

Approved March 13, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Local Government

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

9:0- a.m./~~p.m.~~ on March 10, 1986 in room 531-N of the Capitol.

All members were present except: Senator Winter who was excused

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

Conferees appearing before the committee:

Ron Bacon, Director of Planning, Leavenworth County
Patrick Reardon, Council for Leavenworth County
Fred Allen, Kansas Association of Counties
Gerry Ray, Johnson County Board of Commissioners
Gwen Peatling, Robert Frobenius, Salina, KS.
Edwin P. Carpenter, Attorney for Union Cemeteries Association
John Peterson, Kansas Cemetery Association
Robert Frobenius, Owner of Roselawn Memorial Cemetery, Salina, KS.

The hearing continued on S.B. 678.

Ron Bacon, Director of Planning, Leavenworth County, stated they are not against the oil business, the state needs all of the industry it can get. Counties can do a better job of monitoring the oil business than the state can and they believe the oil business needs to be responsible for the problems they create. The County of Leavenworth is very different from the Western Kansas Counties that have oil and gas, it is more populous and the terrain is different, all of this causes different problems and I believe counties should be allowed to handle these under home rule power.

Mr. Bacon responded in answer to a question, that he helped devise the special permit fee in Leavenworth County. He answered other questions on how the permit fee money was used and how much they had collected since it was implemented.

Patrick Reardon, Counsel for Leavenworth County, stated the law suite against the county is still pending, they were in court on March 7 on this very issue, probably, whoever, wins the case it will be appealed. The issue is amending the home rule powers. One of the things that Leavenworth County finds that oil and gas wells are kind of like private clubs, each one has its own particular eccentricities, the state has passed a lot of legislation, at the same time they haven't changed the powers of the counties and cities to address these problems. We think that Leavenworth Counties special permit fee is an acceptable way for us to address our local problems. That is the argument we are going to make in court and that is the reason we are here giving you our version of what has transpired and what we feel is justification for you not going ahead and enacting this proposed change that would limit the home rule power of the county.

In response to a question, Mr. Reardon stated they expect the ruling within three weeks. He further stated it was absolutely not just a money maker fee for the county, he believes other counties are watching their law suite to see how it is settled, depending on the out come you may see more counties charging fees.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~^{XX} on March 10, 1986.

Senator Gaines asked if they had seen all of the newspaper clippings stating that the money collected was to be used for the road and bridges? Mr. Bacon stated the money was paid into the general fund.

Fred Allen, Kansas Association of Counties, spoke in opposition to the bill. The counties need to have the power to save the roads and bridges, this is a big problem for counties. It is essential for counties to control oil and gas trucks. By having this permit we know where these trucks are going and we can control them.
(Attachment I)

Senator Salisbury stated if there is widespread disregard for roads and bridges perhaps we should address this.

Mr. Allen stated we are attempting to address this, we have authority to address this under home rule power unless you restrict it and this bill would restrict the oil equipment and they are a major part of it. It would be unfair to other business in the county to restrict their trucks but not restrict oil and gas trucks.

Senator Bogina stated this method of directing traffic is pretty feeble, it has no bases, whatsoever, in this particular question. I do accept the comments we have heard concerning the placing of wells to close to houses, drilling in the ditches along the roads, all of these are valid concerns. The weights of trucks have nothing to do with this.

Gerry Ray, Johnson County Board of Commissioners, opposed the bill, she stated her objection is the exception to the home rule power and that the legislation is premature. (Attachment II)

The hearing was concluded on S.B. 678.

S.B. 346 - relating to cemetery corporations; concerning the undedication and disposition of cemetery property.

