

Approved Juan Sand 2/19/86
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

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

1:30 ~~xxx~~ p.m. on FEBRUARY 18, 1986 in room 521-S of the Capitol.

All members were present except: Rep. Clyde Graeber, 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. George Dean, HB 2839 & HB 2840
Ms. Judy Anderson, City of Wichita, HB's 2839 & 2840
Mr. Philip H. Alexander, Hutchinson, HB 2839
Mr. Scott Lambers, Overland Park, HB 2839
Ms. Jane Neff-Brain, Overland Park, HB 2839
Ms. Mary Carson, Asst. Attorney General, HB 2839
Ms. Susan Seltsam, Treasurer's Office, HB 2840

Chairman Sand called for hearings on the following bills:

HB 2839, concerning bonds; relating to nonlitigation certificates;

Rep. George Dean, sponsor of the bill, introduced Ms. Judy Anderson, representing the City of Wichita, who gave background and intent of HB 2839. (See Attachment I.) Ms. Anderson introduced Sen. Jack Steineger, who further explained the intent of HB 2839 and said he would not advise the committee to pass the bill in its present form; that the language is much broader than the intent. Sen. Steineger reviewed the suggested amendments contained in a letter from Gaar and Bell, dated 2/14/86 (Attach. II.). Sen Steineger said he is not sure that even the language in the suggested amendments is tight enough.

Mr. Philip H. Alexander, City Attorney, Hutchinson, Kansas, appeared in support of HB 2839. (See Attachment III.) Mr. Alexander said that the City of Hutchinson endorses the spirit of the amendments to these statutes; that other technical amendments might be necessary.

Mr. Scott Lambers, City of Overland Park, said HB 2839 would provide an advantage for the city. Mr. Lambers introduced Ms. Jane Neff-Brain, Assistant City Attorney, Overland Park, who said Overland Park supports all proposed amendments to HB 2839.

Ms. Mary Carson, Assistant Attorney General, said that she is concerned about HB 2839 because the language is too broad; that she supports the proposed amendments and Sen. Steinegar's suggestions about narrowing it further.

Chairman Sand asked Ms. Carson to furnish to the committee a list of amendments containing desirable limiting language. Ms. Carson agreed to have the amendments prepared and delivered to the committee on 2/19/86.

The hearing on HB 2839 was closed.

HB 2840, concerning bonds; relating to the procedure for the issuance thereof;

Rep. George Dean, a co-sponsor of the bill, gave background and intent of HB 2840.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 1:30 ~~a.m.~~ ^{p.m.} on FEBRUARY 18, 1986.

Ms. Judy Anderson, representing the City of Wichita, said HB 2840 was introduced as a cost savings measure; that the cost to the City of Wichita is about \$1,200 per bond issue.

Ms. Mary Carson, Assistant Attorney General, said some problems that arise in connection with facsimile signatures include timing problems and loss of the self-policing aspect.

Ms. Susan Seltsam, State Treasurer's Office, was present and clarified some of the procedures described in HB 2840.

Rep. Elizabeth Baker requested Staff to research other state policies on similar issues.

The hearing on HB 2840 was closed.

The minutes of the meeting of February 17, 1986, were approved as presented.

The meeting was adjourned.

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER

CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351

February 18, 1986

Chairman Sand and Members of The House Local Government Committee:

The purpose of House Bill 2839 is to allow cities to issue G.O. Bonds to provide permanent financing for public improvements in situations where a landowner has challenged the spread of a special assessment.

The case for most cities in Kansas is that the city finances the construction of public improvements with temporary notes. When the construction project is completed, the City then issues G.O. bonds which retire the temporary notes. At present K.S.A. 10-108 (a) requires that a non-litigation certificate be executed and incorporated in a transcript of proceedings leading up to the issuance of G.O. Bonds. A non-litigation certificate cannot be issued if a court challenge has been made against the spreading of a special assessment. When G.O. Bonds cannot be issued, cities must continue to finance the cost of the project by temporary notes. The interest incurred by rolling over the temporary notes is a cost that must be paid by the city-at-large until G.O. Bonds are finally issued.

For example, if a challenge is made in court by one individual owner of land in a benefit district, and the total cost of the public improvement that is being paid for is one million dollars with interest on the temporary notes at 6% per annum, then the minimum cost a city would incur would be \$60,000.00 worth of temporary note expense. Past experience shows that a year's time is a minimum for completion of a special assessment case through District Court. Most cases are not completed within a year. This would be the case even if the individual landowner challenging the assessment had an assessment that amounted to just a few hundred dollars. The temporary note interest of \$60,000.00 would be paid by the City-at-large taxpayers.

The proposed change to K.S.A. 10-108(a) would allow cities to issue G.O. Bonds even if a special assessment lawsuit is filed

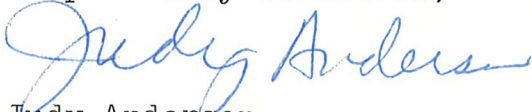
ATTACHMENT I

2/18/86

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and, thus, cities would be able to avoid payment of temporary note interest. The proposed amendment would not stop persons from filing special assessment lawsuits. The proposed amendment would benefit all cities of the State of Kansas, not just the City of Wichita.

Respectfully submitted,



Judy Anderson
Intergovernmental Affairs Officer.

