

Approved Ivan Sand 2/12/86  
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 6, 1986 in room 521-S of the Capitol.

All members were present except: Rep. Arthur Douville, 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:

Rep. Burt DeBaun, New Legislation  
Ms. Terry Humphrey, KS Manufactured Housing Institute,  
New Legislation  
Rep. Ivan Sand, New Legislation  
Rep. Don Rezac, HB 2757  
Mr. Lark D. May, Lake Wabaunsee Improvement Dist.,  
HB 2757  
Rep. Marvin Smith, HB 2728  
Ms. Gerry Ray, Johnson County, HB 2728  
Mr. Ray T. Reed, Jr., First Securities Co. of KS.,  
HB 2728  
Mr. Steve Randle, Stifel-Nicholaus Co., Wichita,  
HB 2728  
Mr. Pat Hurley, City of Ellsworth, HB 2728  
Ms. Judy Anderson, City of Wichita, HB 2728  
Mr. Frederick Sudermann, Wichita State Univ., HB 2728  
Ms. Willie Martin, Sedgwick County, HB 2728

Chairman Sand called for introduction of new legislation.

Rep. Burt DeBaun requested legislation which would give authority for raising the mil levy for a township library to the township trustees, instead of the township library board where the authority now rests. Rep. DeBaun made a motion that the proposed legislation be introduced as a committee bill. Rep. Kenneth D. Francisco seconded the motion. The motion carried. (See Attachment I.)

Ms. Terry Humphrey, representing Kansas Manufactured Housing Institute, requested legislation concerning the zoning regulation of certain types of housing and which would amend K.S.A. 19-2938. (5 RS 1712)

Rep. Mary Jane Johnson made a motion to introduce the proposed legislation as a committee bill. Rep. Robert D. Miller seconded the motion. The motion carried. (See Attachment II.)

Rep. Ivan Sand explained legislation suspending and establishing statutory fund and aggregate property tax levy limitations for certain taxing subdivisions and amending K.S.A. 79-1973 and 79-1974 and repealing the existing sections. (5 RS 2294)

Rep. Phil Kline made a motion to introduce the proposed legislation as a committee bill. Rep. Clinton Acheson seconded the motion. The motion carried. (See Attachment III.)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,  
room 521-S, Statehouse, at 1:30 ~~xxx~~/p.m. on FEBRUARY 6, 1986

Chairman Sand called for hearings on the following bills:

HB 2757, concerning improvement districts; relating to special assessments and the publication of notice thereof;

Rep. Don Rezac, sponsor of HB 2757, explained the intent of the bill and urged the committee's support of the bill. Rep. Rezac introduced Mr. Lark D. May, Secretary, Lake Wabaunsee Improvement District, who in turn introduced Mr. Jesse Whittaker, President of the District, Mr. Chester Templar, Treasurer, and Mr. Kenneth Risler, an interested citizen. (See Attach. IV.)

Mr. Lark D. May, Secretary of the Lake Wabaunsee Improvement District, testified that the District supports HB 2757. (See Attachment V.)

The hearing on HB 2757 was closed.

HB 2728, concerning public building commissions;

Rep. Marvin Smith, chief sponsor of HB 2728, appeared to give background and intent of HB 2728 and to urge the committee's favorable consideration for passage. (See Attachment VI.)

Rep. Smith also distributed copies of Attorney General's Opinion No. 85-152 dated November 8, 1985, re Public Building Commission matters. (See Attachment VII.)

A committee member asked if it would be possible to determine how many public building commissions exist across the state and to monitor the activity generated by those groups. Mr. Mike Heim, Staff, offered to gather available data on existing public building commissions.

Ms. Gerry Ray, representing Johnson County, said passage of HB 2728 would cause many problems for Johnson County and requested that the bill be localized to Shawnee County.

Mr. Ray T. Reed, Jr., President, First Securities Co. of Kansas, Inc., appeared on behalf of the Wichita Building Commission. Mr. Reed urged the Committee to localize HB 2728 to Shawnee County, as it would halt progress on a project in Wichita that has had in-depth planning for many months.

Mr. Steve Randle, Vice President, Stifel-Nicholaus Co., Wichita, Kansas, testified that HB 2728 would have serious, adverse effects on a number of projects in the mill and urged the committee to localize the bill to Shawnee County. Mr. Randle distributed an information sheet, entitled, "Summary of Points in Opposition to HB 2727 and HB 2728." (See Attachment VIII.)

Mr. Pat Hurley, representing the City of Ellsworth, testified that the City of Ellsworth would urge the committee to localize HB 2728 to Shawnee County.

Ms. Judy Anderson, representing the City of Wichita, requested the Committee to limit HB 2728 to Shawnee County. Ms. Anderson introduced Mr. Frederick Sudermann, Governmental Relations, Wichita State University, who concurred with Ms. Anderson.

Ms. Willie Martin, representing Sedgwick County, said Sedgwick County and cities therein would request that HB 2728 be localized to Shawnee County.

The hearing on HB 2728 was closed.

Chairman Sand informed the committee that next week, action will be taken on previously heard bills.

The minutes of the meeting of February 4, 1986 were approved as presented.

The meeting was adjourned.



STATE OF KANSAS

BURT DEBAUN  
REPRESENTATIVE, THIRTEENTH DISTRICT  
OSAGE AND PART  
OF LYON COUNTY  
726 S 9TH  
OSAGE CITY, KANSAS 66523



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: INSURANCE  
LABOR AND INDUSTRY  
LOCAL GOVERNMENT

February 6, 1986

To: House Local Government Committee

Re: Township Libraries

Mr. Chairman and members of the committee

Last year several of we house members sponsored a bill which raised the mill levy a township could assess for a township library.

There are approximately 20 township libraries in the state, two of which are in the 13th district

At the time we thought the bill was so written that the decision to raise the levy rested with the township trustees. Such was not the case because there was a previous statute that still existed that allowed the township library board - not the township trustees to determine if the mill levy should be increased. The Attorney Generals office was contacted and it was confirmed that the township library board could in effect increase the mill levy.

Because it is believed that the governing body (i.e.) the township trustees should have this authority, we respectfully request that this committee introduce a committee bill which would correct this condition.

Are there any questions.

ATTACHMENT I

2-6-86

Ms. Local Gov.

HOUSE BILL NO. \_\_\_\_\_

By

AN ACT relating to cities and counties; concerning the zoning regulation of certain types of housing; amending K.S.A. 19-2938 and repealing the existing section.

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

Section 1. K.S.A. 19-2938 is hereby amended to read as follows: 19-2938. Neither the board of county commissioners nor the planning board of any county shall, ~~in the exercise of any of the powers and duties conferred under article 29 of chapter 19 of Kansas Statutes Annotated, regulate the occupancy or location of dwelling units in such a way as to effect an arbitrary exclusion of manufactured housing~~ adopt any zoning regulation which prohibits the installation, on a foundation system, of any manufactured home certified under the national mobile home construction and safety standards act (42 U.S.C. sec. 5401 et seq.), modular home, or other forms of prefabricated housing in any zoning district in the county on lots zoned for single family dwellings. The board of county commissioners or the planning board of any county may subject any such manufactured home, modular home or other form of prefabricated housing and the lot on which it is placed to any or all of the same development standards to which a conventional single family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access and vehicle parking and architectural, aesthetic requirements. However, any architectural requirements imposed on such manufactured home, modular home or other form of prefabricated housing shall be limited to its roofing material and siding material. In no case may the board of county commissioners or the planning board of

ATTACHMENT II

2-6-86

Hs. Local Gov.

any county apply any development standard in a manner which will have the effect of totally precluding manufactured homes, modular homes or other forms of prefabricated housing from being installed as permanent dwellings on lots zoned, in any zoning district, for single family dwellings.

