Approved ~~January 30, 1986~~
Date

MINUTES OF THE Senate COMMITTEE ON Local Government.

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on January 22, 1986 in room 313-S of the Capitol.

All members were present except: Senators: Mulich and Steineger who were excused

Committee staff present: Mike Heim, Theresa Kiernan, Lila McClaflin

Conferees appearing before the committee: Dana Hummer, Topeka, KS.
Dennis Swartz, President of KS. Rural Water Assn
John Nangle, Monticello Township, Johnson Co.
Sid Linver, Monticello Township, Johnson Co.
John McClelland, Attorney for Monticello Township, Johnson Co.
Gary Zimbelman, Shawnee County
Jerry Soper, Mission Township, Shawnee Co.
John Blythe, Assist. Director Public Affairs, Division, Kansas Farm Bureau
Rep. Charles Laird, 59th District, Shawnee Co.
Onis Lemon, Mission Township, Shawnee Co.
Rep. Marvin Smith, 50th District, Shawnee Co.
Rep. Ginger Barr, 51st District, Shawnee Co.

The hearing for the proponents of S.B. 427 was continued.

Dana Hummer expressed concern with the tax impact when large areas are annexed and services have to be extended. City dwellers can find their taxes increasing to cover these services. Also, he would like the bill to be amended to permit county commissioners to make the decisions in disputed annexations, since they are elected by both city and county residents. (Attachment I)

Dennis Swartz expressed support for the bill, he also, supported the county commissioners as the decision making group. (Attachment II)

He was questioned on how water districts are reinbursed for their property when part of it is annexed. Chairman Montgomery stated next week the Committee would look at this in the hearings on S.B. 428.

John Nangle stated S.B. 427 should give the people some check and balance, which they do not have under the existing law.

Sid Linver stated land should be annexed after a suitable period of preparation and an acceptable plan for extension of city services should be required. He would like the bill to be amended to include the "manifest injury" clause, as proposed by Rep. Brown, he also, supported the other amendments proposed by Rep. Brown. His written testimony includes a letter from Rich Becker, Mayor of Lenexa. (Attachment III)

He responded to questions concerning the letter from Mayor Becker.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,

room 313-S, Statehouse, at 9:00 a.m./~~p.m.~~ on January 22, 1986.

John McClelland stated S.B. 427 certainly does not provide landowners in unincorporated areas with all of the rights and protections they would like, however, it does represent a reasonable compromise. He propose that the "manifest injury" test be added to the bill and the definition of "manifest injury" that was adopted by the Supreme Court be included. (Attachment IV)

Gary Zimbelman stated he believes it is increasingly important that any new annexation law contain a provision that cities provide services to individuals in annexed areas within a reasonable number of years. (Attachment V)

Jerry Soper supports the Board of County Commissioners for the hearing review.

John Blythe testified that indiscriminate annexation of agricultural areas into cities has proven to be most unfair to a great number of rural property owners engaged in agriculture. He recommended some amendments to the bill. One being that the agricultural land be amended to 10 acres. (Attachment VI)

Rep. Charles Laird testified that people in areas to be annexed have no say in the decision making under current law and cities should be required to extend services within a reasonable length of time, as it is now cities have no intention of extending services to new areas.

Onis Lemon was introduced as a proponent of the bill.

Rep. Marvin Smith stated his constituents support a vote as their first choice; an appeal to the Board of County Commissioners and a boundary commission were about equal. He urged the Committee to favorably consider the rights of property owners to an appeal process. (Attachment VII)

Rep. Ginger Barr testified people want representation and should have it. She feels the Board of County Commissioners should decide on the annexation proceedings as they are elected by both city and county residents and are accountable to both. (Attachment VIII)

Memorandum from Staff on annexation law review and an appeal by the City of Lenexa, Kansas County Platform 1986 and copies of Rep. Brown's amendments were all distributed to the Committee. They are marked as attachments to these minutes. (Attachment IX thru XII)

The meeting adjourned until 9:00 a.m., Thursday, January 23, 1986.

Sen Don Montgomery

Senator Don Montgomery
Chairman

Date: January 22, 1986

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
John W. McClellan	Monticello Township	8303 Pebble Lane, Monticello, Kansas 66220
Sidney L. Linver	Monticello Townships	20500 Mill Road Monticello, Kansas 66220
JOHN NAGLE	MONTICELLO TOWNSHIP	131 KINDRED BONNER SPRINGS, KS 66012
John K. Blythe	Ks Farm Bureau	2321 Anderson Manhattan Ks 66502
CHARLES D. BELT	WICHITA AREA CHAMBER OF COMMERCE	350 W. DOUGLAS WICHITA 67202
[illegible]	Assoc. KS Municipalities	Topeka
John F. Wilhm Sr	CITIZENS AGAINST UNILATERAL ANNEXATION	7021 SW Queens TOPEKA, KS 66614
Mary Davis	Mont. Township	Rt. #1, Box 126B Tecumseh, Kansas 66542
Wilma Everist	Tecumseh Twp. Citizens against Unilateral annexation	Topeka, Ks. 66605
Sarah Stephens	" " "	Tecumseh " " 66605
Alice Schultz	" " "	Tecumseh 66605
Wanda Meyer	" " "	" "
Phillis M. Setchell	" " "	" 66605
Karen McClain	KS ASSOC. OF REALTORS	TOPEKA
Mary Moffet	Tec. Twp. Citizens against Unilateral annex	3429 SE Shorewood Dr. 66605
Al Meinert	citizens against unilateral annex	3215 NW Brown Dr Topeka 66618
Dennis L. Schultz	Kansas Rural Water Assn	Tecumseh KS
Dougla Mays	Self	Topeka, KS.
WILLIAM E. ASH	TREASURER - TECUMSEH TOWNSHIP	3131 S.E. ARBOR DR, TOPEKA, KS 66605
Gary Zimbelman	Citizen against Unilateral annexation	3200 Wilder Road Topeka, Ks. 66617
Loretta Zimbelman	Citizen Against Unilateral Annexation	3200 Wilder Rd. Topeka KS 66617
Sara Zimbelman		3200 Wilder Topeka, KS 66617

Date: January 22, 1986

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Eileen Ernst	Citizen against unilateral Annexation	1315 Daisy Topeka, Ks. 66618
Mildred E Bumbelmon	Citizen against unilateral annexation	3200 Wilder Road Topeka Kans
Paul E Adel	" "	2543 SE Tidewater Topeka, Ks 66605
Denny Burgess	K.E.C.	6901 Fountaindale Topeka
Ed Johnson	City Attorney	Topeka
Winfred Kingman	Shawnee Co. Comm.	Topeka
Bruce Shultz + Janice	self	Rt 1 Box 82 Arlington, Ks
Donna Smith	K.B.A.	Topeka
Ruth Wilson	Girl Scout Council	Topeka
Gerry Ray	Johnson Co	Olathe
Lois L Lemon	Mission TWP	Topeka Kans
Robyn Morris	Constituency Services	Topeka
G.T. Sober	MISSION TWP	4342 SW URISH RD

SENATOR MONTGOMERY AND MEMBERS OF THE COMMITTEE:

I THANK YOU FOR THE OPPORTUNITY TO SPEAK THIS MORNING IN FAVOR OF SENATE BILL 427.

I AM DANA HUMMER, 3301 ARNOLD, A RESIDENT OF THE CITY OF TOPEKA. I AM A RETIRED CITY EMPLOYEE, AND OWNER OF PROPERTIES IN THE CITY, WHO IS CONCERNED WITH INCREASED TAXES.

ON PAGE 6 OF SENATE BILL 427, BEGINNING WITH LINE 028 THROUGH 0233 REFERS TO THE COMPOSITION OF THE BOUNDARY COMMISSION. I REALIZE THAT NO BILL WILL BE PERFECT, HOWEVER, I WOULD LIKE TO SUGGEST A CHANGE THAT WOULD PERMIT ONLY THE COUNTY COMMISSIONERS TO MAKE THIS DECISION. THEY ARE THE ONLY ONES ELECTED BY RESIDENTS OF BOTH THE CITY AND THE COUNTY. TO CREATE ANOTHER LAYER OF BUREAUCRACY THAT WOULD TAKE CONTROL AWAY FROM THOSE ELECTED BY THE PEOPLE WOULD BE WRONG. EVEN THIS IS NO PERFECT SOLUTION FOR IT DOES NOT PROVIDE CITY OR COUNTY RESIDENTS THE RIGHT TO PROTEST IF THEY FEEL THAT ANNEXATION IS TOO COSTLY TO EITHER PARTY. HOWEVER, A COMMISSION WOULD CREATE A MORE ORDERLY ANNEXATION IF ALL FACTORS WERE TAKEN INTO CONSIDERATION.

ON PAGE 8, PARAGRAPH 8, I LIKE THIS SECTION FOR AN ORDERLY ANNEXATION SHOULD PROVIDE A TIME FRAME FOR 100-PERCENT SERVICES. TO TAKE IN AN AREA AND LANDLOCK THE PROPERTY OWNERS FROM SERVICES WHILE CREATING OTHER ANNEXED AREAS AGAIN IS WRONG. THIS CAN CREATE A CITY MOVING IN ONE OR MORE DIRECTIONS AND LETS THE CENTRAL PART OF THE CITY DETERIORATE.

ALSO ON PAGE 8, PARAGRAPH 10, I AM CONCERNED WITH THE IMPACT ON TAXES THIS ANNEXATION WILL BRING TO CITY RESIDENTS. FOUR MILLION DOLLARS A YEAR FOR MINIMUM OPERATION SERVICES PLACES A HEAVY BURDEN ON CITY TAXPAYERS AT A TIME WHEN WE HAVE THE HIGHEST TAXES IN THE STATE IF YOU TAKE IN THE ONE PERCENT SALES TAX. AND, WE HAVE BEEN UNABLE TO

ATTRACT NEW INDUSTRY THAT WOULD BROADEN OUR TAX RATE AND ELEVATE THIS PROBLEM.

PAGE 8, PARAGRAPH 11, I AM ALSO CONCERNED WITH THE LEVEL OF POLICE PROTECTION THE CITY RESIDENTS COULD SUFFER SINCE, IN MY OPINION, WE ARE BELOW THE LEVEL IN GOOD PREVENTATIVE PROGRAMS, $1,131,000 HAS BEEN REQUESTED TO POLICE THE NEWLY ANNEXED AREAS JUST FOR MANPOWER AND ROLLING STOCK. THIS WOULD MAINTAIN A 1.9 OR 2 MEN PER THOUSAND PER CAPITA.

HOWEVER, PROVISIONS SHOULD BE PERMITTED TO FILE A PROTEST PETITION BY THE RESIDENTS OF THE CITY AND THOSE BEING ANNEXED IF THEY FEEL THAT THE COST OF ANNEXATION WORKS A MONETARY HARDSHIP ON THOSE BEING AFFECTED.

IN CONCLUSION, A BOUNDARY COMMISSION WHO WOULD TAKE INTO CONSIDERATION THAT A BIGGER CITY IS NOT NECESSARILY A BETTER CITY. THAT THE BETTER CITY IS A CITY THAT PROVIDES THE SERVICES TO ITS PEOPLE WITH A TAX STRUCTURE THEY CAN AFFORD TO PAY.

KRWA

TO: SENATE LOCAL GOVERNMENT COMMITTEE

STATEMENT OF SUPPORT OF SENATE BILL 427

Mr. Chairman and Members of the Committee,

On behalf of the membership of The Kansas Rural Water Association, I wish to express to you our support of Senate Bill 427.

As you may know we supported House Bill 2117 as a step affording recognition of utilities serving persons in areas proposed for annexation. We would be pleased to see any change in existing laws regarding annexation which would return to the property owners, and other affected entities, some voice in the determination of their destiny.

Senate Bill 427 would, in our opinion, constitute an acceptable compromise. We would like to suggest, however, that instead of a "Boundary Commission", to hear annexation protests, that the Board of County Commissioners might be more acceptable.

Favorable action on this Bill would be appreciated by all patrons of rural water in the State of Kansas.

Dennis F. Schwartz

Dennis F. Schwartz

President,

Kansas Rural Water Association
January 21, 1986

Kansas Rural Water Association
P.O. Box 226
Seneca, Kansas 66538
(913) 336-3760

(Attachment II) S.LG
1/22/86

(1)

My name is Sid Luiver. I am resident of Monticello Township, Johnson County Kansas I am appearing before you this morning to speak in favor of Proposed Bill No. 427 be amended.

Until October 1985 annexation was always a concept that boe little meaning to me. I was a member of the apathetic majority. Then, I received a letter from the Mayor of Lenexa telling me that my property was about to be annexed. Shortly thereafter, I received a similar letter from the Mayor of Shawnee extolling the benefits of being annexed by his city. Both cities were about to annex my property. Its nice to be wanted!

A group of Monticello residents then met with Major Rich Becker of Lenexa to find out more about the annexation plans. The Mayor assured us that even though our taxes would go up, they would go up just a little. I asked the Mayor what were his plans for extending police protection to our area. The Mayor wasn't prepared to answer at that time. I then asked about fire and emergency medical services. The Mayor assured me that something would be worked out. What about street maintenance

3

snow removal, lights. The Mayor admitted that no plan had been formulated in this area.

If there was no plan to extend city services and our taxes were going to go up, we just wouldn't go along with it. It didn't matter what all residents wanted. Under the law it was strictly between the City and Board of County Commissioners. ~~In fact, the real reason for the annexation was a gigantic land grab. The City was going to beat its neighboring city to the high ground and~~

The Mayor stated the reasons for the annexation in his letter to me. Dear Property Owner

"Read From Letter Tab 21

Land Grab

The City was going to beat its neighbor to the high ground and cut of the Legislature at the pass. That ladies and gentlemen is the height of arrogance.

The people and their elected representatives are of no consequence.

We would not share, within a reasonable time, the municipal services and benefits now afforded to landowners in other portions of the City upon a footing of substantial equality.

Simply stated – Manifest Injury!

The manifest injury test has been a part of the Kansas Annexation Statute since the first statute was enacted in 1885. This test requires that the decision-making body find that the proposed annexation will not cause manifest injury to landowners affected by the annexation.

We feel that the test of manifest injury is essential to this legislation. A clear definition and statement of criteria is proposed as an amendment. WHY? Well Mayor Becker and his counterpart in the city of Shawnee taught us the value of manifest injury. ~~Without it, what you and I think is of no consequence.~~

When the City and the decision-making body determine the advisability of an annexation, the decision is quasi-legislative. That is as far as the action need go. The advisability of annexing territory to cities is not a matter for consideration by the courts. The basic function of the courts under advisability is to determine whether a city has statutory authority in passing an annexation ordinance. Mayor Becker has that authority under this proposed bill. What you and I think is of no consequence.

(4)

However, the amendment specifically addressing manifest injury, requires the decision making body to act (also) in a quasi-judicial capacity. The legislature's intent and my rights to share equally municipal services and benefits can (and must be measured by the decision making body and are subject to a detailed review by the courts. A substantial body of manifest injury case law is available. The Kansas Supreme Court has provided an important opinion on manifest injury in annexation pursuant to KSA 12-521.

Cities have a right to proceed with orderly municipal growth as future residential, commercial, and industrial demands unfold. The feasibility of annexation for any parcel of land should be based on the City's service capacity and ability to meet projected increases. Land should be annexed over a suitable period of time after the preparation of an acceptable plan for the extension of city services and utilities. The Proposed Bill No 427 if amended to include the provision for manifest injury provides for this orderly growth, protects the rights of land owners and insures that the intent of the legislature is not skirted.

City of Lenexa
(913) 492-8800

October 18, 1985

Dear Property Owner:

I am writing on behalf of the City of Lenexa's Governing Body to explain the action this Body took on Thursday, October 10 at a special call meeting.

The Governing Body decided unanimously to request that the Board of Johnson County Commissioners hold public hearings to consider allowing Lenexa to annex land generally located adjacent to and west of the present city limits and extending to one mile west of State Highway K-7 on the west, K-10 on the south, and approximately 83rd Street on the north.

The City was prompted to take this action for several reasons: 1) The City was concerned about a City of Shawnee Council Committee recommendation to annex a one-half mile wide strip of land from 87th to K-10 on the west side of K-7. This action would preclude the City of Lenexa from expanding west of K-7; and 2) The current political atmosphere in Topeka suggests that changes in the annexation statutes in the next legislative session may limit a city's ability to annex land.

I'm sure you are aware of the tremendous growth occurring in Lenexa. Renner Road will be a hotbed of development in the next several years which is indicative of the westward growth of our City. Development pressures will also occur soon along K-7 and the City of Lenexa wants to be assured that quality development occur along this corridor which will protect your property value and enhance the image of the city.

We recognize and respect the desire you have to maintain the quality of life you now enjoy. Hopefully, we can preserve that lifestyle and even enhance it by providing quality fire protection, police protection, park opportunities, long-range planning, and public works. We recognize there is a difference between urban needs and the needs of rural households and we will seek to find a balance of providing services.

Enclosed please find a question and answer sheet regarding concerns you may have about the proposed annexation. I hope you will read it and feel free to call David Watkins, our City Administrator, or Greg Hembree, our Community Development Director, at 492-8800.

Thank you for taking the time to read this letter and I know we will be seeing you at the scheduled public hearings. We also encourage you to attend Council Meetings which are held at 7:30 p.m. the first and third Thursdays of every month at Lenexa City Hall, 12350 W. 87th Street Parkway.

