

Approved March 10, 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 March 6, 1986 in room 531-N of the Capitol.

All members were present except: Senator Gaines who was excused

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

Conferees appearing before the committee:

Susan Seltsam, Office of State Treasurer
Alan Alderson, Kansas County Treasurers Association
Beverly Bradley, Kansas Association of Counties

Senator Ehrlich moved to adopt the minutes of the March 5 meeting. Senator Allen seconded the motion. The motion carried.

S.B. 683 - concerning motor fuel taxes; relating to the apportionment thereof to cities and counties.

Senator Daniels had asked that the bill be introduced. She told the committee she had received messages from cities requesting the bill because counties were not processing the tax moneys out to the cities in an expeditious manner. Under the provisions of this bill payments to cities would be made within 3 working days after receipt of the moneys from the state treasurer.

Susan Seltsam, Office of State Treasurer, stated they did not oppose the bill if it were amended so the money was paid direct to the cities. It would not require extra personnel, it would only call for a computer program update.

Alan Alderson, Kansas County Treasurers Association, opposed the bill as written. Because of the varying circumstances that exist in each of the 105 counties. The county treasurers association opposes any legislatively mandated distribution period which applies to all counties. If the issue involved is the interest on the moneys while they are in the hands of the county treasurer the direct distribution by the state treasurer would save three more days interest beyond what is provided in S.B. 683. They would not oppose the state treasurers office making the distribution direct to the cities. He, also, had an attorney general opinion #85-88, which concerns the "reasonable time rule" as part of his testimony (Attachment I).

The committee discussed if there would be a penalty if the county treasurers did not get the fund distributed in 3 days. Also, if the state treasurers office would need to hire extra people to make the distribution direct. Discussion was held on amending the bill to allow the state treasurers office to make this payment direct to the cities.

Beverly Bradley, Kansas Association of Counties, stated they would not oppose the bill if it were amended in line 90, to include "(b) except as provided by subsection (c)".

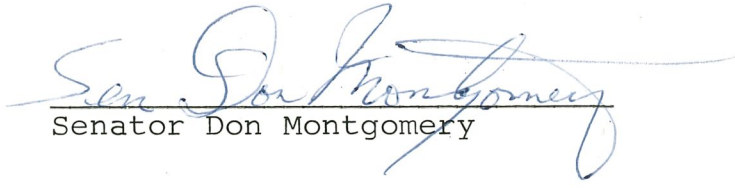
Senator Daniels moved to amend the bill to allow the state treasurers office to make the distributions direct to the cities. Senator Mulich seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:00 a.m. ~~XXX~~ on March 6, 19 86

Staff will draft the amendment and the committee will look at it at the next meeting.

The chairman announced the agenda for the next meeting, March 7, he stated the committee had a full schedule and he would appreciate it if they could start on time. Meeting adjourned at 9:50 a.m.


Senator Don Montgomery

MEMORANDUM

TO: MEMBERS OF THE SENATE LOCAL GOVERNMENT COMMITTEE
FROM: ALAN F. ALDERSON, KANSAS COUNTY TREASURERS ASSOCIATION
RE: SENATE BILL NO. 683
DATE: MARCH 6, 1986

The Kansas County Treasurers Association appears today in opposition to Senate Bill No. 683. As written, the bill would require county treasurers to distribute payments under the special city and county highway fund to cities within three working days of the receipt thereof from the state treasurer. This amendment is similar to the amendment in Senate Bill 676 which was originally scheduled for hearing today as well and has now been withdrawn due to a compromise amendment which is now being worked by the House Local Government Committee. Senate Bill No. 676 pertains to distribution of countywide retailers' sales tax, but the amendment therein would also have required a distribution within three days of receipt from the state treasurer.

Because of the varying circumstances that exist in each of the 105 counties, the County Treasurers Association opposes any legislatively-mandated distribution period which would be applicable to all counties. As you are aware, there are some counties who handle very small amounts of money at infrequent intervals and it would be very cost-ineffective to require all counties to perform distribution functions in the same manner as those counties which have computer capabilities. This statement is not to suggest, however, that it is always easy to make immediate distribution even in counties with computerized treasurer's offices.

(Attachment I) S. LG
3/6/86

Although it pertains only to the distribution of countywide retailers' sales tax revenue, I have attached a copy of Attorney General Opinion No. 85-88, which was issued at the request of the County Treasurer's Association. The gist of this opinion is that where there is no specified time for making distributions, such distributions must be made within a reasonable time following receipt by the county treasurer. The reasonableness of the time within which a county treasurer distributes such revenue is a question of fact to be ascertained in light of all facts and circumstances.

While we realize that this opinion does not go to the issue of whether there should be a specified time for distributions, current law with regard to distribution of countywide retailers' sales tax and motor vehicle fuels revenue in the special city and county highway fund may well be the only remaining distributions which have no specified time limit. In light of the fact that the House Committee on Local Government is working on an amendment which would require the distribution of countywide retailers' sales tax to be made directly by the State Treasurer, we believe the same principle should be applied to distributions under the special city and county highway fund. If the issue involved is the interest on the monies while they are in the hands of the county treasurers, the direct distribution by the state treasurer would save three more days' interest beyond what is provided in Senate Bill No. 683.