New Sec. 2. Neither the governing body nor the planning commission of any city shall adopt any zoning regulation which prohibits the installation, on a foundation system, of any manufactured home certified under the national mobile home construction and safety standards act (42 U.S.C. sec. 5401 et seq.), modular home, or other form of prefabricated housing in any zoning district in the city on lots zoned for single family dwellings. The governing body or the planning commission of any city may subject any such manufactured home, modular home or other form of prefabricated housing and the lot on which it is placed to any or all of the same development standards to which a conventional single family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access, and vehicle parking and architectural, aesthetic requirements. However, any architectural requirements imposed on such manufactured home, modular home or other form of prefabricated housing shall be limited to its roofing material and siding material. In no case may the governing body or the planning commission of any city apply any development standard in a manner which will have the effect of totally precluding manufactured homes, modular homes or other forms of prefabricated housing from being installed as permanent dwellings on lots zoned, in any zoning district, for single family dwellings.

Sec. 3. K.S.A. 19-2938 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

## HOUSE BILL NO. \_\_\_\_\_

By Committee on Local Government

AN ACT suspending and establishing statutory fund and aggregate property tax levy limitations for certain taxing subdivisions; amending K.S.A. 79-1973 and 79-1974 and repealing the existing sections.

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

Section 1. K.S.A. 79-1973 is hereby amended to read as follows: 79-1973. (a) In 1983, all existing statutory fund and aggregate levy limitations on taxing subdivisions are suspended. In such year, any taxing subdivision is authorized either to levy taxes upon tangible property which produces an amount not in excess of the amount which was authorized to be levied by such taxing subdivision in the next preceding year or levy taxes upon tangible property at a rate not exceeding the existing statutory fund or aggregate levy limitation. The tax levy required to produce the amount allowed by the provisions of this subsection shall be the levy limit for ~~1984, 1985~~ and 1986, 1987, 1988 and 1989 unless such tax levy is less than the existing statutory fund or aggregate levy limitation, in which case such statutory fund or aggregate levy limitation shall apply.

(b) As used in this section, "taxing subdivision" means every taxing district in the state other than the state.

(c) Nothing in this act shall apply to the limitations on aggregate tax levies imposed by the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto.

Sec. 2. K.S.A. 79-1974 is hereby amended to read as follows: 79-1974. The provisions of this act shall expire on December 31, ~~1986~~ 1989.

Sec. 3. K.S.A. 79-1973 and 79-1974 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

ATTACHMENT III  
2-6-86  
Hs. Local Gov.

STATE OF KANSAS

DON M. REZAC  
REPRESENTATIVE, SIXTY-FIRST DISTRICT  
WABAUNSEE COUNTY AND PARTS  
OF POTTAWATOMIE AND RILEY COUNTIES



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER AGRICULTURE AND SMALL BUSINESS  
ENERGY AND NATURAL RESOURCES  
LOCAL GOVERNMENT

Testimony by Representative Don Rezac on House Bill 2757 before the HOUSE LOCAL GOVERNMENT COMMITTEE, February 6, 1986.

Thank you Mr. Chairman and members of the Committee. I am Don Rezac, sponsor of HB 2757. This bill relates to Lake Wabaunsee improvement district.

This bill amends two statues. KSA 19-2763, which relates to statement of the district monies. The new language is on Line 61 through 64, which states: In the case of an improvement district located in Wabaunsee County, such statement may be published in a newspaper of general circulation within the district.

This bill also amends KSA 19-2769, which deals with levying special taxes for improvement districts. Again, the new language is on line 118 to 121, which states: In the case of an improvement district located in Wabaunsee County, such notice may be published in a newspaper of general circulation within the district. This bill is localized to Wabaunsee County.

As you can see, it also has the support of the Wabaunsee County Commmissioners and also the editor of the official county paper does not object.

Thank you.

DON REZAC  
State Representative  
District #61

ATTACHMENT IV  
2-6-86  
Hs. Local Gov.





WABAUNSEE COUNTY COURT HOUSE

COMMISSIONER FIRST DISTRICT  
JOE McCLURE, Alta Vista

COMMISSIONER SECOND DISTRICT  
LEO BOHN, Eskridge

COMMISSIONER THIRD DISTRICT  
GLEN L. HEISER, Paxico

BOARD MEETINGS  
FIRST MONDAY OF EACH MONTH AND MONDAY OF EACH WEEK

OFFICE OF COUNTY CLERK

WABAUNSEE COUNTY

ALMA, KANSAS 66401

TELEPHONE 913-785-3414

RUTH M. DIEPENBROCK, Clerk

January 14, 1986

Senator Don Montgomery  
1218 Main  
Sabetha, Kansas 66534

*File under  
Wab. Co.*

Dear Don:

The Board of Wabaunsee County Commissioners are in favor of legislation to be enacted to allow the Lake Wabaunsee Improvement District to publish their legals in the Independent, which is the Eskridge paper.

Thanking you, we remain

Sincerely yours,  
BOARD OF WABAUNSEE COUNTY COMMISSIONERS

*Joe McClure*  
\_\_\_\_\_  
Joe McClure, Chairman

*Glen L. Heiser*  
\_\_\_\_\_  
Glen L. Heiser, Vice-Chairman

*Leo Bohn*  
\_\_\_\_\_  
Leo Bohn, Member

February 6, 1986.

Chairman Sands and Members of the Committee on Local Government:

It is a pleasure to appear before you today and we thank you for the opportunity.

We represent the Lake Wabaunsee Improvement District at Lake Wabaunsee, situated 5 miles west of Eskridge, Kansas. We are here in support of House Bill No. 2757, introduced by Representative Rezac.

H B No. 2757 amends KSA 19-2763's wording as shown on lines number 0061-62-63-64 and KSA 19-2769's wording as shown on lines number 0118-0119-0120-0121 so that an Improvement District in Wabaunsee County may publish legal documents and notices in a newspaper of general circulation within the district.

We are at the doorstep of Eskridge, Kansas, and most residents at the lake subscribe to the Eskridge "Independent". Very few subscribe to the Alma "Signal-Enterprise" which is the official county newspaper. Consequently, when we publish legal documents or other notices in the "Signal-Enterprise", we get a lot of complaints that the residents of the Improvement District do not know what is going on. If such legal documents and notices could be published in the Eskridge newspaper most residents would be aware of what is going on.

The publishing or not publishing such legal matters will neither make nor break any newspaper. Rather it is a matter of convenience and public awareness about the business of our Improvement District.

Thank you very much for your courtesy in allowing us to appear at this meeting and to speak to you on this matter.

Lark D. May, Secretary  
Lake Wabaunsee Improvement Dis:

ATTACHMENT II

2-6-86

Hs. Local Gov.

MARVIN E. SMITH  
 REPRESENTATIVE, FIFTIETH DISTRICT  
 SHAWNEE AND JACKSON COUNTIES  
 123 N.E. 82ND STREET  
 TOPEKA, KANSAS 66617



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: ASSESSMENT AND TAXATION  
 EDUCATION  
 TRANSPORTATION

February 6, 1986

TO: HOUSE LOCAL GOVERNMENT COMMITTEE  
 RE: HOUSE BILL 2728 PUBLIC BUILDING COMMISSION

Mr. Chairman and Members of the Committee:

A sound principal for societies that espouse and promote the private ownership of property as their agenda has been a tradition of our Republic. Historically bonds indebtedness for ad valorem tax has given the voters an opportunity to approve or reject those bond proposals.

