

Approved April 3, 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./~~XX~~ on March 31, 1986 in room 531-N of the Capitol.

All members were present except: Senators: Allen, Bogina and Winter who were excused.

Committee staff present: Mike Heim, Theresa Kiernan, Emalene Corell, Lila McClafflin

Conferees appearing before the committee:

Representative Dale Sprague, 73rd. District, McPherson, KS.  
Senator Joseph Harder, 25th District, Moundridge, KS.  
Don Gerard, Central KS. Wholesale Water District, McPherson, KS.  
Representative Carl Holmes 125th. District, Plains, KS.  
Betty McBride, Treasurer of Cherokee County, KS. also, Secretary of the  
Kansas Treasurers' Association  
Allen Alderson, Attorney, Kansas County Treasurers' Association  
Ernie Mosher, Executive Director, League of Kansas Municipalities  
Willie Martin, Sedgwick County, KS.  
Mac Manning, City of Valley Center, KS.  
Larry Humes, Department of Revenue  
Susan Seltsom, State Treasurers Office

H.B. 2833 - amending the public wholesale water supply district act relating to the composition of the governing body.

Senator Harder spoke in support of H.B. 2833. He expressed a deep and abiding interest that this bill be passed out of committee and he supported the amendments made by the House.

Rep. Sprague presented written testimony in support of H.B. 2833. His testimony states fourteen cities in the central corridor of Kansas have demonstrated an interest in developing a plan to serve the future water needs of their citizens. This legislation would give them greater flexibility in organizing a Public Wholesale Water Supply District. He requested a committee amendment that would change from a five member board to a three member board in order to accomodate present organizations of other Public Wholesale Water Supply Districts. (Attachment I)

Don Gerard, Central Kansas Wholesale Water District, supported the bill. He stated the fourteen cities have similar problems and the problems are escalating, this bill would allow them to organize and work on options available as a group.

H.B. 3012 - concerning the countywide retailers' sales tax; relating to the apportionment thereof.

Rep. Holmes spoke in support of the bill. He expressed concern with Rep. Sand's amendment (Attachment II). He pointed out that his City of Plains does invest their idle funds and this interest is helpful in holding down their mill levy on property tax.

Betty McBride, Treasurer of Cherokee County, also, Secretary of the Kansas Treasurers Association, presented written testimony in support of H.B. 3012. (Attachment III) She stated the County Treasurers Association would not support the amendment offered by Rep. Sand.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,  
room 531-N, Statehouse, at 9:00 a.m./~~a~~<sup>XX</sup>p.m. on March 31, 1986, 19    .

Allen Alderson, Attorney, Kansas County Treasurer's Association, urged the Committee to support the passage of the bill in its current form. (Attachment IV) If Rep. Sand's amendment was adopted they would oppose the bill.

Ernie Mosher, Executive Director, League of Kansas Municipalities, presented testimony in support of H.B. 3012, as amended by the House. He stated even the smallest city can now have a NOW account, and even a few dollars earned by a small city is significant. (Attachment V) In response to a question whether he supported the proposed amendment, he replied, he would rather not have the amendment but it would be better than not having the bill at all.

Willie Martin, Sedgwick County, expressed some concern with the bill, they think the State Treasurer's should distribute the money.

Mac Manning, City of Valley Center, Ks., stated they support the bill.

Larry Humes, Department of Revenue, stated they favored the original bill.

Susan Seltson, State Treasurer's Office, was present and responded to questions from the Committee.

H.B. 2769 - would expand the purposes for which counties could spend moneys for economic development. Manhattan Chamber of Commerce supported this bill as an added tool for economic development.

The Chairman had requested an Attorney General's opinion on S.B. 494 and H.B. 2769 is an identical bill. Attorney General's Opinion No. 86-40 is (Attachment VI).

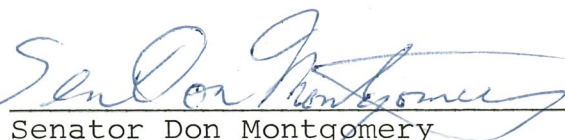
A letter from Wendy J. Schippa, Director of Public Affairs, Manhattan Chamber of Commerce, in support of H.B. 2769 was distributed to the Committee. (Attachment VII)

Ernie Mosher, Executive Director, League of Kansas Municipalities presented written testimony, he stated it seems to us that we are not yet ready for a statewide bill like H.B. 2769. (Attachment VIII).

Willie Martin, Sedgwick County, KS. presented written testimony in support of H.B. 2769. She stated they share the enthusiasm and renewed commitment to economic development that the State is exhibiting. (Attachment IX)

Senator Ehrlich moved to adopt the minutes of March 27, 1986. Senator Mulich seconded the motion. The minutes were adopted.

The meeting adjourned until 9:00 a.m., April 1, 1986.

  
\_\_\_\_\_  
Senator Don Montgomery





STATE OF KANSAS



TOPEKA

HOUSE OF REPRESENTATIVES

DALE M. SPRAGUE

REPRESENTATIVE, SEVENTY-THIRD DISTRICT  
MCPHERSON COUNTY  
P.O. BOX 119  
MCPHERSON, KANSAS 67460  
(316) 241-7112

STATE CAPITOL  
ROOM 112-S  
TOPEKA, KANSAS 66612  
(913) 296-7682

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: INSURANCE  
MEMBER: FEDERAL AND STATE AFFAIRS  
GOVERNMENTAL ORGANIZATION

TO: Senate Local Government Committee

RE: H.B. 2833

DATE: March 31, 1986

BACKGROUND INFORMATION

Fourteen cities located in the central corridor in the State of Kansas have demonstrated an interest in developing a plan to serve the future water needs of their citizens. These cities have informally organized an entity entitled as Central Kansas Wholesale Water Supply District and have elected certain of their members to a Steering Committee. The member cities are:

Abilene	Moundridge
Bel Aire	Newton
Halstead	Park City
Hesston	Salina
Hutchinson	Sedgwick
Lindsborg	Valley Center
McPherson	Wichita

A map indicating the location of each of the member cities is attached hereto.

