

Approved March 17, 1986  
Date

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at  
Chairperson

11:00 a.m./~~p.m.~~ on Monday, March 10, 1986 in room 519-S of the Capitol.

All members were present except:  
Senator Dan Thiessen (Excused)

Committee staff present:  
Tom Severn, Research Department  
Melinda Hanson, Research Department  
Don Hayward, Revisor's Office  
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:  
Senator Phil Martin  
Ralph Skoog, Kansas CATV Association  
Vic Miller, Property Valuation Division, Department of Revenue

Senator Allen moved that the minutes of the March 7, 1986 meeting be approved.  
Senator Salisbury seconded the motion, and the motion carried.

S.B. 157 - State appraisal of cable television services companies

Senator Phil Martin explained that cable television companies are locally assessed and the purpose of S.B. 157 is to require that they be state assessed. He feels that this is a fairness issue. Senator Martin said that these types of companies normally do not sell component by component by are sold as a unit. He stated that the only accurate method of valuing some types of property is by using a unitized approach. Senator Hayden asked about the accuracy of the state-assessed property in relationship to actual value. Senator Martin replied that he believes that state-assessed property is at market value but there are certain cases with certain companies that the Department of Revenue needs to have the option of using a segregated approach for valuation. In response to questions from Senator Burke, Senator Hayden said that he does not believe the video portion of the cable television industry can be regulated by the state, but that other portions could be state regulated. 10 A2

Ralph Skoog testified in opposition to the bill (Attachment 1). Mr. Skoog said that cable television systems and service are not public utilities. He said that S.B. 157 seeks to treat these companies as public utilities for taxation purposes.

Vic Miller mentioned the fiscal note on the bill and said that he would hope the Department's need for an additional staff person would be considered by the Committee in the event the bill is passed. He advised he has information comparing state-assessed properties in Kansas to neighboring states and agreed to provide such information.

S.B. 699 - County inheritance tax fund abolished

Senator Parrish moved that the bill be recommended favorably for passage. Senator Karr seconded the motion. Senator Parrish said that the Governor has recommended abolishing the fund as indicated in S.B. 699 and that his budget reflects the \$1.5 million the state would gain by abolishing the same. The motion failed on a vote of 3-6. Senator Burke moved that S.B. 699 be reported adversely. Senator Frey seconded the motion, and the motion carried.

S.B. 633 - Property tax exemption for veteran's organization property

There was discussion to the effect that S.B. 450 would not include the groups covered in S.B. 633. Senator Hayden moved that the bill be recommended

CONTINUATION SHEET

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room 519-S, Statehouse, at 11:00 a.m. ~~xxx~~ on March 10, 19 86

favorably for passage. Senator Allen seconded the motion. Chairman Kerr expressed concern that in contrast to the previously passed S.B. 400 and S.B. 450, S.B. 633 is quite broad in its language as to what it may exempt. Upon a vote, the motion carried.

S.B. 714 - Interest on refunded property taxes

After discussion, Senator Montgomery moved that the bill be amended to provide that the provisions of S.B. 714 shall apply to taxes paid under protest after December 20, 1985 and that the interest shall begin 60 days after the payment of the taxes under protest. Senator Hayden seconded the motion, and the motion carried.

Vic Miller commented that he feels the actual fiscal impact to counties would be minimal but he mentioned instances where a county seems to be taking advantage of the use of the funds paid under protest.

Senator Burke moved that the word "payable" in line 88 of the bill be changed to "paid". Senator Allen seconded the motion, and the motion carried. Senator Burke moved that the enacting date of the bill be changed to the official state newspaper publication date. Senator Hayden seconded the motion, and the motion carried. Senator Allen moved that the bill, as amended, be recommended favorably for passage. Senator Montgomery seconded the motion, and the motion carried.

Meeting adjourned.

(The study on state-assessed properties mentioned by Mr. Miller has been received and is attachment no. 2).



SENATE BILL 157  
TESTIMONY OF THE KANSAS CATV ASSOCIATION  
Before the Assessment and Taxation Committee of the  
Kansas Senate  
Presented March 10, 1986, at 11:00 A.M.