Sincerely,

CITY OF LENEXA

Rich Becker
Mayor

12350 West Eighty-Seventh Street Parkway • P.O. Box 14888 • Lenexa, Kansas 66215-0888

(Attachment III) 11/22/86

STATEMENT OF JOHN W. McCLELLAND

January 22, 1986

TO: The Honorable Members of the Kansas
Senate Committee on Local Government

Ladies and Gentlemen:

My name is John W. McClelland. I am a resident of Monticello Township in Johnson County, Kansas. I am an attorney with the Hillix, Brewer, Hoffhaus, Whittaker & Horner law firm, practicing principally in the areas of real estate and administrative law. I am appearing on behalf of the Monticello Township Annexation Committee in support of Senate Bill 427.

Introduction

The Monticello Township Annexation Committee is a volunteer group which was formed to study annexation petitions filed by the cities of Lenexa and Shawnee covering portions of Monticello Township, Kansas. The Committee was formed at the request of the residents of the Township after a town meeting was held to discuss pending annexations. The Committee includes members who have served on several previous annexation committees which were formed when the cities of Lenexa and Shawnee first attempted to annex portions of Monticello Township in 1979. Committee members have participated in numerous annexation hearings before the Board of County Commissioners of Johnson County, Kansas, and in the annexation appeal proceedings in In Re the Appeal of the City of Lenexa, 232 Kan. 568, 657 P.2d 47 (1983).

At the time the Committee was formed, the residents of Monticello Township expressed four principal concerns with annexation:

1. A feeling of disenfranchisement due to the lack of a mechanism for meaningful participation in the annexation decision.

2. Concern that the proposed annexation area would not be benefitted by inclusion within the city but would be subject to higher taxes and other burdens.

3. Concern that the cities lacked both the capability and the good faith intention to extend municipal services within a reasonable period of time.

(Attachment IV) S. LG
1/22/86

4. Concern that the annexation petitions were being initiated in order to annex as much land as possible before the Kansas Legislature had the opportunity to amend the Annexation Statutes.

With these concerns in mind, the Annexation Committee reviewed the petitions of the City of Lenexa and the City of Shawnee. After obtaining information from numerous state, county and private sources and reviewing several thousand pages of documents obtained from the cities under the Kansas Open Records Act, the Committee concluded that both of the pending annexations would cause manifest injury to the landowners and would not be advisable. The Committee assembled written responses to the petitions and presented testimony and further evidence at the public hearings conducted by the Board of County Commissioners of Johnson County on December 12, 1985 and December 23, 1985. Both of these petitions are presently pending before the Board.

As a result of the experience gained in these annexation proceedings, the Monticello Township Annexation Committee has concluded that amendments to the annexation and incorporation statutes are necessary. The Committee has reviewed pending amendments to the annexation statutes, including S.B. 115, S.B. 424, S.B. 425, S.B. 426, S.B. 427, S.B. 428 and H.B. 2117. We would like to make you aware of our position.

Background on Amendment to Annexation Statutes

The existing annexation statutes provide two methods by which cities may annex land. K.S.A. §12-520 provides that cities may annex land by unilateral action when the land meets one of six conditions set forth in the statute or when the landowners file a petition requesting annexation. Under K.S.A. §12-521, cities may annex unlimited amounts and types of land provided that the Board of County Commissioners approves the annexation after a public hearing.

A number of bills have been introduced over the past five years to amend the annexation statutes. Some of this proposed legislation would require that all annexations be approved by 51% of the landowners in the proposed annexation area. The cities have opposed these amendments, and favor the broad annexation powers available under the current statutes.

Senate Bill 427 is an attempt to accord additional rights to the landowners without unreasonably restricting the ability of cities to annex land when necessary. The bill provides that unilateral annexations under K.S.A. §12-520 will be subject to review at the county level if 51% of the landowners in the affected area file a petition seeking review. The bill also repeals K.S.A.

§12-521, thereby eliminating the ability of a city to annex land which does not fit into the six categories provided in Section 12-520.

County Review of Unilateral Annexations Under K.S.A. §12-520

Many of the residents of Monticello Township strongly support the elimination of unilateral annexation by a requirement that all annexations be approved by 51% of the landowners in the area. These residents feel that unilateral annexation is an infringement on their rights as landowners. Many of these residents moved from cities to unincorporated areas to escape the urban life-style. These landowners strongly resent the unilateral annexation process which allows the city to annex their land without their consent and without any ability to participate in the decision-making process.

On the other hand, the cities contend that landowners often act in their own short-term best interests rather than considering the long-term best interests of the landowners and the city. The cities also characterize these landowners as "freeloaders" who receive many city benefits without paying for the cost of services.

I believe that Senate Bill 427 represents a reasonable compromise of these positions. Landowners are not given an absolute veto right over annexation, but are accorded a means to have their views heard. Cities will retain the ability to annex additional land if needed. The only additional burden placed upon the cities is that, upon filing of a petition by 51% of the landowners, the cities will be required to demonstrate that the annexation does not cause manifest injury to the landowners and is in the best interests of the public in general. Any annexation should certainly meet these criteria.

While landowners may often act in their own short-term best interests, cities are also proned to taking such action. The city seeking to annex land may not consider the best interests of adjoining cities or the country in general. As an example, the cities of Lenexa and Shawnee are presently engaged in an extremely hostile conflict over annexation of portions of Monticello Township. Both cities have adopted policies stating that they intend to proceed with aggressive unilateral annexation of the same territory. This type of unrestrained annexation war will inevitably result in illogical city boundary lines which inhibit the orderly growth of the cities and the ability of the cities to furnish municipal services. As unrestrained unilateral annexation destroys the tax base of the townships, the townships will no longer be able to provide services for the residents of the unannexed areas. These residents will then become "freeloaders" forced to rely upon the county for services. An analysis of the impact of pending annexations on the tax base of Monticello Township is attached as

Exhibit 1. As indicated, the tax base will be reduced by 25 to 56 percent. The Township will no longer be able to provide essential services. The proposed bill would provide for county review of annexations if requested by the landowners. This review would include a consideration of the impact of the proposed annexation on adjoining cities and the county in general. Logical boundary lines could be preserved and plans for the orderly growth of all cities within the county could be implemented.

Repeal of K.S.A. §12-521

Much of the controversy concerning annexation involves annexation of large areas of predominantly rural land under K.S.A. §12-521. These annexations are the most likely to impose burdens upon the landowners without substantial compensating benefits. Although the present law provides for a review by the county commission, the relatively few number of landowners in a rural area are simply unable to afford the substantial cost of assembling and presenting appropriate evidence to the county commissioners.

In 1979, the City of Lenexa filed a petition pursuant to Section 12-521 seeking to annex a large portion of land in Monticello Township. The Board of County Commissioners denied the petition and the City appealed. During the course of the annexation proceedings, the City of Lenexa spent in excess of $250,000 on the fees of its outside legal counsel alone. In addition, the city's planning staff and in-house counsel spent substantial amounts of time pursuing the annexation. The residents of an unincorporated rural area simply cannot match the resources of a city. As a result, the review becomes a meaningless exercise in which only one side is adequately equipped to present its position.

These types of annexation are also the most likely to result in annexation without accompanying municipal services. The 1979 annexation proposed by the City of Lenexa would have doubled the existing size of the city. The City did not, however, propose to add additional police officers or otherwise expand its capability to furnish services.

The cities contend that the ability to annex large tracts of undeveloped land is necessary to prevent inadequate developmental and land use regulations. This position assumes that the city is the best entity to make these type of long-range decisions. Again, the annexing city is unlikely to consider the effect of the annexation on nearby cities or the county in general. These annexations are often undertaken in order to stake out as much territory as possible or limit the boundaries of a nearby city. The present annexation proceedings by the cities of Lenexa and Shawnee are clear examples of cities seeking to restrict each other's boundaries rather than annexing land to provide for orderly development and necessary expansion.

The idea that the ability to annex massive tracts of undeveloped land is necessary for the orderly growth and development of an area is simply incorrect. All unincorporated land is already subject to regulation and planning at the county level. In many counties such as Johnson County, the resources and abilities of the county planning department substantially exceed that of any city. The land is not, therefore, "unprotected." The annexation of massive amounts of rural land is seldom if ever necessary for the expansion of a city. The population growth of urban areas in Kansas is growing at an average annual rate of 3% or less. This growth rate can easily be accommodated through the annexation procedures provided in K.S.A. §12-521. A clear example of unnecessary annexation under Section 12-521 is provided by the pending annexation petition of the City of Shawnee. The City proposes to annex 4,990 acres of predominantly undeveloped rural land in Monticello Township. A study conducted in November, 1979, indicated that 92.7% of the land in Monticello Township was vacant or agricultural. (Exhibit 2). The area has not experienced significant urbanization since that time. The area of the township which Shawnee proposes to annex is presently 89% vacant or agricultural. Shawnee's own Comprehensive Plan states that the 16,753 acres contained within the city boundaries as they existed in 1978 "will be far in excess of needs through the planning horizon year 2000. In fact, it is estimated that over 7,000 acres or almost 43% of the land area will remain in agricultural or non-urban use through the horizon year 2000." (Exhibit 3). Since January, 1984, Shawnee has annexed over 3,850 additional acres which are almost totally undeveloped. The proposed annexation would increase the total undeveloped land in Shawnee to 17,790 acres or over 63% of the available land. It is impossible to believe that this massive amount of undeveloped land is necessary for the reasonably anticipated future growth of the city.

We believe that the annexation mechanism provided by Section 12-521 is unnecessary for the orderly growth and development of cities, results in extremely expensive proceedings which waste resources, and is highly likely to result in harm to the residents of the proposed annexation area, other nearby cities within the county and the county in general. The repeal of Section 12-521 is an essential part of a reasonable compromise of the rights of landowners, cities and counties.

Effective Date of Senate Bill 427

As you know, Senate Bill 426 proposes that the provisions of Senate Bill 427 apply to all annexations commenced after August 15, 1985. We strongly support a provision which would make Senate Bill 427 applicable to certain annexation proceedings which are already underway. This result could be achieved either through Senate Bill 426 or through amendment of the effective date set forth in Senate Bill 427.

I understand that the August 15, 1985 date may affect certain annexations initiated by the City of Overland Park. I am not familiar with the details of these annexations, therefore, I cannot address the appropriateness of the August 15 date. I am, however, very familiar with annexations initiated by the cities of Lenexa and Shawnee in October of 1985. As previously noted, the residents of Monticello Township were extremely concerned with public statements by the Mayor of Lenexa that the annexation proceedings were being initiated in order to acquire additional territory before the Legislature could act to amend the annexation statutes. A copy of one of Mayor Becker's statements is attached as Exhibit 4. The tremendous amount of time and energy which the Legislature has devoted to proposals for amendment to the annexation statutes indicates a recognition that the present statutes are inadequate to protect the interests of the citizens. We do not believe that cities should be allowed to engage in massive annexation activity for the sole purpose of circumventing the will of the Legislature. This type of lame-duck activity compounds the feeling of disenfranchisement experienced by residents in proposed annexation areas.

Proposed Amendments to Senate Bill 427

While we strongly support Senate Bill 427, we feel that certain amendments are necessary.

We believe that the bill should be amended to provide that the decision-making body must find that no manifest injury will result to landowners if an annexation is approved. The manifest injury test requires a finding that material burdens will not be imposed without substantial compensating benefits. This test is essentially the same as the provision of the Fourteenth Amendment to the Constitution of the United States which requires that private property may not be taken without just compensation. We feel that the inclusion of this test is essential to the constitutionality of the statute.

We also believe that the statues regulating incorporation of cities should be amended to conform as nearly as possible to the annexation statutes. The determination of whether a territory should be incorporated involves essentially the same considerations as in the determination of whether annexation should be allowed. Inconsistent and possibly conflicting results are likely to occur if different standards are applied. There is also a significant risk that an unincorporated area may find itself in a situation where neither annexation or incorporation can occur. This would be extremely harmful if development is occurring in the unincorporated area and there is a need to provide additional services. A deadlock may very well result if a unanimous vote of the county commission is required for approval of incorporation. If a majority of the board

favors incorporation and does not believe that annexation into an existing city would be in the best interests of the landowners and general public, annexation will not occur. If one member of the board holds a contrary position, incorporation cannot occur. We believe that it is proper to provide the same voting procedure for both annexation and incorporation. There is simply no justification for requiring a unanimous vote in one instance and not in the other.

Finally, we believe that the standard of review applied by the District Court on appeal of an annexation decision should be expanded and the time limit for resubmission of annexation petitions should be increased.

A more complete explanation of the amendments which we propose is attached hereto as Exhibit 5. We have also provided your Committee with copies of the specific amendments which we propose.

Conclusion

Senate Bill 427 provides this Committee and the Kansas Legislature with an opportunity to put the annexation issue to rest after many years of controversy. The bill certainly does not provide landowners in unincorporated areas with all of the rights and protections which they would like to have. It does, however, represent a reasonable compromise of two very differing positions, and we strongly urge its passage.

Thank you very much for your courtesy.

Respectfully submitted.

John W. McClelland

JWM/ll

Monticello Township Board
Monticello Fire District No. 1

JOHNSON COUNTY, KANSAS
Route 1, Box 257
OLATHE, KANSAS 66061

December 7, 1985

Computations to demonstrate the financial impact of Monticello Township which will result from the proposed annexation by the City of Lenexa.

Monticello Township budgeted revenue for 1986.	$128,295
Revenues lost with annexed portions:	
Ad Valorem Tax	$(52,658)
Motor Vehicle Tax	(11,407)
Local Ad Valorem Tax Reduction	(2,524)
Federal Revenue Sharing	(5,391)
Motor Vehicle Stamp Tax	(67)
	$72,047
Remaining Revenue on which to support Monticello Township Fire, Rescue and Administration.	$56,248

Sources: Lenexa City Budget for 1986
Monticello Township Budget for 1986
Johnson County Appraiser's Office

Exhibit 1

Monticello Township Board
Monticello Fire District No. 1

JOHNSON COUNTY, KANSAS
Route 1, Box 257
OLATHE, KANSAS 66061

DECEMBER 23, 1985

SHAWNEE PROPOSED ANNEXATION FISCAL IMPACT

Monticello Township 1986 budgeted revenue.....$128,295.

Revenues lost with Shawnee proposed annexation:

Ad Valorum Tax.....(22,387)

Motor Vehicle Tax..... (6735)

Local Ad Valorem Tax Reduction.. (655)

Federal Revenue Sharing.....(3184)

Motor Vehicle Stamp Tax .....-... (40)

Total Revenue Lost..... (33,001)

Remaining revenue..... $95,294

Sources: Monticello Township Budget for 1986
Johnson County Appraiser's Offices.

TABLE 7
MONTICELLO TOWNSHIP
EXISTING LAND USE

Type of Use	Number of Uses	Acreage	Percent Acreage
Residential			
Single-Family[1]	676	676	3.2%
Two-Family	2	2	--
Multiple-Family	3	1	--
Mobile Homes	--		
Commercial	13	58	0.3%
Industrial	20	127	0.6%
Public & Semi-Public	27	70	0.3%
Parkland	--		
Road R-O-W[2]	--	409	2.0%
Railroad R-O-W[3]	--	196	0.9%
TOTAL DEVELOPED AREA	741	1,539	7.3%
Vacant & Agricultural[4]	76	19,431	92.7%
TOTAL UNINCORPORATED AREA	817	20,970	100.0%

[1]Single-family acreage assumed at one (1) acre each.
[2]Average road right-of-way of 100 feet for highways, 40 feet for all other roads.
[3]Average railroad right-of-way of 100 feet.
[4]The number of agricultural uses is defined by the numbers of farm residences.

Source: Bucher & Willis Windshield Survey, November, 1979.

Exhibit 2

#59

SHAWNEE, KANSAS

1978 COMPREHENSIVE PLAN

A GUIDE FOR FUTURE DEVELOPMENT

Exhibit 3

A highly cooperative relationship with these boards and the County Commiss must be developed immediately.

One of the major thrusts on this Planning Guide is to encourage the filling in of the older and currently developing neighborhoods since urban sprawl is considered to be one of the primary problems in the community.

The stabilization, maintenance, and revitalization of the older neighborhoods should conserve energy, make more efficient use of existing public facilities, limit future capital expenditures as much as is practical, limit urban sprawl and reduce the potential for the spread of blight and decay. The specific procedures will be generated in future neighborhood planning programs.

The neighborhood/community concept will provide the basic fabric for land use planning, the transportation network and the provision of public and quasi-public services.

Urban growth is not encouraged into any flood plain. In addition, urban expansion will be discouraged beyond the service capabilities of existing utility systems. In certain instances, land uses are shown on the guide plan map in a non-serviceable area simply to offset the possibility of some unique event which would permit the opening of such areas for urban development.

Specific Land Use Recommendations

The 16,753 acres currently encompassed by the corporate boundaries of Shawnee will be far in excess of need through the planning horizon year 2000. In fact, it is estimated that over 7,000 acres or almost 43% of the land area will remain in agricultural or non-urban use through the horizon year.

The current estimated use of 4,009 acres will increase to 9,592 acres, or well over double current usage.

The population projection of 58,000 persons by the year 2000 indicates an average density of 3.5 persons per gross acre, while a rough estimate of average holding capacity of 8.0 persons per gross acre, with preliminary adjustment for topography and land use, puts the holding capacity of the current city limits at 113,850 persons. The holding capacity of the Planning Area (excluding Quivira Lake) is estimated at 133,000. Many independent variables can have major impacts on these projections and estimates, however, they are deemed reasonable for current long-range planning procedures.

Residential Use

No accurate data for current, actual land usage exists, therefore, for purposes of this planning report, a standard usage of 6.25 net acres per 100 population[1] was drawn from existing experience in the Lawrence, Kansas area in 1975. It is recognized that the current average lot size in Shawnee is exceeding that found in most communities and that lack of sewerage plus rougher topography in the developing areas of Shawnee will probably not provide for much room for reduction in the average lot size. On the other hand, based on experience elsewhere, increased demand for less expensive housing and more apartments must be anticipated.