Ironically home-rule resolutions and creation of the Metropolitan Airport Authority, Metropolitan Transit Authority and the Public Building Commission are just a few of the examples that are created under names of "authority" and/or "commission" to make an "end run" on property owners for bonded indebtedness on both real and personal property.

During the 1983 session, I sponsored HB 2035. That proposed legislation, concerning public building commissions, would have amended the statutes by adding to Section 1, subsection (b) as follows: Prior to entering into any leases, the board of county commissioners of any county shall submit the proposal to enter the lease for approval by a majority of the qualified voters of the county voting at an election thereon. The election shall be called and held in the manner provided by the general bond law.

On January 26, 1983, a hearing was held on HB 2035 before this committee. Testimony was presented before the committee emphasizing county residents outside the city did not have a voice in an obligation. Opponents of HB 2035 were Darold Main, Shawnee County Intergovernmental Coordinator, who said the proposed legislation is not needed and is discriminatory. (See attached article from the Topeka Capital Journal, dated Thursday, January 27, 1983).

A week ago today, January 30, 1986, you held a hearing on HB 2727 which is very similar to HB 2035 (1983 session). It is interesting to note now that the opponents in 1983 to HB 2035 were not here as opponents to HB 2727. Could it be that they have already made an "end run" on all the taxpayers in Shawnee County?

ATTACHMENT VI

2-6-86

Hs. Local Gov.

After a successful petition drive, on September 19, 1986, for an election for an additional 4 million dollars of revenue bonds to be issued by the Topeka Public Building Commission, the Attorney General opined only the City of Topeka could call and pay for the election since the Topeka Public Building Commission was a creation of the City of Topeka. County taxpayers outside the City of Topeka, including the cities of Auburn, Rossville, Silver Lake and Willard, could not vote on the bond issue but still pay the tax on the bonds if issued.

Therefore, I contend that to insure all property bond liability created by a PBC we need a change in the Kansas statute. HB 2728 intent is to provide property owners, who are qualified voters, an opportunity to approve or reject all bond issues initiated by resolution by a Public Building Commission.

Would appreciate your favorable consideration for passage.

February 6, 1986

HISTORY OF TOPEKA PUBLIC BUILDING COMMISSION

REP. MARVIN E. SMITH

RE: HOUSE BILL 2728

1. May 23, 1978, Ordinance 14250, creating a public building commission; creation, composition was ordained by the governing body of the City of Topeka, Kansas.

2. December 22, 1981, The City of Topeka adopted Charter Ordinance 55 exempting the City of Topeka from KSA 12-1767 relating to revenue bonds, laws applicable, resolution, protest petition, and election in conjunction with public building commissions financing and providing substitute provisions therefor.

Section 2. Before any revenue bonds shall be authorized or issued under the provisions of this act, the PBC shall adopt a resolution specifying the amount of such bonds, the purpose of issuance thereof and stating that if within thirty (30) days after the last date of publication of such notice, a petition in opposition to the same, signed by not less than seven (7%) percent of the electors of such county within which the city is located, is filed with the county clerk, the board shall submit the question to the voters at an election called for such purpose or at the next general election. Such resolution shall be published once a week for three (3) consecutive weeks in the newspaper having circulation in such county.

3. November 18, 1981, Resolution 81-205 was passed and approved by the Shawnee County Commissioners by a vote of 2 to 1. In essence, the resolution stated the Board of County Commissioners intends to utilize the Topeka-Shawnee County Building Public Commission as the funding mechanism for construction of a new jail. NOTE: the inclusion of Shawnee to the TOPEKA PUBLIC BUILDING COMMISSION!

4. August 4, 1983, The Topeka Public Building Commission adopted Resolution #1 and gives notice TO ALL CITIZENS OF SHAWNEE COUNTY, KANSAS, of its intention to acquire a site and construct and equip a jail facility at a total estimated cost not to exceed \$15,937,000.00.

5. In the summer of 1985, when the bids for the jail project were opened, there was a \$2.4 million shortfall. Feeble attempts were made to alter plans to monies available.

6. August 2, 1985, the Topeka Public Building Commission adopted Resolution 85-3 to an issue additional \$3,988,000.00 and again gave notice TO ALL CITIZENS OF SHAWNEE COUNTY.

7. Subsequently, a protest petition for an election drive delivered 12,323 signatures on September 19, 1985, to the Shawnee County Clerk. Approximately 5,500 signatures were needed.

8. A Brown County judge, on August 1, 1985, ordered the county to begin construction on the jail by September 15, 1985.

9. Then the legal counsel for Shawnee County Commission requested, from the Attorney General's office, an opinion if the election should

February 6, 1986

Page 2 HISTORY OF TOPEKA PUBLIC BUILDING COMMISSION REP. MARVIN E. SMITH

be called by the Shawnee County Commission or the Public Building Commission; also, who is entitled to vote and who would pay for the election.

10. The Attorney General's opinion stated only citizens in the City of Topeka were eligible to vote since the PBC was a creation of the City.

THUS TAXATION WITHOUT REPRESENTATION for Shawnee County taxpayers outside of the city.

## Bill requiring vote on building jail criticized

Opponents of legislation designed to force a countywide referendum on construction of a new jail here sharply criticized the bill Wednesday during testimony before a House committee.

Darold Main, Shawnee County inter-governmental coordinator, said the proposed legislation is unneeded and discriminatory.

Fred Allen, executive director of the Kansas Association of Counties, told the House Local Government Committee the legislation raises a number of questions and that his organization opposes the measure.

The bill was sponsored by Rep. Marvin Smith, R-Topeka, whose legislative district is comprised of one township in Shawnee County plus territory in Jackson County.

It would require a mandatory countywide referendum on any proposed leases between a county and a public building commission.

Main told the House committee, "This bill is zeroed in on Shawnee County and it's zeroed in on the jail."

Smith said he introduced the bill to give county residents a voice in whether they should be taxed to build a new jail.

He said the Shawnee County Commission has adopted a resolution stating it will use the Public Building Commission as the entity to issue revenue bonds to construct a new jail.

The North Topeka legislator said that because the building commission was created by the city, county residents have no opportunity under the law to try to force a referendum on a new jail

Continued on page 2, column 1

## Bill requiring

Continued from page 1

by launching a protest petition drive.

He said the building commission could issue bonds for the jail, the county could then lease it and residents of Shawnee County outside the city then would be forced to pay taxes to help retire the revenue bonds.

Joan Hrenchir of Berryton, a supporter of the bill, urged the committee to pass it and provide rural Shawnee County residents protection from an unwanted tax increase.

"Lately we've heard prices of \$14 million for a jail. Ours is only 18 years old," she told the House panel.

"The city in effect could build a jail and then make everybody pay for it. County residents wouldn't have any way to protest it."

Main contradicted Smith and Hrenchir on their interpretation of the public building commission statute.

He said the city passed a new charter ordinance several years ago amending its original creation of the public building commission here to require involvement in its activities by county officials and county residents.

He noted the Topeka Public Building Commission is comprised of one county commissioner, one city commissioner, an architect and two members of the general public.

He noted the jail advisory committee "has 29 members from all over the county."

Main said unequivocally that Shawnee County residents outside Topeka will be allowed a voice in whether a new jail will be built and the issuance of bonds to construct it.

Main noted the primary assignment of the Topeka Public Building Commission since its creation in May 1978 has been to assess public building space needs in the city and county.