Thank you Mr. Chairman and Members of the Committee for the opportunity to appear.

The Kansas CATV Association is a trade association to which most of the cable television systems providing service to citizens of the State of Kansas belong. In Kansas, as of 1985, statistics indicate that at least 166 cable television systems serve 228 Kansas communities and something in excess of 425,000 subscribers for their entertainment, news, advertising and information service.

Cable television systems operate pursuant to the Cable Communications Policy Act of 1984, Public Law 98-549, which became Federal law on October 30, 1984. Among the purposes specifically set out in the Federal Act at 47 US Code 521 Section 601(6) is "to promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable system". Under Kansas law, and specifically K.S.A. 12-2013, cable television systems and service are not public utilities subject to regulation by the State Corporation Commission.

Senate Bill 157 proposes to define cable television systems as public utilities for the purpose of personal property taxation.

Under date of March 15, 1985, upon inquiry from Senator Morris as Chairman of the Transportation and Utilities Committee of this Senate, the Attorney General of Kansas in reference to this Bill, Senate Bill 157 and the companion Bill, Senate Bill 158, which proposed to define cable television service as a public utility subject to regulation by the State Corporation Commission, advised that cable television systems are exempt from regulation as utilities under the Federal Act which we just described, (a copy of that Opinion is attached).

In November of 1985, the Federal District Court in Connecticut in the case of Housatonic Cable Vision Company vs. Department of Public Utility Control, H-85-502, found that the 1984 Cable Act had expressly abolished the power of states to regulate cable systems as public utilities and had displaced the previous system under which in Connecticut the Department of Public Utility Control had regulated Connecticut's cable systems.

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As a result, courts have been specific that the power of the States to regulate cable systems as public utilities has been pre-empted by reason of the determination such would be an impediment of the development of the necessary communication and information system beneficial to the entire citizenry of the United States.

To summarize briefly, the fact of the matter is that no State Legislature can give a CATV system the traditional protections to which a public utility is entitled if for no other reason than that States are completely without authority over the competing methods of broadcasting, satellite signal distribution, theaters, micro-wave communications, VCR's, newspapers and other sources of information and entertainment.

The proposal of this Bill to define cable television service as a public utility for tax purposes only is an exceedingly unfair proposal. To single out a non-public utility to be taxed as one and not on the basis of its tangible personal property as are all other properties in the State not used for public utility purposes is not warranted. Our competition the newspapers and newspaper chains, the radio broadcasting or television broadcasting networks within the State of Kansas, would, under this proposal continue to pay their property tax based upon the value of their tangible personal property and cable television services would be taxed upon the combined value of their tangible personal property and any intangible value which they might have including good will and the many other intangibles which are included in the various formulae used for the determination of value for tax purposes of public utilities.

For the past several years the Cable industry in Kansas has been struggling with an aggressive push which has singled it out under the Kansas Department of Revenues Property Valuation Division. We fought various wholly inappropriate approaches to property valuation before this Legislature which passed Senate Bill 467 in 1984, and elicited concern and promises of change from State Government. As a result, we have had many contests with assessors, County Boards of Equalization, the State Board of Tax Appeals, District Courts and continue to have pending efforts to clarify the law as it relates to personal property taxation of our systems for the tax years 1983 and 1984. We believe that much progress has been made and have confidence that the present Property Valuation Division and our industry have made great strides toward uniformity and fairness so that some stability can exist. This suggestion proposed by this Bill promises extended controversy and if enacted will appear to be punitive in nature.

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We respectfully request the Committee to reject this proposal that Cable Television services be taxed as if they were what they specifically and lawfully cannot be, that is public utilities. Thank you for your courtesies.

Ralph E. Skoog  
Legislative Counsel  
Kansas CATV Association



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March 15, 1985

The Honorable Bill Morris  
State Senator, Twenty-Seventh District  
State Capitol, Room 143-N  
Topeka, Kansas 66612

Re: 1985 Senate Bills 157 and 158

Dear Senator Morris:

Attorney General Stephan has received your letter of February 14, 1985, concerning the constitutionality of the above two bills which are pending before your committee. Together with your letter, you have submitted certain background material, including a letter brief from a Washington, D.C. law firm, and a copy of the Cable Communications Policy Act of 1984, 47 U.S.C. §601 et seq. In view of the provisions of this act, we have determined that a response to your inquiry may be made by letter, rather than by a formal opinion.