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1 Net acres excludes land for streets, easements or open space not in obvious use as yard area for the residence in question.

TABLE 5-2 CURRENT & PROJECTED LAND USE, SHAWNEE, KANSAS CORPORATE LIMITS, 1975 TO 2000

Category	General Standard Used (Acres per 100 persons)	1975 (pop. 25,000)		1980 (pop. 29,900)		2000 (pop. 58,800)[5]	
		Adj. Std.	Acres	Adj. Std.	Acres	Adj. Std.	Acres
Residential	6.25[1]	-	1,562.5	-	1,868.8	-	3,675.0
Public:						-	
Schools	0.69[2]	-	171.8	0.59[3]	176.4	0.50[3]	294.0
Parks	3.41[2]	-	853.0	-	877.3	-	1,764.8
Admin. * Utilities	0.10[2]	-	26.0	-	29.9	-	58.8
Semi-Public	0.29[2]	-	73.0	-	86.7	-	170.5
Commercial	0.50[2]	-	125.0	0.52	155.5	0.6 [4]	352.8
Industrial	0.12[2]	-	30.0	0.4[4]	119.6	0.75[4]	441.0
Street R.O.W.	4.5 [2]	-	1,125.0	-	1,345.5	-	2,646.0
Railroad R.O.W.	0.17[2]	-	43.0	-	51.4	-	101.1
Sub-Total	16.03	-	4,009.3	16.31	4,711.1	16.72	9,504.0
Vacant	na	na	12,743.7	na	12,041.9	na	7,249.0
Total	na	na	16,753.0	na	16,753.0	na	16,753.0

[1] From Plan '95- Lawrence, Kansas 1975 by Ron Jones & Associates.

[2] Estimated current land usage based on field checks and map measurements by Ron Jones and Associates.

[3] The 1980 and 2000 land use standard has been adjusted downward to allow for some of the general proportionate reduction in school age children per household.

[4] Current usage is considered to be below normal usage and has, therefore, been expanded.

[5] Not including any annexations.

City of Lenexa
(913) 492-8800

October 18, 1985

Dear Property Owner:

I am writing on behalf of the City of Lenexa's Governing Body to explain the action this Body took on Thursday, October 10 at a special call meeting.

The Governing Body decided unanimously to request that the Board of Johnson County Commissioners hold public hearings to consider allowing Lenexa to annex land generally located adjacent to and west of the present city limits and extending to one mile west of State Highway K-7 on the west, K-10 on the south, and approximately 83rd Street on the north.

The City was prompted to take this action for several reasons: 1) The City was concerned about a City of Shawnee Council Committee recommendation to annex a one-half mile wide strip of land from 87th to K-10 on the west side of K-7. This action would preclude the City of Lenexa from expanding west of K-7; and 2) The current political atmosphere in Topeka suggests that changes in the annexation statutes in the next legislative session may limit a city's ability to annex land.

I'm sure you are aware of the tremendous growth occurring in Lenexa. Renner Road will be a hotbed of development in the next several years which is indicative of the westward growth of our City. Development pressures will also occur soon along K-7 and the City of Lenexa wants to be assured that quality development occur along this corridor which will protect your property value and enhance the image of the city.

We recognize and respect the desire you have to maintain the quality of life you now enjoy. Hopefully, we can preserve that lifestyle and even enhance it by providing quality fire protection, police protection, park opportunities, long-range planning, and public works. We recognize there is a difference between urban needs and the needs of rural households and we will seek to find a balance of providing services.

Enclosed please find a question and answer sheet regarding concerns you may have about the proposed annexation. I hope you will read it and feel free to call David Watkins, our City Administrator, or Greg Hembree, our Community Development Director, at 492-8800.

Thank you for taking the time to read this letter and I know we will be seeing you at the scheduled public hearings. We also encourage you to attend Council Meetings which are held at 7:30 p.m. the first and third Thursdays of every month at Lenexa City Hall, 12350 W. 87th Street Parkway.

Sincerely,

CITY OF LENEXA

Rich Becker
Mayor

12350 West Eighty-Seventh Street Parkway • P.O. Box 14888 • Lenexa, Kansas 66215-0888

Exhibit 4

EXPLANATION OF AMENDMENTS PROPOSED BY

MONTICELLO TOWNSHIP ANNEXATION COMMITTEE

Manifest Injury

The manifest injury test has been a part of the Kansas Annexation Statute since the first statute was enacted in 1885. (L. 1885 Ch. 97, §1). This test requires that the decision-making body find that the proposed annexation will not cause manifest injury to landowners affected by the annexation.

We feel that the test of manifest injury is essential to both the fairness and the constitutionality of the annexation statutes. Manifest injury has been defined by the Kansas Supreme Court as "the imposition of material or substantial burdens upon owners of land without accompanying material or substantial compensating benefits." In Re the Appeal of the City of Lenexa, 232 Kan. 568, 657 P.2d 47, 62 (1983). An annexation statute which does not incorporate this test may result in annexations which are unconstitutional as a taking of private property without just compensation. Under the Fourteenth Amendment to the Constitution of the United States, a state may not take private property without just compensation. It is well established that governmental action need not ascend to the level of physical invasion or the acquisition of legal title to the property. Penn Central Trans. Co. v. City of New York, 438 U.S. 104 (1978). The economic impact of regulatory action may be invasive enough to amount to a taking. Id. While a statutory scheme of governmental control of property may generally be constitutional, the specific application of measures to specific properties may be so onerous as to result in an illegal taking. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Although annexation is generally considered to be constitutional, it is only because the burdens placed upon the property annexed are outweighed by the benefits of annexation. The landowners have, therefore, received just compensation for the burdens. When the burdens of annexation are not accompanied by benefits from the inclusion within the municipality, the annexation will amount to a taking without just compensation. State Ex Rel Davis v. Stewart, 127 So. 335 (Fla. 1929).

We propose that the manifest injury test be added to new Section 4(e) and (f) and that the definition of manifest injury adopted by the Supreme Court be added to the definitions as Section 1(g).

Appeal Standards

The proposed bill provides that the decision of the boundary commission will be quasi-judicial. Unless otherwise provided by the statute, the District Court review on appeal will be limited to a consideration of whether, as a matter of law, (1) the commission

acted fraudulently, arbitrarily, or capriciously, (2) the commission's order is supported by substantial evidence, and (3) the commission's action was within the scope of its authority. We feel that this standard of review is inappropriate for the issue of manifest injury. The determination of manifest injury is a factual determination to be made upon substantial relevant and admissible evidence. The determination is, therefore, a purely judicial determination. While administrative agencies are often authorized to make these types of determinations with limited appellate review, these administrative agencies are permanent agencies with extensive experience in conducting evidentiary hearings. The agencies employ full-time advisory staff attorneys and often employ attorneys or judges as hearing examiners. The proposed bill establishes a boundary commission the makeup of which will be different for each annexation. There is no provision for a full-time professional staff. We do not feel that it would be appropriate to have the boundary commission make purely judicial determinations involving numerous legal issues of relevancy and admissibility of evidence unless a full review of the District Court is provided.

The amendment which we propose to Section 4(f) provides that the District Court shall make an independent determination of the issue of manifest injury based upon the record of the public hearing of the boundary commission. We also propose that Section 4(d) be amended to provide for a stenographic record of the hearing in order to facilitate review on appeal.

Time Limit on Resubmission of Annexation Petition

Section 4(f) of the proposed bill provides that, if the annexation is disapproved, the city shall not attempt to annex any portion of the same land for a period of one year.

We propose that this period be extended to at least two and preferably three years. A city should not be allowed to resubmit an annexation petition until substantial and material changes in conditions have occurred. The present and projected future growth rates for urban areas in Kansas indicate an annual growth rate of 3% or less. We believe that two years is the absolute minimum time in which any significant change in conditions could occur. In addition, the Legislature must consider the substantial costs of annexation proceedings and the burden of these proceedings on county, township and landowner resources. The extension of the period for resubmitting an annexation petition will help to limit these costs.

Amendment of Incorporation Statutes

The determination of whether a territory should be incorporated as an independent city involves essentially the same considerations as the determination of whether annexation should be allowed. Under existing law, annexation and incorporation are considered by the board of county commissioners.

We believe that the incorporation statutes should be amended to conform as nearly as possible to the amended annexation statutes. The inconsistent and possibly conflicting results which might occur when two different decision-making bodies apply two different standards to the same area would be extremely harmful.

We propose that Sections 6, 7, 8, 9 and 10 be added to the proposed bill. The new sections adopt the boundary commission concept for incorporation proceedings and amend the factors to be considered on incorporation to conform as nearly as possible to the factors set forth in the proposed amendments to the annexation statute.

My name is Gary Zimbelman; I live outside the city limits of Topeka (in Shawnee County) and would prefer to continue the township form of government. My property is classified as section 2D under the present annexation plan of the city of Topeka, according to my understanding. The issue of unilateral annexation is more than an issue of where a city ends and a township begins. It is an issue of how much we still believe in our democratic form of government and whether or not government efficiency should be rewarded.

I teach school in Shawnee County and teaching government to sixth graders affords me the opportunity to remain rather idealistic. I firmly believe our forefathers intended for us to be blessed with a government that protects the rights and freedoms of the individuals it is to serve. Our government was not intended to enslave people. At the present time, the law related to unilateral annexation as it is being used by elected officials, enslaves rather than protects the rights of the individuals most affected by the annexation. We are sent written notice by the city of the city's intention to annex us into the city and we have no public official to represent our views on annexation. Where is our representation on this issue in a representative government? We have lost the power of the vote.

Second, we are being told we will lose our township government which we believe, at present, is operated more efficiently than the present city government. We in Soldier Township are willing to pay our fair share of taxes; however, at present we believe we receive more services at a lower tax dollar than do the citizens in the city of Topeka. It seems tragic when taxpayers desire more efficient government that the present unilateral annexation law would make it possible for efficient government to be destroyed.

Therefore it is my view that the present law on unilateral

annexation needs to be improved to preserve our forefathers' intent of the democratic process and to reward efficient government. To accomplish this, the following suggestions are listed in order of preference:

1. Let those people whose lives are affected most by an annexation vote directly for their own destiny.

2. Leave the annexation of a territory in the hands of the county commissioners who are elected and represent city and county people alike.

3. Least preferable, leave the annexation of a territory in the hands of a boundary commission composed of two city members and two county members and an agreed upon fifth member by the other four members. If no fifth member can be agreed upon, the courts would appoint such a member. Under this proposal, I feel it essential that one of the boundary commission members be a township officer from the affected annexation area.

As we move away from suggestion one and closer to suggestion three, I believe it to be increasingly important that any new annexation law contain a provision that cities which annex an area be required to provide promised services to individuals of the annexed area within a reasonable number of years. If promises of services are not kept by the city, a return to township government should be made possible to the annexed citizens.

I would ask you to consider these ideas in changing the present law on unilateral annexation and once again restore decency to government on this issue. Thank you.

Kansas Farm Bureau, Inc.
2321 Anderson Avenue, Manhattan, Kansas 66502 / (913) 537-2261

Statement
of
Kansas Farm Bureau
to the
Senate Committee of Local Government
Senator Don Montgomery, Chairman

RE: S.B. 427 - Annexation;
Interim Study Proposal No. 45

by
John K. Blythe, Assistant Director
Public Affairs Division
Kansas Farm Bureau

January 21, 1986

* *

Mr. Chairman and Members of the Committee:

We are pleased to have this opportunity to bring you the views of the farmers and ranchers who are members of Farm Bureau in Kansas as you consider the issue of city annexation.

The voting delegates at our most recent annual meeting of the Kansas Farm Bureau adopted the following resolution. This resolution was the result of much discussion and study by several of our county Farm Bureau organizations as they sought protection for landowners from excessive tax burdens or improvement assessments.

The resolution reads as follows:

Annexation

We commend the Legislature for undertaking a review and comprehensive study of annexation laws in Kansas. We believe enactment of appropriate legislation in the 1986 Session would correct many of the inequities which have become apparent under current statutes.

(Attachment VI) S.LG
1/22/86

Indiscriminate annexation of agricultural areas into cities has proven to be most unfair to a great number of rural property owners engaged in agriculture.

We believe that amendments to our annexation statutes should provide for:

1. *Reduction from 55 acres to 10 acres the amount of agricultural land that may be annexed without the owner's consent;*
2. *Cities to hold public hearings within the area proposed to be annexed. At such hearings the cities shall have a land development plan, timetable, and cost estimate of proposed services such as water, sewer, electrical, and gas services;*
3. *City maintenance of all existing public facilities and services during the development stage;*
4. *Landowner-initiated deannexation of annexed land when the city fails to provide major municipal services or maintain existing facilities and services; and*
5. *The opportunity for residents of the proposed annexed area to present petitions to the city opposing their annexation into the city. If the petitions contain the names of 25% of the residents of the area, the city shall provide for a vote within the proposed annexed area to determine if the proposed annexation will become effective.*

Mr. Chairman and Members of the Committee, we thank you for the opportunity to share our views on this important issue of annexation.

STATE OF KANSAS

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

January 22, 1986

TO: SENATE LOCAL GOVERNMENT

RE: SB 427 and/or HB 2117

As many of you know, one of my concerns long has been the law that permits cities to annex areas without a check and balance system.

You probably recall that the amendment that received 65 votes in the House two years ago to SB 197, provided that if a petition for an election was successful and 2/3 or more of the qualified electors voted, NO to annexation proposal, the annexation proposal would be denied. Although this was removed by the conference committee, many people support the concept of voter approval.

I have asked the constituents in the 50th District to rank their opinions on a boundary commission composed of 2 from city, 2 from county and 1 selected by the four members; or a county commission and/or vote of qualified electors. They overwhelmingly support a vote as their first choice; an appeal to county commission and boundary commission about equal.

Our country goes all over the world promoting human rights and right of self-determination, yet in Kansas, present law provides little protection for property owners who are victims of unilateral annexation resolutions.

Surely, as we celebrate 125 years of statehood this year of 1986, we can provide some representation to those who are opposed to being annexed!

I would urge your favorable consideration to improve the rights of property owners to an appeal process.

(Attachment VII) S LG
1/22/86

1

STATE OF KANSAS

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

TOPEKA

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X-tra (2)

STATE OF KANSAS

GINGER BARR
REPRESENTATIVE FIFTY FIRST DISTRICT
SHAWNEE COUNTY
P O BOX 58
AUBURN, KANSAS 66402

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER ENERGY AND NATURAL RESOURCES
FEDERAL AND STATE AFFAIRS
GOVERNMENTAL ORGANIZATION

Testimony by Rep. Ginger Barr on Senate Bill 427 before the Senate Local Government Committee----January 22, 1986

Thank you Mr. Chairman and Members of the Committee.

People want representation and should have it. Many of us have worked on this issue for over a year in trying to find a solution to a problem that exists throughout our state. Not one person has come before this committee and asked for the prohibition of annexation. The only thing that anyone has really asked is for representation.

Being from Shawnee County, I have tried to observe and to keep abreast of what is going on in my county. Last week I attended the Topeka City Commission meeting where residents made comments to the Mayor and City Councilmen concerning their thoughts. This was not a public hearing and therefore, more comments will be heard on March 18, 1986. However, I feel that good points were made by non-city residents concerning this very issue. One gentleman stood up and asked the Mayor and City Council to postpone their deliberation and action until the legislature could meet and vote on this very issue. But that recommendation was rejected without comment by the City Council and the City of Topeka has gone ahead.

(Attachment VIII) S.L.G.
1/22/86

You and I know that some cities are trying their best to beat the legislature. Enclosed is a news article where Gene Miles, Topeka Councilman, indicated that some cities use the excuse that the legislature is going to prohibit annexation.

I quote from the Capital-Journal, August 7, 1985,

> "Then we could make it prior to the end of the year, prior to the legislative meeting, before they take the power from us."

You and I know that this is never going to happen. Nor do any of the people working on this subject want that kind of legislation.

One thing that registered in my mind concerning the city council meeting was when one of the city council members stated that his primary concern is to represent his constituents. I agree that the Mayor and City Council members should think first about their constituents who reside in the city, because after all, those are the people they are representing. However, this just goes to prove the inadequacy of the unilateral annexation hearings. The hearing should be in front of a group that looks at the concerns of both city and county residents.

Presently city fathers base their decision on what they feel is best for the city residents and not for the township residents. That is why I have always been very supportive of having an objective hearing panel such as the county commissioners or the boundary commission make the decision.

I have been asked by Senator Allen and I will reiterate, that I feel that it would be in the best interest to have the county commissioners decide on the annexation proceedings as they are elected by both city and county residents and are accountable to both. Then the equities can be considered and balanced.

I'm a businesswoman and I can't help but think as a business-woman. I feel that this S.B. 427 as well as H.B. 2117 is a bill for economic development. No astute businessman wants to come to a state or stay in a state if he does not know what could happen to his business due to annexation. Legitimate businessmen like to deal with concise, deliberate and unambiguious laws. Senate Bill 427 and H.B. 2117 try to take care of this situation.

