

Approved 2-24-87 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 ~~XXX~~ p.m. on February 23, 1987 in room 521-S of the Capitol.

All members were present except:

Representative Douville, Excused Representative Francisco, Excused
Representative Miller, Excused
Representative Graeber, 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 Dale Sprague
Representative Jack Beauchamp
Representative Kennard
Marla Howard, City of Wichita
Representative Don Crumbaker
Representative Marvin Smith
Representative Ginger Barr
Kevin Davis, League of Kansas Municipalities
Representative Elaine Wells
Lawrence Urish, Ridgeway Township Election Judge
Maxine Bleidissel, Scranton Township Election Board

Chairman Sand called the meeting to order.

Representative Sprague appeared before the committee with 3 requests for legislation. The first request came from the McPherson County Board of Commissioners, requesting to amend K.S.A. 8-1901 to provide for the return of all of the fines levied for violations of size and weight laws on county and township roads in those counties, in which a designated weight officer is responsible for enforcement. (Attachment 1)

Motion was made by Representative Bowden and seconded by Representative Fry to introduce legislation requested by Representative Sprague. The motion carried.

Representative Sprague requested legislation dealing with ambulance services operated by fire districts. His proposal was to amend K.S.A. 19-3632 to allow for the operation of ambulance services in fire districts in counties "having a population of more than 15,000 and less than 35,000". (Attachment 2)

Motion was made by Representative Dean and seconded by Representative Fry to introduce legislation requested by Representative Sprague. The motion carried.

Representative Sprague requested legislation that amends K.S.A. 79-41a04 as follows: "The Board of County Commissioners shall adopt the recommendations of the advisory committee concerning such expenditures unless the Board by a majority vote of all commissioners, adopt a different plan." (Attachment 3)

Motion was made by Representative Fry and seconded by Representative Baker to introduce legislation requested by Representative Sprague. The motion carried.

Representative Beauchamp requested legislation to be introduced dealing with a fee for library cards to raise money for libraries.

Motion was made by Representative Bowden and seconded by Representative Beauchamp to introduce legislation requested by Representative Beauchamp. The motion carried.

Representative Kennard asked Marla Howard to explain the request from the city of Wichita concerning allowing cities and counties to issue revenue bonds based upon city or county retailers' sales tax. (Attachment 4)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Local Government

room 521-S Statehouse, at 1:30 ~~a.m.~~/p.m. on February 23, 1987

Motion was made by Representative Kennard and seconded by Representative Sawyer to introduce legislation requested by Marla Howard. The motion carried.

Representative Crumbaker requested legislation to state that once an elected official's salary is determined, the county commissioners' cannot use home rule to reduce that salary for the duration of the official's term in office.

Motion was made by Representative Dean and seconded by Representative Fry to introduce legislation requested by Representative Crumbaker. The motion carried.

Representative Smith testified in support of HB 2286, stating that the proposed legislation would delete the language in the statutes that requires a unanimous vote of a county commission for approving the incorporation of an area. He stated that a majority vote seems to be the logical and fair solution. (Attachment 5)

Representative Barr testified in support of HB 2286, stating that there is no logic when a unanimous vote is needed by County Commissioners to incorporate a city, but it only takes a majority vote of County Commissioners to bilaterally annex an area. (Attachment 6)

Kevin Davis testified in opposition to HB 2286, stating that close scrutiny should be paid when considering incorporation of an area, and that the original reason for the unanimous requirement to incorporate a city within five miles of an existing city is to help curb the proliferation of units of government, improve the economies of scale in the delivery of services and to avoid possible competition between nearby cities. (Attachment 7)

Chairman Sand closed the hearing on HB 2286.

Representative Wells testified in support of HB 2290, stating that the people who were responsible for the overall operation of an election are surely important enough to pay them at least the federal minimum wage. She stated that the bill continues to allow the county commissioners to set the amount, and requires that it not be less than the federal minimum wage. (Attachment 8)

Lawrence Urish testified in support of HB 2290, stating that it was a hard job to get qualified people to work the elections, and that the pay is not enough to justify a 12½ hour or more work load. He stated that the election process is important to government and that the wages should be increased so people would want to work in an election process.

Maxine Bleidissel testified in support of HB 2290, stating that qualified people were needed to help with the elections and she felt that the wage increase would help to get those people.

Chairman Sand closed the hearing on HB 2290.

The minutes of February 19 were approved as presented.

Meeting adjourned.