The member cities, through the Steering Committee, are charged with the responsibility of arranging for the creation of an appropriate formal legal entity to serve the needs of the members and to commence preliminary studies concerning the development of future water supply to serve the member cities.

PURPOSE OF H.B. 2833

The purpose of H.B. 2833 is to make a technical amendment to the currently existing Kansas Public Wholesale Water Supply District Act (K.S.A. 19-3545 et seq). The proposed amendment in H.B. 2833 would provide the member cities greater flexibility in organizing a Public Wholesale Water Supply District under the Act.

A Committee Amendment from a minimum five members of a Board to three is requested in order to accomodate present organizations of other Public Wholesale Water Supply Districts.

(ATTACHMENT I)

3/31/86 S.LG

HOUSE BILL No. 3012

By Committee on Local Government

2-18

0018 AN ACT concerning the countywide retailers' sales tax; relating  
0019 to the apportionment thereof; amending K.S.A. 1985 Supp.  
0020 ~~12-189 and~~ 12-192 and repealing the existing section ~~sections~~.

section

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1985 Supp. 12-192 is hereby amended to  
0023 read as follows: 12-192. (a) *Within two days, excluding weekends*

0024 *and holidays, of receipt from the state treasurer, all revenue*

any county treasurer

0025 received by any county treasurer ~~the director of taxation~~ from a

0026 countywide retailers' sales tax shall be apportioned *by the*

by the county treasurer

0027 *county treasurer* among the county and each city located in such

0028 county in the following manner: (1) One-half of all revenue

county treasurer

0029 received by the county treasurer ~~director of taxation~~ shall be

0030 apportioned among the county and each city located in such

0031 county in the proportion that the total tangible property tax

0032 levies made in such county in the preceding year for all funds of

0033 each such governmental unit bear to the total of all such levies

0034 made in the preceding year, and (2) except as provided by

0035 paragraph (3), 1/2 of all revenue received by the county treasurer

county treasurer

0036 ~~director of taxation~~ from such countywide retailers' sales tax shall

0037 be apportioned among the county and each city located in such

0038 county, first to the county that portion of the revenue equal to the

0039 proportion that the population of the county residing in the

0040 unincorporated area of the county bears to the total population of

0041 the county, and second to the cities in the proportion that the

0042 population of each city bears to the total population of the

0043 county, except that no persons residing within the Fort Riley

0044 military reservation shall be included in the determination of the

0045 population of any city located within Riley county, or (3) one-half

S. LG

(ATTACHMENT II)

3/31/86

0046 of all revenue received by the county treasurer of Geary county  
 0047 ~~director of taxation~~ from countywide retailers' sales taxes levied  
 0048 ~~in Geary county~~ in any year shall be apportioned among the  
 0049 county and each city located in such county, first to the county  
 0050 that portion of the revenue equal to the proportion that the  
 0051 population of the county residing in the unincorporated area of  
 0052 the county less the population residing on a military reservation  
 0053 bears to the total population of the county less the population  
 0054 residing on a military reservation, and second to the cities in the  
 0055 proportion that the population of each city bears to the total  
 0056 population of the county less the population residing on a mili-  
 0057 tary reservation. All revenue retained by the county ~~apportioned~~  
 0058 ~~to a county shall be paid to its county treasurer and~~ shall be paid  
 0059 into the general fund of the county.

county treasurer of Geary county

retained by the county

0060 (b) For purposes of subsection (a), the term "total tangible  
 0061 property tax levies" means the aggregate dollar amount of tax  
 0062 revenue derived from ad valorem tax levies applicable to all  
 0063 tangible property located within each such city or county. The ad  
 0064 valorem property tax levy of any county or city district entity or  
 0065 subdivision shall be included within this term if the levy of any  
 0066 such district entity or subdivision is applicable to all tangible  
 0067 property located within each such city or county.

Unless otherwise agreed upon, the county treasurer shall pay

0068 (c) All revenue apportioned to the several cities of the county  
 0069 ~~shall be paid~~ to the respective treasurers thereof. Whenever the  
 0070 territory of any city is located in two or more counties and any  
 0071 one or more of such counties do not levy a countywide retailers'  
 0072 sales tax, or whenever such counties do not levy countywide  
 0073 retailers' sales taxes at a uniform rate, the revenue received by  
 0074 such city from the proceeds of the countywide retailers' sales tax  
 0075 shall be used for the purpose of reducing the tax levies of such  
 0076 city upon the taxable tangible property located within the county  
 0077 levying such countywide retailers' sales tax, except when the  
 0078 county which does not levy a countywide sales tax has within its  
 0079 bounds a portion of the Fort Riley military reservation, the city in  
 0080 the county which levies the tax shall be exempt from this re-  
 0081 quirement. In every other case, all revenue received by a city  
 0082 from the proceeds of a city or countywide retailers' sales tax shall

city

within five days, excluding weekends and holidays, of receipt  
 of such revenue from the state treasurer

0083 be deposited in the general fund of such taxing subdivision.  
0084 (d) Prior to March 1 of each year, the director of taxation shall  
0085 advise each county treasurer of the revenue collected in such  
0086 county from the state retailers' sales tax for the preceding calen-  
0087 dar year.

