

Approved March 20, 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./~~pm~~ on March 18, 1986 in room 531-N of the Capitol.

All members were present except: Senator Mulich who was excused.

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

Conferees appearing before the committee:

Ernie Mosher, League of Kansas Municipalities

Rep. Ken Francisco, Maize, Ks.

Fred Allen, Kansas Association of Counties

James Snyder, Executive Secretary, The Kansas Funeral Directors and
Embalmer's Association

H.B. 2790 - requiring counties to distribute \$250 per mile per year from the county and township road fund to cities on the county highway system for maintenance of connecting link roads. In lieu thereof counties are required to maintain these connecting links in cities of the third class and pay for this out of the fund noted earlier.

Ernie Mosher spoke in support of the bill. He stated it's been on the books for many years. The Attorney General Opinion #85-172 states that the statute is no longer meaningful and should be repealed. There is a bill in the house yet, H.B. 3087 that is a companion bill and deals with this issue on a broader base.

Rep. Ken Francisco co-sponsor of the bill, spoke in support of the bill. He stated also that they are working on S.B. 3087, they hope to get it out this year. He presented a copy of the Attorney General Opinion #85-172. (Attachment I)

Senator Steineger moved to report the bill favorably. Senator Daniels seconded the motion. The motion carried.

H.B. 2656 - amends the Interlocal Cooperation Act to clarify that economic development may be the subject of an interlocal cooperation agreement. The bill was recommended by the interim special committee on Federal and State Affairs, as a part of its proposal no. 33, dealing with regional planning and development.

Ernie Mosher spoke in support of the bill. He stated this bill specifically adds economic development, they would like to work on this over the summer with the counties and they might be back next session with a different approach.

Senator Steineger moved to report the bill favorably. Senator Daniels seconded the motion. The motion carried.

H.B. 2909 - grants improvement districts the power to enforce resolutions by prescribing penalties including fines and confinement in the county jail and to seek injunctions of violations.

Ernie Mosher stated they didn't have any particular interest or concern about doing this but the language on page 6 of the bill, "the sheriff or the county law enforcement agency of the county shall be responsible for the law enforcement of the resolutions of such

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:00 a.m. ~~XX~~ on March 18, 1986.

districts, the prosecution shall be by the county counsel and county attorney in the district court system". He called attention to the fact that roughly 400 small cities in Kansas would like to have the county sheriff enforce their municipal ordinances and utilize the district court system and the county attorneys office. If the bill passes our people maybe back next session asking for the same regulatory system for small cities.

Fred Allen stated his organization has reservations about the bill.

In responses to a question, Mr. Mosher stated there are 32 such improvement districts in the state. This bill happens to deal with one in Riley County.

The Chairman stated there is another bill in committee concerning election of a board for absentee home owners in these improvement districts. After staff review of improvement districts and their powers and committee discussion of the issue, the consensus of the committee was to hold the bill in committee at this time.

The Chairman referred the committee to S.B. 346, and the action of the committee on March 10th. The committee report had not been turned in yet and he requested that Substitute Bill for S.B. 346 be returned to committee and held at this time. The Chairman stated an interim committee might be asked for to study all of the cemetery issues.

James Snyder, Executive Secretary, The Kansas Funeral Directors and Embalmer's Assn., Inc., presented a letter to the committee, stating because of the changing of this bill from a local situation to one that would be a radical statewide policy change, they opposed the change and requested this bill be returned to committee. (Attachment II)

Senator Gaines moved to have the bill returned to committee. Senator Steineger seconded the motion. The motion carried.

The Chairman called attention to S.B. 677 - concerning the annexation of land located in certain water districts. This bill was separated from S.B. 428. Senator Montgomery stated the bill is not controversial and we need to pass it out.

Senator Gaines suggested this bill be passed and an interim study be requested on the electric utilities.

Senator Winter stated he did not have any problem with S.B. 677 and he felt the cities and water districts had basically signed off on this one. He did have problems with proceeding with S.B. 428, he would not like to have it interpreted as support for S.B. 428.

Senator Bogina moved to clarify the language in line 43, "parcels of land" that this be amended to read "benefit units", also, in line 44 that the same change be made. "prior to annexation", be struck and add "at the time of annexation".

There was discussion on the language in lines 47 through 49, "customers" be stricken and "benefit units" be added. Senator Bogina amended his motion to include this. Senator Gaines seconded the motion. The motion carried.

After discussion on section "c", Senator Winter moved to amend this section to read cities would only have to pay for the number of benefit units they began to serve. Senator Gaines seconded the motion. The motion carried. Staff was instructed to talk with Dennis Schwartz, President of the Rural Water Districts to see if this language was appropriate.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on March 18, 1986.

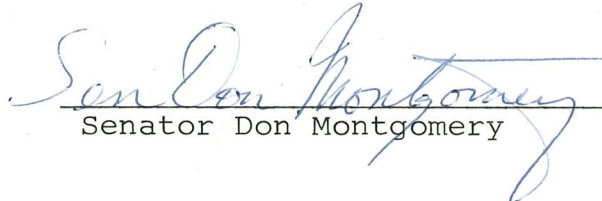
Senator Gaines moved to pass the bill as amended. Senator Daniels seconded the motion. The motion carried.

