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 7, 1986 in room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Denny Burgess, Kansas Rural Electric Cooperatives, Inc.
Mark Sholander, Kansas City Power and Light Co.
Bill Purdue, Kansas Power and Light Gas Service Co.
Louis Stroup, Jr., Kansas Municipal Utilities, Inc., Ks. City, KS.
Jim Kaup, League of Kansas Municipalities
Don Schnaeke, Kansas Independent Oil and Gas Assn.
Walker Hendrix
Bill Bryson, Kansas Corporation Commission
Gerald Oroke, Chairman of the Board of County Commissioners, Leavenworth County

S.B. 428 - concerning cities; relating to granting of franchises following annexation.

The hearing continued from January 29, 1986.

The chairman presented an amendment worked out by several of the electric companies. The amendment provides for a scenario a city would follow when it annexes utility services (Attachment I).

Denny Burgess, Director, Legislative and Public Affairs, Kansas Electric Cooperatives, Inc. presented a letter from Al Gerstner, Manager of Great Plains Electric Cooperative, Colby, KS. the letter responded to remarks made by Mr. Jim Kaup, attached is a copy of Mr. Gerstner letter and a cover letter from Mr. Burgess (Attachment II).

Mark Sholander, Asst. General Counsel for the Kansas City Power and Light Co., stated they support the amendments to S.B. 428. These amendments would close loopholes in the current system of service territory allocations and provide for fairer compensation for utility facilities condemned either as a result of a municipal takeover of utility services or the extension of municipal services into annexed territory. (Attachment III).

Mr. Sholander responded to questions from members of the committee concerning the cost of producing their electric and the agreement of the utility companies that was worked out in 1975.

Testimony prepared by Richard Kready, Kansas Power and Light Gas Service was distributed (Attachment IV).

Bill Perdue, Kansas Power and Light Service Co., stated since the amendment had been prepared they neither supported or opposed the bill. If you do not adopt the amendments we will oppose the bill.

Louis Stroup, Jr., Kansas Municipal Utilities Inc., Kansas City, Ks., stated they opposed the amendments.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,

room 531-N, Statehouse, at 9:00 a.m./p.m. on March 7, 1986

Senator Ehrlich asked Ed Schaub, Southwestern Bell Telephone Co., if they still opposed the bill. Mr. Schaub stated the proposed amendments would take care of their concerns.

Jim Kaup, League of Kansas Muncipalities, stated they hold to their original statement of several weeks ago, and they still oppose the bill. The water districts should be separated out and S.B. 677 should be worked.

Senator Mulich suggested that the committee look at S.B. 677. S.B. 677 and S.B. 428 will be rereferred and will be considered at a later date.

The chairman called attention to S.B. 678. S.B. 678 - relating to counties; concerning county home rule powers; prescribing certain limitations thereon.

Senator Ehrlich stated the bill needed to be amended on line 105.

Senator Gaines explained to the committee why the bill had been introduced and he introduced Donald Schnaeke, Kansas Independent Oil and Gas Assn.

Mr. Schnaeke stated his association has filed a brief in support of the operators in Leavenworth County. His written testimony and a copy of the brief are attached to these minutes (Attachment V).

Walter Hendrix stated he supported the bill and Mr. Schnaeke's remarks.

Bill Bryson, Kansas Corporation Commission, stated inconsistant regulations in counties would cause them concern and he knew of know other county with drilling fees being assessed at this time.

The chairman referred to S.B. 683, a balloon of the amendments maded by the committee on March 6th was presented, a correction was made on page 3 (Attachment VI).

Senator Gaines moved to adopt the amendment as presented with the correction on page 3. Senator Allen seconded the motion. The motion carried. Senator Bogina moved to pass the bill as amended. Senator Ehrlich seconded the motion. The motion carried.

The committee referred back to S.B. 678.

Geraold Oroke, Chairman, Leavenworth County Commissioners, stated they oppose the bill. He stated they believe counties should have the same home rule power as cities. Until we started the permit system we had oil tanks setting on the edge of roads. They had one bridge, in the county, that collapsed, which could probably be blamed on the oil industry. We have had continuing problems that can be placed entirely on the oil and gas industry. The money goes to the general fund of the county. The state should not enfringe on county issues. The Leavenworth County Commissioners submitted a statement adopted by the 1986 county platform. (Attachment VII). Mr. Oroke stated they oppose any legislative action that would dilute county home rule power.

Hearings on S.B. 678 will continue at the next meeting, which will be at 9:00 a.m., on March 10. The meeting adjourned at 10:05 a.m.

Senator Don Montgomery

Date: March 7, 1986

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

| NAME | ORGANIZATION | ADDRESS |
|---|---|---|
| Denny Burgess | KEC | Topeka |
| Lester Murphy | KEC | Topeka |
| Roy D. Shenkel | K.C.P.L. | Shawnee |
| Randy Burleson | Empire | Columbus |
| Timothy M. Herken | Leavenworth County | Leavenworth |
| Ronald E. Bacon | " " | " |
| Don Schnacke | KIOGA | Topeka |
| Gerald D. Oroke | Leavenworth County | Leavenworth, KS |
| BILL PERDUE | KPL Gas Service | TOPEKA |
| MARK SHOLANDER | KCPL | KANSAS City, Mo. |
| Bill Bryson | KCC | Topeka |
| Shelby Smith | Slawson | Wichita |
| B. Baily | KCC | Topeka |
| Fred Allen | KAC | Topeka |
| WALTER DUNN | EKOGA | Topeka |
| Jim Kaup | League of Municipalities | Topeka |
| Chip Wheelen | Legis. Policy Group | Topeka |
| Susan Seltsam | Off of St Treas | Topeka |
| Gil Hanson | KMEA | Mission |
| Gerry Ray | Jo Co Comm | Olathe |
| Ed Schaub | Southwestern Bell Tel. Co | Topeka |
| Jack Montgomery | Gov. - Policy | Topeka |
| John Spangard | Budget - Gov | Topeka |
| Louis Stroup, Jr | Ks municipal Utilities Inc | [illegible] |
| Kirby L. Stegman | DoB | Mayetta |

SUBJ: Amendments to Senate Bill No. 428

The amendments which we have drafted to Senate Bill No. 428 would provide for the following scenario when a city annexes.

When a city annexes an area providers of services have the option of requesting a franchise to continue providing service in the annexed area to current customers and other customers which request services in the annexed portion of the city. Under the statute the city would have 180 days to grant a franchise on reasonable terms and conditions to the service providers. Thus, the service provider would be allowed to continue serving in the annexed area unless the franchise ordinance would be submitted to a popular vote and the citizens of the city would refuse to ratify the ordinance. The procedure allowing for this would require that 20% of the qualified electors in the city would cause a petition to be presented asking that the franchise ordinance be submitted to popular vote. SB 428 requires that any election for adoption of franchise must be called within 200 days of the effective date of annexation.

In the event that the franchise ordinance is refused by the citizens in the community, SB 428 provides that the person, firm or corporation which loses the right to provide services in the annexed area shall be compensated for its loss by the city. The manner provided for appraisal and appeal to the courts of an appraisers award shall be the same as that provided for purchase of utility plant under existing law K.S.A. 12-811. However, the compensation which will be provided will follow the same measure of damages as used in the Kansas Emminent Domain Procedure Act. In other words, the value of the loss shall include property and property rights and consequential and severance damages to compensate for the reduction in value of the remaining system or property of the person, firm or corporation then providing services in the annexed area.

(Attachment I) S. LG
3/7/86

PROPOSED AMENDMENTS TO SENATE BILL NO. 428

"AN ACT concerning cities; relating to granting of franchises following annexation."

Be amended:

In the title, in line 19, by adding the following: ", amending K.S.A. 12-527, K.S.A. 12-811, K.S.A. 66-1,174, and K.S.A. 66-1,176, and repealing the existing sections."

By striking Section 1 in its entirety and adding new Section 1 to read as follows:

"Section 1. K.S.A. 12-527 is hereby amended to read as follows: 12-527. Whenever a city shall annex lands located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., the governing body of the city shall not furnish, make available, render or extend water service to customers in the annexed area served by a rural water district which requests a franchise from the city within sixty (60) days from the date of annexation. If an agreement cannot be reached concerning the terms and conditions of the franchise and its renewal, or if the franchise ordinance shall fail upon submission to a popular vote, the matter shall be submitted to the district court to determine the reasonableness of the terms and conditions of the franchise ordinance.