Normally, distributions which have no specified time limit are made at the same time as other distributions specified by statute. In many counties, the distributions are made on the dates specified for property tax distributions under K.S.A. 12-1678a, which occurs six times per year. While the issue to county treasurers is the additional work and expense in making

distributions at various unspecified times throughout the month, we understand the concern of cities with respect to receiving their funds in a timely fashion. We believe our suggestion concerning direct distribution from the State Treasurer resolves the concerns of both the county treasurers and the cities.

It should be understood that distributions made under K.S.A. 79-3425c, the section which is amended by this bill, are only applicable to 13 counties in the state of Kansas. You should also be aware that 43% of the funds in the special city and county highway fund are now being directly apportioned and paid to all of the cities in the state. The remaining 57% is distributed to counties and 92 counties must credit their entire share to their county road and bridge fund. The remaining 13 counties are required to divide their share between their county road and bridge fund and the cities located within their county. The distribution to each city within those 13 counties is based on the ratio of the population of that city to the population of all cities in that county.

The 43% of the special city and county highway fund paid directly to cities by the state treasurer is distributed in the same proportion that the city's population bears to the total city population of the state, with an exception in counties in which a military reservation has been annexed. It is our belief that the state treasurer could simply add the portion now distributed by the 13 counties to the distribution already made directly to cities. I am certain that the additional funds could simply be

determined through a computer program change. In light of the fact that distributions are already being made directly to cities, it would be difficult for me to understand why any city would object to further amending this bill to provide for direct distribution to the cities in the 13 counties which must make further distributions.

I would be happy to answer any questions, and if I am unable to provide you with an answer at this time, I will get you an answer at a later date.



STATE OF KANSAS

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July 26, 1985

ATTORNEY GENERAL OPINION NO. 85- 88

Alan F. Alderson
Attorney for Kansas County
Treasurer's Association
1610 SW Topeka Avenue
P.O. Box 237
Topeka, Kansas 66612

RECEIVED

JUL 31 1985

ALDERSON, ALDERSON
AND MONTGOMERY

Re: Cities and Municipalities -- General Provisions --
Apportionment of Revenue from Countywide Retailers'
Sales Tax

Synopsis: While K.S.A. 1984 Supp. 12-192 prescribes no time limit within which a county treasurer must make a distribution of countywide retailers' sales tax revenue apportioned to cities located within the county, such distribution must be made within a reasonable time following receipt by the county treasurer. The reasonableness of the time within which a county treasurer distributes such revenue is a question of fact to be ascertained in light of all facts and circumstances. Cited herein: K.S.A. 1984 Supp. 12-189, 12-192.

* * *

Dear Mr. Alderson:

On behalf of Doris Larsen, Lincoln County Treasurer and President of the Kansas County Treasurer's Association, you request our interpretation of K.S.A. 1984 Supp. 12-192. Specifically, you request our opinion as to whether there is any time limit within which a county treasurer must distribute to each city in the county its share of countywide retailers' sales tax revenue.

K.S.A. 1984 Supp. 12-189 prescribes that countywide retailers' sales tax revenue shall be distributed by the state treasurer to county treasurers at least quarterly, and we are advised that such distributions actually occur on a monthly basis. Subsection (a) of K.S.A. 1984 Supp. 12-192 sets forth the formula which county treasurers must use in apportioning countywide retailers' sales tax revenue among the county and each city located in the county, and subsection (c) thereof prescribes that "[a]ll revenue apportioned to the several cities of the county shall be paid to the respective treasurers thereof." Thus, while it is clear that it is the duty of the county treasurer to pay each city its share of sales tax revenue, neither K.S.A. 1984 Supp. 12-192 nor any other statute prescribes the period of time within which the distribution is to be made.

Under these circumstances, it is our opinion that the "reasonable time rule" is applicable. That rule is as follows:

"Where no time has been fixed for the performance of an act to be done, the law implies that performance is to be accomplished within a reasonable time."
Singer Company v. Makad, Inc., 213
Kan. 725, Syl. ¶7 (1974).

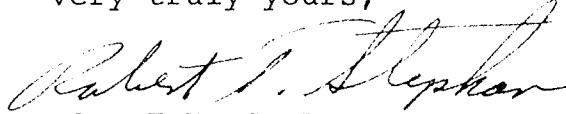
Moreover, "[w]hat constitutes a reasonable time depends on the facts and circumstances of the particular case." Id. at Syl. ¶8.

You indicate that a manual published by the League of Kansas Municipalities states that monthly distributions of countywide retailers' sales tax revenue should normally be made within two or three working days after receiving payment from the state. It may be that in most cases the distribution of sales tax revenue should occur within such a time period, and that any significant delay beyond three days would be unreasonable under the circumstances. However, we cannot state as a matter of law that the distribution must occur within three days, since the determination of what constitutes a "reasonable time" depends upon the facts of the particular case. A computer malfunction, for example, could render an otherwise unreasonable delay (7 to 10 days) acceptable on a one-time basis.

In conclusion, it is our opinion that while K.S.A. 1984 Supp. 12-192 prescribes no time limit within which a county treasurer must make a distribution of countywide retailers'

sales tax revenue apportioned to cities located within the county, such distribution must be made within a reasonable time following receipt by the county treasurer. The reasonableness of the time within which a county treasurer distributes such revenue is a question of fact to be ascertained in light of all facts and circumstances.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:crw