Gwen Peatling, Robert Frobenius, Salina, KS., spoke in support of the bill, she presented the committee with copies of a petition from property owners adjacent and across the street from the vacant mortuary. This petition stated they did not object to this mortuary being in operation. A letter from Keith H. Cruse, a resident of Salina, supporting the bill was also presented. (Attachments III and IV)

Edwin P. Carpenter, Attorney for Union Cemeteries Assn, which is a Kansas for Profit Cemetery Corporation located in Salina, KS., supported the bill. He stated S.B. 346 represents a solution to a local problem in Saline County related to the location of a mortuary building on property that is dedicated for cemetery purposes at Roselawn Cemetery in Salina. Included with his letter is an analysis of S.B. 346 with the history behind this bill. (Attachment V)

John Peterson, Kansas Cemetery Association, offered an amendment to S.B. 346, the amendment would define the 'purposes of sepulture' the definition would include mortuary and embalming facilities.
(Attachment VI)

Robert Frobenius, Owner of Roselawn Cemetery, testified in support of the bill, he showed the committee a petition signed by 600 Saline County residents asking for a public hearing and he showed pictures of the mortuary and the cemetery.

Senator Gaines moved to offer a substitute bill redefining "purposes of sepulture". Senator Bogina seconded the motion. The motion carried. Senator Gaines moved to pass the Substitute for 2

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on March 10, 1986.

S.B. 346 out of committee. Senator Bogina seconded the motion. The motion carried.

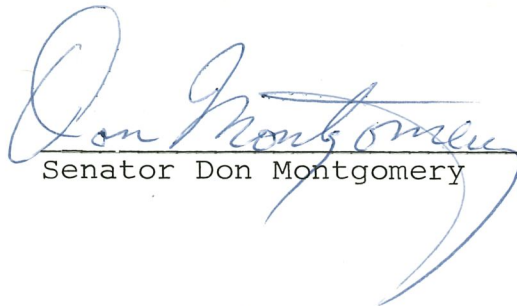
The chairman referred the committee back to S.B. 678.

Senator Daniels moved to amend the bill on line 105, after of "and/or production by". Senator Gaines seconded the motion. The motion carried.

Staff stated the amendment needed to be reworded and they were instructed to do so. The bill will be rereferred through Ways and Means and back.

Senator Langworthy moved to adopt the minutes of the March 6 and 7 meetings. Senator Bogina seconded the motion. The minutes were adopted.

The chairman announced the agenda for the next meeting which will be Thursday, March 13, 1986, at 9:00 a.m. The meeting adjourned at 10:30 a.m.



Senator Don Montgomery

Kansas Association of Counties

Serving Kansas Counties

Suite D, 112 West Seventh Street, Topeka, Kansas 66603

Phone 913 233-2271

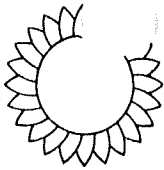


(Attachment I)

3/10/84

S. L. G.

(A. D.)



SENATE LOCAL GOVERNMENT COMMITTEE

HEARING ON SB 678

MARCH 7, 1986

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR
JOHNSON COUNTY BOARD OF COMMISSIONERS

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE MY NAME IS GERRY RAY, REPRESENTING THE JOHNSON COUNTY BOARD OF COMMISSIONERS. THANK YOU FOR THE OPPORTUNITY TO APPEAR IN OPPOSITION TO SB 678.

WHEN THE LEGISLATURE GRANTED HOME RULE TO COUNTIES THE ACTION WAS BASED ON THE PHILOSOPHY THAT LOCAL OFFICIALS WERE BETTER EQUIPPED THAN THE STATE TO DEAL WITH PROBLEMS AND ISSUES AT THE LOCAL LEVEL. THEN OF COURSE THE FIRST EXCEPTION WAS ENACTED AND SINCE THAT TIME THE NUMBER HAS INCREASED EVERY YEAR.

TODAY WE ARE DISCUSSING THE TWENTY FIRST EXCEPTION TO THE HOME RULE STATUTE. SB 678 IS ANOTHER ATTEMPT TO SOLVE A SPECIAL INTEREST PROBLEM BY WEAKENING THE COUNTIES' AUTHORITY TO DEAL WITH IT. WE FEEL THE COMMISSIONERS WHO ARE ELECTED BY THE CITIZENS IN THE COUNTY SHOULD BE ALLOWED TO PROTECT THE ENVIRONMENT OF THOSE CITIZENS. THEREFORE WE DO NOT UNDERSTAND THE NEED FOR LEGISLATION THAT WILL PROHIBIT THEM FROM DOING SO.