Ref 12-001

(b) Whenever a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., fails to request a franchise within sixty (60) days of the date of annexation, title to all facilities used for the transportation or utilization of water belonging to the water district shall vest in or become the property of the city upon payment by the city to the water district of the value of such property, as agreed by the governing body of the city and the board of directors of the district, or if such agreement is not made, then as determined by the city: Provided, That the board of directors of any such district may bring an action in the district court to determine the reasonableness of the amount of compensation fixed and determined by any such city. The governing body of the city and board of directors of the district may provide, on such terms as may be agreed, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to customers outside the city. In addition to compensation for such physical facilities the city ~~may~~ shall pay to the water district all severance and consequential damages which result from the purchase of the physical facilities and loss of service rights in the area annexed by the city, including an amount equal to that portion of outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city.

By adding new Section 2 to read as follows:

"Section 2. K.S.A. 12-811 is hereby amended to read as follows: 12-811. In any city wherein the franchise or service rights of a corporation supplying water, natural or artificial gas, electric light or power, heat, or operating a street railway, ~~has~~ have expired or will expire before the completion of the proceedings contemplated by this section, unless an earlier date is fixed by the franchise or applicable law, the governing body may by resolution declare it necessary and for the interest of such city to acquire control and operate any such plant. Upon the passage of such resolution an application may be presented in writing to the district court of the county in which such city is located, which shall set forth the action of the said city relative thereto, and a copy of the resolution so passed by the city, and praying for the appointment of commissioners to ascertain and determine the value of such plant.

Thereupon a time shall be fixed for the hearing thereof, of which either at least ten days' notice shall be given in writing, or at least thirty days' notice shall be given by publication once in the official city paper, to the person, company or corporation owning said plant and to all persons having or claiming liens on such property: Provided, That publication in the city paper shall not be made until an affidavit has been filed showing that actual service of notice cannot be made and that a diligent effort has been made to obtain such service, and said court shall make an order granting such application, and provide for the appointment and selection of three commissioners, one of whom shall be selected by the city, and one by the person, company, or corporation owning such plant, and the third shall be designated by the judge of the court, who shall be an expert engineer; and the said commissioners shall take an oath to faithfully, honestly and to the best of their skill and ability, appraise and ascertain the fair cash value of said plant and the appurtenances thereunto belonging or in any way appertaining to same~~; but in the determination of such value said commissioners shall not take into account the value of the franchise or contract given or granted by said city to such person, company or corporation.~~ and all severance and consequential damages which result from the purchase of the plant and loss of franchise or service rights.

The said commissioners shall carefully examine said plant and may examine experts and persons familiar with the cost, construction and reproduction cost of such plant, and resort to any other means by which they may arrive at the value thereof, and the city or the person, company or corporation owning such plant may produce such testimony before said commissioners as

in their judgment seems necessary and desirable. Said commissioners shall make their report in writing under oath and file the same with the clerk of the district court. Each party shall have ten days from the filing of said report to file exceptions thereto. Thereupon at a time to be fixed by the court, of which each party shall have ten days' notice in writing, a hearing shall be had upon the said report and the exceptions thereto, and the court thereupon shall confirm, reject or modify said report, and its decision therein shall be a final order from which an appeal may be taken to the supreme court. If any city by a majority vote of the electors voting upon the proposition at an election called and held according to law shall elect to take the property at the amount so ascertained, the governing body is hereby authorized to enact a proper ordinance providing for the issue of bonds according to law to be sold and the proceeds thereof used for the purchase of such plant.

If the city elects to pay the award of said commissioners as approved by the district court it may do so at any time within six months from the date of final order of the district court on the report of the commissioners if no appeal to the supreme court be taken, or from the final judgment in case thereafter an appeal is determined, by paying the amount of the award to the clerk of the district court, and thereupon the title, right and possession thereof. The court shall make all orders necessary to protect such city in the possession of the property and plant. When the purchase money is paid into court for such plant, it shall be paid out only upon the order of the court. If there area any liens or encumbrances upon such plant, the nature and extent thereof shall be ascertained by the court after fixing a time for the hearing, of which all parties in interest shall have sufficient notice. The ascertained liens and encumbrances shall first be paid out of the said fund and the balance to the person, company or corporation owning such plant.

By adding new Section 3 to read as follows:

"Section 3. K.S.A. 66-1,174 is hereby amended to read as follows: 66-1,174. ~~A municipally-owned or operated~~ Every retail electric supplier shall be subject to commission jurisdiction ~~as a public utility~~ for purposes of administering this act. ~~, as defined in K.S.A. 66-104, with respect to all operations within its certified territory extending more than three (3) miles beyond its corporate limits. A municipal retail electric supplier shall be subject to regulation by the commission in matters relating to the right to serve in the territory within three (3) miles of the corporate city boundary, except that the commission shall have no jurisdiction concerning such retail electric supplier within its corporate limits.~~

By adding new Section 4 to read as follows:

"Section 4. K.S.A. 66-1,176 shall be amended as follows: 66-1,176. (a) Whenever any city which is a municipally-owned or operated retail electric supplier shall annex any land the governing body of the city shall not furnish, make available, render or extend retail electric service in the annexed area, certified to another retail electric supplier which requests a franchise within sixty (60) days from the date of annexation. The governing body of the city shall not refuse or neglect to grant or renew a franchise upon reasonable terms and conditions, upon the request of a retail electric supplier certified to provide service in an annexed area. If an agreement cannot be reached concerning the terms and conditions of the franchise and its renewal or if the franchise ordinance shall fail upon submission to a popular vote, the matter shall be submitted to the state corporation commission for resolution in the same manner as provided for under K.S.A. 66-133.

Ref 12-2001

(b) All rights of a retail electric supplier to provide electric service in an area annexed by a city which is not a municipally-owned or operated retail electric supplier shall terminate one hundred eighty (180) days from the date of annexation, unless said electric supplier is then holding a valid franchise for services in said area granted by the annexing city. Said period of one hundred eighty (180) days shall be extended to two hundred ten (210) days from the date of annexation if a franchise is granted to said retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within said period of two hundred ten (210) days. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

By adding new Section 5 as follows:

"Section 5. 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."

By adding new Section 6 as follows:

"Section 6. K.S.A. 12-527, K.S.A. 12-811, K.S.A. 66-1,174, and K.S.A. 66-1,176, are hereby repealed."

By renumbering Sections accordingly; on line 37 striking "2" and inserting "7".

And the bill be passed as amended.

**KANSAS ELECTRIC COOPERATIVES, INC.**

5709 WEST 21ST STREET • TOPEKA • AC 913 272 8740

MAILING ADDRESS P.O. BOX 4267 • GAGE CENTER STATION • TOPEKA, KANSAS 66604-0267

LESTER L. MURPHY, JR.
Executive Vice President

February 25, 1986

Senator Don Montgomery
Kansas Senate
Statehouse
Topeka, KS 66612

Dear Senator Montgomery:

We were quite concerned about statements made by Mr. Jim Kaup, attorney for League of Kansas Municipalities, in his letter of February 4, 1986 to the Senate Local Government Committee. As an opponent of Senate Bill No. 428, Mr. Kaup used the City of Colby, Lincoln Grain Company and Great Plains Electric Cooperative as an example.

Mr. Kaup's scenario does not, of course, include the perspective of a rural electric cooperative. Therefore, we asked Mr. Al Gerstner, Manager of Great Plains Electric Cooperative, to respond to the Committee. Mr. Gerstner's letter is attached.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Denny Burgess

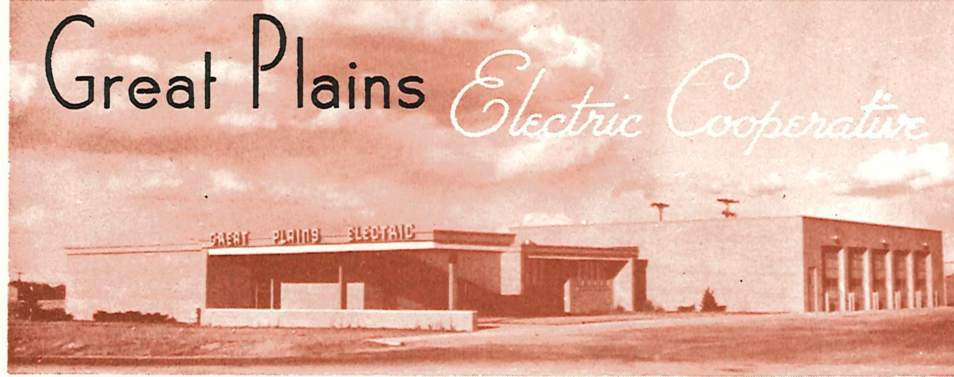
Denny Burgess
Director, Legislative and
 Public Affairs

cp

cc: Senators Langworthy, Daniels, Allen, Bogina, Ehrlich, Salisbury, Winter, Gaines, Mulich, and Steineger
Al Gerstner
Jim Kaup

(Attachment II) S. LG
3/7/86

Phone (913) 462-2722




Colby, Kansas 67701

February 17, 1986

Chairman Don Montgomery and
Members of the Senate Local
Government Committee
Capitol Building
Topeka, KS 66612

Re: SB 428

Dear Chairman Montgomery and Members of the
Senate Local Government Committee:

I am writing as a proponent of Senate Bill 428 and in response to the letter you received from Jim Kaup, attorney, League of Kansas Municipalities dated February 4, 1986. I feel compelled to point out the negative impact annexation by cities may have on the rural electric system.