0088 ~~[(e) Prior to December 31 of each year, the clerk of every~~  
0089 ~~county imposing a countywide retailers' sales tax shall provide~~  
0090 ~~such information deemed necessary by the director of taxation to~~  
0091 ~~apportion and remit revenue to the counties and cities pursuant~~  
0092 ~~to this section.]~~

0093 Sec. 2. K.S.A. 1985 Supp. 12-189 is hereby amended to read  
0094 as follows: 12-189. The rate of any city retailers' sales tax shall be  
0095 fixed in the amount of .5% or 1% which amount shall be deter-  
0096 mined by the governing body of the city. The rate of any  
0097 countywide retailers' sales tax shall be fixed in an amount of  
0098 either .5% or 1% which amount shall be determined by the board  
0099 of county commissioners. Any county or city levying a retailers'  
0100 sales tax is hereby prohibited from administering or collecting  
0101 such tax locally, but shall utilize the services of the state depart-  
0102 ment of revenue to administer, enforce and collect such tax.  
0103 Except as otherwise specifically provided in K.S.A. 12-189a and  
0104 12-190, and amendments thereto, such tax shall be identical in its  
0105 application, and exemptions therefrom, to the Kansas retailers'  
0106 sales tax act and all laws and administrative rules and regulations  
0107 of the state department of revenue relating to the Kansas re-  
0108 tailers' sales tax shall apply to such local sales tax insofar as such  
0109 laws and rules and regulations may be made applicable. The  
0110 state director of taxation is hereby authorized to administer,  
0111 enforce and collect such local sales taxes and to adopt such rules  
0112 and regulations as may be necessary for the efficient and effec-  
0113 tive administration and enforcement thereof. Upon receipt of a  
0114 certified copy of an ordinance or resolution authorizing the levy  
0115 of a local retailers' sales tax, the state director of taxation shall  
0116 cause such taxes to be collected within or without the boundaries  
0117 of such taxing subdivision at the same time and in the same  
0118 manner provided for the collection of the state retailers' sales tax.  
0119 All moneys collected by the director of taxation under the provi-

0120 sions of this section shall be credited to a "county and city  
0121 retailers' sales tax fund" which fund is hereby established in the  
0122 state treasury. Any refund due on any county or city retailers'  
0123 sales tax collected pursuant to this act shall be paid out of the  
0124 sales tax refund fund and reimbursed by the director of taxation  
0125 from collections of local retailers' sales tax revenue. All local  
0126 retailers' sales tax revenue collected within any county or city  
0127 pursuant to this act shall be *apportioned and* remitted at least  
0128 quarterly by the state treasurer, on instruction from the director  
0129 ~~of taxation, to the treasurer of such county or city.~~

0130 Sec. ~~2-3~~. K.S.A. 1985 Supp. ~~12-192~~ is 2 is ~~12-189 and 12-192~~ 3 ~~are~~  
0131 hereby repealed.

0132 Sec. ~~3-4~~. This act shall take effect and be in force from and  
0133 after its publication in the statute book.



Betty McBride, Treasurer

CHEROKEE COUNTY, KANSAS



COLUMBUS, KANSAS 66725

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE;

I AM BETTY MCBRIDE, CHEROKEE COUNTY TREASURER AND SECRETARY OF THE KANSAS COUNTY TREASURERS ASSOCIATION LEGISLATIVE COMMITTEE. I WANT TO EXPRESS MY APPRECIATION TO YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TODAY ON BEHALF OF THE COUNTY TREASURER'S ASSOCIATION TO SHARE WITH YOU OUR CONCERNS ON THE DISTRIBUTION OF COUNTYWIDE SALES TAX-AND TO ASK YOUR SUPPORT OF AMENDED HOUSE BILL # 3012.

THE DISTRIBUTION OF COUNTYWIDE SALES TAX HAS BECOME A SUBJECT OF DISSENTION BETWEEN COUNTY TREASURER'S AND CITY UNITS OF GOVERNMENT, SINCE SOME CITIES HAVE FELT THAT THEIR COUNTY TREASURER'S ARE NOT DISTRIBUTING THIS TAX AS QUICKLY AS THEY WOULD LIKE. K.S.A. 12-192 WHICH ADDRESSES THE DISTRIBUTION OF COUNTYWIDE SALES TAX DOES NOT ADDRESS ANY SPECIFIC DATES ON WHICH THE SALES TAX IS TO BE DISTRIBUTED BY COUNTY TREASURER'S TO CITIES. COUNTYWIDE SALES TAX IS RECEIVED BY COUNTY TREASURER'S FROM THE STATE TREASURER'S OFFICE EACH MONTH BUT NOT ON ANY SPECIFIC DATE, THEREFORE PAYMENT CANNOT BE SCHEDULED AT A CERTAIN TIME OF THE MONTH WHEN OTHER OFFICE DUTIES REQUIRE LESS TIME. COUNTY TREASURER'S PRESENTLY MAKE OVER FIFTY DIFFERENT DISTRIBUTIONS OF TAXES ANNUALLY. MANY COUNTIES ARE SMALL, AND NOT COMPUTERIZED, WHICH MEAN THAT EMPLOYEES ARE REQUIRED TO WORK THE MOTOR VEHICLE PORTION OF THE OFFICE AS WELL AS THE TAX DEPARTMENT.

THIS IN ADDITION TO THE MANY OTHER STATUTORY REQUIREMENTS COMMENCING IN THE COUNTY TREASURER'S OFFICE LEAVES LITTLE TIME FOR ADDITIONAL ADMINISTRATION DUTIES.

(ATTACHMENT III) S.LG  
3/31/84

AMENDED HOUSE BILL # 3012 WOULD REQUIRE THAT THE STATE TREASURER'S OFFICE DISTRIBUTE THE CITIES SHARE OF COUNTYWIDE SALES TAX AT THE SAME TIME DISTRIBUTION IS MADE ON THE CITY SALES TAX PORTION. WE SUPPORT THIS CONCEPT FULLY AND FEEL THIS WILL MEET BOTH CITERA'S FOR CITIES AND COUNTIES. TREASURER'S WILL NOT HAVE ADDITIONAL DISTRIBUTIONS AND CITIES WILL RECEIVE THEIR PORTION OF THE COUNTYWIDE TAX MORE EXPEDITENT, THUS BENEFITING BOTH ENITIES. THE STATE TREASURER'S OFFICE HAS INDICATED THAT DIRECT DISTRIBUTION OF THE TAX WILL NOT CREATE ANY ADDITIONAL PROBLEMS FOR THAT OFFICE. ALL BUT TWO DISTRIBUTIONS, COUNTYWIDE SALES TAX AND MOTOR FUEL TAX ARE ALREADY BEING PAID DIRECTLY BY THE STATE TREASURER'S OFFICE TO CITIES. THE ADDITION OF THESE TWO DISTRIBUTIONS WOULD CREATE UNIFORMITY IN THE METHOD WHICH TAX PAYMENTS OF THIS NATURE ARE MADE.