He said the need for a new county jail rose to the top of that space needs list and asserted, "We have an unconstitutional jail here and have had since 1970 when the standards were changed."

He said there is only 25 square feet of space per prisoner in the present county jail and that 37 square feet is required.

**PUBLIC NOTICES**

No. 442  
(First Published in The Topeka Capital-Journal,  
August 4, 1985)

**TOPEKA PUBLIC BUILDING COMMISSION  
RESOLUTION NO. 85-3**

A RESOLUTION DECLARING THE INTENTION OF THE TOPEKA PUBLIC BUILDING COMMISSION TO ISSUE ADDITIONAL JAIL FACILITY REVENUE BONDS IN A PRINCIPAL AMOUNT NOT EXCEEDING \$3,968,000.00 TO PAY THE ADDITIONAL COSTS TO ACQUIRE A SITE AND TO CONSTRUCT AND EQUIP A JAIL FACILITY.

WHEREAS, the Topeka Public Building Commission (the "Commission") is a duly organized municipal corporation created by the City of Topeka, Kansas, under Ordinance No. 14254 (the "Ordinance") pursuant to K.S.A. 12-1757 and 12-1765, inclusive, as amended (the "Act") and Charter Ordinance No. 25 of the City of Topeka (the "Charter Ordinance"); and

WHEREAS, the Commission is authorized by the Ordinance, the Charter Ordinance and the Act to acquire a site and construct and equip a facility for municipal and/or County law enforcement agencies, to rent said facility to such agencies and to issue revenue bonds to pay the costs thereof; and

WHEREAS, the Charter Ordinance requires the Commission to adopt and publish a resolution containing certain information to be given to the public before authorizing or issuing revenue bonds pursuant to the Act; and

WHEREAS, the Commission adopted Resolution No. 1 on August 4, 1983, and duly published the same without protest, which authorized the issuance of Jail Facility Revenue Bonds in a principal amount not to exceed \$15,937,000.00 for the purpose of paying the costs of acquiring a site, constructing and equipping a jail facility for use and occupancy by Shawnee County, Kansas; and

WHEREAS, the Commission has acquired a site, designed a jail facility and received bids for the construction of the facility; and

WHEREAS, the bids received, as well as the architect's estimate, all exceed the amount of unexpended funds available under the Commission's original \$15,937,000.00 budget for the project.

NOW, THEREFORE, NOTICE TO ALL CITIZENS OF SHAWNEE COUNTY, KANSAS, IS HEREBY GIVEN BY THE TOPEKA PUBLIC BUILDING COMMISSION, AND IT IS HEREBY RESOLVED, AS FOLLOWS:

1. The Commission intends to issue additional Jail Facility Revenue Bonds in an additional amount not to exceed \$3,968,000.00 over, above and in addition to the \$15,937,000.00 previously authorized on August 4, 1983, by Commission Resolution No. 1 for the purpose of paying the costs to acquire a site, construct and equip a jail facility for the use and occupancy of Shawnee County, Kansas. The principal and interest on said additional bonds shall be payable solely from the rents and revenues to be derived from said facility or other facilities acquired by the Commission.

2. Before authorizing or issuing the additional bonds, this resolution shall be published once a week for three consecutive weeks in a newspaper having general circulation in Shawnee County, Kansas, if, within thirty (30) days after the last date of publication of this resolution, a petition in opposition to the same, signed by not less than seven percent (7%) of the electors of Shawnee County, Kansas, is filed with the Shawnee County Clerk, the Commission shall submit the question to the voters of said County at the next general election or at an election called for such purpose. If sufficient protest is not filed, then the Commission will proceed with its intentions as hereinbefore declared.

3. The Chairman of the Commission is hereby directed to publish this resolution in accordance with the aforesaid instruction.

ADOPTED BY THE TOPEKA PUBLIC BUILDING COMMISSION, Topeka, Kansas, this 2nd day of August, 1985.

Harry L. Fisher, II, Chairman  
Tom Hanna, Vice-Chairman  
Bernard Wampler, Member  
Ben Dick, Member (absent)  
Charles Clark-Crowder, Member (absent)

ATTEST:  
Darold D. Main, Secretary

No. 438  
(First Published in The Topeka Capital-Journal,  
August 5, 1985)

Shownee County Public Works Department is soliciting sealed bids for the sale of the following piece of equipment: one (1) each M-8 Paint Stripper.

Copies of the specifications may be obtained in the Purchasing Division, Room B-28, Shawnee County Courthouse. Copies are also available for public inspection at the office of the County Clerk, Room 107, Shawnee County Courthouse, 260 E.

**PUBLIC NOTICES**

7th St., Topeka, KS 66602.

Sealed bids will be received in the Purchasing Division until 2:00 p.m., August 6, 1985 at which time they will be publicly opened. The County reserves the right to accept or reject any and/or all bids. For more information call (716) 375-6421.

(Published in The Topeka Capital-Journal,  
August 6, 1985)

**REPORT OF CONDITION**

Consolidating domestic and foreign subsidiaries of The First National Bank of Topeka in the State of Kansas, of the close of business on June 30, 1985 published in response to call made by Comptroller of the Currency, under 18 U.S.C. United States Code, Section 511, Charter Number 2678, Comptroller of the Currency 10th District.

Thousands of Dollars	
<b>Statement of Resources and Liabilities</b>	
<b>ASSETS</b>	
Cash and due from depository institutions	
Noninterest-bearing balances and currency and coin	57,346
Interest-bearing balances	NONE
Securities	96,961
Federal funds sold and securities purchased under agreements to resell in domestic offices of the bank and of its Edge and Agreement subsidiaries, and IBFs	48,765
Loans and lease financing receivables:	
Loans and leases, net of unearned income	232,778
LESS: Allowance for loan losses	2,664
LESS: Allocated transfer risk reserve	NONE
Loans and leases, net of unearned income, allowance, and reserve	228,114
Assets held in trading accounts	NONE
Premises and fixed assets (including capitalized leases)	16,463
Other real estate owned	930
Investments in unconsolidated subsidiaries and associated companies	132
Customers' liability to this bank on acceptances outstanding	NONE
Intangible assets	NONE
Other assets	6,772
<b>Total assets</b>	<b>445,747</b>
<b>LIABILITIES</b>	
Deposits:	
In domestic offices:	226,336
Noninterest-bearing	122,403
Interest-bearing	204,632
In foreign offices, Edge and Agreement subsidiaries, and IBFs:	NONE
Noninterest-bearing	NONE
Interest-bearing	NONE
Federal funds purchased and securities sold under agreements to repurchase in domestic offices of the bank and of its Edge and Agreement subsidiaries, and IBFs	48,375
Demand notes issued to the U.S. Treasury	16,811
Other borrowed money	NONE
Mortgage indebtedness and obligations under capitalized leases	NONE
Bank's liability on acceptances executed and outstanding	NONE
Notes and debentures subordinated to deposits	NONE
Other liabilities	2,574
<b>Total liabilities</b>	<b>405,216</b>
Limited-life preferred stock	NONE
<b>EQUITY CAPITAL</b>	
Perpetual preferred stock	NONE
Common stock	6,200
Surplus	23,800
Unallocated profit and capital reserves	11,527
Accumulated foreign currency translation adjustments	NONE
<b>Total equity capital</b>	<b>40,531</b>
<b>Total liabilities, limited-life preferred stock, and equity capital</b>	<b>445,747</b>

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

S. K. ALEXANDER, JR.  
ROBERT E. DUFFENS,  
THOMAS R. CLEVELINGER,

Directors  
I, Kenneth G. Harjo, Assistant Vice President of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

KENNETH G. HARJO  
Date: 7-30-85



PUBLIC NOTICES

No. 471

(First Published in The Topeka Capital-Journal, August 18, 1983)

RESOLUTION NO. 1

A RESOLUTION DECLARING THE INTENTION OF THE TOPEKA PUBLIC BUILDING COMMISSION TO ACQUIRE A SITE AND CONSTRUCT AND EQUIP A JAIL FACILITY; TO ISSUE JAIL FACILITY REVENUE BONDS, SERIES 1983, IN A PRINCIPAL AMOUNT NOT EXCEEDING \$15,937,000.00 TO PAY THE COSTS THEREOF; AND DIRECTING AND PROVIDING FOR THE GIVING OF NOTICE THEREOF.