1985 Senate Bill No. 157 would amend the definition of "public utility" to include those companies which furnish cable television services. This would have the effect of subjecting such companies to the same property valuation procedures as certain common carrier utilities which are already listed at K.S.A. 79-5a01. 1985 Senate Bill No. 158 would amend K.S.A. 66-104 to include within the term "public utility" companies which furnish cable television services in this state. This would have the effect of subjecting such companies to the jurisdiction of the Kansas Corporation Commission.

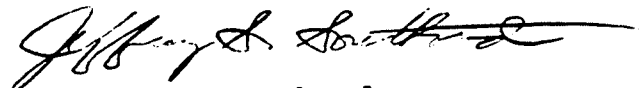
Given the language of the 1984 federal act, both of the above proposed acts would be in conflict with federal law. 47 U.S.C. §621(c) provides that a cable system shall not be subject to regulation as a common carrier or a utility by reason of providing cable service. As noted in the letter brief which you

attached, the legislative history makes it clear that this language was intended to exempt cable systems from regulation as utilities. Section 636(c) of the act goes on to provide that any provision of any state law which is inconsistent with the act shall be deemed to be pre-empted and superseded. Although an exception is provided as to state regulation concerning channel capacity, this is the only exception. It is a basic principle of constitutional law that, in areas where congress has acted under the provisions of the Commerce Clause, states are automatically pre-empted from enacting conflicting legislation. See Arkansas-Louisiana Gas Co. v. Hall, 453 U.S. 571, 69 L.ed.2d. 856 (1983). Accordingly, 1985 Senate Bills No. 157 and 158 would have serious, if not fatal, problems in being reconciled with the recent federal act.

I trust the above has been of assistance to you in this matter. Should you have any further inquiries, please do not hesitate to let us know.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL  
ROBERT T. STEPHAN



Jeffrey S. Southard  
Deputy Attorney General

JSS:crw



COMPANY NAMES	SUMMARY OF UNIT VALUES 1985 -RAILROADS (000'S)							
	*ILLINOIS	KANSAS	MINNESOTA	MISSOURI	NEBRASKA	N. DAKOTA	OKLAHOMA	TEXAS
ARKANSAS-WESTERN							290000	
AT/TOPEKA/SANTA FE	1165613	1440000		1300000	1300000		1295750	1181364
BALTIMORE & OHIO	392665							
BURLINGTON NORTHERN	2235328	3200000	2781280	3400000	2900000	3094302	3090000	3000000
CHICAGO PACIFIC	5622	15200					33802	73000
CHICAGO-NORTHWESTERN	260475	485000	387628	425000	400000	385114		
CONSOLIDATED RAIL	747469							
DENVER & RIO GRANDE		275000		250000				
FT SMITH & VAN BUREN							200000	
GRAND TRUNK & WESTERN	86014							
ILLINOIS CENTRAL GULF	267634			460000	400000			
KANSAS CITY SOUTHERN		182000		270000			300000	201000
KANSAS CITY TERMINAL				25700				
LOUISIANA-ARKANSAS								497621
MILWAUKEE	142826	230000	101198	220000				
MISSOURI PACIFIC	1265132						2690000	1340000
MO-KAN-TEXAS		192000		178000	165000		225000	179500
NORFOLK & WESTERN	1437930	1400000		1550000				
OKLAHOMA-KANSAS-TEXAS							5569	13800
SEABOARD SYSTEM	1641256							
SOO LINE	224543		187767			152563		
SOUTHERN	930902							
SOUTHERN-PACIFIC								
ST LOUIS SW	269746	300000		260000			340000	220000
TERMINAL RR- ST LOUIS				33000				
UNION PACIFIC		2800000		2700000	2650000			

SUMMARY OF UNIT VALUES 1985 - ELECTRIC COMPANIES

(000'S)