FUNDING OF COUNTY ENFORCEMENT OF WEIGHT AND SIZE LAWS FOR VEHICLES

BACKGROUND

Article 19 of Chapter 8 of Kansas Statutes Annotated regulates traffic; size, weight and load of vehicles. Further, K.S.A. 8-1912 (c), provides that the Board of County Commissioners, with respect to the highways under their jurisdiction, may prohibit the operation of trucks or other commercial vehicles, or impose weight or size limitations, on designated highways. McPherson County has developed just such a resolution, which attempts to regulate the use of specific county and township roads, by vehicles whose size would endanger the roads' surface.

K.S.A. 8-1901 sets out the criminal penalties for violation of size and weight laws. K.S.A. 8-1910 provides for enforcement of these laws, and delineates the responsible enforcing parties and policies. McPherson County has designated a law enforcement officer to act as its weight officer. This officer uses portable scales to monitor the weight of vehicles using county or township roads. The County's adoption of this measure was predicated on the belief that strict enforcement of weight regulations would extend the life of road surfaces located within the County's boundaries.

The current cost, per year, for the operation of a weight officer in McPherson County is approximately \$25,000. Unfortunately, none of the dollars levied in fines, for weight violations on county and township roads, resulting from his work, remains in McPherson County to underwrite the program costs. All fine proceeds from this operation are returned to the State Treasury.

PROPOSED CHANGE

The Board of McPherson County Commissioners respectfully requests that the statute, K.S.A. 8-1901, be amended to provide for the return of all of the fines levied for violations of size and weight laws on county and township roads in those counties, in which a designated weight officer(s) is responsible for enforcement.

PROPOSAL JUSTIFICATION

The statutes' current provisions provide no financial encouragement to those counties actively supporting the enforcement of weight and size laws on county and township roads. The return of all of the fines written in the county on its roads, by the designated county weight officer, is a more equitable approach to the administration of this local program. Additionally, the return of all of the fine to the participating county, would facilitate more active enforcement of these laws, which will help maintain the county investment in roads.

AMBULANCE SERVICES OPERATED BY FIRE DISTRICTS

BACKGROUND

Certain provisions of K.S.A. 19-3632, reads as follows: "The governing body of any fire district which is located in any county **having a population of more than 15,000 and less than 25,000 may establish and operate an ambulance service within or without such district...**" This is the statutory provision, which allowed the McPherson County Fire Districts to create and operate volunteer ambulance services, in conjunction with the fire district.

Until recent times, McPherson County's population did not exceed 25,000, which allowed for authorized operation of these ambulance districts. Since our population now exceeds 25,000, there is a question whether the fire districts have the technical authority to "establish and **operate**" an ambulance service in their districts.

PROPOSAL

Amend K.S.A. 19-3632 to allow for the operation of ambulance services in fire districts in counties **..."having a population of more than 15,000 and less than 35,000..."**

PROPOSAL JUSTIFICATION

An amendment of these statutes would insure that those fire districts operating volunteer ambulance services in McPherson County would not be in technical violation of this statute. The volunteer ambulance services provide a reliable and much needed service to many residents of the County.

It would not be beneficial to limit the authorized operation of these important emergency medical services due solely to growth in the county's population. Additionally, McPherson County's size mitigates the advantages accruing from a county-wide service vs. the operation of individual services, which are financially supported by the County. A locally supported and operated volunteer ambulance service in McPherson County is more efficient, from both a cost and treatment perspective. The statutory authority to continue their operation appears to be an appropriate legislative response to the need for the provision of emergency medical services in rural counties.

Attachment 2

COUNTY ADMINISTRATION OF THE LOCAL ALCOHOLIC LIQUOR TAXES

BACKGROUND

K.S.A. 79-41a04 discusses the use and distribution of moneys from the local alcoholic liquor fund. The section discusses the formulas used to distribute these funds to the state's cities and counties, as well as the parameters under which these cities and counties may spend the funds.

The statute currently states the following: "In any county in which there has been organized an alcohol and drug advisory committee, the Board of County Commissioners shall request and obtain, prior to making any expenditures from the special alcohol and drug programs fund, the recommendations of the advisory committee concerning such expenditures. The Board of County Commissioners shall adopt the recommendations of the advisory committee concerning such expenditures **unless the Board, by unanimous vote of all commissioners, adopts a different plan.**"

PROPOSED CHANGE

The Board of McPherson County Commissioners respectfully requests that this statute, 79-41a04, be amended to read as follows: "The Board of County Commissioners shall adopt the recommendations of the advisory committee concerning such expenditures unless the Board **by a majority vote of all commissioners, adopts a different plan.**"

PROPOSAL JUSTIFICATION

The statute's current provisions could produce a situation, where the wishes of the majority of the Board of County Commissioners could be ignored during a review of the advisory board's recommendations for the use of these local funds. Specifically, if one commissioner determines that a different plan for the expenditure of these funds is not appropriate, the appointed advisory board's original recommendations will prevail over the wishes of the majority of the elected County Commissioners.