As the present annexation laws stand, a city can annex almost any area and thereby annex the rural electric service area. With the present economic situation in rural America, the loss of any electric load to an electric cooperative can have a devastating affect and increase the cost of utilty service to all members of the electric cooperative. Because rural electric rates have been increasing and consumption decreasing, the ability to compete for new electric utility load is critical to the survival of many rural electric cooperatives. It is imperative that SB 428 and the present annexation laws be closely reviewed.

I also want to inform you about the "fact" situation described in Mr. Kaup's letter. He accurately refers to Lincoln Grain Company as the industry in question. Lincoln Grain Company was a new load in the service area of Great Plains Electric Cooperative, Inc. The ability to provide electric service to Lincoln Grain Company would have been a substantial contribution to the load factor of Great Plains Electric Cooperative, Inc. and without annexation, Great Plains Electric Cooperative, Inc. would have been allowed to serve Lincoln Grain Company.

While I have discussed the Lincoln Grain Company/City of Colby annexation example, I have not changed the facts. Lincoln Grain Company was not an existing elevator and the City of Colby did not "steal" a paying customer from Great Plains Cooperative, Inc. However, the impact on rural electric cooperatives by loss of service area and potential customers is no less serious than the loss of an existing customer.

During the negotiation and construction stages of Lincoln Grain Company, Jack Heaton, city manager, and James Whitney, city power director, came to my office at Great Plains Electric Cooperative, Inc. and informed me that the city would serve the load for Lincoln Grain Company even though it was in the Great Plains Electric Cooperative, Inc. service area. I was informed that because the city had the right to annex the land and because the city floated industrial revenue bonds, the city would provide electric service to Lincoln Grain Company.

I would also like to point out that this was a duplication of service. Great Plains Electric Cooperative, Inc. had a three phase line within one quarter to one-half mile of the site for Lincoln Grain Company. That three phase line was sufficient to provide the electric service needed by simply extending the service to the site of Lincoln Grain Company. The city of Colby did not have electric utility service nearby and had to build a substation and one and one-half miles of three phase line.

Great Plains Electric Cooperative, Inc. recognizes that Lincoln Grain Company is an asset to the community. The facilities benefit the area as a whole and there has been some slight increase in crop sales prices to area farmers. However, Mr. Kaup is not entirely accurate in his explanation of the benefit provided to the region by Lincoln Grain Company. Instead of a ten cent price differential as was often discussed in the construction stages for Lincoln Grain Company, the differential is often sometimes no more than two cents. Additionally, Lincoln Grain Company does not buy corn. It does purchase wheat and because of its exceptionally good contract with the railroad, pays more for wheat than local elevators.

Great Plains Electric Cooperative, Inc. does not have available to it those methods and tools available to municipal governments in order to effectively compete for electric load. Great Plains does not have the ability to provide industrial revenue bonds. Great Plains does not have the ability to increase its service

area. Great Plains simply has no way to protect its service area from annexation by municipalities. The ability to provide electric service to industries such as Lincoln Grain Company would improve the load factor on our system and thereby benefit all members. Every consumer a rural electric cooperative loses, increases the cost for the remainder of the consumers. While Great Plains Electric Cooperative, Inc. has not lost customers to the city of Colby, Great Plains does need to protect its service territory. The Great Plains Electric Cooperative, Inc. service territory has always been rural America and that territory should be served by rural electric cooperatives.

It is my hope that this letter has explained to you the difficulty faced by rural electric cooperatives such as Great Plains when they are faced with the loss of load or service area by the annexation of municipalities. I simply ask that you closely review the present annexation laws and SB 428 and keep in mind the severe impact faced by rural electric cooperatives when they lose a portion of their service area.

I appreciate your time and consideration and if I may answer any questions or provide additional information I am most happy to do so.

Very truly yours,

Alfred Gerstner
Manager

AG/kll

COMMENTS OF KANSAS CITY POWER & LIGHT COMPANY
IN SUPPORT OF PROPOSED AMENDMENTS TO
SENATE BILL NO. 428

Mr. Chairman and members of the Committee, my name is Mark Sholander, and I am Assistant General Counsel for the Kansas City Power & Light Company. I am speaking here today on behalf of KCPL to express its support of the proposed amendments to Senate Bill No. 428. KCPL supports the proposed amendments (in the new Sections 3 and 4) because they would close a loophole in the current system of allocating service territories among the suppliers of electric utility services in the State of Kansas. In addition, the proposed amendments (in the new Section 2) would provide for much fairer compensation for any utility facilities condemned pursuant to K.S.A. 12-811 and the proposed amended K.S.A. 66-1,176.

K.S.A. 66-1,171 establishes as the public policy of the State of Kansas the "division of the state into territories within which retail electric suppliers are to provide the retail electric service" so as to avoid wasteful duplication of electric facilities and minimize disputes between retail electric suppliers. Pursuant to that policy, K.S.A. 66-1,172 provides for the division of Kansas into electric service territories, including areas served by municipal retail electric suppliers, within which only one supplier shall provide retail service "and any such territory. . .shall be certified to such retail electric supplier by the commission and such area shall be provided retail electric service exclusively by such supplier."

Unfortunately, there is a serious loophole in this system of service territory allocation. Although municipally owned electric

(Attachment III) S. LG
3/7/86

systems are specifically included in this territorial allocation, the current K.S.A. 66-1,174 makes it clear that the Kansas State Corporation Commission does not have any jurisdiction over the retail electric service provided by a municipality within its corporate limits. Furthermore, the current K.S.A. 66-1,176 provides that "all rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate one hundred eighty (180) days from the date of annexation, unless said electric supplier is then holding a valid franchise for services in said area granted by the annexing city." Thus, although municipal electric suppliers are specifically included within the current system of service territory allocation, municipalities can evade its clear intent and purpose merely by the device of annexing the area within which the municipality desires to provide service.

For several reasons, KCPL believes that this loophole should be closed by the adoption of the proposed amendments to Senate Bill No. 428 contained in the new Sections 3 and 4. First, annexations for the purpose of extending municipal retail electric service lead to the very wasteful duplication of facilities and disputes between retail electric suppliers the system of territorial allocation was intended to eliminate. Second, such annexations can be very harmful to the remaining customers of the utility which loses the annexed service territory because it is they who will ultimately be required to pay for the consequences resulting from that loss of business.

Finally, annexations for the purpose of extending municipally provided electric service are inherently unfair and are not in the public interest. They are unfair because municipal electric

systems have an inherent competitive advantage over investor-owned utilities due to their tax exempt status. Municipal property used for utility purposes is exempt from property taxes; income earned by municipal electric systems is exempt from both federal and state income taxes; and municipalities can more easily and more cheaply raise capital for their municipal electric systems because of the tax exempt status of the interest paid on municipal bonds. In effect, then, electric service provided by municipalities is directly subsidized by the taxpayers. It is not in the public interest to allow a tax subsidized provider of electric services to take customers away from an investor-owned provider of such services, especially when the remaining customers of that investor-owned utility will bear the financial consequences of that loss of customers. Municipal utility operations are not given tax exempt status so that they can more effectively supplant utility services being provided by others.