COMPANY NAMES	**IOWA	KANSAS	MINNESOTA	MISSOURI	NEBRASKA	N. DAKOTA	OKLAHOMA
ARKANSAS POWER				2120000			
ARKLAHOMA CORP							372
BLK HILLS POWER & LIGHT					135000		
EMPIRE DISTRIC ELECTRIC		192000		215000			211000
INTERSTATE POWER	432814		472688				
IOWA ELECT & .POWER CO	666619				530000		
IOWA-ILLINOIS GAS & ELEC	945004						
IOWA POWER & LIGHT	721229						
IOWA PUBLIC SVC	651730				570000		
IOWA SOUTHERN UTIL	265548						
KANSAS CITY POWERS&LIGHT		1500000		1700000			
MINNESOTA POWER*			801103			748572	
MISSOURI PUBLIC PUBLIC SVC		295000		345000			
MONTANA DAKOTA						377911	
NORTHERN STATE POWER*			2614767			2738001	
NW PUBLIC SVC*	205244					170777	
OTTERTAIL*			420789			268003	
SW ELECT POWER							1460000
SW PUBLIC SVC		1320000					1300000
UNION ELECTRIC	4915377			4900000			

\*N. D. - EXCLUDES COYOTE PLANT

\*N. D. - EXCLUDES TELEPHONE CO

\*N. D. - EXCLUDES NONCAPITALIZED LEASED EQUIPMENT



## SUMMARY OF UNIT VALUES 1983 - PIPELINES - (000'S)

PAGE TWO

COMPANY NAMES	IOWA	KANSAS	MINNESOTA	MISSOURI	NEBRASKA	N. DAKOTA	OKLAHOMA	TEXAS
GULF CENTRAL				45800	41000			
HUSKY					7700			
HYDROCARBON	95511	85000		68000	71000			
INTERNORTH	2009135	1700000	*1098696		1600000		1500000	
JAYHAWK		9500					11500	
N ENERGY INC		175000			210000		170000	
KANEB	259312	62000			67500	75108		
KERR MCGEE REFINING							1790000	
LAKEHEAD			274392			291806		
LINK SYSTEMS INC							1190	
MAPCO	259312	230000	292042	190000	200000		297000	
MARATHON								332000
MID CONTINENT PIPE LINE							30067	
MIDWESTERN GAS			79533			106400		
MISS. RIVER				222500				
MOBIL		240000		264000			259000	268650
NAT GAS PIPELINE	1518147	1200000		1150000	1300000		1260000	
NORTHERN BORDER	1209846		1114338			1143594		
NORTHWEST CENTRAL		385000		380000	400000		385000	
OKIE PIPELINE		14500					11200	
OSAGE PIPELINE		17000					19729	
PANHANDLE		660000		625000			760000	
PERMIAN CORP							264380	
PHILLIPS GAS		210000		238000		342879	190193	224500
PLATTE		66000		93000	80000			
PORTAL			35731			26907		
PURE TRANSPORTATION				40000	57000		59302	

SUMMARY OF UNIT VALUES - 1985 - PIPELINES - (000'S)

PAGE THREE

COMPANY NAMES	IOWA	KANSAS	MINNESOTA	MISSOURI	NEBRASKA	N. DAKOTA	OKLAHOMA	TEXAS
RIVER PIPELINE							818	
ROUGH RIDER						1222		
AMROCK		32000					34000	
BELL				270000			257000	249000
OHIO PETROLEUM							1891011	
STERLING HYDROCARBON							61200	
UN PIPELINE							98000	
TEXAS				200000				211500
TEXAS EAST - PROD				147000				
TEXAS EAST-GAS				1060000				
TEXAS PIPELINE							92543	
OMAHAWK PIPELINE		1450						
TOTAL PIPELINE		22000					12500	
TRAILBLAZER					225000			
WESCO		30000				60740	43900	
WILLIAMS	465498	265000	255846	280000	280000	296765	290000	
WOODRIVER	70437		89810	32775				

\*TEXAS-INCLUDING TRANS ALASKAN PIPELINE SYSTEM  
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 \*\*\*IOWA TENTATIVE VALUES