There are several ways this committee can move to give all people representation:

1. Pass out S.B. 427 as written
2. Amend S.B. 427 with county commissioners holding the hearing process and include amendments offered by Rep. Nancy Brown and others.
3. Amend H.B. 2117 that contains county commissioners vote. If so, I would urge that you also incorporate the 15 findings of fact and the quasi-judicial portion found in S.B. 427

S.B. 427, as indicated, contains a mandatory requirement for the annexation process to occur in a quasi-judicial enviornment, subject to the scrutiny of the courts. It places the burden on the hearing panel to consider the testimony and information presented, and to make specific finding of fact and conclusions related to each of the areas concerned. It sets forth the need for justification of the annexation, not only for the benefit of the area to be annexed but also for the protection of citizens withing the existing boundaries of the city. It requires an objective analysis of the job the city has done to proved essential governmental services (such as water) to the areas within the city. By this process, the hearing panel can consider the benefits and burden of the proposed annexation on both the municipality and the area proposed to be served, and to consider the relative equities to reach a conclusion what is in the best interests of the State of Kansas.

Very frankly, those standards are an essential element of any fair annexation statute.

S.B. 427 as well as H.B. 2117 do not prohibit annexation. In fact, each proposal contains permission language where one who desires, and owns the territory to be annexed, may consent to the annexation, without the necessity of the hearing process. It is only when the equities require balancing that the relative need for annexation must be measured

The provisions of both S.B. 427 and H.B. 2117 recognize that if the fox is permitted to guard the chicken coop, the risk is upon the chicken. A higher power needs to watch the fox, such that he may not feast on the chicken and he then runs the risk of an upset stomach. I suggest that higher power is the State government, such that it may protect the legitimate interests of all citizens of the state, not just the fox, a sometimes wild beast which is created by the citizens of this state.

Topeka Capital-Journal August 7, 1985

Council names members to study areas for potential annexation

A three-member committee of the Topeka City Council was established Tuesday to examine possible areas for annexation to the city.

The decision to create the committee came in an informal work session prior to the formal council meeting Tuesday evening. The council gathered at 4 p.m. at City Hall for a work session to discuss annexation.

Much of the 90-minute meeting involved Planning Director Jim Schlegel's explanation of Topeka's annexation history and the ramifications of annexation.

Schlegel said he would recommend that only platted areas immediately adjacent to the city boundaries be studied for annexation.

Councilman Vic Miller asked Schlegel to provide the council with a map of the areas surrounding the city that met those criteria. Schlegel said he could probably have that map ready early next week.

Pointing at a map of the existing city limits, Schlegel said there were areas west and southwest, east and southeast, south to the Forbes-Montara area, and "a couple of isolated areas to the north" that he thought should be studied for possible annexation.

Councilman Gene Miles asked how long the entire process of annexing those areas would take.

Schlegel said that his department would need 45 days to prepare the required studies detailing the cost of providing city services to the proposed new areas. Then 60 days would be needed for notice of a formal public hearing on annexing those areas. After the public hearings, the council would need to adopt ordinances annexing the areas.

"Then we could make it prior to the end of the year, prior to the Legislature meeting, before they take the power away from us," Miles said.

Attempts were made in the 1985 session of the Kansas Legislature to further restrict cities' ability to annex property. One bill would have allowed residents of the affected area to vote on whether they would be annexed. A later version would have allowed the county commission to decide.

The Legislature took no action on annexation legislation, but opponents and proponents of restricting annexation agreed to meetings this year on the issue.

Miles later recommended that council members Alan Bibler, Joe Huerter and Mary Holmgren form a committee on annexation. He said after Schlegel provides the map showing the platted areas adjacent to the city limits, the committee would work with Schlegel to select the areas for formal study leading to annexation. The recommendations of the committee would need to be approved by the full council before Schlegel would be authorized to initiate the formal studies, Miles said.

MEMORANDUM

June 25, 1985

TO: Special Committee on Local Government

FROM: Kansas Legislative Research Department

RE: Proposal No. 45 — Annexation Law Review

Proposal No. 45 calls for a review of the Kansas annexation law, the annexation practices and policies of cities, the annexation laws of other states, and suggestions for changes or improvements.

This memorandum contains background and a review of the Kansas annexation law, a summary of recently proposed amendments, several important court decisions and Attorney General opinions interpreting this law, the annexation laws of the surrounding states, and lists several study options and policy issues the Committee may want to consider.

Background on the Current Law

The city home rule amendment to the Kansas Constitution Article 12, Section 5 begins with the following statement:

> "Sec. 5 (a). The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: Provided, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance."

The 1972 Home Rule For Kansas Cities manual published by the League of Kansas Municipalities notes that Section 5(a) was taken from the American Municipal Association's (now National League of Cities) Model Constitutional Provisions of Municipal Home Rule. It was not taken verbatim. The appropriate part of the model provision reads, "The legislature shall provide by law, general in terms and effect, for the incorporation and government of municipal corporations and the methods by which municipal boundaries may be altered, municipal corporations may be merged or consolidated and municipal corporations may be dissolved. . . ."

The phrase "by general law applicable to all cities" seems to imply that the law on incorporation, annexation, deannexation, consolidation or dissolution, to be passed after July 1, 1961, by the Legislature, must be a law uniformly applicable to all cities. The manual notes that it is unfortunate the drafters did not follow the language found in the remainder of the Kansas constitutional provision. Elsewhere in the

constitutional amendment the phrase is "enactments applicable uniformly to all cities." The reason for the difference in language is that Section 5(a) comes from a different source than the remainder of Section 5 which was based on the Wisconsin constitutional home rule provision.

In 1967, the Legislature passed an annexation law which was uniformly applicable to all cities (K.S.A. 12-519 to 12-526). The law was comprehensive but did not repeal several special laws on annexation.

The 1973 interim report of the Special Committee on Local Government on annexation noted that the most significant feature of the 1967 law was that it authorized all cities to annex land by ordinance unilaterally when the territory met any one of several criteria which included:

1. the land was platted and some part of such land adjoins the city;

2. the land was owned by or held in trust for the city or any agency thereof;

3. the land adjoined the city and is owned by or held in trust for any governmental unit other than the city;

4. the land had common perimeter with the city boundary line of more than 50 percent;

5. the land if annexed would make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 20 acres shall be annexed for this purpose;

6. the tract was so situated that two-thirds of any boundary line adjoins the city, except no tract in excess of 20 acres shall be annexed under this standard; and

7. the land adjoined the city and a written petition for or consent to annexation is filed with the city by the owner.

In addition, if the governing body of any city found it advisable to annex land which did not conform to any of the seven conditions specified above, they could in the name of the city present a petition to the board of county commissioners in which the land sought to be annexed was located. The county commissioners was to conduct a hearing to determine the advisability of such annexation, and if satisfied that such annexation or the annexation of a lesser amount of land would cause no manifest injury to the owners, they were required to find and grant the city annexation by order. Thereupon the city could annex the land by ordinance.

The 1973 report noted the Committee was mindful of the following criticisms of the annexation law:

1. Individual property owners do not have the right to challenge annexations by cities. (K.S.A. 12-502c enacted in 1957, provides that only the county attorney or the attorney general may challenge the validity of any city annexation ordinance.)

2. Farm land was sometimes indiscriminately annexed by cities either for tax purposes or to protect future expansion needs.

3. City services were not always extended within a reasonable time to a newly-annexed area.

4. Annexations by cities were sometimes accomplished without proper notice to property owners affected by such annexation.

The 1973 Committee recommended the following changes all of which were enacted by the 1974 Legislature:

1. Retain the right of cities to annex unilaterally by ordinance, but restrict this right in certain areas.

2. Define agricultural land and restrict the annexation of agricultural land in excess of 55 acres unless petitioned for by the property owner or owners or unless approved by the board of county commissioners.

3. Provide that a municipality must give notice of its intent to annex land and require the holding of a public hearing. Notice was to include a sketch or sketches of the land to be annexed and be published in a newspaper of general circulation in the county and was to include the sending of a copy of such notice by certified mail to all property owners of the area to be annexed.

4. Provide for the annexation of noncontinguous property if the owners of such land petition for such annexation and if the board of county commissioners approve such annexation. Noncontiguous annexations were not to be used as a base for further annexations, however, until such time as they become part of the city proper.

5. Require a municipality to formulate a plan for the extension and financing of major services to the area to be annexed.

6. Provide that any property owner of land annexed by any city may seek recourse in the district court by challenging the authority of a city to annex and the regularity of such proceedings.

7. Provide that any city may petition the board of county commissioners to annex land which it was unable to annex under any conditions specified in K.S.A. 12-520 and amendments thereto and require essentially the same notice and hearing requirements under this procedure as under the unilateral procedure.

8. Repeal of all special annexation laws.

The 1981 interim Special Committee on Local Government again was assigned the task of reviewing the Kansas annexation law and annexation practices. Conferees opposing city annexation practices recommended a number of possible changes including a mandatory vote on all annexations or a vote when a protest petition was filed, and county commission approval of all annexations. Representatives of cities

proposed that acreage limitations be increased from 20 to 40 acres under the unilateral annexation procedure; that cities be permitted to petition any county commission (not just the county in which the city is located) to annex land not adjoining the city; that counties rejecting city requests to annex lands not meeting unilateral criteria be required to submit written findings of fact as to the manifest injury that would result to the affected property owners; and that a technical amendment to K.S.A. 12-521 be made so that county commissions would not grant or deny a city's annexation request but only make a finding of whether a manifest injury would occur to property owners affected.

The 1981 interim committee concluded the annexation law provided an adequate means for cities to expand their boundaries and provided sufficient safeguards for citizens living in areas subject to annexation. The Report stated the Committee did not believe that any major changes in the annexation law such as mandatory referendum or protest petition procedures were warranted.

The 1981 Committee did recommend, however, that a county which rejects a city's annexation request under K.S.A. 12-521 should provide written findings of fact as to their determination that manifest injury to property owners would result. In addition, the Committee noted that a county commission's function should be properly limited to the determination of whether manifest injury would occur and not formal approval or denial of the annexation itself. The report stated that a city should be able to petition any county commission (not just the county commission in which the city is located) to annex land not adjoining the city under K.S.A. 12-520c. Under this procedure, landowners must petition for or consent to the annexation and the county commission must make a finding that the annexation will not hinder or prevent the proper growth and development of the area. Finally, the Committee saw merit in requiring a city to mail notice to the board of county commissioners and to affected township boards concerning the city's proposed annexations of lands.

The above conclusions and recommendations were incorporated in 1982 H.B. 2618. The bill passed the House but died in the Senate Local Government Committee.

Recent Proposed Annexation Amendments in Kansas

The following is a list and description of bills containing proposed amendments to the Kansas annexation law since 1981.

1981

H.B. 2453, introduced by Representative David Webb, would have provided for a 5 percent protest petition of the electors living in the area proposed to be annexed. If a petition was filed, an election would have been required. A simple majority of those voting would have determined the issue. H.B. 2453 passed out of the Local Government Committee in 1981, and was later referred to the Federal and State Affairs Committee after being withdrawn from the calendar. It was then rereferred to the House Local Government Committee in 1982 and died in that committee.

H.B. 2557, introduced by the House Committee on Local Government, would have permitted 20 percent of the owners of land proposed to be annexed to file a

protest petition. A majority of the qualified electors in the area to be annexed could then approve or prevent the annexation. H.B. 2557 died in the House Local Government Committee in 1982.

1982

H.B. 2618 was recommended by the 1981 interim Special Committee on Local Government, a description of which has previously been given. The bill died in the Senate Committee on Local Government.

H.B. 2800, introduced by Representatives Spaniol, Foster, Ken Ott, and Yost, and as amended by the House on Final Action, would have provided for a 5 percent protest petition. Three-fourths of the qualified electors residing within the area to be annexed at an election could have blocked the proceedings. The protest petition/election procedure would not have applied if less than 10 qualified electors resided in the area. H.B. 2800 was reported adversely by the Senate Committee on Local Government.

H.B. 2848, introduced by Representative Spaniol, would have given cities three years to extend services to areas annexed. If this timetable was not complied with, then the cities at large would have had to pay any assessments for uncompleted services for those areas. H.B. 2848 died in the House Committee on Local Government.

1983

H.B. 2078, introduced by Representatives David Webb, Foster, Laird, Matlack, Smith, and Spaniol, would have provided for a 5 percent protest petition of the qualified voters residing within an area proposed to be annexed. A two-thirds majority voting at an election in the area to be annexed would have been required to defeat the annexation. The procedure would not apply where less than 25 qualified electors resided within an area. H.B. 2078 was referred separately to the House Local Government and Federal and State Affairs Committee. The bill died in committee in 1984.

S.B. 197, introduced by Senator Daniels, and as amended by the House Committee of the Whole, contained the same amendment as H.B. 2078 described above. S.B. 197 was enacted by the Legislature in 1984 without the protest petition/election amendment. The bill as enacted made a technical change to the statute.

S.B. 254, introduced by Senator Francisco, would have permitted landowners whose land had been annexed to a city to petition for deannexation if within ten years following annexation major city services had not been provided the area. S.B. 254 died in the Senate Committee on Local Government in 1984.

1985

S.B. 115, introduced by Senator Francisco, would have permitted landowners to petition the board of county commissioners for deannexation if major municipal services had not been provided an area within ten years of annexation. The bill is in the Senate Local Government Committee.

H.B. 2117, introduced by Representatives Barr, Brown, Laird, Littlejohn, D. Miller, and Smith, originally would have provided for a protest petition/election procedure. The bill as amended by the House Committee of the Whole would establish a procedure whereby 51 percent of the owners who own at least 51 percent of the land could trigger a hearing before the board of county commissioners on the annexation. The board then would decide whether the city should annex the land after hearing testimony and considering factors listed in the bill. The bill is in the Senate Local Government Committee. This bill is the impetus, in part at least, for this interim study and the League of Kansas Municipalities appointment of a task force on annexation.

Kansas Annexation Law

A uniform law (K.S.A. 12-519 et seq.) for the annexation of territory by cities in accordance with the home rule constitutional amendment was enacted in 1974 and has had only minor amendments since that time as noted earlier.

Three separate methods for annexing lands are provided by the act. Under the first method, cities may unilaterally annex land if it meets one or more of the criteria found in K.S.A. 12-520 (a) through (f), i.e., the land is platted and some part adjoins the city; the land is owned by or held in trust for the city; the land adjoins the city and is owned by or held in trust for any governmental unit; the land lies within or mainly within the city and has a common perimeter with the city of more than 50 percent; the land if annexed will make the city boundary line straight or harmonious (limited to 20 acres); or two-thirds of the land's boundary line adjoins the city (limited to 20 acres). Upon making this initial determination, the city then must adopt a resolution (see K.S.A. 12-520a) stating that the city is considering annexation which shall include: (1) notice of time, date and place of the public hearing; (2) a description of the boundaries of the land proposed to be annexed; and (3) a statement that a plan for the extension of services is available for inspection in the city clerk's office. The plan for extension of services is covered by K.S.A. 12-520b. A copy of a resolution, including a sketch delineating the land to be annexed must be mailed by certified mail to each owner of land proposed to be annexed. The resolution must be published in the official newspaper. Following the public hearing, the city may adopt the annexation ordinance. Within 30 days any owner of land annexed may challenge the city's authority in the district court.

The second method of annexation may be utilized, if the land cannot be annexed under K.S.A. 12-520 (a) through (f), by the city petitioning the board of county commissioners. The city submits a petition to the board that includes a legal description of the land and requests a public hearing on the advisability of such annexation. A report on plans for the extension of services must be filed with the petition. Notice must be mailed to each owner of land proposed to be annexed and must be published. The county commissioners then must hold a public hearing and must determine if the proposed annexation will cause manifest injury to the property owners; otherwise the annexation must be granted. An order either approving or denying the city's petition is issued by the board. If the order is approved by the county board, the governing body of the city adopts an annexation ordinance. Any owner or any city aggrieved by the decision of the board may appeal to the district court.

The third annexation method allows for annexation by petition or consent of owners in two situations: (1) if the land adjoins the city it may be annexed by ordinance

on submission of a petition or consent form (see K.S.A. 12-520(g)); (2) if the land is noncontiguous but within the same county, it may be annexed under certain conditions if the board of county commissioners approves (see K.S.A. 12-520c).

K.S.A. 12-529 prohibits the annexation of any territory of a United States military reservation.

Statutes relating to deannexation of land and vacation of plats were amended in 1984. The law provides (see K.S.A. 12-504 and 12-505) that upon petition for deannexation by the landowner or landowners, published notice must be given of a public hearing to be conducted by the city governing body. The city governing body then decides whether the territory should be deannexed.

Several other statutes relate to annexation. K.S.A. 12-503a deals with taxation after annexation and provides that whenever all or any part of any township, improvement district, or other governmental unit is annexed, the governmental unit may continue to furnish services for the year in which taxes have been levied or collected to those annexed or as an alternative shall surrender the tax money to the city. No improvement district shall continue to make a levy after the annexation.

K.S.A. 12-527 deals with the annexation of territory of water districts. It provides all water facilities shall become property of the city upon payment by the city to the water district. K.S.A. 12-528 permits the city to issue bonds to pay these costs.

K.S.A. 19-3616 deals with the annexation of territory of certain fire districts in Johnson County. The statute provides the territory annexed shall remain a part of the fire district unless otherwise agreed by the city and fire district.

Finally, K.S.A. 12-517 and 12-518 require cities to annually declare their boundaries by ordinance and to file this ordinance with certain officials.

Court Decisions and Attorney General Opinions

Issues relating to city annexation powers have been a fairly common subject of litigation and opinions by the Attorney General.