Senator Bogina stated Ways and Means has been asked to introduce legislation for a moratorium on annexing utilities, that the bill be referred to this committee and that an interim committee be requested to study the electric utilities. He said he has not agreed to do this until the Ways and Means Committee saw the bill, but he wanted the committee to be aware of it.

The committee discussed the electric utilities, Sunflower and K. G. & E and how a moratorium would affect them. Senator Steineger asked if it goes to an interim study are we talking about going into the whole Kansas Retail Electric Act. Senator Gaines stated he felt it would have to be, he had concern about K.G. & E. in his area. Senator Steineger suggested that it was a territorial war. The Chairman stated that is why we need an interim study there isn't enough time in committee to study it.

Senator Langworthy moved to adopt the minutes of March 13. Senator Allen seconded the motion. The motion carried.

The meeting adjourned at 10:00 a.m., the next meeting will be at 9:00 a.m., March 19.



Senator Don Montgomery



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 12, 1985

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 85- 172

The Honorable William M. Bryant, D.V.M.
State Representative, Sixty-Third District
Rural Route 2
Washington, Kansas 66968

Re: Roads and Bridges -- County and Township Roads --
Classification and Designation of Roads in a
Non-County Road System

Synopsis: A county is primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county primary roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. Thus, in the event of a controversy over the maintenance of a county road which passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed. Cited herein: K.S.A. 12-2901; 12-2904; 12-2905; 12-2907; 68-169; 68-506; 68-506e; 68-572; 79-2925; L. 1967, ch. 354.

* * *

Dear Representative Bryant:

As State Representative for the 63rd District, you request our opinion as to who is responsible for the maintenance of a public road. Specifically, you inquire as to which governmental entity has the primary responsibility for maintenance of a county road which passes through a third class city, and to what extent, if any, the county is responsible to the city for road maintenance.

(Attachment I) S. LG

3/18/86

You inform us that Washington County intends to pay the City of Haddam (a city of the third class) the amount of \$250 per mile per year for the maintenance of those streets in Haddam which are part of the county connecting link system. Initially, it may appear that this arrangement is authorized by K.S.A. 68-506e, which states:

"The board of county commissioners of each county shall annually apportion and distribute quarterly to each city on the county highway system from the fund known as the county and township road fund at the rate of two hundred fifty dollars (\$250) per mile for the maintenance of the streets in such cities used as connecting links in the system of county highways which are not connecting links in the state highway system, said moneys to be credited to the street and alley fund of such cities. In lieu of said apportionment the board of county commissioners may maintain in cities of the third class such streets and pay for such maintenance from the county and township road fund."

However, this statute is no longer meaningful to the issue at hand, in that K.S.A. 68-416(b)(1) provides: "The fund known as the 'county and township road fund' is hereby abolished" Thus, this provision of K.S.A. 68-506e is not relevant since the county and township road fund no longer legally exists. However, as you note in your letter, the county is authorized to pay a city \$250 per mile, or more or less, under the county's home rule authority. We agree with this interpretation.

A more applicable statute, K.S.A. 68-506, provides in relevant part:

"Whenever any main traveled highway is located partly within and partly without a city and connects a county primary road with a city, by and with the consent of the governing body, and with the final approval of the secretary of transportation, the board of county commissioners is hereby given power and authority and required to designate such

public highway as a part of the county primary road system, and it shall be improved and maintained as other parts of the county primary road system, except that the governing body of such city may aid in the construction, maintenance and improvement of such road as it would were the said highway wholly within the corporate limits of said city." (Emphasis added.)

As we interpret this statute, the county is primarily responsible for the maintenance of those "main traveled highways" which lie within a city and which connect a county primary road with the city. See, e.g. City of Independence v. Montgomery County Comm'rs, 140 Kan. 661 (1934). At the same time, however, under county home rule, a board of county commissioners has wide discretion as to how it will distribute its annual budget. Thus, in the event of a controversy over the maintenance of a county road which passes through a third class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed. K.S.A. 12-2901 et seq.

Regarding such agreements, K.S.A. 12-2901 states:

"It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations and corporations on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."

K.S.A. 12-2904 goes on to say:

"(b) Any public agency may enter into agreements with one or more public or private agencies for joint or cooperative action pursuant to the provisions of this act."

Under such an agreement, which the county counselor would be able to prepare, the city could contract with the county for performance of road maintenance work.

Earlier this year, Attorney General Opinion No. 85-57 addressed the related issue of whether a township could utilize revenue produced by taxes levied for road maintenance to contract with a county, under the terms of an interlocal agreement, for the performance of road maintenance work. As in the situation at hand, the county was not under the county road unit system. A number of the smaller townships were either unable or unwilling to maintain their roads, and the county was interested in relieving them of this obligation. The opinion concluded that an interlocal agreement between the county and each one of the townships which desired the county to maintain its roads would be possible under K.S.A. 12-2901 et seq.