IT IS OUR UNDERSTANDING THAT A PROPOSED AMENDMENT WILL BE OFFERED AT THIS HEARING MANDATING A FIVE DAY DISTRIBUTION PERIOD ON COUNTYWIDE SALES TAX BY COUNTY TREASURER'S. IF THIS LEGISLATIVE BODY SHOULD DECIDE TO ADOPT SUCH AN AMENDMENT, COUNTY TREASURER'S WILL OF COURSE ADMINISTER THE LEGISLATIVE MANDATE, HOWEVER THIS MANDATE WILL CREATE DIFFERENT DEGREES OF ADMINISTRATIVE BURDENS FOR COUNTY TREASURER'S AFFECTING SOME MUCH MORE THAN OTHERS. PRESENTLY THE STATE TREASURER'S OFFICE MAELS THE RETAILERS AND COMPENSATING USE PORTION OF THIS TAX ON THE SAME DATE, HOWEVER MANY TIMES THEY ARRIVE SEVERAL DAYS APART. WE NOW DISTRIBUTE THESE BOTH ON THE SAME DATE. THE FIVE DAY DISTRIBUTION DEADLINE COULD MEAN THAT SOME COUNTY TREASURER'S WOULD HAVE TO MAKE AN ADDITIONAL DISTRIBUTIONS, THUS MAKING TWO DISTRIBUTIONS NECESSARY IN A ONE MONTH PERIOD. PASSAGE OF AMENDED HOUSE BILL # 3012 IN ITS PRESENT FORM WOULD BE A PERMANENT WORKABLE SOLUTION OF THE PROBLEM, SATISFYING BOTH CITY AND COUNTY NEEDS, AND REDUCING UNNECESSARY BURDENS FOR COUNTY TREASURER'S.

WE ASK THIS COMMITTEE'S FULL SUPPORT FOR PASSAGE OF AMENDED HOUSE BILL # 3012 IN IT'S PRESENT FORM.

THANK YOU FOR THE TIME YOU HAVE ALLOTTED ME TO EXPLAIN OUR VIEWS CONCERNING THIS MATTER. I WILL BE HAPPY TO ANYSWER ANY QUESTIONS YOU MIGHT HAVE AT THIS TIME

RESPECTFULLY,

  
BETTY MCBRIDE,

SECRETARY KANSAS CO. TREASURER'S ASSN.

MEMORANDUM

**TO: MEMBERS OF THE SENATE LOCAL GOVERNMENT COMMITTEE**  
**FROM: ALAN F. ALDERSON, ATTORNEY, KANSAS COUNTY TREASURERS ASSOCIATION**  
**RE: HOUSE BILL NO. 3012 (As Amended by House Committee)**  
**DATE: MARCH 31, 1986**

As originally introduced, House Bill No. 3012 would have required County Treasurers to distribute county-wide local retailers' sales tax to each city located within the county within two days of its receipt from the State Treasurer. Under current law, there is no time limit for such distributions from the County Treasurer and the County Treasurers Association opposed the bill as originally introduced.

Following the hearing in the House Local Government Committee, an agreement was reached between the Department of Revenue, the League of Kansas Municipalities, the State Treasurer's office and the County Treasurer's Association which led to the House Committee Amendments. As amended, the State Treasurer would be responsible for making all distributions to the cities directly.

Inasmuch as it has been determined that these distributions can be made directly by the State Treasurer's office without additional expense and in a manner in which will get the monies to the cities much faster than under either current law or the Bill as originally proposed, the County Treasurers Association supports the Bill in its current form. The original intent of the Bill was to ensure a timely distribution to the cities and the County Treasurers Association sees no reason for the distributions to be made first to the County Treasurer with a secondary apportionment and distribution having to be made to the cities within each county. Passage of the bill in

(ATTACHMENT IV) 3/31/86 S.LG

its current form will end a long-standing feud which has existed in many counties between the County Treasurers and cities located within such counties.

At the House Local Government Committee's hearing on Senate Bill 683 on Thursday, March 27, 1986, Representative Sand advised me and the County Treasurers which were present that an amendment would be offered at this hearing today which would again require distributions to be made by the County Treasurers. The substance of such amendment was revealed to us at that time and the County Treasurers Association does oppose the amendment as it was presented to us at that time. It is our belief that it is inconsistent for city distributions to be made through the County Treasurer's office for those cities who do not want the funds for investment purposes and, at the same time, to require the County Treasurers to distribute the funds to those cities within five working days. If there are cities who are not concerned about receiving the funds at the earliest possible time for investment purposes, those cities should not be concerned about whether they receive their distributions at a time other than the time a County Treasurer makes his or her other distributions. We are very much opposed to the proposed amendment as it was presented to us.

In light of the fact that it is now been determined that the State Treasurer can make these distributions directly, the County Treasurers Association would oppose any amendment to this Bill which would require the distributions to be made first to the County Treasurer with a secondary apportionment and distribution to the cities. We would urge your support and passage of the Bill in its current form. I would be glad to answer any questions you may have in this regard.



# League of Kansas Municipalities

**PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565**

**TO:** Senate Committee on Local Government  
**FROM:** E.A. Mosher, Executive Director  
**DATE:** March 28, 1986  
**SUBJECT:** HB 3012--Distribution of Countywide Sales Tax Revenue

The League strongly supports the enactment of HB 3012, as amended by the House. At present, both the city share and county government share of countywide sales taxes are paid to the county treasurer, who then credits the county general fund with the county government share and pays to each city its share. The bill provides that the state will directly pay each city its share. It does not in any way change the amount cities receive--only the way and time in which cities are paid.

We did not request the original House bill. Rather than sponsor such a bill, we have instead tried to assist county treasurers and have developed a manual on "Distribution of Countywide Sales Taxes." While the allocation of the county general fund share and the cities' share is a very simple calculation, once the basic data is obtained, some county treasurers have encountered some problems in prompt distributions, because of the press of other duties. As a result, the Kansas County Treasurers Association proposed the House-adopted amendments. We support this approach.