No appointed advisory commission should be invested, by state statutes, with this type of authority over locally elected officials. The proposed amendment will place this advisory board's recommendations at a more suitable level of input.

Further, it is more appropriate that the **elected County Commissioners** should, by a majority vote of Board, control the budgeting function for county programs. The proposed amendment will result in a more uniform application of this standard.

Attachment 3

K.S.A. 12-195 is amended to read as follows:

~~12-195. Countywide and city retailers' sales taxes; use of proceeds for payment of bonds prohibited; exception.-(a) Except as otherwise provided in subsection (b), no city or county shall commit any of the funds or proceeds derived from a retailers' sales tax as a guarantee for the payment of bonds issued by such city or county.~~

~~(b) The board of county commissioners of a county which imposes a countywide retailers' sales tax may issue revenue bonds payable from the proceeds thereof for the purpose of paying the state's share of the cost of highway improvement for which a federal share is to be received.~~

~~Any tax imposed pursuant to this subsection shall terminate whenever such revenue bonds and any interest thereon has been paid in full.~~

Any city or county which ~~has heretofore authorized a local option~~ sales tax pursuant to K.S.A. 12-187 et seq., is hereby authorized to issue revenue bonds to provide for the payment of capital improvements of such city or county. (a) Such bonds shall be authorized by resolution of the governing body of such city or county. The bonds may be issued as registered bonds or coupon bonds, payable to bearer, and, if coupon bonds, may be registrable as to principal only or as to principal and interest, and may be made exchangeable for bonds of another denomination or in another form. The bonds may be in such form and denominations, may have such date or dates, may be stated to mature at such time or times, may bear interest

receives revenue from a ~~city~~ countywide or city retailers'

*Attachment 4
2-23-87*

payable at such times and at such rate or rates, may be payable at such places within or without the state, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms and conditions, all as the city or county shall determine. The bonds shall have all the qualities of and shall be deemed to be negotiable instruments under the laws of the state of Kansas. The authorizing resolution may contain any other terms, covenants and conditions that the city or county deems reasonable and desirable, including without limitation those pertaining to the maintenance of various funds and reserves, the nature and extent of any security for payment of the bonds, the custody and application of the proceeds of the bonds, the collection and disposition of sales tax revenues, the investing of bond proceeds or any funds pledged to the repayment of the bonds, and the rights, duties and obligations of the city or county and the owners of the bonds.

(b) The authorizing resolution may provide for the execution of a trust indenture between the city or county and any financial institution within or without the state of Kansas. The trust indenture may contain any terms, covenants and conditions that are deemed desirable by the city or county.

(c) Any authorizing resolution and trust indenture relating to the issuance of and security for the bonds shall constitute a contract between the city or county and

the owners of the bonds, which contract, and all covenants, agreements and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of such contract, and the covenants, agreements and obligations of the city or county may be enforced by mandamus or other appropriate proceeding at law or in equity. The pledge of revenues made by the city or county shall be valid and binding from the time when such pledge is made and the revenues so pledged and thereafter received by the city or county shall immediately be subject to the lien of such pledge without such physical delivery thereof or further act on the part of the city or county, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the issuer, irrespective of whether such parties have notice thereof. Neither the authorizing resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the city or county.

(d) The revenue bonds may be sold in such manner, either at public or private sale, and upon such terms as the city or county shall determine to be reasonable, including sale at discount. It shall be plainly stated on the face of such bond that it has been issued under this act, that the bonds shall be special obligations of the city or county, payable solely and only from the revenues derived from the collection of such ~~local~~ sales taxes, and that, in no event,

retailer's

shall the bonds constitute an indebtedness of the state of Kansas or the city or county for which the faith and credit of the state of Kansas or city or county is pledged.

(e) Any bonds issued under the provisions of this act and the interest thereon, shall be exempt from all taxes levied by the state of Kansas, or any political or taxing subdivision thereof, except inheritance taxes.

(f) Bonds may be issued for the purpose of refunding, either at maturity or in advance of maturity, any bonds issued under this act. Such refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the city or county and the authorizing resolution or trust indenture securing such refunding bonds. The authorizing resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same security for their payment as provided for the bonds being refunded. Refunding bonds shall be sold and secured in accordance with the provisions of this act pertaining to the sale and security of the bonds.