Likewise, although we find Washington County, rather than the city of Haddam, primarily responsible for the maintenance of a county primary road which passes through the city (K.S.A. 68-506), we believe that an interlocal agreement would be extremely beneficial in resolving this issue. Given the fact that the county road is utilized by citizens living in Haddam, it seems equitable that the expenses should be apportioned between the two governments. The city could appropriate its share of the necessary funds and turn them over to the county pursuant to K.S.A. 12-2907 and as the joint agreement may provide. We also call to your attention the provisions of K.S.A. 12-2904(f) (approval of the attorney general required) and K.S.A. 12-2905 (filing of agreement with register of deeds and secretary of state). In addition, funds provided by the county pursuant to such an agreement must be budgeted and expended in accordance with Kansas law, particularly the Budget Law, K.S.A. 79-2925 et seq.

In addition to K.S.A. 12-2901 et seq., two other statutes authorize interlocal cooperation. K.S.A. 68-169 supplements K.S.A. 12-2904, and provides in relevant part:

"Any county, city or political subdivision of this state shall have the authority to enter into written agreements with each other or with the secretary of transportation with respect to the planning, designing, financing, constructing, reconstruction, maintaining, acquiring of right-of-way or establishing

to controlled access facilities of any existing or proposed highway, road, street or connecting link, including bridges, traffic control devices and other such improvements located thereon. Expenditures made pursuant to such agreements shall be considered proper expenditures of public funds, including state funds, notwithstanding the location of such improvement or facility outside the boundary or jurisdiction of such county, city or political subdivision."

K.S.A. 68-572 specifically addresses intergovernmental agreements for road construction and maintenance, and states:

"The board of county commissioners of any county, any township board of highway commissioners of the county or city governing body within such county are hereby authorized to enter into agreements for the construction, reconstruction or maintenance of any roads or streets."

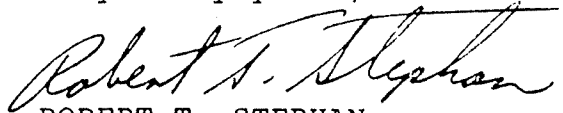
Thus, it appears the legislature has expressly authorized the forming of contracts between cities and counties. In Attorney General Opinion No. 80-213, we concluded that cities and counties are authorized to enter into agreements with each other for the construction, reconstruction or maintenance of any roads or streets without the letting of competitive bids. That opinion noted that the title of the act (see L. 1967, ch. 354) makes clear that the agreements referred to in the above quotation are agreements by and between cities, counties and townships. The title of the act is stated, in pertinent part, thus:

"An Act relating to intergovernmental cooperation, authorizing counties, townships and cities to contract with each other as to the improvement of roads and streets"

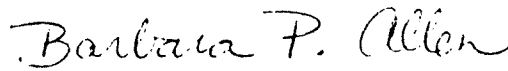
In conclusion, it is our opinion that the county is primarily responsible for the maintenance of main traveled highways which lie within a city and which connect county primary roads with the city, although a city is also empowered to aid in the maintenance of such roads. K.S.A. 68-506. Thus, in the event of a controversy over the maintenance of a county road which

passes through a third-class city, and to ensure the most efficient use of public funds, an interlocal agreement apportioning the costs between the county and the city may be formed.

Very truly yours,

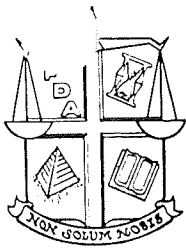


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General

RTS:JSS:BPA:crw



THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

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Derby

March 17, 1986

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Senator Don Montgomery, Chairman
Senate Local Government Committee
Statehouse
Topeka, KS 66612

Second Vice President

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Manhattan

Corporate Secretary

DICK CASSELMAN
Hiawatha

Dear Senator Montgomery:

Executive Secretary

JIM SNYDER
Topeka

Your Committee considered Senate Bill 346 recently, changed it into a Substitute Bill with a total amendment--including the title--and recommended it. Because of the changing of this bill from a local situation to one that would be a radical statewide policy change that our profession opposes, The Kansas Funeral Directors respectfully request this bill be returned to your committee for a fair hearing.

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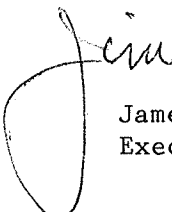
LARRY KOONS
Goodland

PHIL PHILLIPS
Ulysses

While we are not opposed to mortuary/cemetery combinations as we already have some 5 in Kansas, we do not believe dedicated land for final disposition should be so easily opened up to commercial purposes of any type. We would go into this in more detail at a hearing should your Committee so grant our request.

Since this bill originally was introduced by the Federal and State Affairs Committee, and has no time limitation, our request is merely for a fair hearing.

Thank you.


James F. Snyder
Executive Secretary

cc: Local Government Committee Members

(Attachment II) S. LG

3/18/86

John Peterson

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 11)