

Approved 2-17-87 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 16, 1987 in room 521-S of the Capitol.

All members were present except:

Representative Dean, Excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Neufeld
Tom Bell, Kansas Hospital Association
Linda McGill, Kansas Funeral Directors Association
Larry McElwaine, Kansas Funeral Directors Assoc., President
Hap Bledsoe, Owner of funeral home and cemetery in Wichita, KS
John Peterson, Kansas Cemeteries Association

Chairman Sand called the meeting to order.

Mike Heim gave the committee an overview of HB 2185, stating that this bill amends the township district hospital laws by adding a fourth alternative for selecting board members.

Representative Neufeld testified in support of HB 2185, stating that this bill changes the term of hospital board members from 3 years to 4 years, so that they will coincide with the school board election ballot. He stated that a special election for the hospital board members did cost Minneola \$1,700.

Tom Bell testified in favor of HB 2185, stating that by allowing the flexibility to provide four-year terms, district hospitals could share the costs of election with other governmental units, thereby saving money.
(Attachment 1)

Mike Heim briefed the committee on SB 11, stating that the bill amends the Cemetery Merchandise Act to exclude caskets from the definition of cemetery merchandise. The sale of caskets shall be governed by the pre-need funeral law. This bill also authorizes the Secretary of State's office to audit all pre-need funeral accounts or trusts established under K.S.A. 16-301 et seq.

Linda McGill testified in support of SB 11, stating that the Funeral Directors have no opposition to an audit and that the consumer is adequately protected. (Attachment 2)

Larry McElwaine answered questions from the committee members regarding SB 11.

Hap Bledsoe testified in opposition of SB 11, stating that this bill does not protect the public, only funeral directors, and that the funeral directors do not want the competition.

John Peterson testified in opposition to SB 11, stating that there is an increasing demand for pre-need sales, and that the Cemeteries Association does not oppose the auditing amendment, but opposes the restriction of sales.

Motion was made by Representative Patrick and seconded by Representative Rezac to favorably pass HB 2185 and place it on the Consent Calendar. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Local Government,
room 521-S, Statehouse, at 1:30 ~~a.m.~~^{XX}/p.m. on February 16, 1987

Motion was made by Representative Graeber and seconded by Representative Empson to favorably pass SB 11. The motion carried.

The minutes of February 12 were approved as presented.

Chairman Sand adjourned the meeting.



Donald A. Wilson
President

February 16, 1987

- I. KHA supports H.B. 2185.
- II. H.B. 2185 applies to district hospitals. There are approximately 20 district hospitals in the state, ranging generally from 15-50 beds. These are small hospitals that are, in many cases, facing financial difficulties.
- III. Present law requiring three-year terms for board members would, in some cases, require the hospital to assume the entire bill for an election. By allowing the flexibility to provide four-year terms, district hospitals could share the costs of election with other governmental units, thereby saving money.

Attachment 1
2-16-87

February 16, 1987

TESTIMONY

to

HOUSE LOCAL GOVERNMENT COMMITTEE

by

Linda McGill

Mr. Chairman and Members of the Committee.

I am Linda McGill of Pete McGill and Associates. As most of you know, we represented the Kansas Funeral Directors Association in the last legislative session and I appear here today in the same capacity.

Several of you have already told me you have heard this issue described and debated several times. For that reason, I will be as brief as possible, however, I do not want to slight this issue. I would like to take a few moments to share with you the history of this proposal for the benefit of the new members on the committee. Much of my testimony will be similar to that which we provided the interim committee this summer.

Prior to the start of the 1986 legislative session, Jim Snyder, Executive Director of the Kansas Funeral Directors Association, contacted Pete about assisting his organization in the 1986 legislative session. He told Pete they hoped to pursue legislation that would add one word to the existing statute,-- the word "caskets", and he very carefully explained the reason.

Consistent with the established practice of our firm, Pete asked Mr. Snyder to give us a few days to consider his request as he needed time to check it out. Most of you know we do not work on issues that we do not believe in nor do we represent clients of which we are not proud.

*Attachment 2
2-16-87*

We checked the history of the cemetery merchandise law, the date of enactment, the purpose and intent of the act. The act was passed in 1982.