We acknowledge the bill imposes some additional duties on the state. We think these are minor. Under subsection (e) on page 3, county clerks are required to submit the data necessary for the director of taxation to make the apportionments. This data is of two sorts under the existing statutory formula--relative property taxes and relative population. (The population data

(ATTACHMENT V) 3/31/86 S.46  
President: Ed Eilert, Mayor, Overland Park • Vice President: John L. Carder, Mayor, Iola • Past President: Peggy Blackman, Mayor, Marion  
Directors: Robert C. Brown, Mayor, Wichita • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Donald L. Hamilton, City  
Clerk/Administrator, Mankato • Carl D. Holmes, Mayor, Plains • Paula McCreight, Mayor, Ness City • Jay P. Newton, Jr., City Manager, Newton •  
John E. Reardon, Mayor, Kansas City • David E. Retter, City Attorney, Concordia • Arthur E. Treece, Commissioner, Coffeyville • Dean P. Wiley,  
City Manager, Garden City • Douglas S. Wright, Mayor, Topeka • Executive Director: E.A. Mosher

for countywide sales tax distribution is determined by the state division of the budget, under K.S.A. 11-201.) The monthly distributions by the director of taxation would be very simple with computer programming. The state treasurer will need to prepare and mail out a number of monthly checks. These added duties by the state, however, simply replace the same work done by each county treasurer. For the state as a whole, we think the bill would save money.

The sales tax involved in this discussion is not a "county government" or "county" sales tax. The statute calls it a "countywide sales tax," to clarify its nature. Nor is it a county government aid to cities. As in handling city or school levied property taxes, the county treasurer serves as an agent of the state, rather than an officer of the county, in distributing countywide sales tax money.

Finally, I would note that if there are any investment earnings to be made in this program, we think the basic rule should be followed that interest follows principal. It may be possible for a county to earn higher interest rate earnings than a small city, when the money can be temporarily invested. However, the smallest city can now have a NOW account, and even a few dollars earned by a small city is significant.



STATE OF KANSAS



TOPEKA

SENATE CHAMBER

L. MONTGOMERY

SENATOR, TWENTY-FIRST DISTRICT  
MARSHALL, NEMAHA, POTTAWATOMIE,  
WABAUNSEE, PARTS OF DICKINSON,  
GEARY, MORRIS, RILEY COUNTIES  
1218 MAIN  
SABETHA, KANSAS 66534

COMMITTEE ASSIGNMENTS

CHAIRMAN: LOCAL GOVERNMENT  
VICE-CHAIRMAN: AGRICULTURE  
MEMBER: ASSESSMENT AND TAXATION  
EDUCATION  
LEGISLATIVE AND CONGRESSIONAL  
APPORTIONMENT  
JOINT COMMITTEE ON ADMINISTRATIVE  
RULES AND REGULATIONS

February 16, 1986

Honorable Robert T. Stephan  
Attorney General  
Kansas Judicial Center

Dear Attorney General Stephan:

The question has arisen whether several of the proposed uses of public moneys contained in Senate Bill 494 and an identical bill House Bill 2769, dealing with county economic development programs, would be for a proper public purpose.

The proposed legislation would expand the purposes for which county public moneys for economic development could be spent to include acquiring and selling industrial sites and awarding grants to industries as inducements to locate in a county.

The specific questions are whether it is a proper public purpose for a county to engage in the buying and selling of real estate for industrial sites for economic development and whether public moneys can be used for cash grants to industries? A related question is, if the activities are deemed to be a proper public purpose, could a county exercise the powers of eminent domain without express statutory authority under home rule powers to acquire lands for industrial sites?

The Senate Local Government Committee will need to take action on Senate Bill 494 within the next 4 weeks. Your timely response to my inquiry will be most appreciated.

Sincerely,

Senator, Don Montgomery  
Chairman, Senate Local Government Committee

DM:lm

(ATTACHMENT VI) S.LG

3/31/86



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

March 14, 1986

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

ATTORNEY GENERAL OPINION NO. 86- 40

The Honorable Don Montgomery  
State Senator, Twenty-First District  
Capitol, Room 503-N  
Topeka, Kansas 66612

Re: Counties and County Officers -- General Provisions  
-- Home Rule; Acquisition of Real Property for  
Industrial Sites

Counties and County Officers -- Economic  
Development Programs -- Awarding Grants to  
Industries as Inducements to Locate in a County

Synopsis: K.S.A. 19-4103 authorizes expenditure of county moneys for programs related to economic development. The buying and selling of real estate for industrial sites is a legitimate exercise of a county's power of home rule as provided in K.S.A. 19-101 and K.S.A. 1985 Supp. 19-101a. Thus, a county which has established an economic development program under K.S.A. 19-4101 et seq. may engage in the buying and selling of real estate for industrial sites for economic development, as long as said expenditure: (1) has a demonstrable relationship to the program, and (2) satisfies the public purpose doctrine. Similarly, a county may award cash grants to industries as inducements to locate in a particular county, as long as the expenditure meets both of the above-mentioned requirements. Finally, a county may exercise the power of eminent domain to acquire lands for industrial sites, insofar as this power

(ATTACHMENT VI)

3/31/86

S. LG

is authorized expressly by K.S.A. 19-3801 or by implication through home rule and K.S.A. 19-4103. Cited herein: K.S.A. 1985 Supp. 12-1741b, 12-1744a, 12-1744b; K.S.A. 19-101; K.S.A. 1985 Supp. 19-101a; K.S.A. 19-3801, 19-3802, 19-3803, 19-4101, 19-4102, 19-4103; 1986 Senate Bill No. 494; 1986 House Bill No. 2769.

\* \* \*

Dear Senator Montgomery:

As chairman of the Senate Local Government Committee, you request our opinion as to whether several proposed uses of public moneys would be proper. These uses are authorized in 1986 Senate Bill No. 494, and identical 1986 House Bill No. 2769. The proposed legislation would expand the purposes for which county public moneys for economic development could be spent. Specifically, you inquire whether it is proper for a county to engage in the buying and selling of real estate for industrial sites for economic development, and whether public moneys can be used to award grants to industries as inducements to locate in that county. Assuming such activities are permissible, a related question is whether a county may exercise the powers of eminent domain without express statutory authority under home rule powers to acquire lands for industrial sites.