WHEREAS, The Topeka Public Building Commission (the "Commission") is a duly organized municipal corporation created by the City of Topeka, Kansas, under Ordinance No. 14288 (the "Ordinance") pursuant to K.S.A. 12-1757 to 12-1768, inclusive, as amended (the "Act") and Charter Ordinance No. 33 of said city (the "Charter Ordinance"); and,

WHEREAS, the Commission is authorized by the Ordinance, the Charter Ordinance and the Act to acquire a site and construct and equip a facility for municipal and/or county law enforcement agencies, to rent said facility to such agencies and to issue revenue bonds to pay the costs thereof; and,

WHEREAS, the Charter Ordinance requires the Commission to adopt and publish a resolution containing certain information to be given to the public before authorizing or issuing revenue bonds pursuant to the Act.

NOW THEREFORE, BE IT RESOLVED by the Topeka Public Building Commission of Topeka, Kansas:

1. The Commission hereby gives NOTICE TO ALL CITIZENS OF SHAWNEE COUNTY, KANSAS, of its intention to acquire a site and construct and equip a jail facility (the "Facility") of a total estimated cost not to exceed \$15,937,000.00 and to issue Jail Facility Revenue Bonds, Series 1983 in a principal amount not to exceed \$15,937,000.00 (the "Bonds") for the purpose of paying the costs of the Facility, with principal and interest on the Bonds payable solely from the rents and revenues to be derived from the Facility or other facilities acquired by the Commission.

2. Before authorizing or issuing the Bonds, this Resolution shall be published once a week for three consecutive weeks in a newspaper having general circulation in Shawnee County, Kansas, and it within thirty (30) days after the last date of publication of this Resolution, a petition in opposition to the same, signed by not less than seven percent (7%) of the electors of Shawnee County, Kansas, is filed with the Shawnee County Clerk, the Commission shall submit the question to the voters of said County at the next general election or at an election called for such purpose. If sufficient protest is not filed, then the Commission will proceed with its intentions as hereinbefore declared.

3. The Chairman of the Commission is hereby directed to publish this Resolution in accordance with the aforesaid instruction.

ADOPTED by the Topeka Public Building Commission, Topeka, Kansas, this 4th day of August, 1983.

- HARRY L. FELKER, III  
Chairperson
- VELMA PARIS  
Vice-Chairperson
- BERNARD WANNER  
Member
- (absent) BEN BLAIR  
Member
- (absent) THOMAS WRIGHT  
Member
- ED CARMONA  
Secretary
- Public Buildings  
Commission

PUBLIC NOTICES

No. 443

(First Published in The Topeka Capital-Journal, August 6, 1985)

TOPEKA PUBLIC BUILDING COMMISSION RESOLUTION NO. 85-3

A RESOLUTION DECLARING THE INTENTION OF THE TOPEKA PUBLIC BUILDING COMMISSION TO ISSUE ADDITIONAL JAIL FACILITY REVENUE BONDS IN A PRINCIPAL AMOUNT NOT EXCEEDING \$3,988,000.00 TO PAY THE ADDITIONAL COSTS TO ACQUIRE A SITE AND TO CONSTRUCT AND EQUIP A JAIL FACILITY.

WHEREAS, the Topeka Public Building Commission (the "Commission") is a duly organized municipal corporation created by the City of Topeka, Kansas, under Ordinance No. 14250 (the "Ordinance") pursuant to K.S.A. 12-1757 and 12-1768, inclusive, as amended (the "Act") and Charter Ordinance No. 55 of the City of Topeka (the "Charter Ordinance"); and,

WHEREAS, the Commission is authorized by the Ordinance, the Charter Ordinance and the Act to acquire a site and construct and equip a facility for municipal and/or County law enforcement agencies, to rent said facility to such agencies and to issue revenue bonds to pay the costs thereof; and,

WHEREAS, the Charter Ordinance requires the Commission to adopt and publish a resolution containing certain information to be given to the public before authorizing or issuing revenue bonds pursuant to the Act; and,

WHEREAS, the Commission adopted Resolution No. 1 on August 4, 1983, and duly published the same without protest, which authorized the issuance of Jail Facility Revenue Bonds in a principal amount not to exceed \$15,937,000.00 for the purpose of paying the costs of acquiring a site, constructing and equipping a jail facility for use and occupancy by Shawnee County, Kansas; and,

WHEREAS, the Commission has acquired a site, designed a jail facility, and received bids for the construction of the facility; and,

WHEREAS, the bids received, as well as the architect's estimate, all exceed the amount of unexpended funds available under the Commission's original \$15,937,000 budget for the project.

NOW, THEREFORE, NOTICE TO ALL CITIZENS OF SHAWNEE COUNTY, KANSAS, IS HEREBY GIVEN BY THE TOPEKA PUBLIC BUILDING COMMISSION, AND IT IS HEREBY RESOLVED, AS FOLLOWS:

1. The Commission intends to issue additional Jail Facility Revenue Bonds in an additional amount not to exceed \$3,988,000.00 over, above and in addition to the \$15,937,000.00 previously authorized on August 4, 1983, by Commission Resolution No. 1 for the purpose of paying the costs to acquire a site, construct and equip a jail facility for the use and occupancy of Shawnee County, Kansas. The principal and interest on said additional bonds shall be payable solely from the rents and revenues to be derived from said facility or other facilities acquired by the Commission.

2. Before authorizing or issuing the additional bonds, this resolution shall be published once a week for three consecutive weeks in a newspaper having general circulation in Shawnee County, Kansas, if, within thirty (30) days after the last date of publication of this resolution, a petition in opposition to the same, signed by not less than seven percent (7%) of the electors of Shawnee County, Kansas, is filed with the Shawnee County Clerk, the Commission shall submit the question to the voters of said County at the next general election or at an election called for such purpose. If sufficient protest is not filed, then the Commission will proceed with its intentions as hereinbefore declared.

3. The Chairman of the Commission is hereby directed to publish this resolution in accordance with the aforesaid instruction.

ADOPTED by the Topeka Public Building Commission, Topeka, Kansas, this 2nd day of August, 1985.

- Harry L. Felker, III, Chairman
- Tom Hanna, Vice-Chairman
- Bernard Wanner, Member
- Ben Blair, Member (absent)
- Charles Clinkenbeard, Member (absent)

ATTEST:  
Darold D. Main, Secretary

RESOLUTION NO. 81-205

WHEREAS, local jails are a vital part of the system of criminal justice and law enforcement, and necessary for the public safety of a community; and,

WHEREAS, the Shawnee County Jail has been cited for non-compliance with both State and Federal standards; and,

WHEREAS, the Shawnee County Jail can no longer adequately serve its primary purpose of providing facilities for safe, secure incarceration of persons who must be removed from society; and,

WHEREAS, the Board of County Commissioners of Shawnee County, Kansas, recognizes the need for adequate jail facilities and accepts the responsibility to move toward a solution to this community problem.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Shawnee County, Kansas, as follows:

1. That the Board of County Commissioners of Shawnee County, Kansas, intends to utilize the Topeka-Shawnee County Public Building Commission as the funding mechanism for construction of a new jail.