In addition to closing this loophole in the current system of service territory allocation, the proposed amendments to Senate Bill No. 428 (in the new Section 2) would provide for much fairer compensation for utility facilities condemned either as a result of a municipal takeover of utility services under K.S.A. 12-811 or the extension of municipal utility service into annexed territory (if approved by the Kansas State Corporation Commission under proposed amended K.S.A. 66-1,176). The compensation specified in the current K.S.A. 12-811 is extremely unfair in that it prohibits compensation for the value of the franchise itself. The proposed amendment to K.S.A. 12-811 would remedy this by requiring compensation for <u>the true losses</u> caused by the municipal takeover or annexation (if

approved by the KCC). This full compensation is required to protect the remaining customers of the utility whose property has been condemned by the municipality.

On behalf of KCPL, I thank the Committee for the opportunity of giving these comments.

Testimony Before

SENATE LOCAL GOVERNMENT COMMITTEE

Senate Bill 428
ANNEXATION - GRANTING FRANCHISES

By RICHARD D. KREADY
KPL GAS SERVICE
Director of Governmental Affairs

January 29, 1986

Mr. Chairman and Members of the Committee:

We oppose passage of Senate Bill #428 in its current form. The annexation situation has already been specifically addressed for the electric industry by the Retail Electric Suppliers Act. Provisions of that act permit the city governing body to decide if it is in the best interest of its citizens to grant a new franchise to the electric utility supplier in the newly annexed area, or if it is in the best interest of their community to be served by only one electric supplier. This decision has not always been resolved the same way. Just as the act has provided, those elected officials have made the best decision they could at that point in time, for the citizens of their community. A great deal of legislative time and effort was expended to resolve everyone's concerns about the annexation issue's relationship to the Retail Electric Suppliers Act, and we don't believe there is adequate justification to warrant disruption of those agreements at this time.

Rather than disrupt the legislative balance of the Retail Electric Suppliers Act, we believe it would be more appropriate to: 1) exempt the electric industry from these proposed changes; 2) make guidelines similar to those in the Retail Electric Suppliers Act apply to all types of utility services; or 3) address the more specific problems expressed by some utility service providers, such as adequate and timely compensation for existing facilities and/or the right of a simple majority of affected persons in the annexed territory to petition or vote on which utility will supply their future services.

(Attachment IV) S. LG
3/7/86

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297


March 7, 1986

TO: Senate Committee on Local Government

RE: SB 678

SB 678 is an amendment to the County Home Rule Act prescribing limitations on counties as it relates to the regulation of the Kansas oil and gas industry.

The problem arose in Leavenworth County last summer. I approached Senator Reilly and sought his assistance. The County refused to budge and several oil operators filed suit against the County. Our association filed a brief in support of the operators. I have attached a copy for your reference. It outlines several good legal reasons why the County cannot regulate our industry in the manner they are pursuing, including:

1) Home rule powers do not permit regulation of the oil and gas industry;
2) A county ordinance for the purpose of raising revenue is void;
3) County regulation of the oil and gas industry would lead to confusion and conflict; and
4) The County already receives ad valorem and severance taxes to be used for roads and bridges.

Our industry is being regulated by the State Corporation Commission under KSA Chapter 55 and the Department of Health and Environment under Chapter 65. The industry is assessed by an assessment that amounts to about $4 million annually that supports these state-wide regulatory programs within the two agencies.

Our industry drills and operates in 90 counties throughout Kansas under one set of regulations issued by KCC and KDH&E. The reason we supported the operators in their complaint against Leavenworth County is that we do not want or need a new level of local regulations and assessments placed on our industry. We see utter chaos of regulation requirements and assessments if this is permitted.

Leavenworth County collects considerable ad valorem taxes for its support. In 1984 they got $14 million of which $52,000 was from oil and gas properties. In 1985 their tax collections were $15.3 million of which $73,000 was from oil and gas properties - an increase of $21,000.

(Attachment V) S. LG
3/7/86

Furthermore, the Leavenworth County ad valorem real estate tax on rural property is lower than the statewide average. The median assessment-sales ratio for rural real estate in Leavenworth County is 5.81%. This low figure results in decreased revenue for Leavenworth County that they should be collecting, some of which is dedicated to their road and bridge program. The taxes collected from the oil and gas properties are at 30%, adjusted annually by the State Director of PVD. This inequitable approach to taxation in Leavenworth County, by assessing an additional $200 fee on our activities, should not be permitted as a state policy.

The County complains that oil industry vehicles are damaging their roads and bridges - the reason for the $200 fee. We contend there are regulations for over-weight vehicles that should be enforced. Any accidental damage can be covered by liability insurance carried by all operators. Assessing all operators doing business in Leavenworth County for the alleged acts of a very few is not right.

To require our industry to be assessed a special fee anticipating damage to roads and bridges does not make sense. I am sure our industry is not the only one operating in Leavenworth, Kansas that has large vehicles capable of doing damage.

At this point there is only one county out of ninety that is imposing new fees that are not being imposed in the other 89 counties. We think, as state policy, this should be prohibited and that SB 678 should be passed.

We would ask that you amend SB 678 on line 105 after the word "drilling" by adding the words "and producing".

Thank you for your consideration.

Donald P. Schnacke

DPS:pp
Attachment

IN THE FIRST JUDICIAL DISTRICT
DISTRICT COURT, LEAVENWORTH COUNTY, KANSAS

| | | |
|---|---|---|
| BILLY OIL, INC., et al., Plaintiffs, | ) | |
| v. | ) | Case No. 85 C 44 |
| THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LEAVENWORTH, KANSAS, et al., Defendants. | ) | |

MEMORANDUM OF KANSAS INDEPENDENT OIL AND GAS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' PETITION AND PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

Kansas Independent Oil and Gas Association ("KIOGA") submits this memorandum as *amicus curiae* in support of Plaintiffs' Petition and Plaintiffs' Motion For Temporary Injunction. Plaintiffs' Petition seeks to declare invalid Leavenworth County Ordinance XVIII, paragraph 21 ("the Ordinance"), and Leavenworth County Commissioners' Board Order No. 1984-15. Plaintiffs' Motion For Temporary Injunction seeks to enjoin the defendants, their agents and employees, from enforcing the Ordinance. As set forth below, the Ordinance is invalid as a matter of law and the plaintiffs requested relief should be granted.

KIOGA adopts the arguments and authorities presented by the plaintiffs in their memorandum in support of Plaintiffs' Motion For Temporary Injunction and in Plaintiffs' Supplemental Memorandum In Support Of Their Motion For Temporary Injunction.

## INTEREST OF AMICUS CURIAE

The interest of KIOGA as *amicus curiae* is set forth in the motion to which this brief is appended.

## STATEMENT OF FACTS

On September 9, 1985, the Leavenworth County Planning Commission discussed a proposed amendment to Article XVIII, "Special Uses," of the zoning resolutions then in effect for Leavenworth County. This proposed amendment would establish a $200 permit fee for all oil

and gas wells, drilling apparatus and oil storage tanks in the county. The stated purpose of the amendment was to regulate where wells were drilled and to raise revenue for road and bridge repairs allegedly necessitated by the activity of the oil and gas industry in Leavenworth County. See, Exhibit "A" to Plaintiffs' Petition. Ultimately, on October 10, 1984, this amendment was passed by the Board of Leavenworth County Commissioners; the fee and permit requirements thus were authorized. See, Exhibit "B" to Plaintiffs' Petition. On October 22, 1984, the Board of County Commissioners issued the Ordinance, i.e., Board Order No. 1984-15, establishing the $200 permit fee. See, Exhibit "C" to Plaintiffs' Petition. A copy of the Ordinance as enacted is attached hereto as Exhibit "A".

Since its enactment, the aforementioned permit fee has been levied and enforced by the defendants against all members of the oil and gas industry doing business in Leavenworth County. On November 6, 1985, the plaintiffs filed their Petition herein asking this Court to declare the Leavenworth County permit fee invalid as a matter of law. Simultaneously, the plaintiffs also filed their Motion For a Temporary Injunction seeking to enjoin the defendants from enforcing the permit fee requirement pending the Court's determination of its validity. Both the Plaintiffs' Motion For Temporary Injunction and Petition are presently before this Court for determination.

## I. Leavenworth County Home Rule Powers Do Not Permit It To Regulate The Oil And Gas Industry.

Kansas counties do not possess inherent legislative powers; they are political subdivision of the state government, and, as such, they possess only such powers as are expressly or impliedly conferred upon them by legislative enactment. Board of County Commissioners v. Lewis, 203 Kan. 188, 191, 453 P.2d 46 (1969). See also, State ex rel. Cole v. City of Garnett, 180 Kan. 405, 407, 304 P.2d 555 (1956) (powers of county commissioners are wholly statutory).