Each of your questions will be addressed separately. In Attorney General Opinion No. 85-52 (copy enclosed), we examined the issue of whether the acquisition and development of real property as an industrial site or park is a legitimate exercise of a county's power of local legislation or home rule, as provided in K.S.A. 19-101 and K.S.A. 1985 Supp. 19-101a. In that opinion, we stated that county funds acquired pursuant to K.S.A. 19-4101 et seq. may only be utilized for programs related to economic development. Further, we stated that the acquisition and development of an industrial site or park would appear to be such a program. However, to be authorized any expenditure of public funds must pass a two-part test, i.e. have a demonstrable relationship to a program of economic development and satisfy the public purpose doctrine.

K.S.A. 19-101 deals with the scope of a county's home rule authority, and provides in pertinent part:

"That each organized county within this state . . . shall be empowered for the following purposes: . . . second, to purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law; third, to sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; fourth, to make all contracts and do all other acts in relation of the property and concerns of the county, necessary to the exercise of its corporate or administrative powers . . . ."

This section clearly grants a county authority to acquire property and to make any order concerning such property which may be deemed to be in the interests of the county's inhabitants. Such authority, in our opinion, includes the ability to buy and sell real estate for industrial sites in order to encourage the economic growth and development of the county. This power would be specifically codified by the Senate bill (at section 1).

In addition to home rule authority, the Kansas Legislature has provided a county with several alternative methods of seeking to stimulate and promote industrial, and thus economic, growth and development. For example, K.S.A. 12-3801 et seq. enables "local unit[s] of general government," defined as counties and cities [K.S.A. 12-3802(b)], to issue "industrial development bonds," upon making required findings,

"for the purpose of financing the acquisition of land, the acquisition or construction (including reconstruction, improvements, expansion, extension, and enlargement) of buildings and appurtenances, including but not by way of limitation industrial trackage and access roads, the purpose of such financing being primarily to sell or lease the property so financed to a private individual, partnership, or corporation for the conduct of manufacturing, warehousing,

distribution, and/or research and development operations, except municipal stadiums and theaters."

K.S.A. 1985 Supp. 12-1741b authorizes a county to issue revenue bonds, subject to the constraints of K.S.A. 1985 Supp. 12-1744a and 12-1744b, the proceeds of which shall be used:

". . . for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling of facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development, and manufacturing purposes . . . ." (Emphasis added.)

In addition, a board of county commissioners has the power, pursuant to K.S.A. 19-3801 et seq., to incorporate, organize and enlarge industrial districts within a county. This authority, however, is dependent upon the presentation of a proper petition for such organization signed by the owners of 100 or more contiguous acres of land (located outside the limits of any incorporated city) which is by its character and location suitable for industrial development. K.S.A. 19-3802. Once incorporated, such industrial districts have independent authority to levy a tax and issue general obligation bonds, in addition to exercising the other powers specified in K.S.A. 19-3803.

However, in our opinion, none of these alternatives limit or restrict the authority of the county under K.S.A. 19-101 and K.S.A. 1985 Supp. 19-101a. Therefore, we conclude that the acquisition or disposal of real property for the purpose of developing an industrial site is a permissible exercise of county home rule powers.

Given that the county has the power, either under its broad home rule authority or under specific statutes, to buy and sell real estate for industrial sites for economic development, the question becomes whether such expenditure is for a proper public purpose. K.S.A. 19-4103 outlines how moneys raised pursuant to a tax levy (authorized by K.S.A. 19-4102) may be utilized. K.S.A. 19-4103 states:

"Any such county establishing an economic development program under this act may utilize the funds herein authorized to conduct studies and prepare comprehensive plans for its future economic growth and development; to inventory the services, facilities and resources of the entire county; to promote, stimulate, and encourage the growth and development of the agriculture, commerce and industry of the county as a whole, in order to achieve maximum utilization of its human, economic and natural resources and tourist attractions; and to otherwise promote the general economic welfare and prosperity of the area." (Emphasis added.)

These rather broad confines are the only limits on the utilization of the funds authorized by K.S.A. 19-4102. As Attorney General Opinion No. 82-229 concluded:

"K.S.A. 19-4103 authorizes expenditure of county moneys for programs related to economic development. The only constraints in this regard are that such expenditures have a demonstrable relation to programs of economic development and that they satisfy the public purpose doctrine."

Thus, a county which has established an economic development program under K.S.A. 19-4101 et seq. may engage in the buying and selling of real estate for industrial sites, as long as such expenditure has a demonstrable relationship to a program of economic development. In addition, the buying and selling must satisfy the "public purpose" doctrine.

As stated in Attorney General Opinion No. 85-52:

"The public purpose doctrine, discussed at length in Opinion No. 82-229 (copy enclosed), requires a unit of local government, in exercising the powers conferred upon it, to spend funds only for a public purpose. Thus, the funds raised pursuant to K.S.A. 19-4102 may not be



expended by a governmental entity to make a gift or loan to benefit a solely private entity or cause. By the enactment of K.S.A. 19-4101 et seq., however, the Kansas legislature has made a policy determination that government-financed programs to encourage economic development serve a valid public purpose. This should not be construed as a blanket authorization of every expenditure which may be made under the guise of 'economic development,' and the question of whether a specific expenditure serves a public purpose must be determined in light of the specific circumstances. However, in view of the general authority the legislature has granted to counties regarding the promotion of economic and industrial development, it is our opinion that most expenditures for the development of a county industrial site would serve the purpose required by K.S.A. 19-4103 and the public purpose doctrine."

We affirm this result, and conclude that the buying and selling of real estate for economic development would meet the requirements of the public purpose doctrine.