Senator Arasmith was Chairman of the Senate committee that considered this legislation and Representative Ivan Sand was Chairman of the House committee in 1982. Pete made a special effort to contact both, and both assured him emphatically and in no uncertain terms that it was the intent of the legislature that caskets would not be a part of cemetery merchandise, as defined by law.

Both agreed a bill should be passed in the 1986 session of the legislature to remove any doubt and carry out the original legislative intent.

That was done in the form of SB 499 and the legislature passed the bill by an overwhelming vote in both houses.

SB 499 was introduced early in the 1986 session with 21 Senate sponsors. All 21 Senators voted for the bill, as did 10 additional Senators. The vote was 31 to 7 in the Senate. Senator Arasmith emphasized in the committee and on the floor of the Senate, SB 499 did nothing more than the legislature thought it was doing and intended to do in 1982.

Chairman Sand was equally emphatic in the House Local Government Committee where the bill was first heard and approved. The Local Government Committee then sent SB 499 to the floor with the recommendation to be passed.

A few days later Pete was summoned to the Speaker's office and advised the bill was going to be pulled off the calendar and re-referred to the Federal and State Affairs Committee. This was on Friday, before the week of the legislative recess. I was to learn later that this was the result of a request from one House member and a very unusual procedure to say the least.

Chairman Miller, of Federal and State Affairs, will tell you he already had a very heavy schedule in the final days considering the Economic Development package. Some expected SB 499 might never have a sufficient opportunity to be heard and might get lost in the shuffle.

However, Chairman Miller recognized the interest in SB 499, assured everyone it would be heard and voted on by the Committee. The Chairman scheduled the bill at the earliest opportunity, and as I recall, all members were present and the Federal and State Affairs Committee recommended the bill favorable for passage with only one dissenting vote.

At that stage it had passed two House committees. You will also recall, the opponents of SB 499, had introduced HB 2715. This bill would have negated the purpose of SB 499 and so the House Local Government Committee had heard the subject thoroughly debated on two separate occasions.

After SB 499 came out of the Federal and State Affairs Committee on Thursday before the recess on Saturday, it once again appeared on the Calendar.

On Saturday morning SB 499 was number nine on the Calendar, as I recall. That morning when it came up for debate, it was passed over.

During the noon recess that day, Pete had additional conversation with the Speaker. He knew of the intensive interest and support for SB 499, as several members had requested the bill be debated and voted on. He knew of the possibility of some legislator making an emergency motion to advance the bill on the Calendar was well aware of the possibilities of that motion passing.

The Speaker said he would prefer not to debate the bill on Saturday, but would guarantee the bill would be number one on the Calendar following the recess, and would be debated and voted on.

SB 499 was the first bill on the Calendar following the recess. It passed the House by a vote of 98 to 25.

Mr. Chairman, I respectfully submit few bill in the history of the Kansas legislature have been more thoroughly debated and passed by such overwhelming margins.

For whatever reason, the Governor chose to veto the bill. The legislature never had an opportunity to consider the veto. However, both the Minority Leader of the House and Senate voted for the measure, as did the Speaker, President of the Senate and both Majority Leaders, as well as the Chairman of every committee where this issue was discussed.

The major criticism we heard from the opponents in every discussion was the Funeral Directors trust account are not audited.

For the record, Mr. Chairman, the Senate Financial Institutions and Insurance Committee did discuss this subject and found the Funeral Directors must file a list of their accounts with the State Board of Mortuary Arts every two years, as they are licensed and reviewed by that board. Since 1953, there has not been one case where a Funeral Director has been convicted of absconding with any funds or where a consumer has lost money.

However, Mr. Chairman, as we told Chairman Arasmith last year, the Funeral Directors have no opposition to an audit and that is the same thing we told the interim committee this summer. In fact, we provided a suggested amendment to do just that and it is incorporated into SB 11 that we are

considering here today. It is almost identical to the auditing procedures for cemeteries. It provides for an audit of the trust accounts for Funeral Directors and places that responsibility with the Secretary of State.

We saw no need for the amendment last year and apparently the legislature felt the same way. However, as I said, if it alleviates any concern, the Funeral Directors have no objections. I should call to your attention to the fact there are far more funeral directors than cemeteries and I expect you will find the need for an additional appropriation for staff for the Secretary of State to perform this function.

Senate Bill 499 as introduced last year is identical to SB 11 before you with one exception--the lengthy auditing provision. SB 499 did one simple thing, it added one word to the statute that was intended to correct legislative intent.