The Kansas statutes governing the home rule powers of counties are contained in K.S.A. 19-101, *et seq*. Section 19-101 grants counties the authority "to exercise the powers of home rule to determine their

local affairs and government." Section 19-101a expressly grants counties "powers of local legislation and information as they [the county commissioners] deem appropriate." Just as the legislature may delegate powers to the counties, the legislature also may limit those powers. "The home rule powers of a county are thus subject to determination and limitation by the legislature . . . ." State ex rel. Stephan v. Board of Lyon County Commissioners, 234 Kan. 732, 736-37, 676 P.2d 134 (1984). The restrictions and prohibitions on the counties home rule powers are enumerated in K.S.A. 19-101a. Most important for purposes of this case is the provision stating that counties shall be "subject to all acts of the legislature which apply uniformly to all counties." K.S.A. 19-101a(a) First.

This express statutory limitation on county home rule power has been interpreted to mean that "[c]ounties are prohibited . . . from passing any legislation which is contrary to or in conflict with any act of the state legislature which is of uniform application to all counties throughout the state." Missouri Pacific Railroad v. Board of Greeley County Commissioners, 231 Kan. 225, 227, 643 P.2d 188 (1982) (emphasis added). In language particularly applicable to the present case, the Kansas Supreme Court also said:

> "[t]he [home rule] power exercised [by counties] cannot result in legislation which conflicts with an act of the legislature, and it cannot be exercised in any area which has been pre-empted by the state."

Id., 231 Kan. at 230.[1] Thus, both the Kansas legislature and the Kansas Supreme Court have clearly stated that counties are prohibited from enacting any local rule or regulation that either (1) conflicts with a state statute, or (2) involves an area of regulation which has been pre-empted by the state. The Leavenworth County Ordinance violates both of these prohibitions and is clearly invalid.

That Ordinance is contrary to and conflicts with K.S.A. 55-151, which provides, in relevant part, that:

---

1 The Missouri Pacific Railroad case is thoroughly discussed in the Plaintiff's Supplemental Memorandum In Support Of Their Motion For Temporary Injunction at pages 3 through 5.

> "Prior to the drilling of any well, every operator shall file an application of intent to drill with the [State Corporation] Commission.
>
> * * * * * * * *
>
> On and after July 1, 1983, the requirement that the application of intent to drill be accompanied by a fee of $40 shall expire and no fee shall be collected on and after such date."

By K.S.A. 55-151, the Kansas legislature declared, in language uniformly applicable to all counties throughout the state, that (1) every operator who drills any well in the State of Kansas shall file an application with the State Corporation Commission to drill prior to drilling said well, and (2) that after July 1, 1983, no fee shall be collected in connection with any said application. The Ordinance is void: it imposes a $200 fee upon every operator who desires to drill a well in Leavenworth County, and is contrary to the provisions of K.S.A. 55-151, which is uniformly applicable to all Kansas counties. K.S.A. 19-101a(a) First; Missouri Pacific Railroad, supra.

Moreover, the Kansas legislature has pre-empted the field of regulating the state's oil and gas industry. In Missouri Pacific Railroad, supra, the Supreme Court held that "said county resolution is invalid and beyond the home rule power of the county be reason of state pre-emption of the particular field covered by the county resolution, regulation of railroads." Id., 231 Kan. at 233. The Court found that "the state has evidenced a purpose and design to occupy the field so as to prohibit additional regulation by local authorities in the same area." Id. To reach this conclusion that the State has pre-empted the field, the Court relied on two factors: (1) the railroads are regulated and supervised by the Kansas Corporation Commission, and (2) the comprehensive nature of the state statutes regulating railroads. Id., 231 Kan. at p. 231. The oil and gas industry in Kansas is similarly regulated: (1) it also is regulated and supervised by the Kansas Corporation Commission, (2) Chapter 55 of Kansas Statutes Annotated is devoted solely to comprehensive statutes regulating the oil and gas industry, and (3) in furtherance of this legislative design, the KCC has enacted broad rules and regulations covering the industry. See, Article 82-2 of Kansas Administrative

Regulations. The broad comprehensive scope of these statutes and regulations clearly evidence that the State has pre-empted the field concerning the regulation of the oil and gas industry. Therefore, Leavenworth County is prohibited from enacting its own regulations purporting to govern the oil and gas industry.

II. The Leavenworth County Ordinance In Question Constitutes An Ultra Vires Tax And Is Therefore Void.

Kansas counties are expressly granted the home rule power to levy taxes, excises, fees and other charges for revenue purposes. This home rule power of taxation for revenue purposes, however, may be exercised lawfully only when the procedural requirements of K.S.A. 19-117 are satisfied. K.S.A. 19-117(a) provides, in relevant part, that:

> "Where the board of county commissioners of any county by resolution propose to levy for revenue purposes any tax, excise, fee, charge or other exaction other than permit fees or license fees for regulatory purposes, a procedure for the levy of which is not otherwise prescribed by enactment of the legislature, such resolution shall require a two-thirds (2/3) vote of the members of the board and shall be published once each week for two (2) consecutive weeks in the official county newspaper.
>
> "No such resolution shall take effect until sixty (60) days after its final publication, and if within sixty (60) days of its final publication a petition signed by not less than five percent (5%) of the qualified electors of the county election office demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon."

The procedural requirements of K.S.A. 19-117(a) are expressly applicable to "any tax, excise, fee, charge or other exaction" levied for revenue purposes, and are expressly inapplicable to "permit fees or license fees for regulatory purposes." The relevant question thus becomes whether this $200 permit fee adopted by the Ordinance was levied for revenue purposes or for regulatory purposes.

The following factors reveal that this permit fee was enacted for revenue purposes. First, the professed purpose of imposing the $200 permit fee was to raise revenue for the county to make road and bridge repairs. As stated by Ron Brown [handwritten: Bacon], Leavenworth County Director of Planning and Zoning:

> "the establishment of the permit fee was an answer to handle the increasingly growing number of complaints concerning damaged roads and bridges left behind by the movement of heavy oilfield equipment in and out of areas. The new fee will be included in the County's General Fund and will be used to make necessary road and bridge repairs in instances involving oilfield equipment."

39 Daily Oil News Service 160, p. 1 (August 15, 1985). Second, the amount of the permit fee imposed on oil and gas wells is vastly disproportionate to the other regulatory permit fees imposed by Leavenworth County. Fees imposed for purely regulatory permits are intended merely to reimburse the county for the cost of regulation; the fee collected is ancilliary to the regulatory purpose. See, Panhandle Eastern Pipeline Company v. Fadely, 183 Kan. 803, 806-7, 332 P.2d 568 (1958) (fees charged for regulatory statutes must be limited to the costs of regulation). The next highest regulatory permit fee charged by Leavenworth County is a $100 fee for temporary fireworks stands. The fees charged for various other permits are $65 (mobile homes), $10 (signs in excess at fifteen square feet and fireworks stands within an existing structure) and $5 (signs not exceeding fifteen square feet). This contrast in fee amounts shows that the $200 fee charged for oil and gas wells greatly exceeds the cost of regulation, and is being used for other than regulatory purposes, i.e., for revenue purposes. These reasons establish that the $200 drilling permit fee enacted by Leavenworth County constitutes a revenue enactment and, as such, is void for failure to comply with the procedural requirements of K.S.A. 17-117. The Leavenworth County Ordinance was adopted by the Leavenworth County Planning Commission and approved by the Leavenworth County Commission as an amendment to the Leavenworth County zoning regulations. The procedural requirements for the passage of a revenue enactment were not satisfied.

## III. Public Policy Strongly Opposes The Validity Of The Leavenworth County Ordinance In Question.

### A. Local Regulation Of The Oil And Gas Industry Would Lead To Confusion And Conflict.

The regulation of the oil and gas industry in Kansas is clearly a matter of statewide concern. Such regulation should not be and has

not been left to local county government. See, Missouri Pacific Railroad v. Board of Greeley County Commissioners, supra (regulation of railroads is a matter of statewide concern and should not be left to local government). Uniformity of regulation is especially important to the oil and gas industry. Such uniformity exists by virtue of the broad and comprehensive design for regulating the industry which has been estabilshed by the Kansas legislature and the KCC, previously discussed. Oil and gas operators in Kansas are not purely "local" businesses. Instead they operate on a statewide basis in all parts of the state. The importance and necessity of being governed by one uniform set of rules and regulations is readily apparent and is necessary to prevent confusion and uncertainty.