GAAR & BELL

NORMAN E. GAAR¹
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JOE L. NORTON
MARTHA E. SCHACH¹
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<input type="checkbox"/> RGT	<input checked="" type="checkbox"/> JA
<input type="checkbox"/> INT	<input type="checkbox"/>
OVERLAND PARK OFFICE	
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8717 FEB 14 1986	
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February 14, 1986

Representative George R. Dean
Room 279-W
State Capitol Building
Topeka, Kansas 66612

Mr. Tom Powell
Sr. Assistant City Attorney
City of Wichita
455 North Main
Wichita, Kansas 67202

Senator John F. Steineger
Room 136-N
State Capitol Building
Topeka, Kansas 66612

Ms. Judy Anderson
City Manager's Office
City of Wichita
455 North Main
Wichita, Kansas 67202

Re: House Bill No. 2839 - Non-Litigation Certificate

Pursuant to our previous conversations, enclosed please find a suggested amendment to Section 1 of House Bill No. 2839. The proposed amendment deletes the existing Section 1 and substitutes in its place an amendment to K.S.A. 10-108a.

As we have discussed, the purpose of the proposed change to K.S.A. 10-108a would allow a municipality to issue bonds to finance projects irregardless of a challenge to the levying of assessments against effected property, wherein the challenge was to the amount of a particular special assessment; e.g., the method by which the amount of the assessment was determined or the valuation placed on the property to be assessed. The proposed amendment would not allow a municipality to issue bonds where a challenge exists as to the municipality's legal proceedings authorizing the project or the legal ability to issue bonds to pay the costs thereof. The proposed change could result in financial benefit to municipalities by allowing the issuance of bonds on a timely basis thus avoiding additional interim financing costs of the project until such time as the challenge to levying assessments is resolved and bonds may be issued.

ATTACHMENT II

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It is my understanding that this bill is currently scheduled for hearing by the House Local Government Committee at 1:30 p.m., Tuesday, February 18, 1986. If you have any questions concerning the proposed amendment, please contact the undersigned.

Very truly yours,

GAAR & BELL



Joe L. Norton

JLN/lr

Enclosure

cc Norman E. Gaar

GAAR & BELL

HOUSE BILL No. 2839

By Representative Dean

(By Request)

2-5

0018 AN ACT concerning bonds; relating to nonlitigation certificates.

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

~~0020 Section 1. Notwithstanding any controversy, litigation or
0021 other proceeding disputing the spreading of special assessments
0022 against property benefited by improvements financed by the
0023 issuance of general obligation bonds, the governing body of the
0024 city may issue general obligation bonds of the city pursuant to
0025 the authority of any appropriate statute without executing a
0026 nonlitigation certificate required by K.S.A. 10-108a, and amend-
0027 ments thereto. Except as provided by this section, such bonds
0028 shall be authorized, issued, registered and sold in the manner
0029 provided by the general bond law and shall bear interest at a rate
0030 not to exceed the maximum prescribed by K.S.A. 10-1009, and
0031 amendments thereto.~~

0032 Sec. 2. This act shall take effect and be in force from and
0033 after its publication in the Kansas register.

ATTACHMENT - NEW SECTION 1

K.S.A. 10-108a is hereby amended to read as follows:

10-108a. Non-litigation certificate; incorporation in transcript; form. The governing body of any municipality issuing bonds pursuant to article 1 of chapter 10 of the Kansas Statutes Annotated, shall execute and incorporate in the transcript of the proceedings leading up to the issuance of such bonds a non-litigation certificate in substantially the following form:

It is hereby certified that there is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the issuing municipality or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act shown to have been done in the transcript of the proceedings leading up to the issuance of the bonds, or the constitutionality or validity of the indebtedness represented by the bonds shown to be authorized in said transcript, or the validity of said bonds or any of the proceedings in relation to the issuance or sale thereof, or the levy and collection of a tax to pay the principal and interest thereof.

History: L. 1978, ch. 54, § 1; July 1.

other than a challenge to the levying of special assessments

other than to the proceedings levying special assessments

other than a special assessment

In the event there is no challenge to the levying of a special assessment, the appropriate references thereto may be deleted from the certificate.

Testimony before
House Local Government Committee
February 18, 1986

In Support of HB 2839

Most cities in Kansas finance public improvements through sale of general obligation bonds. Ordinarily, such bonds are sold after the improvement in question has been completed. Thus, permanent financing of public improvements through sale of bonds is typically the last step in completing a project. Very often these bonds are to be retired by levy of special assessments against specially benefitted property.

This last step--sale of general obligation bonds--cannot now be taken if any affected property owner has sued, challenging his or her proposed assessment. As long as such litigation is pending, permanent financing is held up because the "nonlitigation" certificate required by K.S.A. 10-108a cannot be executed. HB 2839 would specifically allow cities to execute the required nonlitigation certificate notwithstanding a legal challenge to special assessments levied to retire the bond issue.

It is important to note that the proposed amendment will not adversely affect either the bond purchaser or the citizen challenging a special assessment. Purchasers are unaffected because the issuer's obligation to pay according to the bond covenants is not dependent on levy or payment of special assessments. This unlimited duty is the very essence of all general obligation issues. Likewise, the disgruntled property owner is not prejudiced since the district court has specific authority to review, and modify or invalidate, the challenged assessment.

ATTACHMENT III
2/18/86
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If there are no losers under HB 2839, there certainly are winners. All those persons who will ultimately pay for a public improvement, whether or not they are in an assessment district, benefit when the overall cost is minimized. At current rates, temporary financing of a \$2 million project costs about \$12,500 per month. Since assessment disputes ordinarily arise only when permanent financing is undertaken, forestalling a bond sale solely to await the end of litigation does nothing except increase the cost passed on to the citizenry. Such litigation may consume months or even years. By avoiding a corresponding delay in issuance of bonds, as now required by K.S.A. 10-108a, significant cost savings will be realized.

HB 2839 will accomplish this result.

Philip H. Alexander
City Attorney
Hutchinson, KS 67504-1567