

Approved 2-10-87 Ivan Sand
Date

MINUTES OF THE House COMMITTEE ON Local Government

The meeting was called to order by Representative Ivan Sand at
Chairperson

1:30 ~~am~~ p.m. on February 9, 1987 in room 521-S of the Capitol.

All members were present except:

Committee staff present:

Mike Heim, Legislative Research Dept.
Bill Edds, Revisor of Statutes' Office
Sharon Green, Committee Secretary

Conferees appearing before the committee:

Rep. Lawrence Wilbert
Senator Phil Martin
Ike Loy, Trustee, Highland Park Cemetery Association, Inc., Pittsburg, KS
Donald C. Widner, Highland Park Cemetery Association, Inc., Pittsburg, KS
Rep. Bill Roy
Beth Schafer, Assistant City Attorney
Edie Snethan, Director of Public Works
David Pope, State Water Resources Board
Leland E. Rolfs, Legal Counsel, Division of Water Resources
George McCullough, Topeka Metropolitan Airport Authority, Chairman
Carl Pritchit, Topeka Metropolitan Airport Authority

Chairman Sand called the meeting to order.

Motion was made by Representative Baker to introduce a new committee bill in place of HB 2005. The motion was seconded by Representative Francisco. The motion carried.

Mike Heim briefed the committee on HB 2118, stating that this bill would exempt Crawford County from maintaining a permanent maintenance fund.

Rep. Wilbert testified in favor of HB 2118, stating that he introduced the legislation at the request of the trustees of the Highland Park Cemetery Association in his district.

Senator Phil Martin testified in favor of HB 2118, stating that economics was the factor in the non-profit situation of this Crawford County cemetery. He also stated that there was merit to what the trustees were asking for in this bill.

Ike Loy testified in favor of HB 2118, stating that should the Highland Park Cemetery Association be required to turn absolute control of the perpetual maintenance funds over to a banking institution or savings and loan association, the minimum annual fees will be in excess of \$1,200, whereas, the directors of the cemetery association now serve free of charge. (Attachment 1)

Donald Widner testified in support of HB 2118, stating that he did not feel it would serve any useful purpose to turn over the funds to an institution and be charged for the handling of those funds. He also stated that the Highland Park Cemetery Association had complied with the annual reports to be filed at the Secretary of State's office.

Chairman Sand closed the hearing on HB 2118.

Mike Heim briefed the committee on HB 2115, stating that the bill would grant the city of Topeka an easement to divert water along the Kansas river.

Rep. Roy testified in favor of HB 2115, stating that he appeared before the

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Local Government,
room 521-S, Statehouse, at 1:30 ~~AM~~ p.m. on February 9, 19 87

committee on behalf of the Shawnee County Delegation.

Beth Schafer testified in support of HB 2115, stating that the state of Kansas has control of the Kansas River and therefore the city has to be granted an easement by the state. She stated that the Kansas River is the source of water supply to Topeka, and the City has acquired all necessary permits from the Division of Water Resources and from the Corps of Engineers.
(Attachment 2)

Edie Snethan testified in favor of HB 2115, stating that she had nothing further to add to Ms. Schafer's testimony.

David Pope testified in support of HB 2115, stating that the cost of the proposed weir was \$5 million.

Leland Rolfs testified in favor of HB 2115, stating that the proposed easement should not have any effect on downstream users, and that the Division of Water Resources feels that this bill is necessary in order for the City of Topeka to acquire a necessary easement in order to construct the proposed weir across the Kansas River bed. (Attachment 3)

Chairman Sand closed the hearing on HB 2115.

Mike Heim briefed the committee on HB 2116, stating that the bill is localized and gives the Topeka Airport Authority authority to own, operate and dispose of water and sewage utility systems.

George McCullough testified in support of HB 2116, stating that this bill, if enacted, would help pay off some bonds.

Carl Pritchit testified in favor of HB 2116, and answered questions from the committee members.

Chairman Sand closed the hearing on HB 2116.

The minutes of February 5 were approved.

Meeting adjourned.

HISTORY - HIGHLAND PARK CEMETERY ASSOCIATION, INC.

Highland Park Cemetery Association, Inc. was incorporated in 1914 as a non-profit cemetery association and assumed the perpetual care responsibilities for many older burials in the cemetery which was formerly known as Pittsburg Cemetery.

The date of the very first burials in the cemetery are actually unknown, however, some burials date back to prior to the year 1900.

Donald C. Widner is President and been a member of the Board of Directors and Trustee of the cemetery association for a number of years. Donald C. Widner is a retired businessman, holds a law degree and is active on many boards in the area in the City of Pittsburg, Kansas, including BANK IV Pittsburg, N.A., Pittsburg State University Foundation Fund, and many others.

William Shute is a retired businessman from the City of Pittsburg, Kansas, having operated his own successful business, Pitt-Craft, Inc., approximately 40 years prior to retirement.

Kenneth Ike Loy is a practicing attorney in the City of Pittsburg, Kansas, having practiced approximately 34 years, holding an undergraduate degree in accounting from Kansas University, and been a member of the Board of Directors and Trustees of Highland Park Cemetery Association for approximately 25 years.

