

Approved February 19, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Local Government

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

3:30 ~~xxx~~ p.m. on February 13, 1986 in room 531-N of the Capitol.

All members were present except: Senator Salisbury who was excused

Committee staff present: Lila McClaflin, Theresa Kiernan

Conferees appearing before the committee:

The Committee reviewed the changes that had been made in the 15 items that the Board of County Commissioners would look at in determining manifest injury. (Attachment I)

New Section 12

Senator Bogina made a motion to insert in this section the language "be approved by affirmative action." Senator Mulich seconded the motion.

The motion was opposed by several members as they felt it is wrong as a matter of philosophy for the State Legislature to set or change the rules of the game when the game is over. It's the wrong message to send out over the State. There was discussion whether the retroactive clause is constitutional. It was stated the Legislature had used it several years ago when Fort Riley had been annexed.

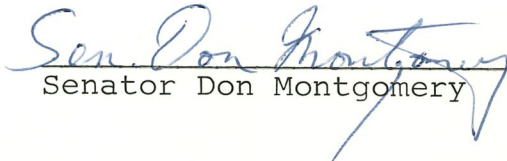
The vote was called for and the motion carried.

Vice-Chairman Langworthy expressed concern that she did not think the Committee had looked at the amendments offered by the League. The Chairman stated he thought these had been incorporated into the bill. The Committee looked at the amendments again but no changes were made.

Senator Gaines moved to report the bill favorably as amended. Senator Allen seconded the motion. Discussion followed. Senator Daniels wanted to expand the scope of review, she made a substitute motion to conceptually allow more to be looked at if litigation is brought other than just the authority and procedure. Motion died for lack of a second.

The original motion was called for and the motion carried.

Meeting adjourned until February 14, at 9:00 a.m.



Senator Don Montgomery

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INSERT #1

Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (a) "Tract" means a single unit of real property under one ownership, outside the corporate limits of a city, which may be platted and/or or unplatted, title to which is publicly or privately held by an owner as defined by subsection (c) herein.

(b) "Land" means ~~a-part-of-a-tract-or~~ one or more tracts.

(c) "Owner" means the one who has record title to a tract. In the event two ~~(2)~~ or more persons have record title to a tract, "owner" shall be defined as follows:

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of ~~ten~~ ~~(10)~~ 10 years or longer and a remainderman, "owner" means both such tenant and remainderman; (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface title holder.

(d) "Adjoins" means to lie upon or touch (1) the city boundary line; or (2) a highway, railway or watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed by only the width of such highway, railway or watercourse.

(e) "Platted" means a tract or tracts 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) "Plat" means a map or drawing of a tract or tracts, filed in the office of register of deeds, showing a division or divisions thereof.

(Attachment I) S. LG
2/13/86 P.M

~~(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.~~ (g) "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.

INSERT #3

Sec. 4. K.S.A. 12-520b is hereby amended to read as follows: 12-520b. The governing body of any city proposing to annex land under the provisions of K.S.A. 12-520, and amendments thereto, shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in K.S.A. 12-520a, and amendments thereto, prepare a report setting forth such plans. The report shall include:

(a) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereof;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth ~~the plans~~ a detailed plan of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and the area proposed to be annexed at the time of annexation, ~~setting forth~~ and the estimated cost of providing such services. The plan shall state the cost impact on the residents of the city and to the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. Such statement shall also include a timetable of the plans for extending each major municipal service to the area annexed. The plan shall state the means by which the services currently provided in the area to be annexed shall be maintained at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services

which may be provided upon petition of the landowners to create a benefit district.

The preparation of a plan for the extension of services as hereinbefore required shall not be required for or as a prerequisite to the annexation of land of which all of the owners ~~of which~~ petition for or consent to such annexation in writing.

Sec. 5. K.S.A. 12-521 is hereby amended to read as follows:
12-521. (a) 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, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amendments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section. 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 the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

~~(a)~~ (b) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereto;

(3) The general land use pattern in the areas to be annexed.

~~(b)~~ (c) A statement setting forth ~~the-plans~~ a detailed plan of the city for extending to the area to be annexed each major municipal service provided to persons and property located within

the city and area proposed to be annexed at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area. Such plan shall include a timetable of the plans for the extension of major municipal service to the area proposed to be annexed. The plan shall state the means by which the services currently provided in the area to be annexed shall be maintained at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

(c) The date fixed for such public hearing shall be not less than ~~sixty-(60)~~ 60 nor more than ~~seventy--(70)~~ 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of ~~said~~ the hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published in ~~some~~ a newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of the land proposed to be annexed not more than ~~ten-(10)~~ 10 days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board ~~may~~ for good cause shown may continue ~~said~~ the hearing beyond the time specified in the notice without further publication.

(d) On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the

city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

~~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 see find and grant the annexation by order, and thereupon the city may annex the land by ordinance.~~

The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the proposed land to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determination whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental or quasi-governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

(1) Extent to which any of the area 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 area to be annexed and adjacent land within the city's boundaries;

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

(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 such services;

(9) tax impact upon property in the city and the area;

(10) extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;

(11) effect of the proposed annexation on the city and other 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 in the area;

(14) effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan;

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

(e) The board of county commissioners shall render a judgment within seven days after the hearing has been adjourned sine die. If a majority of the board of county commissioners conclude that the annexation or any part thereof should be allowed, they shall so find and grant the annexation by order;

and thereupon the city may annex the land by ordinance. Orders of the board of county commissioners denying the petition or a part thereof for annexation shall require a majority vote of the members of the board. When an order denying a petition or part thereof is issued, it shall be by resolution, which shall be sent by certified mail to the city proposing the annexation. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of ~~said~~ the board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

(f) Any owner or the city aggrieved by the decision of the board of county commissioners may appeal ~~from~~ the decision of ~~such~~ the board to the district court of the same county 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.