In State, ex rel. v. City of Coffeyville, 211 Kan. 746 (1973) involving an action challenging the validity of an ordinance annexing numerous tracts of land which included platted subdivisions, unplatted tracts of varying acreage and land owned by the state, the judgment of the trial court affirming annexation of all such land, except certain unplatted land was affirmed. The court said that the proviso in K.S.A. 12-520 that a city by one ordinance may annex one or more separate tracts of lands each of which conforms to any one of the prescribed conditions for annexation permits consolidation of separate annexations in one procedure, thereby saving time and expense. The procedure is permissive but is not intended to permit annexation of any lands which depend on the completion of other pending annexations before the conditions for annexation exist. Pursuant to K.S.A. 12-520(a) a city by ordinance may annex a contiguous body of platted land, consisting of one or more tracts, so long as some of the platted land adjoins the city.

The court in State, ex rel. v. City of Overland Park, 215 Kan. 700 (1974) held that provisions of the general annexation law, K.S.A. 12-519 et seq., permitting cities to annex territory unilaterally by ordinance without the consent or approval of the owners of the property to be annexed was constitutional and did not deny due process of law or equal protection of the laws, and that there was not an unconstitutional delegation of legislative power. In reversing the district court and upholding the constitutionality of the annexation law, the Kansas Supreme Court said that the Legislature has absolute authority to create or disorganize municipal corporations, to designate their limits, and to provide methods by which their boundaries may be increased or decreased and the conditions in K.S.A. 12-520, although geographical in nature, established general patterns of contiguity and were sufficient standards.

A city extension of services plan and timetable were issues dealt with in Clarke v. City of Wichita, 218 Kan. 334 (1975). The court said the plan and timetable for services cannot be a hoax. It must be made in good faith and with honest intentions, but there cannot be a "guarantee" that the services will be provided because all municipal services and facilities are subject to economic, political, and other practical contingencies over which a city has no absolute control. The plan submitted by the city was held to be a bona fide plan even though some services were to be provided only "when petitioned for by the owners." This was consistent with the city policy of providing similar services only when petitioned for. The court also held that the 1974 amendment to the annexation law which allows any owner of land annexed to the city to "challenge the authority of the city to annex such lands and regularity of the proceedings" changed prior law only to the extent that it was no longer necessary that actions protesting annexation be brought in the name of the state. As under prior law, the basic function and duty of the court on appeal is to determine whether the city (1) had statutory authority to annex; and (2) whether it acted under statutory authority in passing an annexation ordinance. The Court noted that the wisdom, necessity, or advisability of annexing was not a matter for consideration by the court.

In City of Lenexa v. City of Olathe, 228 Kan. 772 (1981), the issue was whether one city had standing to challenge the annexation of land by another city. The court held that where a dispute arises as to the annexation of land which adjoins a city the only interested parties to the controversy are the city and the owner of land proposed for annexation. Other incorporated cities in the county do not have standing to challenge a proposed annexation where the land adjoins the city and the owner of the land consents to the annexation. In case of a proposed annexation of land not adjoining the city, the rights of another incorporated city in the county must be considered and it has an interest which entitles it to challenge such an annexation in the district court. Note: On rehearing, the case was remanded to the district court to determine whether certain tracts were in fact adjoining the city at the time of their attempted annexation.

In Grandon v. City of Hutchinson, 6 K.A. 2d 896 (1981), the Court of Appeals upheld the procedure of using a single resolution and public hearing regarding the annexation of land which required the adoption of successive ordinances by the city of Hutchinson.

The court in Board of Johnson County Commissioners v. City of Lenexa, 230 Kan. 632 (1982) stated the county commission was a proper party to an appeal taken by the city which had been aggrieved by an order of the board denying an annexation petition by the city under K.S.A. 12-521.

The court in Board of Riley County Commissioners v. City of Junction City, 233 Kan. 947 (1983) upeld the constitutionality of a legislative enactment prohibiting

the annexation of territory of military reservations and held that where a city's annexation ordinance attempts to annex a single trust of land described in one parcel only part of which is subject to annexation, the entire annexation ordinance is invalid.

The court in In Re Petition of City of Shawnee for Annexation of Land 236 Kan. 1 (1984) held that a county cannot reconsider its earlier action denying an annexation request by a city under K.S.A. 12-521 after an appeal from the county's decision has been taken. The court also held that a city could not petition the court to delete certain areas from its earlier annexation request to the county. The court noted only a county has the power to grant a city an annexation request not the district court.

Several Attorney General opinions are noteworthy. In Opinion No. 80-146 the Attorney General said the annexation of territory lying within a fire district established under K.S.A 19-3601 et seq., does not automatically detach the territory from the district. A similar conclusion was reached in regard to territory within a watershed district in Opinion No. 80-147. In Opinion No. 81-213 the Attorney General reconsidered Opinion No. 80-146 in light of K.S.A. 12-503a and concluded annexation does have the effect of detaching territory from a fire district.

Surrounding States' Laws

Colorado

By constitutional amendment adopted in 1980, territory may not be annexed to a municipality unless one of three conditions is met: (1) the area is entirely surrounded by or solely owned by the annexing municipality; (2) a majority of the landowners and registered electors in the area proposed to be annexed voting at an election have approved the annexation; or (3) an annexation petition has been presented to the annexing municipality, signed by persons who comprise more than 50 percent of the landowners in the area to be annexed and who own more than 50 percent of the area to be annexed, excluding public streets and alleys and any land owned by the annexing municipality.

If the petition is signed by persons who comprise more than 50 percent of the landowners in the area and who own more than 50 percent (but less than 100 percent) of the area, excluding public streets and alleys and any land owned by the annexing municipality and if no petition for an annexation election is filed, and if no additional terms and conditions are to be imposed, then the area may be annexed by adoption of an ordinance, after notice, public hearing, and necessary findings are made.

Nebraska

The various classes of Nebraska cities generally may unilaterally annex contiguous or adjacent lands which are not agricultural in nature.

Missouri

In 1980, the Missouri General Assembly extensively revamped the annexation laws. The proper procedure for annexation in Missouri is determined first by the

type of municipality (third or fourth class, village, special charter, or constitutional charter) and secondly by the county in which the municipality is located. Municipalities in Jackson and St. Louis counties follow different rules for city-initiated annexations and cities in Jefferson, St. Charles, and Franklin counties have different rules for landowner initiated annexations. The procedure described below is the general procedure for a municipal-initiated annexation under the 1980 legislation. In a municipal-initiated annexation which is involuntary (not requested by landowners) municipalities must carry out the following procedures:

1. The adoption of the resolution of intent to annex is required. The land must meet the statutory definition of "contiguous" before the resolution of intent is adopted.

2. The preparation of the plan of intent to extend services is required.

3. An annexation ordinance must be introduced.

4. A public hearing must be held.

5. The governing body must adopt the annexation ordinance.

6. Following adoption of the ordinance, an action must be filed to obtain a declaratory judgment in the circuit court. The court must find the annexation is reasonable and necessary.

7. Upon receiving court approval for the annexation, an election must be held and the annexation proposition must be approved by a majority of the electors in the municipality and a majority of those voting in the area to be annexed. A second election may be held within 120 days if a majority is not obtained in the area to be annexed. Approval by two-thirds of the voters, counting those in the area to be annexed and the municipality, must then be obtained for the annexation to proceed.

Oklahoma

Cities may annex land unilaterally without consent of the owners if the territory is subdivided into tracts of less than five acres and has more than one residence or three sides of the land is adjacent or contiguous to the city boundaries. Towns may annex land unilaterally if the land is contiguous or adjacent to the municipality.

Study Options and Policy Issues

The Committee may want to pursue any of the following study options or policy issues:

1. survey the laws of more states to determine annexation procedures utilized in other states including how many states have boundary commissions and how these operate;

2. survey or invite selected cities in Kansas to testify before the Committee to determine how many have adopted annexation policies and what these policies are in regard to when annexation is advisable, when services will be provided, and how these services will be financed;

3. hold public hearings to hear citizen input from around the state;

4. explore the needs of cities to exercise certain extra territorial powers to control growth and development in city environs;

5. explore the tax implications of annexation in regard to cities and the residents to be annexed, benefits that suburban residents derive from being near cities, and related issues; and

6. clarify, if needed, the impact of annexation on the boundaries of other political subdivisions, e.g., fire districts, drainage districts, and sewer districts.

No. 54,422

IN RE: THE APPEAL OF THE CITY OF LENEXA TO THE DECISION OF THE BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, DENYING A PETITION TO ANNEX CERTAIN LANDS, PURSUANT TO K.S.A. 12-521.

(657 P.2d 47)

SYLLABUS BY THE COURT

1. COUNTIES—*Board of County Commissioners—Determination of Advisability of City Annexation Request.* In carrying out its functions under K.S.A. 12-521, a board of county commissioners has two roles: When it determines the advisability of an annexation, it acts in a legislative capacity, but when it determines whether the annexation will cause manifest injury to landowners, it acts in a quasi-judicial capacity.
2. APPEAL AND ERROR—*Review of "Determination of Advisability" Made by Board of County Commissioners in City Annexation Request.* In reviewing a determination of advisability, made by a board of county commissioners in an annexation proceeding under K.S.A. 12-521, the duty of the district court and of an appellate court is limited to a determination of whether the board has the statutory authority to enter the order which it made.
3. CITIES AND MUNICIPALITIES—*Annexation of Land—Involvement of Courts.* The wisdom, propriety, necessity or advisability of annexing territory to cities is not a matter for consideration by the courts.
4. COURTS—*District Court Review of Quasi-judicial Determination by Board of County Commissioners.* When a district court is called upon to review a quasi-judicial determination by a board of county commissioners, the reviewing court is limited to considering whether, as a matter of law, (1) the board acted fraudulently, arbitrarily, or capriciously, (2) the board's order is supported by substantial evidence, and (3) the board's action is within the scope of its authority.
5. APPEAL AND ERROR—*Appellate Court Review of District Court Review of Quasi-judicial Determination made by Board of County Commissioners.* In reviewing the judgment of a district court which has reviewed a quasi-judicial determination of a board of county commissioners, an appellate court must first determine whether the district court observed the requirements and restrictions placed upon it, and then make the same review of the board's action as does the district court.
6. CITIES AND MUNICIPALITIES—*Annexation of Land—Doctrine of Prior Jurisdiction.* The doctrine of prior jurisdiction, simply stated, is that a city which takes the first valid step toward annexation of territory has priority over any other city which later seeks to annex the same or a part of the same territory, as long as the original proceeding is pending. Once the proceeding is terminated adversely to the first city, however, the priority which accompanied the original valid proceeding vanishes.
7. SAME—*Annexation of Land—Review by Courts—"Fairly Debatable" Rule Not Applied in Kansas.* The "fairly debatable" rule, adopted in some jurisdictions to guide courts which are called upon to review annexation proceedings, has no application in this state.

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8. COUNTIES—*Board of County Commissioners—Determination of Advisability of City Annexation Request—Duty to Protect Public Rights.* A board of county commissioners, in making a determination of the advisability of annexation pursuant to K.S.A. 12-521, has a duty to see that the rights of the public are protected; it is not obligated to defer to a city's determination of the same issue.
9. CITIES AND MUNICIPALITIES—*Annexation of Land—Acceptance Required by Board of County Commissioners—"Manifest Injury" to Landowners Considered.* The term "manifest injury," as used in K.S.A. 12-521, implies the imposition of material or substantial burdens upon landowners within territory sought to be annexed, without accompanying material or compensating benefits.
10. EVIDENCE—*Substantial Evidence.* Substantial evidence is that which possesses relevance and substance and which furnishes a substantial basis of fact from which an issue can reasonably be resolved.
11. ADMINISTRATIVE LAW—*Findings of Fact—When Specifically Required of Administrative Agency.* Specific findings of fact by an administrative agency are desirable in contested matters, but are not indispensable to a valid decision in the absence of a statute or rule requiring them. *Olathe Hospital Foundation, Inc., v. Extendicare, Inc.*, 217 Kan. 546, Syl. ¶ 9, 539 P.2d 1 (1975).
12. APPEAL AND ERROR—*Issue Raised for First Time on Appeal—Consideration by Appellate Court Not Required.* Ordinarily, an issue not raised in or presented to the trial court cannot be raised on appeal.
13. CONSTITUTIONAL LAW—*Deprivation of Property without Due Process—Protection Not Applicable to Annexation Proceeding of Municipality.* The command of the Fourteenth Amendment to the Constitution of the United States that a State shall not deprive any person of property without due process of law has no application to the annexation of territory to a municipality.

Appeal from Johnson District Court, MARION W. CHIPMAN, judge. Opinion filed January 14, 1983. Affirmed.

Richard W. Byrum, of Schnider, Shamberg & May, Chartered, of Shawnee Mission, and *Robert H. Freilich*, of University of Missouri-Kansas City, argued the cause and were on the brief for appellant City of Lenexa.

Bruce F. Landeck, assistant county counselor, argued the cause and *Lyndus A. Henry*, county counselor, and *Philip S. Harness*, assistant county counselor, were with him on the brief for appellee Board of County Commissioners of Johnson County, Kansas.

John Anderson, Jr., of Overland Park, argued the cause and was on the brief for appellee John Anderson, Jr.

Byron J. Beck, of Morrison, Hecker, Curtis, Kuder & Parrish, of Overland Park, argued the cause and was on the brief for appellee Byron J. Beck.

Leonard A. Hall, assistant municipal counsel, and *Thomas A. Glinstra*, municipal counsel, of Olathe, were on the brief for intervenor City of Olathe, Kansas.

The opinion of the court was delivered by

MILLER, J.: This is an appeal by the City of Lenexa from the denial of its petition to annex an area of approximately twenty square miles lying to the west of its present city limits. Lenexa's petition for permission to annex the territory was filed with the Board of County Commissioners of Johnson County pursuant to K.S.A. 12-521. After a hearing, the Board denied the petition. Lenexa appealed to the District Court of Johnson County. The court approved the Board's denial of the proposed annexation. Lenexa then appealed the matter to the Court of Appeals, and we transferred the case to this court. Many issues are raised. We will separately state and discuss them later in this opinion.

The parties appearing in this court are the City of Lenexa, appellant, the Board of County Commissioners and landowners John Anderson, Jr., and Byron J. Beck, appellees, and the intervenor, City of Olathe, appellee.

The facts giving rise to this appeal were before us in an interlocutory appeal, *Board of Johnson County Comm'rs v. City of Lenexa,* 230 Kan. 632, 640 P.2d 1212 (1982), where we held that the Board was a proper party to the pending appeal before the district court. We remanded, with directions to permit the Board to participate in further proceedings in the district court. The case has now been heard and fully decided below. Rather than restate the background facts, we repeat Justice Prager's succinct summary of the facts from our earlier opinion:

"On July 2, 1979, the city of Lenexa filed with the Board of County Commissioners of Johnson County a petition for authority to annex to the western limits of the city 12,800 acres of unincorporated territory covering an area of approximately 20 square miles. The petition was filed pursuant to K.S.A. 12-521. A notice of the time and place of the public hearing was published pursuant to the statute. There is no dispute that the city of Lenexa substantially complied with the requirements of K.S.A. 12-521 in all matters of procedure. The board held a public hearing on the petition on September 4, 1979.

"On September 19, 1979, the board denied Lenexa's petition for annexation. In its order, the board commented on its review of certain standards and factors, including but not limited to:

"(1) Population density per square mile of the territory proposed to be annexed;

"(2) future growth patterns of the area and the capability of planning thereof;

"(3) drainage basins and concern for storm and sanitary sewers;

"(4) conditions of roads;

"(5) degree of platted and unplatted lands;

"(6) extent of residential, business, commercial, and industrial development and other aspects of economic interaction;

"(7) the urban or rural nature of the area;

"(8) the effect of city expenses upon the area;

"(9) the ability or inability to supply within a reasonable time for the extension of city service;

"(10) the probability of consent annexations and other statutory annexations in the future; and

"(11) the exhibits, maps, briefs, and documentation presented. The board in its order further found that the proposed territory sought to be annexed by Lenexa was under the planning jurisdictions of certain township zoning boards and Johnson County through the Johnson County Planning Commission; further that the proposed territory was within the corporate shadow of the cities of Lenexa and Olathe; further, that other annexation statutes (K.S.A. 12-520, 12-520a, 12-520b and 12-520c) provided the city of Lenexa adequate opportunity to proceed with orderly municipal growth as future residential, commercial, and industrial demands unfold and, further, that present zoning safeguards will be maintained so that the future of the municipalities and the county interests will not be jeopardized.

"The board specifically found and concluded that the granting of Lenexa's petition would result in obvious impairment to the real estate involved in that the landowners would not share within a reasonable time the municipal services and benefits now afforded to the landowners in other portions of the municipality upon a footing of substantial equality, and that the granting of Lenexa's petition would cause and result in manifest injury to the landowners of the proposed area sought to be annexed." 230 Kan. at 632-34.

The district judge filed a memorandum decision in which he made extensive findings of fact and conclusions of law. His factual findings parallel the facts stated above, but also include the following:

"Apart from three small areas of residential development . . . substantially all of the 20 square miles is agricultural in use and is so zoned.

"At the public hearing [before the Board] on September 4, 1979 a great crowd of landowners in the area attended and protested the annexation. Representatives of the City of Olathe attended and protested the annexation for the reason the proposed area included land already annexed by the City of Olathe, and for the further reason the annexation would annex all the unincorporated land lying North of Olathe and adjoining the City of Olathe. . . .

"The Mayor of Olathe denominated the proceedings an annexation war between the cities.

"In the presentation made by the officials of the City of Lenexa, it was stated that the 20 square mile area was divided by Mill Creek and the Santa Fe Railroad running North and South through the tract and that only as to the easterly half of the tract was Lenexa realistically capable of providing adequate municipal services within the next five to ten years.