(g) Bonds issued under the provisions of this act shall be eligible to secure the deposit of public funds under article 14 of chapter 9 of the Kansas Statutes Annotated.

(h) Bonds issued under the provisions of this act shall be exempt from any statutory limitation of bonded indebtedness imposed on such city or county.

History: L. 1978, ch. 56, § 9; L. 1983, ch. 227, § 1; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Virginia Ratzlaff, 33 K.L.R. 71, 77 (1984).

MARVIN E. SMITH
REPRESENTATIVE, FIFTIETH DISTRICT
SHAWNEE AND JACKSON COUNTIES
123 N.E. 82ND STREET
TOPEKA, KANSAS 66617-2209



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
TAXATION
TRANSPORTATION

FEBRUARY 23, 1987

HB 2286
HOUSE LOCAL GOVERNMENT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THE PROPOSED LEGISLATION WOULD DELETE THE LANGUAGE IN THE STATUTES THAT REQUIRES A UNANIMOUS VOTE OF A COUNTY COMMISSION FOR APPROVING THE INCORPORATION OF AREA.

MOST BOARDS OR ASSEMBLIES OF GOVERNMENT REQUIRE A MAJORITY VOTE OR 2/3 VOTE ON ISSUES, POLICIES, RESOLUTIONS AND ACTION.

THE IRONIC SCENARIO IS THAT ONE BOARD MEMBER'S DISSENTING VOTE WOULD CAUSE THE COUNTY AND/OR LEGAL COUNSEL TO DEFEND THAT MINORITY POSITION OR NO VOTE.

THIS JUST DOESN'T SEEM LIKE LOGICAL, DEMOCRATIC PROCESS.
A MAJORITY VOTE SEEMS TO BE THE LOGICAL AND FAIR SOLUTION!

*Attachment 5
2-23-87*

GINGER BARR
REPRESENTATIVE, FIFTY-FIRST DISTRICT
SHAWNEE COUNTY
P O BOX 58
AUBURN, KANSAS 66402



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN FEDERAL AND STATE AFFAIRS
MEMBER ENERGY AND NATURAL RESOURCES
GOVERNMENTAL ORGANIZATION

Testimony by Rep. Ginger Barr - House Bill 2286

Mr. Chairman and Members of the Committee:

I appear as a sponsor and in support of House Bill 2286. I, as well as others, wonder where the logic comes from when a unanimous vote is needed by County Commissioners to incorporate a city, but it only takes a majority vote of County Commissioners to bilaterally annex an area?

If the legislature ever wanted to prohibit a policy from passing, they would simply say it takes a unanimous vote. Was the intention of the current statute to prohibit any city from being formed in the State of Kansas?

If I appeared before you today and said that I was a proponent of having a unanimous vote on bilateral annexation by the county commissioners, some would scream that I was trying to stop all annexation. Let's keep the logic consistent!!!

I received a copy from Bob Mize who has retired as one of the principle owners of the largest CPA firms in Topeka and I quote:

"Let's either have a unanimous vote on bilateral annexation of county commissioners, or a majority vote of county commissioners on incorporation of cities." Thank you.

Attachment 6

2-23-87



League of Kansas Municipalities

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

TO: House Committee on Local Government
FROM: Kevin R. Davis, Attorney
RE: HB 2286
DATE: February 23, 1987

The League has taken a position in opposition to HB 2286. The existing unincorporation statutes K.S.A. 15-115 et seq. have been in effect since 1963 and updated laws which were in existence since 1871.

There have been eight new cities formed in Kansas, under this statute, since 1963. Kansas currently has 627 cities and over 4,000 total units of government. This ranks Kansas about fourth in the nation in number of governmental units.

We believe that the original reason for the unanimous requirement to incorporate a city within five miles of an existing city is to help curb the proliferation of units of government, improve the economies of scale in the delivery of services and to avoid possible competition between nearby cities. This is supported by reading all of the incorporation statutes together. That is K.S.A. 15-121 provides a listing of factors to be considered in an incorporation action; and further lists additional factors to be considered when the request is within five miles of an existing city.

This public policy of close scrutiny in reviewing the creation of new units of government was most recently reaffirmed by the legislature in 1986 with SB 425, codified at K.S.A. 19-270. This statute requires a 3/4 majority vote to create a special benefit district within 3 miles of an existing city. It also lists the exact same factors to be considered as does the incorporation statute.

We believe this public policy should be continued and therefore oppose HB 2286.