New Sec. 6. Before any city annexes any land pursuant to K.S.A. 12-520 or K.S.A. 12-521, and amendments thereto, the governing body of the city shall submit its resolution of intent to annex adopted pursuant to K.S.A. 12-520, and amendments thereto, or a copy of the petition submitted to the board of county commissioners pursuant to K.S.A. 12-521, and amendments thereto, to any city, county, township or joint city-county planning commission having jurisdiction over any portion of the area to be annexed. If the annexation is pursuant to K.S.A. 12-520, and amendments thereto, a copy of the resolution of intent to annex shall be submitted to the planning commission within 10 days following the adoption of the resolution by the city. If the annexation is by petition pursuant to K.S.A. 12-521, and amendments thereto, a copy of such petition shall be submitted to the planning commission within 20 days after the date on which the petition was presented to the board of county commissioners. The planning commission shall review the proposed annexation and make a finding of the compatibility or the

incompatibility of the annexation with any adopted land use or comprehensive plans applicable to the area to be annexed and the annexing city. A copy of the planning commission's findings shall be sent to the city. If the city is annexing property pursuant to K.S.A. 12-521, and amendments thereto, a copy of such findings shall be filed with the board of county commissioners at least 20 days prior to the date of the hearing. The planning commission's findings shall be available for public inspection in the office of the city clerk. The failure of a planning commission to issue its advisory report prior to the date required by this section shall not invalidate any annexation commenced under K.S.A. 12-520 or 12-521, and amendments thereto, when the annexing city has complied with the provisions of this section.

New Sec. 7. (a) Five years following the annexation of any land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, five years following the conclusion of such litigation, the board of county commissioners shall call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. The board of county commissioners shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in section 8, if the services are not provided within 2 1/2 years of the date of the board's findings.

New Sec. 8. (a) If, within 2 1/2 years following the

conclusion of the hearing required by section 7, or, where there has been litigation relating to the hearing, 2 1/2 years following the conclusion of such litigation, the city has not provided the municipal services as provided in the timetable set forth in the plan prepared in accordance with K.S.A. 12-520b or 12-521, and amendments thereto, the owner of such land may petition the board of county commissioners to exclude such land from the boundaries of the city. Within 10 days after receipt of the petition, the board shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The owner; (2) the city; (3) the township into which the property, if deannexed, would be placed; and (4) the governing body of any fire district, sewer district, water district or other special district governments which have jurisdiction over territory adjacent to the area sought to be deannexed. The notice shall be sent by certified mail no less than 21 days before the date of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. Except as provided by subsection (e), if the board finds after the hearing that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the board may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner provided in K.S.a. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the land.

(c) The county clerk shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the owner, the register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records

where the order is recorded in the register's office.

(d) Except as provided by this subsection, after the effective date of the order to exclude the land from the city, it shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of the land from the city.

(e) The board shall not order exclusion of any land if:

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of the district was blocked by the filing of a sufficient protest petition of some or all of the owners of any land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other tracts of land located within the city's boundaries; or

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such land.

(f) Any owner or the city aggrieved by the decision of the board may appeal the decision to the district court in the manner provided in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed

therein.

New Sec. 9. (a) The owner of any land in an area annexed by a city may bring an action in the district court of the county in which the land is located to compel the governing body of such city to provide the services in accordance with the service plan required by K.S.A. 12-520b or 12-521, and amendments thereto.

(b) The court shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. If the court finds that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the court shall order the city to provide such services or in lieu thereof, the court may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner provided in K.S.a. 12-523, and amendments thereto. Such land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the land.

(c) The clerk of the district court shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the city, the register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records where the order is recorded in the register's office.

(d) Except as provided by this subsection, after the effective date of the order to exclude the land from the city, it shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed the petition to compel the city to

provide such services.

(e) The court shall not order exclusion of any land if:

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of the district was blocked by the filing of a sufficient protest petition of some or all of the owners of any land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other tracts of land located within the city's boundaries; or

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such land.

(f) If the court finds that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the court shall order the city to pay all attorney's fees and court costs.

New Sec. 10. Any written agreement entered into between a city and the owner of a land proposed to be annexed 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 office of the register of deeds of the county where the property is located within 30 days after being executed by all parties.

Any such agreement executed prior to the effective date of this act shall be binding upon the owner and any successors in interest if the agreement is filed by the city in the office of the register of deeds of the county where the property is located within 180 days following the effective date of this act, however, the failure to so file any written agreement within 180 days shall not make such agreement void or otherwise unenforceable.

New Sec. 11. The governing body of any city annexing property pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, may enter into contractual agreements with the owners of land proposed to be annexed to guarantee the apportionment of the costs of improvements made in the area to be annexed between the city at large and the area to be annexed. The term of such agreements shall not exceed 10 years.

This section shall not preclude the formation of a benefit district to make such improvements upon petition by landowners in the area to be annexed.

New Sec. 12. The provisions of this act shall be applicable to any annexation made without the written consent of or petition by the landowners for which the annexing city has adopted a resolution of intent to annex if proceeding pursuant to K.S.A. 12-520, and amendments thereto, or submitted a petition to the board of county commissioners if proceeding pursuant to K.S.A. 12-521, and amendments thereto, from and after September 1, 1985.

New Sec. 13. If any part or parts of this act are held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

Sec. 13. K.S.A. 12-519, 12-520, 12-520b and 12-521 and K.S.A. 1985 Supp. 12-520a are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the Kansas register.