WE ASK YOUR HELP IN STOPPING THE CONTINUED EROSION OF THE COUNTIES' AUTHORITY TO GOVERN AT THE LOCAL LEVEL BY VOTING AGAINST THE PASSAGE OF SB 678.

(Attachment II)

3/10/86

S. LG

(ATT)

Senator Don Montgomery
Representative Ivan Sand
Chairmen: Local Government Committees
State House
Topeka, Kansas

March 5, 1986
Salina, Kansas

Sirs:

We, the undersigned representing 100% of the property owners adjacent to and across the street therefrom the vacant building in question in Senate Bill # 346, do request that a favorable vote be made and the bill passed as printed.

We have no objections to such a use as described. In fact the intended use will enhance the neighborhood and serve the public as desired by the citizens of Salina, Kansas.

Name	Address
<i>Lee M. Forans</i>	1945 Rolling Hills Circle
<i>John Dieter</i>	1943 Rolling Hills Cir.
<i>Joann M. Haeffner</i>	1939 Rolling Hills Circle
<i>Doris L. Haddock</i>	1931 Rolling Hills Cir.
<i>Linda M. Suggart</i>	164 Aspen Rd.
<i>John W. Bastin</i>	685 Starlight
<i>Oscar A. Mutha</i>	684 Starlight

KEITH H. CRUSE, D. D. S.

2023 Lynwood
SALINA, KANSAS 67401

March 6, 1986

The Honorable Senator Don Montgomery
Chairman of State and Local Affairs Committee
State Capital Building
Topeka, Kansas

Dear Sir,

I am writing this letter on behalf of Robert Frobenius, the owner of Roselawn Cemetary who is being deprived of his right to free enterprise to conduct his business as a mortuary on the grounds of Roselawn Cemetary.

I have known Bob since grade school, a span of over 50 years. I also own two burial spaces in Roselawn Cemetary. I retired from active practice of dentistry in 1984. Prior to that I grew up in Salina. I graduated from Salina High School in 1939. I attended Kansas Wesleyan and Kansas University before enlisting in the Navy Air Corps in April of 1942. I was called to active duty August 6th, 1942 and commissioned a Navel Aviator with the rank of Ensign in March 1943. I was assigned to the USS Gambier Bay-CVE-73, a jeep carrier during the 2nd Battle of the Phillipines. My ship was sunk during the Battle of Heyte Gulf. I watched floating in the water, until she bottomed up and sank bow first. The engine props were exposed and one had been hit, which caused the ship to lose power and drop back from the other carriers and our ship became a sitting duck for the Japs to shoot at.

I have been watching from the side lines for many years, while a friend is being sunk by his competition because of a loop hole in the law concerning the mortuary business. The other aspects to this case are political as well as rival jealousy.

My father is buried in Boulder Colorado by the mortuary located on the burial grounds. I speak from experience that during the sottow of losing a loved one this type of arrangement provides convenience to the family of the deceased. In my opinion it is entirely proper and does not infringe on the dignity of the living or the deceased.

The aspects of the funeral expense involved are quite important to me as well as with other retirees. The opportunity to have this available as an option in Salina will greatly enhance the savings involved and also will provide better service for a funeral which is never pleasant to begin with.

Competition is the basis of our heritage and we as Americans and citizens of this community expect to have this right available to us in our time of need.

Respectfully Yours



Keith H. Cruse

(Attachment IV S. LC

3/10/86

LAW OFFICES
HIATT & CARPENTER, CHARTERED
627 S. TOPEKA AVENUE
TOPEKA, KANSAS 66603-3294

EUGENE W. HIATT
EDWIN P. CARPENTER
RONALD R. HEIN
DAVID C. CARPENTER
STEPHEN P. WEIR

March 6, 1986

TELEPHONE
AREA CODE (913)
232-7263

The Honorable Donald L. Montgomery
Chairman of the Senate
Local Government Committee
State Capitol
Topeka, KS 66612

Re: Senate Bill 346

Dear Senator Montgomery:

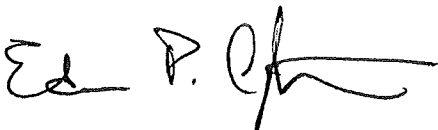
This office, since approximately 1982 has represented the Union Cemeteries Association, which is a Kansas-for-Profit Cemetery Corporation located in Salina, Kansas. Senate Bill 346 represents a solution to a local problem in Saline County related to the location of a mortuary building on property that is dedicated for cemetery purposes at Roselawn Cemetery in Salina.