"[An attorney] for Lenexa . . . stated at the hearing:

" 'The City of Lenexa did not intend to make full annexation immediately of this area. One portion it will, but as to the second portion it is the full function and purpose of Lenexa to continue to exercise extra territorial control over that

outlying area and to utilize those powers and to provide for those services through that means until a method of annexation does indicate that full services will be provided. In other words a time and sequence approach . . . will be adopted by the City in this particular area.'

The Mayor of Lenexa said that because of Olathe's annexation of lands on Lenexa's Western border, the City felt it should ask for unchallenged authority to annex the entire area. He said: 'This would not necessarily mean that Lenexa would annex the entire area at once.' The City Planner said it was the plan that Lenexa annex West to Mill Creek and not annex beyond Mill Creek for at least five years. . . .

"The Board of County Commissioners . . . by unanimous vote, made the following resolution:

" 'The granting of Lenexa's petition would result in obvious impairment to the real estate involved in that the landowners would not share within a reasonable time the municipal services and benefits now afforded to the landowners in other portions of the municipality upon a footing of substantial equality; further, that the granting of Lenexa's petition would cause and result in manifest injury to the landowners of the proposed area sought to be annexed.'

"The Court has found and ordered that it may and will take judicial notice of certain matters of common knowledge and public records. These relate to (i) the existing county road and bridge unit system whereby Johnson County maintains roads, keeps in repair the roads and bridges throughout the twenty (20) square mile area; (ii) the City of Lenexa does not provide water service for the City and would not provide such service within the area; (iii) Johnson County provides sewer service in the area within the entire tract; (iv) Monticello Township provides fire district protection for the western half or more of the entire area and provides ambulance service for most of the area; and (v) the Court notes that the tax levies for the City of Lenexa are substantially greater than for any of the proposed annexation area."

The trial judge then announced his conclusions of law, which are as follows:

"1. The Court's appellate review is limited to a review of the record on appeal and consideration of those matters of which the Court may exercise judicial notice under K.S.A. 60-409.

"2. The Court may not substitute its judgment for that of the Board of County Commissioners but may determine only (1) whether the Board's decision was arbitrary, capricious or unreasonable, (2) whether the Board's decision was substantially supported by the evidence, and (3) whether the Board was acting within the scope of its authority. *Kansas Board of Healing Arts v. Foote,* 200 Kan. 447.

"3. The City of Lenexa is here on appeal from an adverse ruling by the Board of County Commissioners and the appellant has the burden of proof on the issues on appeal. *Gorham v. City of Kansas City,* 225 Kan. 369, 379.

"4. The plan of the City of Lenexa for extension of services which are furnished in the city into the proposed annexation area does not meet such requirements as would prevent manifest injury to the landowners within the area. The City would not furnish the traditional services known as sewers, lights, water and gas. All

these already exist in the area to be annexed or would be furnished by other governmental agencies or public utilities. The City made no showing that it would maintain streets and roads of equal or better service than the County road unit system. There was evidence the City service would be of lesser quality. And annexation would interfere with fire protection and ambulance service in the area.

"5. The finding by the Board of County Commissioners that annexation would result in manifest injury to the landowners is supported by the facts that any benefits to inure to the landowners would be disproportionately low when compared to the added tax burden which would result from annexation. See *City of Louisville v. Kraft,* 297 S.W.2d 39.

"6. It is clear, from the evidence, that the 'general land use pattern in the area' is agricultural.

"7. It is difficult to see how the City could properly maintain the County roads and equal the County road unit [maintenance] level.

"8. From the tax records it appears that the ad valorem tax for rural Monticello Township in District 311 was 85.68 dollars per thousand assessed valuation in 1980. In the City of Lenexa it was 116 dollars per thousand.

"9. Adding to the tax burden, taking away county road maintenance, ambulance service, fire protection and giving no benefit in utility or sewer services would be a manifest injury to the landowners.

"10. The administrative services of the City in zoning, dog leash law and municipal city functions have not been shown to be a benefit to this rural area.

"11. The statute under which this proceeding lies places upon the Administrative Board the responsibility of hearing testimony as to the advisability of such annexation, including the plan for services into the area. Inherent in the approval of the ultimate finding by the Board as being reasonable and not arbitrary or capricious is the reasonableness or unreasonableness of the proposed annexation. The action to be reviewed under K.S.A. 12-521 is distinguished from an ex parte annexation taken by a city under K.S.A. 12-520 as reviewed in *Clarke v. City of Wichita,* 218 Kan. 334, and the wisdom and advisability of the annexation is an issue within the review of the Court. This is not to say the Court may substitute its judgment for that of the Board, but that the Court may, upon total review of the record and facts, determine the ultimate reasonableness of the Board's order and the reasonableness of the annexation proposed. When this is done, much as was done by the Court in *City of Sugar Creek v. Standard Oil Co.,* 163 F.2d 310, it is clear that the findings of the Board that such annexation would work manifest injury are reasonable; that the Board's order denying the annexation is reasonable and that such proposed annexation was 'clearly unreasonable'.

"12. The Order of the Board of County Commissioners in denying the annexation petition of the City of Lenexa, Kansas was within the statutory authority of the Board, was supported by evidence and was not unreasonable, arbitrary or capricious and should be affirmed.

"13. The finding by the Board that such proposed annexation would create manifest injury to the landowners was supported by the evidence and was reasonable.

"14. The City of Lenexa sought by its petition to annex a part of the City of Olathe contrary to K.S.A. 12-524 and notwithstanding the separate appeals this

Court cannot find the Board's Order to be in error when it disapproves such an attempt by Lenexa.

"15. The City of Lenexa admitted publicly and in the record that it did not intend to annex the westerly half of the 20 square mile tract even if approved by the Board until approximately five to ten years hence. What Lenexa really was seeking was a procedure whereby it could place the area in limbo so Olathe or another city could not annex it or another city could not be incorporated and keep it available for future action by the City of Lenexa. The annexation laws do not provide for such a procedure even though Lenexa city planners may think it advisable.

"16. Since the City of Lenexa does not seek prompt annexation and does not propose prompt extension of services, the Board's Order disapproving the annexation is reasonable and is approved."

Judgment was entered in conformity with the memorandum decision. The City of Lenexa appeals.

K.S.A. 1981 Supp. 12-520 is the familiar statute under which most annexation proceedings are conducted. In general, it may be said to provide for direct annexation by cities of relatively small tracts, usually platted land adjoining or within a city, or unplatted land owned by the city or owned by someone who petitions for or consents to the annexation.

Resort must be had to K.S.A. 12-521 when annexation is not authorized by 12-520. That is the situation here. K.S.A. 12-521 provides in pertinent part:

"Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under the authority of K.S.A. 12-520 and amendments thereto, the governing body in the name of the city may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to land proposed to be annexed and shall file a copy thereof with the board of county commissioners at a time of presentation of the petition."

The statute then lists specific items which the city must include with its petition, provides for the giving of public notice of hearing both by publication and by mailing notices to each landowner, and for the holding of a public hearing by the board. The statute concludes:

"If said board shall be satisfied that such annexation or the annexation of a lesser amount of such land will cause no manifest injury to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. . . .

"Any owner or the city aggrieved by the decision of the board of county

commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K.S.A. 19-223. Any city so appealing shall not be required to execute the bond prescribed therein."

There is no claim of noncompliance with the procedural provisions of K.S.A. 12-521.

I. The Scope of Review

The first of many disputed points is what scope of review this court should exercise. We start with a review of the function of a board of county commissioners under K.S.A. 12-521. Discussing this statute when this case was before us on the interlocutory appeal in *Board of Johnson County Comm'rs,* we said:

"It is inconceivable that the legislature would require a city to petition a county board of commissioners and request a hearing on the advisability of an annexation and require the county board to *hear testimony on the advisability* without the intention that the county board *determine* the advisability of the annexation. Under K.S.A. 12-521, the city proposes the annexation; it is up to the board to grant or deny the annexation. In carrying out its function of determining the advisability of the annexation the board is, at least in part, carrying out legislative functions as well as quasi-judicial functions and in so doing has an obligation to see that the rights of the public are protected." 230 Kan. at 640. (Emphasis in original.)

The Board thus wears two hats: When it determines *advisability,* it acts in a legislative capacity, but when it determines *manifest injury,* it acts in a quasi-judicial capacity. A predecessor of our present annexation statute, G.S. 1901, § 1172, required a city seeking to annex adjacent territory to petition the board of county commissioners, which then held a hearing "as to the advisability of making such addition." If the board concluded that the annexation would "cause no manifest injury to the persons owning real estate in the territory sought to be added," the board was authorized by the statute to enter an order effecting the annexation. That statute was before us in the case of *Nash v. Glen Elder,* 74 Kan. 756, 88 Pac. 62 (1906). Justice Mason, speaking for the court, said:

"The county board in the exercise of its original jurisdiction has at least two questions to determine when a proper petition is presented: (1) Whether the proposed change can be made without manifest injury to the persons owning real estate in the territory sought to be added; (2) if so, whether the annexation shall be ordered. The first determination is judicial; the second legislative." 74 Kan. at 761.

Returning to the case at hand, when a district court is called

upon to review the action of the board in determining the judicial issue of manifest injury, the reviewing court is limited to considering whether, as a matter of law, (1) the board acted fraudulently, arbitrarily, or capriciously, (2) the board's order is supported by substantial evidence, and (3) the board's action was within the scope of its authority. See *Kansas State Board of Healing Arts v. Foote,* 200 Kan. 447, 436 P.2d 828 (1968); *Olathe Hospital Foundation, Inc. v. Extendicare, Inc.,* 217 Kan. 546, 539 P.2d 1 (1975). In reviewing the district court's judgment, this court must first determine whether the district court observed the requirements and restrictions placed upon it, and then make the same review of the Board's action as does the district court. *Kansas Dept. of Health & Environment v. Banks,* 230 Kan. 169, 172, 630 P.2d 1131 (1981).

The judicial review of the Board's determination of the *advisability* of the annexation, however, is the review of the legislative function. The duty of the district court, and of this court on appeal, is limited to a determination of whether the Board has the statutory authority to enter the order which it made. *State, ex rel., v. City of Overland Park,* 192 Kan. 654, 656, 391 P.2d 128 (1964); *State ex rel., v. City of Kansas City,* 181 Kan. 870, 317 P.2d 806 (1957). In the former case we said:

> "The wisdom, propriety, necessity or advisability of annexing territory to cities is not a matter for consideration by the courts. [Citations omitted.] The basic function and duty of the courts is to determine whether a city has statutory authority and has acted thereunder in passing an annexation ordinance." 192 Kan. at 656.

The only function of the courts, then, with reference to the review of the Board's finding that the annexation was not advisable, is to determine whether the Board had statutory authority to make the order which it made. None of the parties challenge the Board's *statutory* authority to allow or deny the annexation.

II. Was the Board's action arbitrary and capricious?

Lenexa argues that the Board's action was arbitrary and capricious because the Board—and the district court—grievously misunderstood the two-part relief Lenexa was seeking from its petition. In short, the City argues that it was seeking immediate authority to annex "Area I"—that portion of the territory which lies east of Mill Creek—and that it merely wanted "Area II"—that portion west of Mill Creek—placed in a "holding zone" for

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Lenexa's future annexation. On this basis it contends that the Board and the trial court erred in not granting Lenexa authority to annex "Area I" immediately.

There are many difficulties with this argument. Lenexa's petition, never amended, asked for authority to annex the entire twenty square mile area. It never changed its request, and sought authority to annex the entire area throughout the entire proceedings before the Board. There was no mention of "Area I" and "Area II," although Lenexa did advise the Board that it intended to annex that part of the territory east of Mill Creek promptly, and to supply services to the residents of that area after authority to annex was granted. The City also indicated that it did not desire to annex that part of the territory lying west of the railroad or Mill Creek for some years, perhaps ten or more. Lenexa's goal, however, was inflexible: It sought immediate authority to annex the entire area. Never did it suggest to the Board that the City be granted leave to annex less than the entire twenty square mile tract. Once the authority was granted, the City intended to exercise that authority in two or more parts. But the action it sought from the Board was not two-part; it was one-part: authority to annex the entire tract.

The record indicates that the Board fully understood the statute, and understood that it could authorize less than the entire tract included within the petition. Lenexa argues that the Board's determination that the granting of the City's request would impair the landowners, since they would not share in municipal services within a reasonable time, is "implicit" evidence that the Board considered only Area II in denying the whole annexation. The Board's decision does not reflect such a distinction. There was evidence that the City would not supply all of the usual municipal services, but that some of them would continue to be supplied by the same entities which supplied them at the time the petition was filed. There was further evidence that annexation of a part of the territory would leave some of these entities with an insufficient tax base to continue to function properly. Further, there was evidence that the City was not prepared to maintain the roads within the territory, or even a part of it, as well as those roads were presently being maintained. Further, the vast bulk of the area lying east of Mill Creek and the railroad is undeveloped agricultural land, similar to that lying west of either dividing line.

The Board certainly had the right to take the entire territory into consideration in making its determination of manifest injury. We find nothing in the record to indicate that the Board misunderstood the relief sought by Lenexa in its petition.

Lenexa argues that under the statute, it is the annexing city which decides in the first instance and in the last instance what territory to annex. None of the parties quarrel with this assertion. Lenexa, however, argues that since the Board disagreed with the City, the Board is somehow attempting to usurp the City's power and authority under K.S.A. 12-521. Nothing in the record or in the Board's written order supports this argument. In the earlier appeal in this case, *Board of Johnson County Comm'rs v. City of Lenexa*, we observed that under K.S.A. 12-521, the board of county commissioners participates *to a significant extent* in the annexation proceedings. We enumerated six steps in the proceedings and noted the Board's responsibility therein. And we said: "The city *proposes* the annexation and the board of county commissioners has the administrative obligation to *grant or deny* the petition for annexation." (Emphasis in original.) 230 Kan. at 640. The Board here merely discharged that administrative obligation.

Next, under its claim of arbitrary and capricious action on the part of the Board, Lenexa argues that under the common law doctrine of prior jurisdiction, it was entitled to have the western portion of the territory placed in a holding zone, to allow the City to plan for the future annexation of that area. The doctrine of prior jurisdiction is essentially a rule of priority, to be applied in cases where two municipal corporations seek to annex the same territory. See 2 McQuillin, Municipal Corporations § 7.22a (3d ed. 1979). Thus, the city which takes the first valid step toward annexation of territory has priority over any other city which later seeks to annex, so long as the original proceeding is pending. Once the proceeding is terminated adversely to the first city, however, the priority which accompanied the original valid proceeding vanishes.

In the case now before us, Lenexa's first valid step was to file a petition for annexation with the Board. During the pendency of that proceeding, Lenexa undoubtedly had priority to the area sought to be annexed, and would have a prior right to annex that territory as against any other city. When the Board denied Len-

exa's petition (and the trial court and this court affirmed), both the City and the territory returned to their former positions and the doctrine of prior jurisdiction had no further relevance. The doctrine does not create affirmative rights independent of a valid pending proceeding.

There is some similarity in the case of *Town of Clive v. Colby*, 255 Iowa 483, 123 N.W.2d 331 (1963). There, the Town of Clive sought to annex an area also sought by the City of Windsor Heights. Clive instituted annexation proceedings first, but failed to make an affirmative showing, as required by statute, that it was capable of furnishing substantial services, and thus annexation was denied. The Iowa court concluded that failure of the town to meet the statutory requirements resulted in a failure to acquire exclusive jurisdiction. Thus, the later voluntary annexation of the territory by the City of Windsor Heights was upheld. The court said:

"We said in State ex rel. Mercer v. Incorporated Town of Crestwood (1957), 248 Iowa 627, 632, 633, 80 N.W.2d 489, 492: 'All parties agree as to the legal principle that in a conflict between annexation and incorporation, the proceeding first instituted has precedence. [Citations] • • • The great weight of authority in other states is that annexation proceedings and incorporation proceedings are legislative in character and the entity taking the first legislative step has exclusive jurisdiction to complete its procedure.' [Citations] We reaffirm these statements. However, the instant case demands consideration of an additional factor not previously considered by this court.

"In all prior Iowa cases the party who took first action apparently pursued its course to a successful conclusion. In the instant case we have held that Clive failed to make an affirmative showing of any capability to furnish substantial services or benefits. It therefore failed to meet the statutory requirements. It was permitted to pursue the regular procedure to conclusion without interference. The conclusion was adverse. This is the first case in which we have been called upon to decide whether compliance with the statute is essential to the exclusive jurisdiction referred to in the foregoing authorities.

. . . .

"The majority rule is set forth in 2 McQuillin, Municipal Corporations (Third Ed.), section 7.22, as follows:

" 'A proceeding for the annexation of territory to a contiguous municipal corporation is ineffectual when instituted after the institution of a proceeding for the organization of the territory into a village or city, and while such proceeding is pending and undetermined. *However, annexation proceedings are not precluded where the pending incorporation proceedings do not comply with the statute, or are otherwise insufficient to deprive the annexing city of jurisdiction or authority to acquire the territory involved.*' (Emphasis added.)

"This principle is in accord with the public interest. We have stated herein that a city should not be permitted to tie up contiguous property by initiating

annexation proceedings at a time when it cannot meet the statutory requirements in order to gain time to build up its capabilities. The capabilities are to be determined on the conditions that exist when annexation proceedings are initiated and they are to be conducted with reasonable dispatch. These principles would be circumvented if we were to hold the initiating party had exclusive jurisdiction until a decree finding the statutory requirements were not met.

"Five years have passed since Clive first instituted proceedings in this case. Although we found it unnecessary to decide whether it lost exclusive jurisdiction by reason of the delay, it offers a graphic example of the problem created if exclusive jurisdiction were conferred upon the first party to act until a final decision was reached. It would still be an unincorporated area, offered as a prize to the winner of another 'race to the courthouse.' One such race is enough. A winner who has been disqualified by a decision of this court is not entitled to a fresh start. The race goes to the party which instituted the first valid proceeding and complied with the statute.