You next ask whether public moneys may be used for cash grants to industries as an inducement to locate in a particular county. This question can be analyzed in the same manner as your previous inquiry; such expenditure would be permissible only if the funds are utilized for programs related to economic development and serve a public purpose. In our opinion, awarding grants to industries as inducements to locate in a particular county would appear to be such a program. Thus, a county which has established an economic development program under K.S.A. 19-4101 et seq., may use public moneys for cash grants to industries, as long as the expenditure has a demonstrable relationship to said program. The analysis of the public purpose doctrine which appears above would also apply here, and would justify this usage. Again, the proposed amendment to K.S.A. 19-4103 would specifically allow this action.

Finally, you ask whether a county could exercise the power of eminent domain without express statutory authority to acquire land for industrial sites. Initially, we note the language in K.S.A. 19-3801 which provides in relevant part:

"For the purpose of encouraging development in this state, the board of county commissioners of any county shall have the power, upon a proper petition being presented for that purpose, to incorporate, organize and enlarge industrial districts within such county in the manner provided by this act. . . ."  
(Emphasis added.)

Thereafter, the statutes expressly give a board of county commissioners the power to form an industrial district within the county for the purpose of encouraging development in the state. Further, K.S.A. 19-3808(5) gives every industrial district (incorporated as provided by this act) the power in such district:

". . . to exercise all the rights and powers of eminent domain within the district in the manner set forth in K.S.A. 26-501 to 26-516, inclusive, and amendments thereto;" (Emphasis added.)

Clearly, the board of county commissioners in any county has express statutory authority to exercise the powers of eminent domain within an industrial district, if the purpose of such action is to encourage economic development. The question then arises whether the express grant of authority under K.S.A. 19-4101 et seq. also gives the county the implied authority to exercise the powers of eminent domain. The necessity to employ eminent domain by implication could conceivably arise if land the county wishes to acquire for an industrial site is not located within an industrial district. Similarly, a county may find it necessary to employ this power either expressly or by implication if an agreement of sale cannot be made with the landowner.

Neither K.S.A. 19-101, which deals with the scope of a county's home rule authority, nor K.S.A. 19-4103, which authorizes the use of county funds to encourage economic development, specifically authorizes the use of eminent domain

authority. However, the statutes, by their express grant of these powers, carry with them such implied authority as is necessary to effectively exercise the express powers. This principle has long been recognized by Kansas courts. State ex rel. v. Younkin, 108 Kan. 634, 638 (1921); Edwards County Comm'rs v. Simmons, 159 Kan. 41, 53 (1944). Accordingly, to the extent that the use of the power of eminent domain is required to fulfill the powers conferred by the above statutes, it is our opinion that a county has the implied authority to so act.

We are aware of the line of Kansas cases which state that the power of eminent domain may be exercised only when it is specifically authorized by statute. Dinges v. Board of County Comm'rs of Johnson County, 179 Kan. 35, 41 (1956); Soden v. State Highway Commission, 183 Kan. 33, 39 (1958); Board of Education of U.S.D. 512 v. Vic Regnier Builders, Inc., 6 Kan.App.2d 888, 890 (1982). However, we note that none of the cases which contain such a holding have dealt with counties since the advent of home rule for these units of government. All have either been issued prior to 1974 (the year county home rule was approved by the legislature), or deal with units of government such as school districts which do not possess home rule, and so are limited to the powers conferred on them by statute. Therefore, we are of the opinion that, in the case of acquisition of industrial sites pursuant to K.S.A. 19-4103, a county does have the implied power to exercise eminent domain authority under its home rule power and 19-4103.

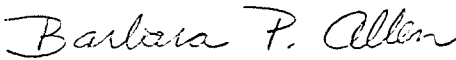
In conclusion, K.S.A. 19-4103 authorizes expenditure of county moneys for programs related to economic development. The buying and selling of real estate for industrial sites is a legitimate exercise of a county's power of home rule as provided in K.S.A. 19-101 and K.S.A. 1985 Supp. 19-101a. Thus, a county which has established an economic development program under K.S.A. 19-4101 et seq. may engage in the buying and selling of real estate for industrial sites for economic development, as long as said expenditure: (1) has a demonstrable relationship to the program, and (2) satisfies the public purpose doctrine. Similarly, a county may award cash grants to industries as inducements to locate in a particular county, as long as the expenditure meets both of the above-mentioned requirements. Finally, a county may

he Honorable Don Montgomery  
page 9

exercise the power of eminent domain to acquire lands for industrial sites, insofar as this power is authorized expressly by K.S.A. 19-3801 or by implication through home rule and K.S.A. 19-4103.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Barbara P. Allen  
Assistant Attorney General

RTS:JSS:BPA:crw



# Manhattan Chamber of Commerce

P.O. Box 988 505 Poyntz Manhattan, Kansas 66502 (913) 776-8829

March 26, 1986

Senator Don Montgomery  
Room 503 N  
State Capitol Building  
Topeka, KS 66612

Dear Senator Montgomery,

The Manhattan Chamber of Commerce was very pleased to receive and review the opinion rendered by the Attorney General in regard to clarifying applicable uses of industrial mil levies by counties.

We believe the Attorney General's opinion provides counties the kind of directions they need for growth. The abilities to acquire property and to award grants have always, in our opinion, been related to economic development programs and satisfied the public purpose doctrine. House Bill 2769 along with Attorney General's opinion 86-40 will certainly leave no doubt in the minds of county attorneys or commissioners as to the kinds of programs they may employ to attract new employers to their locales.

We appreciate your hard work in helping to pass this needed legislation.

Sincerely yours,

Wendy J. Schiappa  
Director of Public Affairs

WJS/jh

(ATTACHMENT VII)

3/31/86

S. LG





# League of Kansas Municipalities

**PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565**

**TO:** Senate Committee on Local Government  
**FROM:** E.A. Mosher, Executive Director  
**DATE:** March 28, 1986  
**SUBJECT:** HB 2769--County Economic Development

I appear before you today with a mixed message. The League's Finance and Taxation Committee reviewed the provisions of HB 2769 and acted to recommend an interim legislative study. The League's State Legislative Committee took a position against the specific provisions of the bill. These actions occur with a recognition that increased county government involvement and regional approaches to economic development appear necessary. And on top of all this, we have some uncertainty as to whether the legislature may even authorize counties to use public funds to do as much as the bill attempts to authorize.