I am enclosing for your consideration an analysis of the problem and the solution, as well as the background and reasoning for the need for the solution. In addition, I am enclosing a copy of Senate Bill 346 for your convenience in relationship to this analysis.

I have been requested by Gwen Peatling, who is the registered lobbyist for the Union Cemeteries Association, to be present at your hearing on Monday, March 10, 1986, for the purpose of answering any questions in relationship to this bill, and to provide to you whatever information we can which will help you in making a decision relative to the merits of this legislation. In addition, should you have any further questions or concerns, I have been requested by the officers and directors of Union Cemeteries Association to provide to you whatever information you may need. I thank you in advance for your continued cooperation and interest related to this local matter, and should you have questions or concerns, please feel free to contact me.

Yours truly,

HIATT & CARPENTER, CHARTERED



Edwin P. Carpenter

EPC:lc

cc: Gwen Peatling
Bob Frobenius

(Attachment V) S. LG

3/10/86

PROPONENT'S ANALYSIS OF SB 346

THE PROBLEM: Undedication of a platted use restriction for purposes of sepulture related to Lot 7, Block 1, Union Cemetery Addition to the City of Salina, Kansas, to permit the operation of a mortuary at that location.

THE SOLUTION: Senate Bill No. 346

BACKGROUND:

On or about October 5, 1972, the City Commissioners of Salina, Kansas, rezoned the front two hundred feet of Roselawn cemetery to permit the construction of a mortuary (Connolly v. Frobenius, 2 Kan.App.2d 18 574 P.2d 971 [1978]).

In consideration for this rezoning to allow the construction of a mortuary, the cemetery granted to the City a 30 foot easement along its northern boundary to allow the City to widen Crawford Road.

When the cemetery began construction of a mortuary on the rezoned property, a lot owner, who also was the owner of a competing mortuary in the City, filed a petition to enjoin the cemetery from building the mortuary.

After the mortuary was completed and three years later, on April 6, 1977, the District Court entered a permanent injunction against the cemetery from "using the building constructed on Lot Seven (7), Block One (1) of the Replat of

the North 200 feet of the Union Cemetery Addition to the City of Salina, Saline County, Kansas, for the operation of a mortuary or any other private or commercial purpose than that for which said land was dedicated."

The trial Court's decision was appealed to the Court of Appeals which affirmed the trial court in Connolly v. Frobenius, 2 Kan. App.2d 18, 574 P.2d 971 (1978). A petition for review was denied by the Supreme Court on March 1, 1978.

Following the Supreme Court's 1978 decision, Lot 7 of the cemetery was placed back on the tax rolls because of the "mortuary" building which had been constructed on the Lot. However, the Supreme Court had already determined that the "mortuary" building could not be used for a mortuary and could only be used for "purposes of sepulture." The cemetery therefore appealed to the Board of Tax Appeals and District Court requesting the property be exempted from taxation. The District Court ruled that since the building was a "mortuary", even though it couldn't be used as a "mortuary", it was no longer exempt from taxes (as the property was not used exclusively as a graveyard [See K.S.A. 79-201c]). The Court of Appeals affirmed the District Court's ruling in Court of Appeals Case No. 82-54927-A, on June 9, 1983, holding that the building and ground are taxable, notwithstanding the injunction which prevents the building and grounds from being used for anything but sepulture, i.e., a graveyard.

In September, 1984 the cemetery filed a Motion to Determine in the District Court requesting that the Court clarify the language of the permanent injunction enjoining use of the building "for the operation of...any other private or commercial purposes than that for which said land was dedicated," and suggested that the use of the building for onsite ceremonial services was a "purpose of sepulture." At the time the motion to determine was filed, the cemetery merely wanted to clarify what the injunctive language included. There had been no change of circumstances regarding the use of the building as a mortuary and the cemetery did not want the injunction modified as to that point. However, at oral argument, it became clear that the District Court may include use of the building, as a chapel, as a use prohibited by the ambiguous language of the injunction. Therefore, it became necessary to file a petition to modify and vacate that part of the injunction which may include use of the building as a chapel or for visitation, based upon the change of circumstances in the intended use of the building.