*Attachment 1
2-9-87*

Highland Park Cemetery Association, Inc. follows the guidelines as required by the Kansas Secretary of State in setting aside 15% of the sale price of each lot sold or a minimum of \$25.00 per sold and has filed the required annual reports and statements with the Office of the Kansas Secretary of State.

The asset value of cash and mortgages on December 31, 1985, was in the sum of \$163,374.13.

Should Highland Park Cemetery Association, Inc. be required to turn absolute control of the funds over to a banking institute or savings and loan association, the minimum annual fees will be in excess of \$1,200.00. Assuming the fees were paid during the 25 years which Kenneth Ike Loy has been on the board, as well as the other board members, the minimum fees would, therefore, be in the sum of \$32,476.00.

Due to the fact that the directors of the cemetery association serve as Perpetual Care Fund Trustees free of charge, the trust fund has been able to accumulate the additional sum of \$32,476.00 by reason of the fact that no fees or charges have been made against the principal or income of the trust funds.

The Highland Park Cemetery Association, Inc. has claimed exemption from K.S.A. 17-1312f(c) by reason of the fact that this cemetery began business in 1914 and is a non-profit organization and is in a urban county.

At the time the original law was enacted, the law did not state that the cemetery had to be in a county designated as urban and, therefore, until the law was changed the cemetery was able to be exempt from the provisions of the statute.

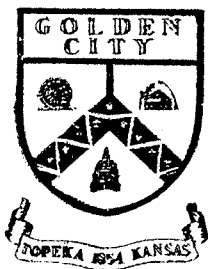
That throughout the 25 years Kenneth Ike Loy has been a cemetery association director and trustee of the Perpetual Care Fund all required reports have been filed with the various taxing divisions and a good working relationship has been enjoyed. Highland Park Cemetery Association, Inc. is required by the Internal Revenue Service to file a non-profit income tax return, and the return has been audited on a number occasions, and each examination resulted in no change to the submitted returns.

Subsequent to discussing the statute and the intent of the law, it appears that the statute is primarily designed to prohibit for-profit corporations from beginning cemetery operations, depleting the Perpetual Care Trust Fund, and then liquidating leaving the lot owners with insufficient funds to maintain the cemetery in perpetuity.

In conclusion, would like to again state that the Board of Directors, Donald C. Widner; William Shute; and Kenneth Ike Loy, serve as trustees of the Perpetual Care Trust Fund free of

charge and oversee the management and investment of the funds and from a review of the initial figures, it is apparent that management of the funds has been in good hands and the fund has continued to grow.

Therefore, it is respectfully requested that each of the Committee Members consider the foregoing facts carefully and vote favorably upon House Bill 2118 and amend the statute to include Crawford County, Kansas as being designated as exempt from K.S.A. 17-1312f(c).



CITY OF TOPEKA

City Attorney
215 E. 7th Street Room 353
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Phone 913-295-3883

Members of the House Local Government Committee:

The City of Topeka is undertaking construction of a "low water weir" on the Kansas River. The City has acquired all necessary permits from the Division of Water Resources and from the Corp of Engineers. However, the construction of the weir constitutes an encroachment on the Kansas River which requires an easement. KSA 75-2131 authorizes a state agency or board to grant easements to Municipalities, provided the agency has custody and control of the real property. In this instance, no one agency or board has custody and control of the Kansas River. Therefore, the easement must be granted by the legislature. Precedence for granting an easement is found in KSA 82a-212, KSA 82a-213 and KSA 82a-214.

I would ask this committee to favorably report House Bill 2115.

Respectfully submitted,

Elsbeth D. Schafer
Assistant City Attorney

EDS/sh

Attachment 2
2-9-87

TESTIMONY BY THE
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
ON
HOUSE BILL NO. 2115
ON
FEBRUARY 9, 1987
TO THE
HOUSE COMMITTEE ON LOCAL GOVERNMENT

PRESENTED BY
LELAND E. ROLFS, LEGAL COUNSEL
DIVISION OF WATER RESOURCES

Thank you, Chairman Sand and Members of the Committee, for this opportunity to appear. In accordance with the provisions of K.S.A. 82a-301 et seq. relating to the placing of obstructions in streams, the City of Topeka has recently applied for a permit to construct a weir across the Kansas River. In accordance with this application, a permit was issued and plans approved by the Chief Engineer, Division of Water Resources, for the construction of the weir, but the approval specifically provided that the permit did not constitute an easement to construct the weir on State owned property.

Under Kansas State Law, the State of Kansas is the owner of the bed and banks of any navigable river within the State of Kansas up to the ordinary high water mark. The Kansas River is a navigable river under State Law. The City of Topeka would like to construct this weir on the bed and banks of the Kansas River which are owned by the State of Kansas.

The City of Topeka has consulted with Mr. John Campbell, of the Attorney General's Office, and the Division of Water Resources concerning House Bill 2115. The Division of Water Resources feels that this Bill is necessary in order for the City of Topeka to acquire a necessary easement in order to construct the proposed weir across the Kansas River bed. The Division of Water Resources supports passage of House Bill 2115.

Thank you for this opportunity to appear and I would be happy to answer any questions you might have.

*Attachment 3
2-9-87*