United States. Quite frankly, its not just a responsibility of our members to accommodate the handicapped, but as you can see, it's an untapped market of some thirty-six million people that mean better business if we can intice them to stay at our establishments.

Of the thirty-six million, five hundred thousand are reportedly in wheelchairs, while some fourteen million are handicapped by being either deaf or hearing impaired. With a population in this country of approximately 235 million people, the percentage of people confined to wheelchairs is approximately two tenths of a percent (0.2%). That low percentage of the total population explains why the members of the Lodging Association were concerned with the existing statute requiring that 10% of all hotel/motel units be handicapped accessible. In all our research, we have been unable to find any building codes or statistics that would substantiate a need for ten percent.

Attachment XI
2-4-86
Hs. Local Gov.

1100 Merchants Tower • 800 Jackson • Topeka, Kansas 66612 • (913) 233-9344

I would like for you to know that the industry itself is addressing the needs of the handicapped. Some examples of these are:

The Holiday Inns have a standard that requires one out of every seventy-five rooms be equipped for wheelchair access.

Howard Johnson's follows local and state codes regarding number of specially equipped rooms per property, but when there are no local codes, the company requires two percent (2%) of the rooms to be wheelchair accessible. That standard applies for franchises, as well as company-owned properties.

Luxury hotels, too, are committed to serving the needs of handicapped. The Sheraton Plaza Reina at Los Angeles International Airport boasts forty-eight of the 810 rooms which feature extra-wide entrances and closet rungs, light switches and environmental controls positioned conveniently for a guest in a wheelchair.

At the Mayflower Hotel in Washington, D.C., twelve out of 724 rooms are designed exclusively for people confined to wheelchairs.

And, the American Hotel & Motel Association (AH&MA), the national association with which the Kansas Lodging Association is affiliated, is working on a position paper on handicapped accessiblity for newly constructed hotels and motels.

The interim study committee heard all these details this summer and as a result of this and other testimony, agreed that the existing 10% requirement was unreasonable. In the committee's attempt to draft legislation which would best address the problem, we offered information regarding the use of the American National Standards Institutes (ANSI) Specifications. As has been pointed out, as good as the ANSI specifications are, they were not initially developed as a "Code" to be unilaterally adopted, and they do not include any specifications for required numbers or percentages of apartment or hotel/motel units. We understood that if the ANSI standards were adopted, some other form of "required number of units" specifications would have to be used. And we also understood that Kansas local building inspectors are probably more familiar with the UBC than with ANSI.

So, we agreed with the interim committee when they drafted this bill to include the Uniform Building Code (UBC) requirements, because, in all practicality, we know that local building inspectors are most familiar with the UBC and more likely to enforce something with which they're familiar. We were also pleased that the committee agreed to draft separate bills for public buildings and apartment complexes, hotels and motels.

So, HB-2660 addresses the definitions and standards to be required for constructing or renovating a hotel or motel in Kansas after whatever date is finally agreed upon. And the basics for hotel/motel owners are that any new lodging facility, or any renovated (25% or more of the replacement value) facility, of more than 20 units shall conform to the Uniform Building Code. The bill also sets forth waiver procedures which we believe to be reasonable and allows local control to enforce the act.

The only problem the Lodging Association has with this bill at all is in section 8. which requires that recreational facilities be handicapped accessible.

During the interim study, we did not request, and the committee did not draft, separate legislation for apartment complexes and hotels/motels. But I would like for you to consider that there is a difference. An apartment is a "home" where a person resides on a daily basis and probably spends the greater part of his or her leisure time. Whereas a hotel or motel is a temporary residence, usually for just one or two nights.

We are all inconvenienced by travelling. Amenities may entice us to choose one facility over the other, but the truth is, what we really have a right to expect, and I think what we are trying to achieve for the handicapped person in this bill, are the necessities -- a place to sleep, bathe and use the rest room in privacy and reasonable comfort, if not always in the greatest of comfort or luxury. A swimming pool, or a sauna, or a putting green or a tennis court is a luxury, an amenity.

Our real problem is in renovation projects which exceed the 25% replacement cost figure, where the recreational facility already exists and may be extremely inaccessible. For example, elevated swimming pools are not uncommon. It would hardly seem appropriate for an owner who is trying to upgrade his property and who is most likely installing handicapped units, to be stymied simply because it is totally unfeasible to redesign his recreational facilities. We would appreciate your consideration in exempting hotels and motels from Section 8., the requirement for handicapped access to recreational facilities.