Like Pandora's box, the Leavenworth County Ordinance, if allowed to stand, would open the door for every county in the state to enact its own rules and regulations for governing the oil and gas industry within each county. The industry would be confronted with a maze of 105 different sets of rules and regulations in addition to the current statewide regulation. The need for statewide uniformity in regulation of the oil and gas industry is imperative. Additional regulation by each county is unnecessary and unwise.

### B. The Leavenworth County Ordinance In Question Is Not A Necessary Means To Achieve Its Stated Objectives.

In enacting the Ordinance, Leavenworth County stated that the purpose of the $200 permit fee was (1) to raise revenue to pay for road and bridge damage allegedly caused by the oil and gas industry, and (2) to enable the county to keep accurate records of all oil and gas wells in the county for purposes of tax assessment. See, 39 Daily Oil News Service 1, supra; Plaintiffs' Petition, Exhibit "A". Both of these functions are adequately performed through other means, and the $200 permit fee is unnecessary.

The first avowed purpose of the Leavenworth County ordinance is to raise revenue for the county to pay for road and bridge repairs. Currently, all oil and gas leases and oil and gas wells, including all related material and equipment, are uniformly subject to ad valorem

taxation as personal property. K.S.A. 79-329, et seq. These properties are also subject an excise tax upon the severance and production of oil and gas. K.S.A. 79-4216, et seq. Furthermore, the Leavenworth County ad valorem real estate taxes on rural property are lower than the statewide average. The median assessment-sales ratio for rural real estate in Leavenworth County is 5.29; the statewide median assessment-sales ratio for rural real estate is 5.81. See, 1984 Kansas Department of Revenue Real Estate Assessment/Sales Ratio Study. This low figure results in decreased revenues for Leavenworth County from ad valorem real estate taxes which are based on assessed valuations of property. To require the oil and gas industry to pay a $200 permit fee in addition to ad valorem personal property taxes for purposes of raising revenue for the county to fix roads and bridges when the real estate located in Leavenworth County is under-assessed is inequitable. The alleged revenue raising rationale for this permit fee is unpersuasive.

The second avowed purpose of the Leavenworth County ordinance is to enable the county to keep accurate records of all oil and gas wells in the county for purposes of assessing property taxes. This record keeping function is not necessary and, in fact, it penalizes those oil and gas operators and others who do properly report their property for taxation. Chapter 55 of the Kansas Statutes Annotated and the State Corporation Commission's administrative regulations both require that all oil and gas wells be reported to the KCC. These records are readily available to Leavenworth County to enable them to determine if all oil and gas wells in the county are being reported for taxation. Furthermore, the taxation statutes provide adequate penalties and remedies for any person who fails to make and file a full and complete statement of assessment relative to said persons oil and gas properties. K.S.A. 79-332a.

## CONCLUSION

For the reasons discussed above, the Court should grant the Plaintiffs' Motion For Temporary Injunction and the Plaintiffs' Petition

seeking to declare the Leavenworth County ordinance in question invalid.

Donald P. Schnacke
Kansas Independent Oil and Gas Association
1400 Merchants National Bank Building
Topeka, KS 66612

- and -

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600 Hardage Center North
100 South Main
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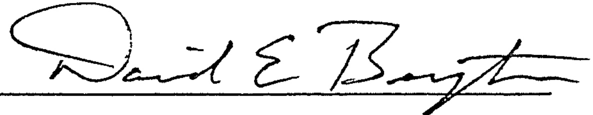
(316) 263-7583
Attorneys for _Amicus Curiae_, Kansas Independent Oil and Gas Association

By: 

CERTIFICATE OF SERVICE

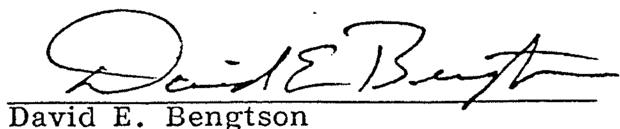
The undersigned hereby certifies that a true and correct copy of the foregoing Memorandum of Kansas Independent Oil and Gas Association as _Amicus Curiae_ In Support of Plaintiffs' Petition and Plaintiffs' Motion For Temporary Injunction was served upon the following:

John P. Jennings, Jr.
1812 Commerce Tower
911 Main Street
Kansas City, MO 64105

Bernard F. Weinand
4121 West 83rd Street
Suite 137
Prairie Village, KS 66208

Patrick J. Reardon
Counsellor to the County Commission
520 South Fourth Street
Leavenworth, KS 66048

by depositing same in the United States mail, postage prepaid and properly addressed, this 11th day of December, 1985.


David E. Bengtson

ARTICLE XVIII - SPECIAL USES

A Special Use Permit may be issued by the County Commissioners of the county of Leavenworth which authorizes the location of any of the following buildings or uses in a district from which they are prohibited by this resolution. Should one or more of the special uses set out in this article be set out in a particular zoning district definition, a Special Use Permit must be obtained for that use, regardless.

Provisions for I-1 Light Industry special uses within an R-Rural zoning district are set out in Article V, "R-RURAL DISTRICT REGULATIONS" of this resolution, Section 2, item 14.

A Special Use Permit is obtained by filing an application accompanied by all appropriate documents in the office of the Department of Planning and Zoning along with a filing fee as set out by the County Commissioners. The process for obtaining a Special Use Permit is as outlined in Article XXVI, "AMENDMENTS" of this zoning resolution.

The following buildings and uses may be authorized by a Special Use Permit:

1. An accessory use of a service character customarily conducted either within a dwelling or on the homesite by the residents thereof, which is clearly a secondary use. A sign advertising the use may be erected on the property but must not exceed twelve (12) square feet in area and there may be stock in trade kept on the premises.

2. Any public building erected and used by any public agency.

3. Airport of landing field.

4. Amusement parks, commercial baseball or athletic fields, race tracks, circuses, carnivals or fairgrounds.

5. Automobile salvage yards; provided that each permit shall contain regulations that will protect the surrounding area from any adverse effects of the salvage yard.

6. Cemetery, mausoleum or crematorium.

7. Child care facilities, ie., Day Care Home, Child Care Center, Group Boarding Homes, Residential Centers for Children and Youth.

8. Coal, fuel or ice storage, saw mills, storage and treatment of building materials and the storage of general contracting materials and equipment; provided that such uses be permitted only in the R-Rural District and for such periods and under such conditions as the County Commissioners may determine by Special Use Permit.

9. Community buildings or recreation fields.

10. Conservation or flood control projects.

11. Dairy farms which process, package and distribute their product.



EXHIBIT "A"

12. Dog kennels and horse boarding and/or riding stables.

13. Disposal of waste materials; landfills, incinerators, etc.

14. The extraction of raw materials such as rock, gravel, sand and clay; to include rock crushers, asphalt and concrete ready-mix plants.

    NOTE: A quarry operating under an existing Special Use Permit may obtain a permit for an asphalt or concrete plant under their existing permit without requiring a public hearing contingent upon approval and/or imposition of certain stipulations or conditions as set out by the County Engineer and the Director of Planning and Zoning. Upon approval of such permit, an agreement must be signed by the petitioner, the land-owner and the County Commissioners stating any conditions or stipulations.

15. Gun, skeet and private clubs.

16. Hospitals, clinics and institutions; provided that such buildings or uses will be located upon a tract of sufficient area and shall be of such character that they will not have any serious and depreciating effects upon the value of the surrounding development and provided, further, that the buildings shall be set back from all required yard lines a distance of not less than two (2) feet for each foot of building height.

17. Nurseries and greenhouses.

18. Parking lots on land within two hundred (200) feet of Business or Industrial Districts.

19. Storage, packaging and distribution of smokeless Class B and Black Class A powder.

20. Temporary and seasonable uses, including roadside stands and recreational and amusement areas, except roadside stands as set out in the R-Rural regulations.

21. Oil and natural gas wells, drilling aparatus and storage tanks.

    (The Zoning Administrator may issue permits as specified in Section 21 of this Article without requiring a Special Use Permit to be obtained. If the Administrator is reluctant to approve the issuance of said permit, (s)he shall request that the applicant apply for a Special Use Permit as set out in this Article.)

22. Towers, radio antennas, commercial satellite earth stations and similar appurtanences.

23. Mobile home and tourist courts; provided that there shall be not less than 2,500 square feet of lot area for every family accomodated in either a mobile home, cabin or similar domicile, or in accordance with any other applicable laws.