2. That the Board of County Commissioners of Shawnee County, Kansas, and jail authorities will work with the Topeka-Shawnee County Public Building Commission to proceed with additional planning and development studies, and to formulate a proposed jail design and construction cost estimates which will be subject to periodic and final review and authorization by the Board of County Commissioners of Shawnee County, Kansas.

RESOLUTION NO. 81-205 WAS PASSED AND APPROVED by  
the Board of County Commissioners of Shawnee County, Kansas,  
on this 18th day of November, 1981.

BOARD OF COUNTY COMMISSIONERS  
SHAWNEE COUNTY, KANSAS

Velma Paris  
Velma Paris, Chair

Richard A. Maner  
Richard A. Maner, Member

"No"  
Dennis R. Taylor, Member

ATTEST:

Winifred L. Kingman  
Winifred L. Kingman, County Clerk

Jan 26, 1983

To the House Committee on  
Local Government

In re: H. B. 2035

I support H. B. 2035 for the following reasons:

1. Since I live in the county, there are no provisions for a protest petition or vote.
2. Passage would require a vote of all the qualified electors of the county, and city voters would not have to run a petition.
3. The County Commission would be required to present an acceptable, least expensive plan to sell the voters on it.
4. The Public Building Commission is not elected, so the people should have a voice.

Joan Hrenchir  
Berryton, Kansas

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Session of 1983

HOUSE BILL No. 2035

By Representative Smith

1-12

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0015 AN ACT concerning public building commissions; relating to  
0016 leases by political subdivisions and state agencies; amending  
0017 K.S.A. 12-1765 and K.S.A. 1982 Supp. 19-101a and repealing  
0018 the existing sections.

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

0020 Section 1. K.S.A. 12-1765 is hereby amended to read as fol-  
0021 lows: 12-1765. (a) *Except as provided by subsection (b), the*  
0022 *governing bodies of all school districts, cities, agencies and*  
0023 *departments of the state of Kansas, and all boards of county*  
0024 *commissioners now located or which may hereafter be located*  
0025 *within the county where such the public building commission*  
0026 *has been created are hereby authorized and empowered to enter*  
0027 *into leases without the necessity of any election and without*  
0028 *regard to K.S.A. 10-1001 to 10-1122, inclusive, or 79-2925 and*  
0029 *amendments thereto or to K.S.A. 1982 Supp. 79-2925, for any*  
0030 *period of time not to exceed fifty (50) 50 years.*

0031 (b) *Prior to entering into any leases, the board of county*  
0032 *commissioners of any county shall submit the proposal to enter*  
0033 *the lease for approval by a majority of the qualified voters of the*  
0034 *county voting at an election thereon. The election shall be called*  
0035 *and held in the manner provided by the general bond la*

0036 Sec. 2. K.S.A. 1982 Supp. 19-101a is hereby amended to read  
0037 as follows: 19-101a. (a) ~~Counties are hereby empowered to~~ *The*  
0038 *board of county commissioners may transact all county business*  
0039 *and perform such all powers of local legislation and administra-*  
0040 *tion as they deem it deems appropriate, subject only to the*  
0041 *following limitations, restrictions; or prohibitions: First, (1)*  
0042 *Counties shall be subject to all acts of the legislature which apply*  
0043 *uniformly to all counties; second,*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

November 8, 1985

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

ATTORNEY GENERAL OPINION NO. 85-152

James P. Davidson  
Shawnee County Counselor  
200 East 7th Street, Room 203  
Topeka, Kansas 66603

Re: Cities and Municipalities -- Buildings, Structures  
and Grounds -- Public Building Commission; Elections

Constitution of the State of Kansas -- Corporations  
-- Cities Power of Home Rule

Synopsis: The board of county commissioners of Shawnee County, in the exercise of its power of home rule, may conduct a non-binding advisory election on the question of whether Shawnee County should enter into the leases necessary to permit the Topeka Public Building Commission to issue revenue bonds under K.S.A. 12-1761. However, no statutory or constitutional authority exists for a board of county commissioners to conduct a binding election in the county on the question of whether a public building commission, established by a city under K.S.A. 12-1757 et seq., may issue revenue bonds. Moreover, a city which has established a public building commission does not have the authority, under constitutional home rule powers, to require or authorize a board of county commissioners to conduct a binding election in the county, as such authorization goes beyond the scope of "local affairs" as that phrase is used in Article 12, Section 5 of the Kansas Constitution. Similarly, a city may not, by home rule charter ordinance, authorize a public building commission to extend the right to vote in a binding election on the issuance of bonds to persons who are not

ATTACHMENT VII

2-6-86

Hs. Local Gov.

qualified electors of the city. Thus, the City of Topeka's Charter Ordinance No. 55 operates solely to authorize the Public Building Commission to conduct an election in the city upon the presentation of petitions sufficient under its terms. Cited herein: K.S.A. 12-1757; K.S.A. 1984 Supp. 12-1758; K.S.A. 12-1761; 12-1767; 25-2104; 25-2110; 25-2810; Kan. Const., Art. 12, §5.

\* \* \*

Dear Mr. Davidson:

As Shawnee County Counselor and with the consent of Topeka City Attorney, E. Edward Johnson, you have requested our opinion on a number of issues relating to a resolution of the Topeka Public Building Commission to issue revenue bonds for the construction of a facility to be leased and utilized by Shawnee County as a county jail.

According to your letter the Topeka Public Building Commission (hereinafter "PBC"), established pursuant to K.S.A. 12-1757 et seq., has agreed to utilize its authority to issue revenue bonds to finance the acquisition and construction of a facility to be leased to Shawnee County for use as a jail. The PBC recently published a resolution to issue an additional \$3,988,000.00 in revenue bonds to fund construction of the facility. Petitions bearing approximately 12,000 signatures protesting the proposed issuance have been filed with the Shawnee County Clerk. The petitions bear the signatures of persons who reside within the city limits of Topeka as well as those who reside in Shawnee County but outside the Topeka city limits. The petitions seek to bring the question of the PBC bond issue to a popular vote. A number of questions regarding the conduct of this election have arisen from the language of a home rule charter ordinance enacted by the City of Topeka in 1981.

Charter Ordinance No. 55 utilizes the city's constitutional power of home rule under Article 12, Section 5 of the Kansas Constitution to exempt the city from the provisions of K.S.A. 12-1767. That statute, when read in conjunction with K.S.A. 12-1761, is only applicable to a public building commission established in a city of less than 175,000 or more than 200,000 population. K.S.A. 12-1767 relates to the issuance of revenue bonds by a public building commission in such cities and provides:

"Any revenue bonds authorized by this act shall be issued as provided in K.S.A. 10-1201 et seq. and amendments thereto, except to the extent that such statutes are in conflict with this act. Before any revenue bonds are authorized or issued under the provisions of this act, the public building commission shall adopt a resolution specifying the amount of such bonds and the purpose of the issuance thereof. The resolution shall provide that if within 30 days after the last date of publication of the resolution a petition in opposition to the resolution, signed by not less than 5% of the electors of the city, is filed with the county clerk, the board shall submit the question to the voters at an election called for that purpose or at the next general election. Such resolution shall be published once a week for two consecutive weeks in the official city newspaper." (Emphasis added.)