In November 1984, the cemetery filed a petition pursuant to K.S.A. 60-910 and K.S.A. 60-260(b) to modify and partially vacate the permanent injunction, based upon the subsequent change in the intended use of the building from a mortuary to a chapel.

Thereafter the District Court denied the cemetery's

Motion to Determine and sustained the lot owner's Motion to Dismiss the cemetery's petition. That ruling is now on appeal to the Court of Appeals, No. 85-57881-A, and is to be heard in late March; however, it is anticipated that no change in posture will occur.

PRESENT STATUS: The cemetery is still subject to a mandatory injunction prohibiting it from using the building a ground under Lot 7, where the mortuary is located, for any purpose but burial. Notwithstanding that injunction, the Saline County Appraiser still determines the "use" of the property to be a mortuary and assesses taxes on it. Those taxes are presently in arrears, with the cemetery owing approximately \$33,000 in back taxes, interest, and penalties, with no way to use the building for any purpose at all, including burial. The property in question directly abutts onto Crawford Road, a busy trafficway in Salina. Notwithstanding the dedication for burial purposes, no lot owner would wish to be buried next to the public roadway; therefore, the economic use of the property for burial purposes is extremely limited. The result, necessarily, is that the mortuary building cannot be used for any purposes whatsoever; the ad valorem taxes cannot be paid; the building and ground cannot be maintained because of lack of income; the mortgage cannot be amortized; and the land, even assuming someone would buy it for use as burial spaces, can't be sold until the building, parking lots, and other

improvements are razed to permit use for burial. That is not in the best interest of the lot owners who the original injunctive relief was to protect. The ground is not going to be sold for spaces, and no money will be going into the perpetual care trust fund.

THE REASONING: SB 346 provides, only in this one instance, that the cemetery corporation may undedicate the ground, provided the subsequent use is in "conjunction with funeral services or related services...." It requires all revenue from the sale or lease to go into the perpetual care trust fund, to provide for future care of the cemetery. The property clearly becomes taxable for ad valorem taxes, and if not paid, the property could be sold. The proposal requires verification that no burials have been made in the ground so undedicated. It is beneficial to the lot owners, the county, and the cemetery, and, in addition, should provide new employment and other development benefits. The final benefit to the lot owner comes because the additional funeral home, in competition, will permit funeral services and merchandise to be provided at competitive prices within the community.

17-1302. Cemetery lots; disposition.

Such corporations shall have power to convey, by deed or otherwise, any lot or lots of the cemetery for purposes of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office of the register of deeds of the county wherein the same are situated. No lots shall be sold or disposed of until such plat shall have been recorded.

Every lot sold and conveyed in such cemetery shall be held by the proprietor, for the purpose of sepulture only, and shall not be subject to attachment or execution: *Provided*, That where such corporation has agreed to convey a certain lot or lots to a purchaser, and such purchaser has failed for a period of one year following the date of such agreement to pay the purchase price therefor, such agreement, at the option and election of the cemetery corporation, shall be and remain canceled, void, and of no effect: *Provided further*, That if within the said period of one year the purchaser shall cause any dead person to be buried upon said lot, or lots, so agreed to be sold, that portion of said lot or lots actually occupied by the said grave of such dead person so buried shall not be sold by such cemetery corporation to any other person, or persons; but, if the purchaser shall voluntarily remove or cause to be removed the dead person so buried in such grave, such corporation may convey, sell and dispose of such grave described to any other person or persons.

The "purposes of sepulture" shall be defined as including, but not limited to, the interment of human or pet remains; cemetery roadways, easements, walkways, features and other decorative improvements; cemetery offices, maintenance facilities, and other such improvements; mausoleums, columbariums, and other above ground interment spaces; facilities for visitation, committal, or funeral services; mortuary and embalming facilities; and such other purposes and uses necessary or incidental thereto.

(Attachment VI)
3/10/86

S. L. G