There are at least 28 Kansas counties which now levy a special tax under this statute, of not to exceed .50 mills, for economic development. However, a separate tax levy is not required. K.S.A. 19-4102 authorizes the use of general operating fund money for this purpose. As a result, other county revenue sources could be used, not just the special tax levy proceeds which is subject to a petition for voter referendum.

As you know, we have long had a fundamental rule of common law that public funds may not be used for private purposes. Like a nuisance, this is primarily a judicial determination. There is, we think, some question as to whether a county board may be authorized to "acquire and sell industrial sites," or award a grant of money to a specific industry "as inducements to locate in the county."

(ATTACHMENT VIII) 3/31/86 S. LG

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We suspect that the existing statute and the statutory home rule powers of counties, may be adequate to accomplish this kind of action--assuming they are public purposes for which public funds may be used.

As an aside, I should note that the League has never requested statutory authority for cities to specifically do the kind of thing specified by HB 2769. Our reason has been that if it's permissible to do so--if it is a public purpose--then cities probably have the power to do so constitutionally.

Finally, I would note that some city officials are concerned as to how countywide tax moneys would be used for specific development purposes, and when and where. For example, a city would not be very happy with a situation where there is an industrial park in existence within a city with a full set of public facilities, but the county government wants to use countywide tax funds to open up a new and competitive facility for the limited growth that might occur in the area. On the other hand, cities and counties might want to jointly finance some improvements of special need for industrial prospects. Many cities are devoting considerable energy and public resources in promoting the economic development of their city and the area. At the very minimum, it would seem that some kind of a coordinated approach should be required to avoid duplication and conflicting objectives.

It seems to us that we are not yet ready for a statewide bill like HB 2769. The existing powers in lines 30 and 31--"to promote, stimulate and encourage the growth and development"--seem to us to be adequate at this time. We suggest more thought and study is necessary before such specific subsidy authority as contained in the bill is enacted.

## Article 41.—ECONOMIC DEVELOPMENT PROGRAMS

**19-4101.** Economic development programs; counties having or developing comprehensive plan. Any county which has completed or is in the process of developing a comprehensive plan for the future physical growth and development of all or a part of its area may establish and conduct a program for its future economic growth and development in accordance with the provisions of this act.

**History:** L. 1965, ch. 209, § 1; L. 1972, ch. 89, § 1; July 1.

**19-4102.** Economic development program; financing; tax levy, use of proceeds; adoption and publication of notice of intention; protest petition and election. The board of county commissioners of any such county may, by resolution, provide for the establishment of a countywide economic development program and may provide for the financing thereof from its general operating fund, or may levy a tax annually upon all the taxable tangible property of the county in an amount not exceeding the limitation prescribed by K.S.A. 1979 Supp. 79-1947, for the purpose of creating a fund therefor and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 1979 Supp. 12-1774, and amendments thereto, by cities located in the county. The tax levy herein authorized shall be in addition to all other levies authorized or limited by law and shall not be subject to or within aggregate tax levy limit prescribed by article 19 of chapter 79 of the Kansas Statutes Annotated. In any year in which the board of county commissioners of any county shall elect to levy any tax under the authority of this section, such board shall cause a notice of its intention to make such levy to be published in the official newspaper of the county, and if within thirty (30) days next following the date of the publication of such notice a petition, signed by electors equal in number to not less than five percent (5%) of the electors of the county, requesting an election thereon, shall be filed in the office of county election officer, no such levy shall be made without such prop-

osition having first been submitted to and having been approved by a majority of the electors of the county voting at an election called and held thereon. Any election held under provisions of this section shall be subject to election laws applicable to elections for approval of bonds issued by such county.

**History:** L. 1965, ch. 209, § 2; L. 1970, ch. 100, § 30; L. 1972, ch. 89, § 2; L. 1976, ch. 141, § 1; L. 1979, ch. 52, § 132; July 1.

**Cross References to Related Sections:**

Aggregate tax levy limitation exemption, see 79-5011.

**19-4103.** Same; use of funds. Any such county establishing an economic development program under this act may utilize the funds herein authorized to conduct studies and prepare comprehensive plans for its future economic growth and development; to inventory the services, facilities and resources of the entire county; to promote, stimulate and encourage the growth and development of the agriculture, commerce and industry of the county as a whole, in order to achieve maximum utilization of its human, economic and natural resources and tourist attractions; and to otherwise promote the general economic welfare and prosperity of the area.

**History:** L. 1965, ch. 209, § 3; April 21.

**19-4104.** Same; advisory committee. Such board may create a county economic development advisory committee, with such members as deemed advisable, which shall be representative of the various private and public interests and political subdivisions within the county.

**History:** L. 1965, ch. 209, § 4; April 21.

**19-4105.** Same; joint undertaking by two or more counties; cooperation with other agencies. Any two or more such counties may jointly and cooperatively undertake programs to promote the growth and development of the area or region in which such counties are located and any county may likewise cooperate with political subdivisions of the county and with other public or private nonprofit agencies to achieve the purposes set forth in this act.

**History:** L. 1965, ch. 209, § 5; April 21.



## SEDGWICK COUNTY, KANSAS

### BOARD OF COUNTY COMMISSIONERS

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Testimony of Willie Martin  
Sedgwick County  
House Local Government Committee  
HB 2769  
March 31, 1986

Sedgwick County is very supportive of the changes contained in HB 2769. We certainly share the enthusiasm and renewed commitment to economic development that the State is exhibiting. Legislation such as this is very important in giving counties the statutory tools to respond to economic and industrial development opportunities. Often we find that the ability to provide needed infrastructure improvements is a critical factor in the decision of a business or industry to locate in the community.

Generally, the financing of capital improvements through the issuance of general obligation bonds is a lengthy process. The ability to respond to the infrastructure needs of new business and industry, existing business and industry and commercial development in a timely fashion is often crucial. Any added flexibility which could be given to counties in financing infrastructure improvements will be a boon to economic development activities in the State of Kansas.

(ATTACHMENT IX)

3/31/86

S. LG