"As Clive failed to meet the requirements of section 362.26, Code of Iowa, the proceedings were not valid or effective. It failed to acquire exclusive jurisdiction over the disputed territory. The application for voluntary annexation and its subsequent approval by the Town Council of Windsor Heights had priority and jurisdiction over the disputed territory and we decree that said territory [is] a part of the municipal corporation of Windsor Heights . . . ." 255 Iowa at 493-494, 496-497.

As long as Lenexa's petition was pending, and for a reasonable time thereafter if the petition were granted in whole or in part, Lenexa would have a prior right to annex, as against other cities attempting to annex the same territory. That, however, is not the case; the relief sought has been denied; the doctrine is inapplicable here. The doctrine applies as between competing municipalities; it does not, in and of itself, create a right where only one municipality is involved. The situation here is analogous and the same reasoning should apply as in *Town of Clive,* cited above. Lenexa was permitted to pursue its annexation proceeding under K.S.A. 12-521 to its conclusion; that conclusion was adverse. Lenexa is no longer in a position to assert the doctrine of prior jurisdiction. In another portion of its brief, the City of Lenexa quite candidly states: "The priority issue will ripen only if Lenexa's annexation is in whole or in pertinent part approved either by this Court or upon remand." We agree.

Lenexa next argues that the Board and the trial court should have considered the east half of the twenty square mile area as a separate matter, and should have granted the city authority to annex that portion of the territory. Briefly, the City contends that because the statute grants authority to the Board to approve the annexation of a lesser amount of land if the Board finds that

annexation will cause no manifest injury to the landowners, then the Board *must* allow annexation of the smaller area. This argument assumes (1) that the Board misunderstood the statute and did not know that it could grant authority as to less than the whole of the territory sought to be annexed, and (2) that the Board found no manifest injury, and that in fact there is no manifest injury to the landowners of the east half of the territory. What we have already said in this opinion disposes of both arguments; the Board was fully cognizant of its authority and of the provisions of the statute; and the Board did not find that manifest injury would occur only to the landowners in the western portion of the proposed tract. The Board found that manifest injury would occur to landowners in the entire twenty square mile territory.

III. Did the trial court misapply the "fairly debatable" rule relied upon and applied in *City of Sugar Creek v. Standard Oil Co.*, 163 F.2d 320 (8th Cir. 1947)?

The *Sugar Creek* case discusses and applies the "fairly debatable" rule, a standard of review applicable in the courts of Missouri when called upon to determine the reasonableness of municipal annexation. The rule is discussed in *Sugar Creek* as follows:

"Under Missouri law, in any annexation where the prescriptions of the statute have been followed, the action of the city will be presumed to have had a reasonable basis. [Citations omitted.] But a right to test legally whether the city's action has in fact had a reasonable basis is recognized, since the statute does not give to those whose property is being annexed any voice or vote on the annexation. [Citations omitted.] The courts, however, will not undertake to substitute their judgment for that of the city council and the electorate, and they will therefore not declare an annexation invalid unless the evidence is convincing that reasonable men would have to agree, from the nature, scope, object, need and results of the annexation, that the action was unreasonable and ought not to have been taken. Municipal need must be liberally viewed and is, of course, entitled to dominance over all other considerations.

"The Missouri Supreme Court stated the controlling principle thus, in State ex inf. Mallett ex rel. Womack v. City of Joplin, 332 Mo. 1193, 62 S.W.2d 393, 398: 'It was not for the trial court to decide whether, upon the facts shown to exist, the extension of the boundaries was necessary, but to determine whether or not, upon the facts shown to exist, reasonable men would differ as to the necessity of the extension. If the question of whether or not the territory involved should be included within the city limits was fairly debatable, that is, if there was substantial evidence each way so that reasonable men would differ about its necessity, then the decision of that question was for the city council and the city electorate and not for the court. When the evidence shows a fairly debatable question about the matter, then neither way the question might be decided would be unreason-

able. On the other hand, if there was substantial evidence tending to show that there was no fairly debatable question about it, and that reasonable men could not differ about it, but would have to agree that it was not necessary to annex the territory, then a trial court's finding that it was unreasonable would be binding (in spite of testimony to the contrary), and would have to be sustained.' " 163 F.2d at 322-323.

The trial court cited *Sugar Creek* in paragraph No. 11 of its order, quoted above, in the context of determining the ultimate reasonableness of the Board's order and the proposed annexation. The City contends the "fairly debatable" rule, stated in *Sugar Creek*, should have been applied by the trial court to the legislative determination of the City to annex, not to the action by the board of county commissioners; further, the City argues that the Board in its determination of manifest injury, is bound by the "fairly debatable" rule, and should not find manifest injury if there is a fairly debatable question about it.

The rule, as we have noted, is applicable in Missouri in cases challenging annexation. The Eighth Circuit Court of Appeals noted in its opinion that Missouri statutes do not give the person whose property is being annexed any voice or vote on the annexation. K.S.A. 12-521, here involved, provides for notification of the landowners both by publication and by mailing. K.S.A. 1981 Supp. 12-520 provides for notice by publication. In either event, public hearings are held before the proposed annexation may be effected. The scope of appellate review of the advisability of annexation proceedings under section 520 is stated in *Clarke v. City of Wichita*, 218 Kan. 334, 543 P.2d 973 (1975), by Justice (now Chief Justice) Schroeder in Syllabus 12 as follows:

"The wisdom, necessity or advisability of annexing territory to cities is not a matter for consideration by the courts. The basic function and duty of the court is to determine whether a city has statutory authority and whether it has acted thereunder in passing an annexation ordinance."

The scope of review in Section 521 annexation proceedings is stated in this opinion. In neither type of proceeding have we adopted the "fairly debatable" rule.

The City of Lenexa first made a legislative determination to annex the territory. The board of county commissioners then conducted a public hearing, with notice to all landowners concerned, and made its findings and order. Its action was both quasi-judicial and legislative. As we noted in *Board of Johnson County Comm'rs*, and as stated earlier in this opinion, a board of

county commissioners in carrying out its function of determining the advisability of the annexation is, at least in part, carrying out legislative functions, and in so doing has an obligation to see that the rights of the public are protected. The board of county commissioners is not bound to defer to the governing body of a city; it must make its own legislative determination of advisability based upon the evidence before it, its knowledge of the area, and other information which it possesses.

Legislative findings and determinations of municipal governing bodies are entitled to great deference in the courts. This applies equally to determinations by the governing bodies of a city and of a county. If the municipal government acted within the confines of the applicable statutes, the action must be upheld.

As we noted earlier, the Board's determination on the question of manifest injury is a quasi-judicial decision. This court's review of that decision is governed by the three-part test stated earlier in this opinion. The "fairly debatable" rule exists in Missouri to protect the integrity of legislative decisions. We do not find it applicable to the review of a quasi-judicial determination. We decline to adopt the "fairly debatable" rule as a guide to review of either a legislative or quasi-judicial determination under K.S.A. 12-521. We find no misapplication of the rule in the proceedings below.

IV. Is the determination of the Board of County Commissioners of manifest injury arbitrary and capricious, not supported by substantial evidence, and beyond the scope of the Board's authority?

The City in effect argues all three parts of the three-point test of *Kansas State Board of Healing Arts v. Foote,* 200 Kan. 447, 436 P.2d 828 (1968), stated earlier in this opinion. We will first consider whether the Board's order is arbitrary or capricious.

Arbitrary, oppressive or capricious conduct is said to be shown " 'where an order of an administrative tribunal is based upon findings which are not substantially supported by evidence in the record.' " *U.S.D. No. 461 v. Dice,* 228 Kan. 40, 50, 612 P.2d 1203 (1980). "Substantial evidence" is defined as "that which possesses relevance and substance and which furnishes a substantial basis of fact from which the issues can reasonably be resolved." *Brinson v. School District,* 223 Kan. 465, 473, 576 P.2d 602 (1978). Thus the first two prongs of the test merge, and we move on to the

determination of whether the Board's finding that the proposed annexation would cause manifest injury was supported by substantial evidence.

The term "manifest injury" has not been previously defined in our opinions. The Supreme Court of Kentucky, in *Masonic Widows and Orphans Hm. v. City of L'ville,* 309 Ky. 532, 539-40, 217 S.W.2d 815 (1949), said:

"The term 'manifest injury' means the clear and obvious imposition of material or substantial burdens upon the owners of the property as a class or the majority of them. City of Louisville v. Sullivan, [302 Ky. 86, 193 S.W.2d 1017]. The situation and conditions are to be considered from the standpoint of the whole—the city as an organized community and the suburban property as an unorganized community. It is to the interest of the city showing growth and expansion, particularly of a movement or trend of development, not to be placed in a straitjacket. Nor is it reasonable or fair that property enjoying substantial city conveniences, facilities and advantages should remain without and not be made a part of the municipality and subject to the power of the government in sustaining peace and order and fire protection. The over-all character of the property, its use and adaptability or capacity of being absorbed into the city are to be regarded. City of Russell v. Ironton-Russell Bridge Co., 249 Ky. 307, 60 S.W.2d 628. This embraces the consideration of density of population and the extent of urban development. The view to be taken is of the entire area and not the separate parcels of real estate in isolation. It is not the individual burdens or the wishes of the individual owners, although, of course, what affects the individual affects the whole. There is no more material factor—whether present or absent—than that the area and its inhabitants have in fact the use and benefit of city conveniences and facilities without contribution to the expense (City of Georgetown v. Pullen, 187 Ky. 697, 220 S.W. 733) though this of itself is not sufficient to warrant annexation. City of Lexington v. Rankin, 278 Ky. 388, 128 S.W.2d 710."

As the term "manifest injury" is used in our statute, it implies imposition of material or substantial burdens upon the landowners without accompanying material or substantial compensating benefits.

It is not the function of an appellate court to reweigh the evidence; we are concerned only with the evidence which supports the findings below, and not the evidence which might have supported contrary conclusions. See *Parsons Mobile Products, Inc. v. Remmert,* 216 Kan. 256, Syl. ¶ 1, 531 P.2d 428 (1975). Substantial evidence is "that which possesses relevance and substance and which furnishes a substantial basis of fact from which the issue can reasonably be resolved." *Brinson v. School District,* 223 Kan. at 473; *Kelly v. Kansas City, Kansas Commu-*

nity College, 231 Kan. 751, 755, 648 P.2d 225 (1982). If there is such evidence in the record, we need look no further.

Briefly, the evidence and inferences therefrom which are supportive of the Board's finding of manifest injury are as follows. Obviously, taxes upon the land would increase substantially. Lenexa would not furnish sewers, electricity, lights and gas; these services are already being furnished by other governmental agencies and would continue to be so furnished. Fire protection would be furnished by the City; however, there is no indication that it would be equal to that presently furnished by the Monticello Fire Department, which has two specially equipped vehicles designed for use in rural areas. The City would furnish ambulance service; however, loss of the present service furnished by the Monticello Rescue Squad and replacement by Lenexa-based service would increase the distance of the ambulance base from residents of this area. Annexation of the entire twenty square mile territory by the City would so decrease the tax base that the Monticello Fire Department and Rescue Squad might well be lost, to the detriment of the public now served by those entities. Since the City was seeking authority to annex the entire area, there was no evidence of the effect of the tax base reduction if only the east half of the territory is annexed, and we will not speculate as to that matter. The City plans to extend police protection to the entire area without additional personnel; it is building or has now completed an adequate building, conveniently situated, to serve the City in its expanded state. How the present personnel can effectively patrol and serve over twice the present area, however, was not explained. Finally, the City proposes to maintain the streets and highways, but the evidence does not indicate that the service provided would be equal or superior to that presently provided with county personnel and equipment. Without detailing the evidence further, we conclude that it is adequate to support the finding of the Board of manifest injury.

Lenexa maintains that the Board's order was outside the scope of its authority. It contends that the Board considered evidence other than that bearing upon manifest injury to the landowners. As we have stated, the Board was acting partly in a legislative capacity in determining the advisability of the annexation. It could and should consider the effect of the proposed action upon residents other than those within the target area, *i.e.,* upon the public generally. The Board, in its written order, noted many

factors which it considered. The fact that the Board considered evidence which appellant contends was not relevant is immaterial, since there was substantial relevant evidence to support the Board's finding. The Board's action was entirely within the scope of its authority.

Lenexa complains that the Board's order is not sufficiently specific, and that the order fails to reveal precisely what evidence the Board considered in arriving at its conclusion that the annexation would cause manifest injury to the landowners. In this regard, the following portion of our opinion in *Kansas State Board of Healing Arts v. Acker*, 228 Kan. 145, 153, 612 P.2d 610 (1980), is relevant:

> "Detailed findings of fact and conclusions are certainly recommended and are of great help to the trial court and appellate court in reviewing administrative decisions. See *Blue Cross & Blue Shield v. Bell*, 227 Kan. 426, 607 P.2d 498 (1980). However, we have held:
>
> " 'Specific findings of fact by an administrative agency are desirable in contested matters, but are not indispensable to a valid decision in the absence of a statute or rule requiring them.' *Olathe Hospital Foundation, Inc. v. Extendicare, Inc.*, 217 Kan. 546, Syl. ¶ 9, 539 P.2d 1 (1975)."

K.S.A. 12-521 does not require the board of county commissioners to make detailed findings of fact and conclusions of law. The Board's findings indicate only that it accepted the substantial evidence before it indicating that the proposed annexation would cause manifest injury to the landowners, and it rejected the City's evidence to the contrary. The Board also noted many of the factors considered in reaching its decision. The order appears to meet the requirements of the statute and is sufficient to allow judicial review.

V. Did the trial court err in taking judicial notice of facts, and in using those facts to support its affirmance of the Board's decision?

The trial judge took judicial notice of a number of items, including a map of Johnson County Water District No. 3, the mill levy rates for various Johnson County taxing districts, and various resolutions, maps, and bond issues of the City, county, and Monticello Township. Obviously, most of these matters were within the knowledge of the Board of County Commissioners, and could well have been considered by the Board as a basis for its determination of the advisability of the annexation. These items were not a part of the evidence offered at the hearing before

the Board, and cannot now be considered in reviewing the Board's finding on the issue of manifest injury. However, since we have concluded that there was substantial competent evidence *before the Board* to support that finding, any error of the trial court in taking judicial notice of those matters is at most harmless error.

VI. Did the trial court err in holding that the City of Lenexa attempted to annex a part of the City of Olathe, contrary to K.S.A. 12-524?

The trial court, in its conclusion of law No. 14, quoted above, noted that Lenexa was attempting, by its petition in this action, to annex a part of the City of Olathe, and it then reasoned that it could not find the Board's order to be in error in denying the proposed annexation. Appellant points out that the validity of the Olathe procedures in annexing the disputed tracts is in issue in a companion case, *City of Lenexa v. City of Olathe,* Johnson County Case No. 84,833; and see *City of Lenexa v. City of Olathe,* 228 Kan. 773, 620 P.2d 1153 (1980), *rev'd on rehearing* 229 Kan. 391, 625 P.2d 423 (1981). The issue of the validity of the Olathe annexation was not properly before the court in this case, but this error does not alter our conclusion that the Board's decision was supported by substantial, competent evidence. Again, any error in this finding is harmless.

VII. Is K.S.A. 12-521 unconstitutional as violative of the due process clause of the Fourteenth Amendment?

One of the appellees attacks this statute, asserting that it violates the due process clause because it does not provide for notice to all concerned landowners when an appeal is taken to the district court. This issue is not properly before this court on appeal for the reason that it was not raised in or presented to the trial court. Ordinarily, an issue cannot be raised for the first time on appeal. *Boswell, Inc. d/b/a Reno County Adult Care Home v. Harkins,* 230 Kan. 610, 613, 640 P.2d 1202 (1982). We see no reason to make an exception to the rule in this case. At any rate, the matter would appear to be controlled by our opinion in *State, ex rel., v. City of Overland Park,* 215 Kan. 700, 704-705, 527 P.2d 1340 (1974), where Justice Fontron, speaking for a unanimous court, said:

"Many years ago, in *Callen v. Junction City,* 43 Kan. 627, 23 Pac. 652, this court expressed itself this way on the subject:

" '. . . [T]he change of the *status* of a tract of land from a farm to city lots, by the exercise of a power granted cities to extend their limits, is not a deprivation of property without due process of law. . . .' (p. 630.)

"The *Callen* case reflects the generally prevailing rule in this country. In an annotation appearing in 64 A.L.R., Municipal Boundaries—Power to Extend, p. 1335, *et seq.*, numerous authorities are cited at pages 1358 to 1364 supporting the proposition that acts taken extending municipal boundaries are not unconstitutional in the sense of depriving the people in the areas annexed of their property without due process of law.