24. Accessory Mobile Homes:

    (NOTE: The Zoning Administrator may issue accessory mobile home permits without requiring a Special Use Permit to be obtained. If the Zoning Administrator is reluctant to approve the issuance of said permit because of a questionable

use, (s)he shall request that the applicant apply for a Special Use Permit as set out in this article and/or in Article IV, Section 4, Paragraph 5 of this Zoning Resolution.)

Accessory mobile homes shall include mobile homes as: (1) an accessory dwelling to the farm, (2) as an accessory dwelling for locating the elderly on property occupied by the immediate family, (3) as an accessory dwelling for members of the immediate family (parents and their children) on property owned and occupied by the immediate family and (4) as a temporary dwelling for one year while building a house.

An affidavit must be signed by the property owner stating that the mobile home will be for one of the above uses and a mobile home fee as set out by the County Commissioners shall be paid. All mobile homes other than for one year while building will be required to be placed on a permanent foundation, and will be assessed as real estate. Mobile homes for one year whild building will be assessed as personal property. No mobile home shall be occupied until a certificate of occupancy has been issued by the administrative officer. This permit will be contingent upon any required foundation being installed, any required additions being completed and all zoning requirements being met. All accessory mobile home permits shall expire witnin one year of issue, and must be renewed at that time for a fee as set out by the County Commissioners.

Every Special Use Permit issued by the County of Leavenworth will be valid for a specified period of time, but will have to be reviewed every year to see that all conditions and regulations as set out are being complied with. This review will be conducted by a board consisting of representatives from the Planning and Zoning office, the Department of Public works and the County Appraiser's office. The review shall require a fee as set out by the County Commissioners. If the review finds that all regulations are being complied with, the permit will be renewed by the Planning and Zoning office. If it is found that regulations and conditions of the permit are not being complied with, it will be necessary for the applicant to be present at a hearing before the Board of County Commissioners to give reason for the lack of compliance. If the County Commissioners are unable to resolve the situation and deny the renewal of the Special Use Permit, the applicant will have thirty (30) days to cease the operation and/or remove the mobile home for which the permit was issued. Failure to do so will result in the application of Article XXVII, "ENFORCEMENT AND PROCEDURE" of this resolution.

(Amended October 1984)

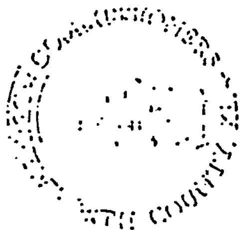
BOARD ORDER # 1984-15

We the Board of County Commissioners of Leavenworth County, Kansas do hereby order:

That the following fee schedule for Planning and Zoning be approved for Leavenworth County:

| | |
|---|---|
| Construction Permit fee for dwellings & accessory buildings | Assessed as set out in Article XXII, Section 4 of the Zoning Resolution. The fee schedule is based 40% of the cost per sq. ft. as per the United Building Code. |
| Accessory structure fee | $10.00 |
| Fireworks standwithin an established building | $10.00 |
| Temporary stand for the sale of Fireworks | $100.00 |
| Erection of a sign not to exceed fifteen (15) square feet | $5.00 |
| Erection of a sign in excess of fifteen (15) square feet | $10.00 |
| Initial Accessory Mobile Home fee | $65.00 |
| Oil & Gas well/drilling/storage fee | $200.00 |
| Special Use Permit application fee | $65.00 |
| Rezoning Petition application fee | $65.00 |
| Zoning Appeal application fee | $65.00 |
| Subdivision & Replat filing fee | $1.00 for each lot in the subdivision or replat providing that said replat or subdivision does not consist of less than ten (10) lots, in which case a minimum filing fee of $10.00 is paid. |
| Mobile Home Park fees | $2.00 per lot, but not less than $120.00. There is also a $35.00 deposit. |
| All yearly renewal fees | $25.00 |

Dated this 22nd day of October, 1984.



Board of County Commissioners
Leavenworth County, Kansas

Dollie Scheller, Chairman

Don Aaron, Member

John F. Denney, Member

# SENATE BILL No. 683

By Committee on Local Government

2-21

0017 AN ACT concerning motor fuel taxes; relating to the apportion-
0018 ment thereof to cities and counties; amending K.S.A. 79-3425c
0019 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*
0021 Section 1. K.S.A. 79-3425c is hereby amended to read as
0022 follows: 79-3425c. (a) On January 15, April 15, July 15 and
0023 October 15 of each year, the director of accounts and reports shall
0024 transfer $625,000 to the county equalization and adjustment fund
0025 from the special city and county highway fund and on such dates
0026 the state treasurer shall apportion and pay to the several counties
0027 of the state 57% of the moneys in the special city and county
0028 highway fund, created by K.S.A. 79-3425, and amendments
0029 thereto, and shall apportion and pay to the several cities of the
0030 state the remaining 43% of such moneys.
0031 (b) The allocation and payment to each county under the
0032 provisions of this section shall be made in the following manner:
0033 *First,* Each county of the state shall receive a payment of
0034 $5,000;
0035 *Second,* Of the balance remaining, 50% thereof shall be ap-
0036 portioned and paid to each county on January 15 and April 15 of
0037 each year in the proportion that the total amount of money
0038 collected in such county from motor vehicle registration fees for
0039 the second preceding calendar year bears to the total amount of
0040 money collected in all counties from motor vehicle registration
0041 fees for the second preceding calendar year, and on July 15 and
0042 October 15 of each year in the proportion that the total amount of
money collected in such county from motor vehicle registration
fees for the preceding calendar year bears to the total amount of
0045 money collected in all counties from motor vehicle registration

(Attachment VI)
3/7/86
S. LG

0046 fees for the preceding calendar year;
47 *Third,* The remaining 50% of such balance shall be appor-
48 tioned and paid to each county on January 15 and April 15 of
0049 each year in the proportion that the average daily vehicle miles
0050 traveled in such county for the second preceding calendar year
0051 bears to the average daily vehicle miles traveled in all counties
0052 of the state for the second preceding calendar year, and on July
0053 15 and October 15 of each year in the proportion that the average
0054 daily vehicle miles traveled in such county for the preceding
0055 calendar year bears to the average daily vehicle miles traveled in
0056 all counties of the state for the preceding calendar year.
0057 If the total amount of money received by any county pursuant
0058 to the foregoing distribution formula and by all cities located
0059 within such county pursuant to subsection (c) ~~of this section~~
0060 during the period from July 15 of any year to April 15 of the next
0061 succeeding year is less than the total amount received by such
0062 county and all cities located within such county from the county
0063 road and city street fund, the special city and county highway
0064 fund, the county and township road fund and the special motor
0065 carrier fee county road fund during the period from July 1, 1969,
0066 to June 30, 1970, plus the total amount such county and all cities
0067 located within such county would have received on July 15,
0068 1970, from the special city and county highway fund based on
0069 the formula for distributing such fund in effect on June 30, 1970,
0070 then on April 15 of each year, the state treasurer shall apportion
0071 and pay to each such county from the county equalization and
0072 adjustment fund an amount which together with the amount
0073 received pursuant to the foregoing distribution formula will
0074 equal the total amount received from the four aforementioned
0075 funds during such period of time plus the total amount such
0076 county and all cities located within such county would have
0077 received on July 15, 1970, from the special city and county
0078 highway fund based on the formula for distributing such fund in
0079 effect on June 30, 1970. In the event that there ~~is~~ *are* insufficient
080 funds in the county equalization and adjustment fund to pay each
081 county the amount to which it is entitled, each county shal'
0082 receive a payment in the proportion that the amount to which

SB 683

0083 such county is entitled bears to the amount to which all such
0084 counties are entitled. If there is money remaining in such fund
0085 after such distribution, the state treasurer shall distribute the
0086 balance to the several counties in the manner provided in the
0087 second and third clauses of the foregoing formula for distributing
0088 moneys to counties from the special city and county highway
0089 fund.

(b) Except as provided by subsection (c),

0090 ~~A~~ All payments shall be made to the county treasurers of the
0091 respective counties, and upon receipt of the same~~:~~

. The county treasurer shall credit such moneys to the road and bridge fund of the county. Not less than 25% of the amount received by each county and credited to the county road and bridge fund under the provisions of this section shall be expended by the county on mail and school bus routes on county roads as defined in K.S.A. 68-101, and amendments thereto.