Topeka Carter Ordinance No. 55 provides in relevant parts (emphasis added to relevant differences between the ordinance and K.S.A. 12-1767):

"That the governing Body of the City of Topeka, Kansas, by the power invested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and exempts itself from, and makes inapplicable to it, K.S.A. 12-1767, which applies only to cities with less than 175,000 population and cities with more than 200,000 population, and therefore applying to the City of Topeka, and provides substitute and additional provision as hereinafter set forth.

"Section 2.

"Public building commission authorized; revenue bond issues, laws applicable; resolution, protest petition, election. Any such revenue bonds shall be issued as provided in K.S.A. 10-1201 et seq.

except to the extent that such statutes are in conflict with this act; provided, before any revenue bonds shall be authorized or issued under the provisions of this act the public building commission shall adopt a resolution specifying the amount of such bonds, the purpose of the issuance thereof and stating that if within thirty (30) days after the last date of publication of such notice a petition in opposition to the same, signed by not less than seven percent (7%) of the electors of such county within which the city is located, is filed with the county clerk, the board shall submit the question to the voters at an election called for such purpose or at the next general election. Such resolution shall be published once a week for three (3) consecutive weeks in a newspaper having general circulation in such county." (Emphasis added.)

*city different  
10-20-01*

You raise the following questions concerning the election which the charter ordinance purports to authorize: (1) what entity calls the election; (2) who pays for the costs of holding the election; and (3) who votes in the election?

*Legal?*

Your first question is the most critical to our response and requires the analysis of a number of complex factors. The question of what entity calls the election presumably raises a choice between the county and the PBC. The question exists because of the somewhat ambiguous nature of the charter ordinance. Charter Ordinance No. 55 provides, as does K.S.A. 12-1767, that "the board" shall submit the question of the issuance of bonds to "the voters."

In both the ordinance and the statute, the term "board" is inconsistent with the terminology employed in the statute as a whole and is, thus, ambiguous. Neither Ordinance No. 55 nor K.S.A. 12-1767 contain any previous references to a "board." Under the statutory scheme the only entities which could conceivably be referred to by the term "board" are the PBC or the city governing body, yet neither normally bears that name. It is clear under the statutes that the PBC, the entity which has resolved to and which will issue the revenue bonds, is required to call the election and submit the question to the voters. Although both K.S.A. 12-1767 and



Ordinance No. 55 fail to specify which voters, it is fully apparent under the statutory scheme that the voters in question are the voters of the city. This conclusion is supported by the fact that the PBC is a municipal corporation created solely by action of the city. See K.S.A. 12-1757 and K.S.A. 1984 Supp. 12-1758. Additionally, K.S.A. 12-1761, which pertains to elections on the issuance of revenue bonds by a PBC created by a city of more than 175,000 but less than 200,000 population, clearly states that such issuance is to be submitted to and approved by a majority of the electors of the city.

This clarifying statutory context, however, is not especially helpful in interpreting Charter Ordinance No. 55. Evidence of the circumstances surrounding the adoption of the charter ordinance indicate that its intent was to permit the question to be submitted to the voters of the county as a whole. The ordinance itself, however, is less than clear on the subject. On one hand, the ordinance does not refer to any entity other than the PBC before it states that the "board" shall submit the question to an election. On the other hand, the ordinance makes such an election conditional upon the submission of petitions signed by electors of the county in which the city is located, thus evidencing an intent that those electors are also those who will vote at the election. [We do not place great reliance on the fact that the petitions are to be filed with the county clerk, as this is standard practice. The county clerk is usually the county election officer and is required by law to conduct city elections as well as county-wide elections. K.S.A. 25-2104(b); 25-2110; 25-2810].

Thus, Charter Ordinance No. 55 is subject to a number of possible interpretations. You argue for what you describe as a "literal" interpretation of "board" to refer to the board of county commissioners because it is the only body conceivably involved in this matter which is usually described as a "board." As noted, it is clearly the desire of those involved that the election be one at which all residents of the county are permitted to vote.

We have no great difficulty in concluding that this was what was intended when Ordinance No. 55 was adopted. The difficulty arises when we consider whether there is sufficient authority to require such a result. In order to conclude that the board of county commissioners may call the election it is necessary to conclude that a board of county commissioners may derive the authority to conduct a binding election in the county from a city home rule ordinance.

It is a general rule in election law, and one which anyone familiar with the democratic electoral process should regard as fundamental, that a valid election cannot be called and held except by authority of the law.

"There is no inherent right in the people, whether of the state or of some particular subdivision thereof, to hold an election for any purpose. Accordingly, an election held without affirmative constitutional or statutory authority, or contrary to a material provision of the law, is a nullity, notwithstanding the fact that such election was fairly and honestly conducted." 26 Am.Jur.2d Elections §183 (footnotes omitted); Cf. State, ex rel., v. Deck, 106 Kan. 518 (1920).

In the circumstances which prompt this opinion request, the only authority which the county commissioners may rely upon to conduct a county-wide election, the results of which will govern another municipal corporation, i.e. the PBC, is a city home rule ordinance which makes the grant in terms which may only be described as non-specific. We are not aware of any other statutory provisions which authorize the board of county commissioners to call and conduct an election under these circumstances. In the case of State, ex rel., v. Deck, 106 Kan. 518 (1920), the Kansas Supreme Court was asked to decide if county commissioners had the power to call a special election concerning the recall of a county commissioner. Concluding that such an election could not be held, the court said:

"The board of county commissioners is authorized to call special elections on various propositions, but each specific instance is under a special grant of statutory power . . . These instances may not exhaust the list, but in each of such special elections, positive, complete, and specific authority is granted to the board of county commissioners. Where such authority is not expressly conferred, it would not exist." (Emphasis added.)  
Id. at 522, 523.

Our concern, therefore, is fundamental: May a board of county commissioners derive the authority to call and

conduct an election in the county from a city home rule charter ordinance? In our opinion, an affirmative answer to this question is not possible given the limitations of city home rule and the general principles of election law discussed earlier in this opinion.

Article 12, Section 5 of the Kansas Constitution is known as the "Home Rule Amendment." It generally empowers cities to determine their "local affairs and government" subject to enactments of the legislature of statewide concern which are uniformly applicable to cities, other uniformly applicable enactments, and enactments prescribing limits of indebtedness. This office has consistently interpreted the Home Rule Amendment in a liberal fashion to insure, in accordance with Art. 12, Section 5(d), that cities be granted the largest measure of self-government. While such liberal construction will continue to be the policy of this office, we do not believe that the home rule legislative authority of a city is sufficiently broad to permit it to authorize or regulate the decision of a distinct political subdivision regarding the conduct of an election.

The home rule amendment empowers cities to determine their "local affairs and government." While we are not of the opinion that this language operates to restrict cities to matters of strictly local concern [City of Junction City v. Griffin, 227 Kan. 332, 337 (1980)], we do believe that the language may be read to limit municipal power in some circumstances. In our opinion, the legislative act which authorizes a separate governmental subdivision to conduct a binding election is beyond the scope of a city's "local affairs."

Previous opinions issued by this office have concluded that both a city and a county may rely upon home rule powers to hold a non-binding advisory election. Attorney General Opinions Nos. 83-177 and 79-44. These conclusions were based upon the fact that an advisory election is not one at which the voters' choice will have a binding effect upon or within a governmental unit. In the case of such binding elections, both opinions make it clear that there is no authority to call such elections absent specific statutory or constitutional authorization.