"Perhaps as clear a statement of this point of view as may be found was expressed by the Kentucky Supreme Court in *Lenox Land Co. v. City of Oakdale*, 137 Ky. 484, 489, 125 S.W. 1089, 1091:

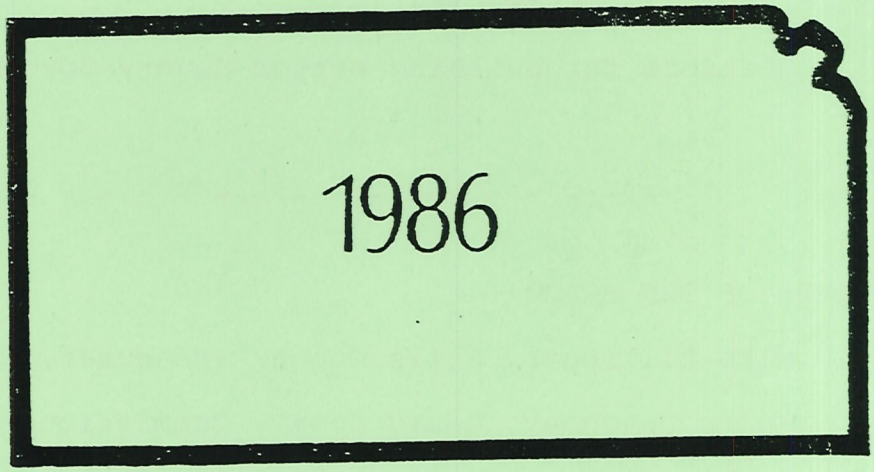
" '. . . [I]t has been repeatedly announced, by this court and others, that the question of due process of law or the taking of property without compensation has no application to the annexation of territory to a municipality. The extension or reduction of the boundaries of a city or town is held, without exception, to be purely a political matter, entirely within the power of the Legislature of the state to regulate. The established doctrine is that the state Legislature has the unlimited right to pass such laws for the annexation of territory to municipal corporations as in its judgment will best accomplish the desired end, and that a different method may be provided for each class. It may, if it chooses, direct that notice shall be given personally to each individual owner of property sought to be annexed, or that notice by publication shall be given, or that notice by posting copies of the ordinance at any place shall be sufficient, or it may provide that no notice at all need be given. In short, the manner of annexation is entirely beyond the power of the courts to control if the provisions of the statute are followed. . . .' (p. 489.)"

We have carefully considered each of the issues raised, whether or not specifically addressed in this opinion, and we find no reversible error.

The judgment is affirmed.

KANSAS

County Platform



1986

Kansas Association of Counties

(Attachment XI) S. 46
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Kansas Association of Counties

Serving Kansas Counties

Suite D, 112 West Seventh Street, Topeka, Kansas 66603 Phone 913 233-2271

1985 - 1986

OFFICIAL STATEMENT OF POLICY

This Statement of Policy was adopted by conference action at the annual Kansas Association of Counties meeting in Wichita on the 19th day of November, 1985. It is the means through which the counties of Kansas make known their common aims and purposes and move together for the improvement of local government.

This Statement of Policy represents the foundation upon which the counties will build their 1986 State Legislative Program. It does not attempt to set forth the counties position on many of the specific bills which may be considered by the Legislature during the coming session. However, it does set forth basic principles and policies which will serve as a guide for action by legislative committees and county officials.

. . A Platform for building better County Government in Kansas . .

- -

PROPOSED 1986 COUNTY PLATFORM

We commend the Legislature for its courage in taking positive action in facing the financial needs of our state and local county governments and express our sincere appreciation. We offer full dedication and cooperation in your further efforts to serve our constituents/taxpayers with research information, public relations and good will. We request that you give consideration to the following in your 1986 deliberations.

1. **BANK SECURITY** - We request that all public funds of local governments be one hundred percent (100%) secured at all times by repealing K.S.A. 9-1403 which presently exempts financial institutions from the security requirement of K.S.A. 9-1402 during peak periods.

2. **PROPERTY TAXATION AND REAPPRAISAL -**

   (a) We pledge a dedicated and cooperative effort to bring the statewide reappraisal to a fair and accurate conclusion and request that the state finance seventy-five percent (75%) of the cost.

   (b) We support legislation allowing County Commissioners the option to appoint an Advisory Hearing Committee for the purpose of hearing appeals pertaining to reappraisal. The Board of Equalization shall retain the final approval authority on all decisions of such an Advisory Hearing Committee.

3. **FINANCE AND TAXATION** - To assist counties in maintaining a stable financial base, we recommend that all existing special levying authority be extended until the statewide reappraisal is completed. (Amend K.S.A. 79-1973 and all related statutes.)

4. **ANNEXATION -**

   (a) The vast majority of annexations take place with no controversy and are, in fact, requested. In those few cases where controversy arises, the most common objection of property owners being annexed is the lack of access to a representative entity which has authority to hear and arbitrate the dispute between the city and the owners of property proposed for annexation.

   We feel that House Bill 2117 prescribes a reasonable procedure whereby owners of property proposed for annexation may petition the Board of County Commissioners for a hearing before the Board to determine whether or not the annexation should be allowed to proceed. Only those annexations disputed by petition would be decided by the County Commission.

The Board of County Commissioners is the logical body to assume this responsibility for several reasons:

(1) Cities are created by acts of the Board of County Commissioners. It is a logical and consistent extension of this function to allow the Board authority to arbitrate disputes arising from the growth of the cities which they created.

(2) The Board of County Commissioners is the only locally elected body which is representative of all taxpayers of the county regardless of their residence inside or outside of city boundaries.

(3) The County Commission is the locally elected body with the greatest potential for complete objectivity, since they have no vested interest in either encouraging or discouraging annexation (i.e. annexation does not add to or erode the county's tax base).

(b) We request that cities be required to annex roadways when adjacent property on both sides have been annexed.

(c) We oppose any legislative efforts to authorize the practice of pyramidal annexation by cities.

(d) We oppose the establishment of a boundary commission.

5. **LIABILITY INSURANCE COSTS** - We support a legislative interim study in 1986 of the increasing cost to local governments of all types of liability insurance coverage.

6. **IMMUNITY FOR COMMUNITY SERVICE** - Counties believe the legislature should provide opportunities for the use of creative sentencing options by district courts, including the use of court ordered community service. The legislature should extend tort and workmen's compensation immunity to local governments which operate community service programs.

7. **COMMUNITY COLLEGE TUITION PAYMENTS** - We request to pay tuition only on verified completion of prescribed courses in our community colleges. In addition, we strongly oppose legislative efforts to eliminate the current limitation of 64 credit hours (72 credit hours for nursing students) relative to county out-district tuition aid payments.

8. **EXEMPTION OF ELECTION BOARD WORKERS** - We request that the State Unemployment Act be amended to exempt election board workers from the Act.

9. **PROPERTY TAX CALENDAR** -

   (a) We support elimination of the requirement for the filing of an abstract of assessment roll on July 1 with the Director of Property Valuation.

   (b) We also support continued legislative consideration of changes in the statutory deadlines in the property tax calendar that eventually will allow the use of the most complete valuation information available in the preparation of local government budgets.

10. **TRANSIENT MERCHANTS** - We support the repeal of the Transient Merchants Licensing Act.

11. **MORTGAGE REGISTRATION TAX** - The mortgage registration tax is a valuable and fair type of intangibles tax. We oppose legislative efforts to limit the applicability of the mortgage registration tax to mortgage instruments as currently defined in state law.

12. **REAL ESTATE CONTRACTS** - Due to increasing reliance on real estate contracts (contracts for deed), we support legislative action requiring that such contracts be recorded in the office of the county register of deeds for any executory contract for one year or more.

13. **REVENUE ANTICIPATION NOTES** - We support the granting of authority to issue revenue anticipation notes by local government.

14. **EXTENSION COUNCIL BUDGETS** - We support an addition in funding from State General Revenue Funds for County Extension Councils in their joint relationship with the Division of Extension, KSU, to reduce the dependency on the property tax to finance the County Extension Councils' budgets. K.S.A. 2-610 should be amended to provide for the approval of the Extension Council Budget by a majority of the County Governing Board.

15. **COURT FINANCING** - We urge legislative approval of a fine-sharing arrangement that would require all fines paid for violations of county home rule resolutions that do not parallel state laws be deposited in the county general fund.

16. **COURTS** - We support the activities of the Judicial Council in its study of the effects of court unification and request further review of statutes relating to court fines and fees. Additional funding is needed at the county level.

17. **MENTAL HEALTH** - We urgently request and recommend that the state aid for community mental health centers be increased to fifty percent (50%) as provided by the 1974 Legislature in KSA 65-4401 et seq.

18. **COUNTY HOME RULE** - Kansas County governments strongly endorsed the enactment in 1974 of the county home rule act, K.S.A. 19-101 et seg. As a matter of principle, we strongly oppose any legislative action that would further dilute county home rule powers. The Legislature should resist adding any new exceptions to county home rule powers contained in K.S.A. Supp. 19-101a, and all existing execptions should be reviewed and considered for possible repeal. The Legislature should give serious consideration to the approval and submission to the voters of a constitutional amendment granting home rule powers to counties similar to those held by Kansas cities.

19. **COUNTY BOARD OF EQUALIZATION** - We oppose the erosion of the role of the county governing board as a board of equalization.

20. **EXEMPTIONS** - We strongly oppose further erosion of the property tax base by the granting of additional constitutional or statutory exemptions. We also support legislation that would "sunset" or require legislative action every five (5) years to renew all existing statutory exemptions. We oppose the passage of legislations without the opportunity for public input at committee hearings.

21. **STATE MANDATES** - We strongly oppose the imposition of additional mandatory functions or activities, on local governments by the state unless the state also provides funds other than ad valorem taxes to finance such functions.

22. **RETIREMENT BENEFITS** - Whereas current home rule authority exists to provide for county law enforcement and fire department personnel to be covered by the Kansas Police and Firemen's Retirement System we oppose all state mandates for this change in retirement coverage.

23. **FINANCE AND TAXATION** - We support the home rule local option tax lid approach, whereby the elected board can adjust the state-imposed tax lid according to local conditions, subject to voter petition for a referendum.

24. **REGIONAL DETENTION FACILITIES** - We urge the continued study of the concept of state funded regional detention facilities.

25. **CODIFICATION OF STATUTES** - We continue to support the codification and clarification of outdated and obsolete statutes including fence laws and revenue sources relating to townships, cemetery districts and drainage districts.

sought to be annexed by only the width of such highway, railway or watercourse.

(e) "Platted" means a tract mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

(f) ~~"Agricultural purposes" as applied to the use of land means the planting, cultivation and harvesting of crops and/or raising and feeding of livestock for profit.~~ *"Land devoted to agricultural use" means land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.*

Sec. 2. K.S.A. 12-520 is hereby amended to read as follows: 12-520. Except as otherwise ~~hereinafter~~ provided *by section 4 or K.S.A. 12-520c, and amendments thereto*, the governing body of any city ~~may~~ by ordinance *may* annex land to such city if any one or more of the following conditions exist:

(a) The land is platted, and some part of such land adjoins the city.

(b) The land is owned by or held in trust for the city or any agency thereof.

(c) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county which has primary use as a county-owned and operated airport, or other aviation related activity, without the express permission of the board of county

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SUGGESTED RECOMMENDATIONS FOR CHANGES

Rep. Nancy Brown - January 22, 1986
(to go with testimony before Senate
Local Government - January 21, 1986)

(g) "Manifest injury" means the imposition of material or substantial burdens upon owners of land without accompanying material or substantial compensating benefits.

(Attachment XII) S.46
1/22/86

~~(f)~~ *(g)* Any resolution, adopted pursuant to this section, which includes territory subsequently incorporated pursuant to K.S.A. 15-115 *et seq.*, and amendments thereto, shall be invalid.

New Sec. 4. (a) No land shall be annexed pursuant to K.S.A. 12-520, and amendments thereto, unless approved by ~~a boundary commission~~ the board of county commissioners if, within 30 days following the conclusion of the public hearing required by K.S.A. 12-520a, and amendments thereto, a petition protesting the annexation is filed with the county clerk. The petition shall be signed by the owners of at least 51% of the acreage of the land within the area proposed to be annexed or by at least 51% of the ~~landowners~~ owners of land in such area. The petition shall: (1) Be addressed to the board of county commissioners in which the land sought to be annexed is located; (2) contain the names of property owners within the area sought to be annexed, including a general description of the boundaries of their property; (3) request that ~~a boundary commission be appointed~~ the board call and hold a hearing to consider the advisability of the annexation. ~~Upon certification of the petition by the county clerk, the clerk immediately shall notify the governing body of the annexing city that a sufficient petition has been filed and a boundary commission shall be appointed as provided by subsection (b).~~ If the area to be annexed is located in more than one county, the petition shall be filed with the clerk of the county in which there is the greater number of landowners protesting the annexation.

~~(b) The boundary commission shall be composed of five members: (1) The board of county commissioners shall appoint two members of the board of county commissioners to serve on the boundary commission; the county commissioner whose district includes the area to be annexed is located shall be one of the county commissioners appointed to the boundary commission. If the area to be annexed is located in more than one county, a commissioner from each county shall be appointed to the boundary commission; (2) the governing body of the city shall appoint two members of the governing body of the annexing city to serve on the boundary commission; (3) an impartial fifth member of the boundary commission, who shall be the chairperson of the commission, shall be selected by the four other~~

members. If the fifth member cannot be agreed upon by the other four members within five days, the judge of the district court in the area to be annexed shall appoint the fifth member. The boundary commission shall be appointed within 14 days of the certification of the petition by the county clerk.

(c) The boundary commission shall hold a public hearing on the proposed annexation. The date of the hearing shall be held within 14 days of the creation of the boundary commission. Unless the boundary commission determines adequate facilities are not available, the public hearing shall be held at a site located in or as near as possible to the area proposed to be annexed. The hearing shall be held at a time which is most convenient for the greatest number of interested persons. Notice of the time and place of the hearing shall be published by the county clerk in the official newspaper of the city at least once not less than one week and not more than two weeks preceding the date fixed for the public hearing. Notice also shall be mailed by certified mail at least 10 days prior to the hearing to each owner of land proposed to be annexed, the annexing city and to the entities listed in subsection (d) of K.S.A. 12-520a, and amendments thereto.

(b) (d) At the hearing, time shall be set aside for the opponents and proponents of the annexation to be heard. All those wishing to be heard and to present documentary evidence or briefs shall be allowed to do so. The hearing may be adjourned from time to time, but the decision of the boundary commission shall be rendered within 14 days of the final adjournment of the hearing at which testimony was presented.

(c) (e) The action of the boundary commission shall be quasi-judicial in nature. As such, the commission shall make specific written findings of fact and conclusions determining whether or not it is in the best interests of all involved to approve the annexation. The findings and conclusions shall be based upon the preponderance of evidence presented to the commission. In consideration of the advisability of the annexation, the commission shall determine the extent to which the following criteria may effect the land to be annexed, the residents of the land to be

board

A stenographic record of the public hearing shall be made, and all documentary evidence, exhibits and briefs received shall be preserved and made a part of the record.

board of county commissioners

board

that such annexation or the annexation of a lesser amount of land will cause no manifest injury to the landowners and

board

determining that no manifest injury will result, the board shall examine

landowners

annexed, other governmental or quasi-governmental units providing services to the land to be annexed, the utilities providing services to the land to be annexed, and any other such public or private person, firm or corporation which may be effected thereby:

(1) Extent to which any of the land is devoted to agricultural use;

(2) area of platted land relative to unplatted land;

(3) topography, natural boundaries, drainage basins or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;

(4) extent and age of residential development in the land to be annexed and adjacent land within the city's boundaries;

(5) present and projected population and population density of the area proposed to be annexed during the next five years;

(6) the extent of past business, commercial and industrial development in the area;

(7) the present cost, methods and adequacy of governmental services and regulatory controls in the area;

(8) the proposed cost, extent and necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend 100% of such services;

(9) tax impact upon property in the area;

(10) extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services;

(11) effect of the proposed annexation on adjacent areas, including but not limited to other cities, fire, sewer and water districts, improvement districts, townships or industrial districts;

(12) existing petition for incorporation of the area as a new city or special district government;

(13) degree of opposition by owners of the land;

(14) effect of annexation upon the utilities providing services to the land;

(15) degree to which the city has provided governmental services to areas previously annexed;

(16) availability of other more suitable land for annexation.

(d) ~~(f)~~ If a majority of the members of the ~~boundary commission conclude that the annexation should be allowed, the commission~~ board of county commissioners determine no manifest injury will result and deems it as being in the best interests of all involved, it shall approve the annexation by resolution and the city may proceed to annex the land. All decisions and the specific reasons therefor shall be recorded in the journal of the proceedings of the ~~commission~~ board. A copy of the order and the reasons therefor shall be sent to the governing body of the city and a copy shall be filed with the county clerk and shall be open for public inspection.

~~(g)~~ If the annexation is disapproved, the city shall not attempt to annex any portion of such land for a period of two years following the date of issuance of the resolution disapproving the annexation. Within 30 days following the issuance of any such order, any owner of land or the city aggrieved by the decision of the ~~boundary commission~~ board of county commissioners may appeal from the decision of the commission to the district court of the county in which the land is located. The appeal shall be taken in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein. The district court shall make an independent determination of the issue of manifest injury based upon the record of the public hearing of the board of county commissioners. The review of the issue of advisability shall be limited to a consideration of whether, as a matter of law, (1) the commission acted fraudently, arbitrarily or capriciously, (2) the commission's order is supported by substantial evidence, and (3) the commission's action was within the scope of its authority.

(e) ~~(h)~~ Notwithstanding any provision of this section, a city shall be authorized to annex land which adjoins the city and for which a written petition for or consent to annexation is filed with such city by the owner.

~~(i) Persons appointed to a boundary commission shall be paid subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223, and amendments thereto.~~

(j) All costs incurred during the proceedings required by this section shall be paid equally by the annexing city and the county ~~or~~ counties in which the area to be annexed is located.

New Sec. 5. Any written agreement entered into between a city and the owner of the land proposed for annexation by the city which conditions the delivery or extension of municipal water, sewer, electrical, gas or other services to the land on the consent of the owner to annexation on a later date shall be deemed to be a sufficient consent to annexation under K.S.A. 12-520, and amendments thereto, by the owner and any successors in interest. Such agreements shall be filed by the city in the