0092 ~~(1) The county treasurers of Sedgwick and Shawnee counties~~
0093 ~~shall credit 50% of the moneys received to the road and bridge~~
0094 ~~fund of such counties and apportion and pay the remainder of~~
0095 ~~such moneys to the several cities located in such counties;~~
0096 ~~(2) the county treasurer of Wyandotte county shall credit 10%~~
0097 ~~of the moneys received to the road and bridge fund of such~~
0098 ~~county and apportion and pay the remainder of such moneys to~~
0099 ~~the several cities located in such county;~~
0100 ~~(3) the county treasurers of Lyon, Cowley, Crawford, Mont-~~
0101 ~~gomery, Butler, Saline, Leavenworth, Riley, Reno and Douglas~~
0102 ~~counties shall credit 90% of the moneys so received to the road~~
0103 ~~and bridge fund of such counties and apportion and pay the~~
0104 ~~remainder of such moneys to the several cities located in such~~
0105 ~~counties except that no persons residing within the Fort Riley~~
0106 ~~military reservation shall be included or considered in deter-~~
0107 ~~mining the population of any city located within Geary or Riley~~
0108 ~~county; and~~
0109 ~~(4) the county treasurers of Johnson county and all other~~
0110 ~~counties not listed in paragraphs (1), (2) or (3) shall credit all of~~
0111 ~~the moneys received to the road and bridge fund of such coun-~~
0112 ~~ties.~~

(c)(1) In the case of Sedgwick and Shawnee counties, the state treasurer shall pay 50% of the moneys allocated to such counties to the treasurers of the counties who shall credit such moneys to the road and bridge fund of such counties. The state treasurer shall pay the balance to the city treasurers of the cities in such counties.

(2) In the case of Wyandotte county, the state treasurer shall pay 10% of the moneys allocated to such county to the treasurer of the county who shall credit such moneys to the road and bridge fund of such county. The state treasurer shall pay the balance to the city treasurers of the cities in such county.

(3) In the case of Lyon, Cowley, Crawford, Montgomery, Butler, Saline, Leavenworth, Riley, Reno and Douglas counties, the state treasurer shall pay 90% of the moneys allocated to such county to the treasurer of the county who shall credit such moneys to the road and bridge fund of such county. The state treasurer shall pay the balance to the city treasurers of the cities in such counties.

0113 Not less than 25% of the amount received by each county and
0114 credited to the county road and bridge fund under the provisions
0115 of this section shall be expended by the county on mail and
0116 school bus routes on county roads as defined in K.S.A. 68-101,
0117 *and amendments thereto.* Payments to the cities under the
0118 provisions of this subsection shall be in the proportion that the
0119 population of each city bears to the total population of all cities

0083 such county is entitled bears to the amount to which all such counties are entitled. If there is money remaining in such fund after such distribution, the state treasurer shall distribute the
0086 balance to the several counties in the manner provided in the
0087 second and third clauses of the foregoing formula for distributing
0088 moneys to counties from the special city and county highway
0089 fund.
0090 All payments shall be made to the county treasurers of the
0091 respective counties, and upon receipt of the same:
0092 (1) The county treasurers of Sedgwick and Shawnee counties
0093 shall credit 50% of the moneys received to the road and bridge
0094 fund of such counties and apportion and pay the remainder of
0095 such moneys to the several cities located in such counties;
0096 (2) the county treasurer of Wyandotte county shall credit 10%
0097 of the moneys received to the road and bridge fund of such
0098 county and apportion and pay the remainder of such moneys to
0099 the several cities located in such county;
0100 (3) the county treasurers of Lyon, Cowley, Crawford, Mont-
0101 gomery, Butler, Saline, Leavenworth, Riley, Reno and Douglas
0102 counties shall credit 90% of the moneys so received to the road
0103 and bridge fund of such counties and apportion and pay the
0104 remainder of such moneys to the several cities located in such
0105 counties except that no persons residing within the Fort Riley
0106 military reservation shall be included or considered in deter-
0107 mining the population of any city located within Geary or Riley
0108 county; and
0109 (4) the county treasurers of Johnson county and all other
0110 counties not listed in paragraphs (1), (2) or (3) shall credit all of
0111 the moneys received to the road and bridge fund of such coun-
0112 ties.
0113 Not less than 25% of the amount received by each county and
0114 credited to the county road and bridge fund under the provisions
0115 of this section shall be expended by the county on mail and
0116 school bus routes on county roads as defined in K.S.A. 68-101,
0117 *and amendments thereto.* Payments to the cities under the
0118 provisions of this subsection shall be in the proportion that the
0119 population of each city bears to the total population of all cities

(b) Except as provided by subsection (c),

. The county treasurer shall credit such moneys to the road and bridge fund of the county. Not less than 25% of the amount received by each county and credited to the county road and bridge fund under the provisions of this section shall be expended by the county on mail and school bus routes on county roads as defined in K.S.A. 68-101, and amendments thereto.

(c)(1) In the case of Sedgwick and Shawnee counties, the state treasurer shall pay 50% of the moneys allocated to such counties to the treasurers of the counties who shall credit such moneys to the road and bridge fund of such counties. The state treasurer shall pay the balance to the city treasurers of the cities in such counties.

(2) In the case of Wyandotte county, the state treasurer shall pay 90% of the moneys allocated to such county to the treasurer of the county who shall credit such moneys to the road and bridge fund of such county. The state treasurer shall pay the balance to the city treasurers of the cities in such county.

(3) In the case of Lyon county, the state treasurer shall pay 90% of the moneys allocated to such county to the treasurer of the county who shall credit such moneys to the road and bridge fund of such county. The state treasurer shall pay the balance to the city treasurers of the cities in such county.

0120 located in the same county as such city.

(d)

In counties which have not adopted the county-unit road system, the amount of money retained by such counties after
0123 distribution to the cities within such county pursuant to this
0124 subsection shall be distributed to each township within such
0125 county in not less than the proportion that the amount of money
0126 received by each township from the county and township road
0127 fund during the period from July 1, 1969, to June 30, 1970, bears
0128 to the total amount of money received by such county from the
0129 county and township road fund, the county road and city street
0130 funds, the special motor carrier fee county road fund and the
0131 special city and county highway fund during the period from
0132 July 1, 1969, to June 30, 1970, plus the amount such county
0133 would have received on July 15, 1970, from the special city and
0134 county highway fund based on the formula for distributing such
0135 fund in effect on June 30, 1970. All payments to townships
0136 hereunder shall be made to the treasurers thereof, and all
0137 moneys so received shall be deposited in the general road fund
0138 of such township.

(e)

0139 ~~(c)~~ The allocation and payment of moneys to the several
0140 cities of the state from the special city and county highway fund
0141 shall be in the proportion that the population of each city bears to
0142 the total population of all cities in the state except that the
0143 population of any military reservation which has been annexed
0144 to a city after the date of December 31, 1981, shall not be
0145 included in the population of such city for the purpose of this
0146 allocation. All such payments shall be to the city treasurers of the
0147 respective cities, and upon receipt of same the city treasurer of
0148 each city shall credit the same to a separate fund to be used for
0149 the construction, reconstruction, alteration, repair and mainte-
0150 nance of the streets and highways of such city and for the
0151 payment of bonds, and interest thereon, issued pursuant to
0152 K.S.A. 79-3425g, *and amendments thereto*. In order to reduce
0153 vehicular traffic and congestion on its streets and highways, any
54 city located within Johnson county may use not to exceed 10% of
55 the moneys credited to such fund for the purpose of constructing,
0156 repairing and maintaining footpaths and bicycle trails within

0157 such city.
0158 ~~(d) Payments to cities under the provisions of this section~~
0159 ~~shall be made within three days, excluding weekends and holi-~~
0160 ~~days, of receipt of the moneys from the state treasurer.~~
0161 ~~(d)~~ ~~(e)~~ (f) For the purposes of this section, the average daily
0162 vehicle miles traveled in each county shall be determined by the
0163 secretary of transportation, but it shall not include miles traveled
0164 on interstate highways, and the population of each city shall be
0165 reported in the annual enumeration by the state board of agri-
0166 culture for the preceding calendar year.
0167 Sec. 2. K.S.A. 79-3425c is hereby repealed.
0168 Sec. 3. This act shall take effect and be in force from and
0169 after its publication in the statute book.

This is part of the 1986 Adopted County Platform, each issue is important! #18 is basically the Top issue -

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 seq. 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 execeptions 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.

(Attachment VII)

3/7/86

S. LG