It follows from these conclusions that city home rule power regarding elections does not extend to authorize a separate political subdivision of the state to hold a binding election. We believe this is an area where the words "local

affairs" as used in Article 5, Section 12, may be read to limit the city's power. In our opinion, permitting a city home rule ordinance to authorize the calling of a binding, countywide election by a board of county commissioners would compromise the general rule of election law discussed above; that is, a binding election may not be held absent specific statutory or constitutional authorization, that is, action by the legislature or the people.

We are faced with similar problems if we conclude that "board" in Charter Ordinance No. 55 refers to the PBC. The first difficulty is, of course, that the PBC is not referred to as a "board" in any other place in the ordinance. Assuming, however, that the PBC is the body intended to call the election, we again must address whether the PBC, an agency created by the city, may derive the authority to conduct a binding county-wide election from an ordinance adopted by the city. To give an affirmative answer to this question requires us to conclude that the city's home rule authority is sufficient to extend the right to vote in an election which will have binding effect upon the conduct of yet another separate municipal corporation to individuals who are not residents of the city. Again, we believe that this exercise of authority goes beyond the scope of "local affairs" and would represent an attempt by the city to utilize home rule authority to give significant extra-territorial effect to its ordinance.

Except with regard to a non-binding advisory election, it is our opinion that, in Kansas, the legislature alone has the authority to provide for calling a binding election and to determine, within constitutional limitations, which voters may exercise the franchise in a particular election. In this case, the legislature clearly provided that the PBC would call an election at which the voters of the city would be entitled to vote. In our opinion, it goes beyond the scope of "local affairs" for the city to attempt to extend the franchise in such an election to persons who are not qualified electors of the city.

We are not unmindful that the equities of this situation call for permitting the voters of Shawnee County to make a decision on this question. It would, however, be contrary and basic democratic principles (as well as future equities) to sanction the expedient result without full consideration of the legal principles involved. To conclude that a city may utilize its home rule legislative power to authorize or require the conduct of an election by a county would, in our opinion,

contravene fundamental principles of law and set a dangerous precedent for the future. Thus, we must reluctantly conclude that Charter Ordinance No. 55 is not sufficient to authorize the board of county commissioners to hold a binding countywide election nor to authorize the PBC to conduct an election at which non-residents of the city are entitled to vote. What the ordinance appears to accomplish is that which is evident on its face. The PBC is bound, under the terms of Charter Ordinance No. 55, to submit the question of the issuance of bonds to the voters of the city upon sufficient petitions signed by electors of the city and the county.

It would appear, however, that another less awkward, although not entirely satisfactory, option exists which would permit voters in the county to express their opinion on this matter. The commendable purpose behind Charter Ordinance 55 was to attempt to provide all the residents of Shawnee County with the opportunity to vote on a question which concerns the county as a whole. Under K.S.A. 12-1761, the PBC's authority to issue revenue bonds is dependent upon the negotiation of a lease between the county and the PBC (in this case) sufficient to provide the revenue to retire and service the bonds. If such a lease is not in place, no bonds may issue. The county's decision to agree to the leases is then a most important precondition to the issuance of bonds under these statutes.

While the county governing body is clearly possessed of authority to agree to the leases without submitting the matter to an election, we are aware of nothing which would prevent the county from exercising its home rule authority as discussed in Attorney General Opinion No. 79-44 to conduct a non-binding advisory election on the question. Although the results of such an election would not bind the county commissioners (i.e. the board would be free to agree or not agree to the leases), it would provide the Shawnee County voters with an opportunity to make their desires known to the commissioners. Such an advisory election would accomplish that result, without doing violence to fundamental concepts of election law.

We conclude, therefore, that no statutory or constitutional authority exists for a board of county commissioners to conduct a binding election in the county on the question of whether a public building commission, established by a city under K.S.A. 12-1757 et seq., may issue revenue bonds. Moreover, a city which has established a public building commission does not have the authority, under constitutional

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home rule powers, to require or authorize a board of county commissioners to conduct a binding election in the county as such authorization goes beyond the scope of "local affairs" as that phrase is used in Article 12, Section 5 of the Kansas Constitution. Similarly, a city may not, by home rule charter ordinance, authorize a public building commission to extend the right to vote in a binding election on the issuance of bonds to persons who are not qualified electors of the city. Thus, the City of Topeka's Charter Ordinance No. 55 operates solely to authorize the Public Building Commission to conduct an election in the city upon the presentation of petitions sufficient under its terms. ~~To permit the remaining electors of Shawnee County an opportunity to vote, the board of county commissioners may, in the exercise of its home rule powers, conduct an advisory election on the question of whether the county should agree to the leases necessary to authorize the public building commission to issue bonds under K.S.A. 12-1761.~~

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

*Mary F. Carson* by *crw*  
Mary F. Carson  
Assistant Attorney General

RTS:JSS:MFC:crw

SUMMARY OF POINTS IN OPPOSITION TO HB 2727 AND HB 2728

House Committee on Local Government  
Rep. Ivan Sand, Chairman  
Thursday, February 26, 1986  
1:30 p.m., room 521-S

GENERAL

HB 2727 and 2728 propose changes to the Kansas Public Building Commission Act to require an election prior to the issuance of revenue bonds by a public building commission and prior to execution of a lease by a public entity in conjunction therewith.

The Kansas Public Building Commission Act (K.S.A. 12-757 et seq.) was adopted by the Kansas legislature in 1965. The Act authorizes any city to create a public building commission ("the Commission") for the purposes of

"acquiring a site or sites for and constructing, reconstructing, equipping and furnishing a building or buildings or other facilities of a revenue producing character, including parking facilities, or for purchasing or otherwise acquiring such building or buildings or facilities and such building or buildings or facilities shall be maintained and operated for a county courthouse, and the housing and accommodation of county offices or county business or for city offices or such other purposes as are commonly carried on in connection with such facilities or in county courthouses and general city buildings, including administrative offices for school districts and housing, accommodations and parking facilities for offices of state and federal agencies. In addition to the above, public building commissions may acquire land and facilities adjacent to or near any state university, may acquire by lease, land and facilities constituting a part of the campus of any state university, including campus property as such term is defined in subsection (c) of K.S.A. 76-3a01 and amendments thereto, and may construct, reconstruct, equip and furnish such facilities on such land and lease such land and facilities to any board of trustees of such university or to the official governing body of such university."

Such public buildings may be leased by school districts, cities, counties and agencies and departments of the State of Kansas. A Commission is also empowered to issue revenue bonds payable solely from the revenues derived from the lease with the government agency. Prior to issuance of the revenue bonds, the public building commission must adopt a resolution declaring its intent to issue the bonds. The resolution must be published once a week for two consecutive weeks in the official city newspaper. No bonds may be issued without an

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election if more than 5% of the electors in the city file a petition within thirty days of the last publication requesting such election.

POINTS IN OPPOSITION TO THE BILLS

1. The existing Act has provided a beneficial means for public entities to finance public building improvements but also provides adequate protection to the tax payers by virtue of the protest mechanism.
2. Currently organized Public Building Commissions that have projects currently underway may suffer serious repercussions if HB 2727 and HR 2728 are adopted. One proposed method to finance a State of Kansas Medium Security Correctional facility contemplates this form of financing as does a proposed project at Wichita State University to house a Federal Aviation Administration training center.
3. In the event the introduction of the bills is to remedy a purported problem effecting a specific project, special legislation may be addressed to such project. For example, under current law no bonds may be issued by a public building commission in the City of Kansas City, Kansas without an election.