However, the opponents were very successful in directing the attention of the legislature to other issues and created doubt in the minds of some.

There is no law in Kansas that prohibits any person, any firm, or any business from selling caskets. The law as passed in 1982, intended that those who did sell caskets pre-need, put 100% of the consumer's money in trust.

To the best of our knowledge, the two firms who have chosen to sell under the cemetery merchandise law found a loophole in the law and in 1985, we first learned that they were selling caskets pre-need and only putting 110% of wholesale cost of the caskets in trust.

We believe, as I think every member of this committee would agree, if this is a good idea and in the public interest, and the consumer is adequately

protected, it should come about as a positive act of the legislature and not through the back door.

At the time I did research last year, some 35 states had 100% trust laws on the sale of caskets. Some surrounding states had something less than that.

Permit me to give you a simple example of what that means. If you bought a casket pre-need for \$1500 under the cemetery merchandise law, and the wholesale cost was \$500, the seller, under 110% of wholesale would only be required to put \$550 in trust. The seller could then take the other \$950 and do whatever he wanted. If you bought the same merchandise under the funeral director requirements, the consumer would have \$1500 in a Federal Insured KANSAS Financial Institution and that \$1500 would be drawing interest for the consumer, not the funeral director.

If you bought this same merchandise under a revocable contract under the cemetery merchandise law, and you wanted to cancel the contract, you would receive back 85% of the 110% of wholesale. As I mentioned, 110% of wholesale would be \$550, so you would receive only \$467.50 of your original investment of \$1500. Under the funeral director statutes, you would receive your total \$1500 investment back, plus accumulated interest.

Now you readily understand why the legislature overwhelmingly approved SB 499. It is quite obvious the option that best protects the consumer.

As I pointed out earlier; anyone can sell caskets. They could have even if SB 499 had become law and they will be able to if SB 11 becomes law. That could be one of the problems if there is not 100% put in trust.

I don't know how many people realize you and I could go into the business of selling caskets without any appreciable investment. We could

form a cemetery corporation, file with the Secretary of State, get a slick brochure printed and we are in business. We could move into a town, any town in Kansas, with a battery of salesmen, set up shop in a motel, perhaps make a few telephone calls to identify interested parties, and then start going up and down the street door-to-door.

If we had ten salesmen, and each made one sale an evening, and we were able to pocket \$950 of each sale, using the example I cited a short while ago, we would have netted \$9,500 the first night.

Let's say we are in Topeka, and we did that for 30 days with the same degree of success each night. In thirty days we would be able to pocket \$285,000. Split ten ways that is \$28,500.

We would be happy to place on deposit 110% of wholesale and file our report with the Secretary of State.

We have violated no law, we have clearly created a new market, new competition and given the consumer additional alternatives. The problem might be, where will we be if we have to deliver the merchandise. Of course, this is an example that I made up and I am merely attempting to dramatize just one of the many possibilities of abuse if we permit this loophole to exist.

SB 499 did not pass last year because of a veto. As we suspected, shortly after the session was over, a retail, storefront casket store opened up in Lenexa, Kansas. I never saw the store, but they told me it was next door to Governor Hayden's campaign headquarters. The operators were allegedly proposing to sell caskets, not for delivery today, but sometime in the future. The operators were not complying with either the cemetery merchandise statutes or the statutes which govern the funeral directors and

apparently were not trusting any of the money. We were told that someone called it to the attention of the Attorney General and that business is no longer in operation at that location and in that manner.

Without this legislation, that is precisely what can happen and is happening.

The Governor recommended an interim study on this issue. After the veto, so did Chairmen of the House and Senate committees. SB 11 is the recommendation of the Joint Committee on Federal and State Affairs.

Once again the issue was presented to a legislative body. That committee voted to introduce SB 499 exactly as it passed the legislature, with the auditing provision added.

SB 11 is that bill. Testimony was heard in the Senate Local Government Committee on January 27, 1987 and SB 11 was passed out with a 10-1 vote.

It was debated on the Senate floor and on February 3, 1987, SB 11 passed with a vote of 34-4.

Mr. Chairman, Members of the Committee, probably no issue has been more thoroughly reviewed, discussed and debated and consistently passed with overwhelming margins. We respectfully ask this committee report SB 11 favorable for passage.