Attachment 7

2-23-87

RESEARCH / INFORMATION BULLETIN

published by league of kansas municipalities / 112 west seventh street / topeka, kansas 66603 / 913 354-9565

Vol. VIII, No. 398

January 30, 1986

NUMBER OF CITIES IN KANSAS

The trend of new city incorporations in Kansas has declined sharply during the past 20 years. Since January 1, 1966, there have been five newly formed cities. This is the lowest number for any 20-year period during the history of the state.

The number of Kansas cities, now totaling 627, has increased by a net of four since 1966. While five new cities were formed, the city of Wellsford was disincorporated in 1975.

The slow down in the rate of municipal incorporations in recent years may be contrasted with the incorporation of 28 new cities in the 15-year period of 1946 through 1960. Several of the cities formed during this period were located in the rapidly expanding Johnson county area. In 1963, the Kansas legislature adopted a new law governing the incorporation of cities which establishes factors to be considered by the board of county commissioners in determining the advisability of ordering an incorporation on petition of the residents of the area. Under K.S.A. 15-123, a unanimous vote of the board of county commissioners is necessary for incorporation of an area within five miles of an existing city. Since the law took effect in 1963, six new cities have been formed.

Presented later in this report is a table which shows the number of cities incorporated by five-year periods since 1855. The table below shows the date and other information as to cities incorporated since 1930.

City Incorporations Since 1930

<u>City</u>	<u>Co. Where Located</u>	<u>Date Incorporated</u>	<u>Approx. Pop. When Incorp.</u>
Timken	Rush	June 16, 1930	
Radium	Stafford	January 1, 1934	
Leona	Doniphan	April 1934	
Damar	Rooks	February 26, 1935	
Bogue	Graham	March 21, 1935	
Schoenchen	Ellis	September 1935	
Liebenthal	Rush	August 5, 1935	
Eastborough	Sedgwick	June 1, 1937	
Hollenberg	Washington	July 14, 1937	
North Newton	Harvey	September 20, 1938	
Susank	Barton	May 7, 1940	
Gorham	Russell	April 10, 1941	
Zurich	Rooks	August 20, 1946	

<u>City</u>	<u>Co. Where Located</u>	<u>Date Incorporated</u>	<u>Approx. Pop. When Incorp.</u>
Overbrook	Osage	March 8, 1948	386
Glade	Phillips	October 7, 1947	127
Leawood	Johnson	November 30, 1948	900
Fairway	Johnson	May 21, 1949	1,695
Westwood Hills	Johnson	June 6, 1949	449
Westwood	Johnson	June 7, 1949	1,541
Mission Hills	Johnson	June 10, 1949	544
Mission Woods	Johnson	July 22, 1949	175
Park	Gove	February 13, 1950	215
Merriam	Johnson	October 23, 1950	1,600
Prairie Village	Johnson	February 19, 1951	1,500
Countryside	Johnson	July 2, 1951	358
Mission	Johnson	July 2, 1951	1,852
Roeland Park	Johnson	July 2, 1951	1,373
Haysville	Sedgwick	July 3, 1951	102
Goessel	Marion	March 10, 1952	270
Willowbrook	Reno	July 10, 1952	50
Raymond	Rice	December 6, 1954	213
Rose Hill	Butler	February 7, 1955	250
Provence Village	Johnson	September 19, 1955 to February 1, 1960	
Andover	Butler	February 4, 1957	166
Kechi	Sedgwick	April 29, 1957	204
Lansing	Leavenworth	June 22, 1959	1,102
Bentley	Sedgwick	November 12, 1959	225
Rush Center	Rush	December 7, 1959	265
Cassoday	Butler	April 4, 1960	125
Overland Park	Johnson	May 20, 1960	28,085
Holcomb	Finney	May 1, 1961	280
Burdett	Pawnee	November 28, 1961	359
Smolan	Saline	April 30, 1962	284
Auburn	Shawnee	June 27, 1963	235
Grandview Plaza	Geary	March 4, 1963	450
Basehor	Leavenworth	June 11, 1965	641
Ozawkie	Jefferson	September 15, 1967	86
New Strawn	Coffey	May 18, 1970	164
Lake Quivira	Johnson & Wyandotte	May 11, 1971	959
Park City	Sedgwick	November 24, 1979	3,700
Bel Aire	Sedgwick	November 19, 1980	2,166

City Consolidations

There have been at least 10 consolidations of cities in Kansas since 1867. The following information is from records of the League of Kansas Municipalities.

- 1867--Eugene consolidated with Topeka (April 11)
- 1886--Armourdale consolidated with Kansas City (By state law)
- Wyandotte consolidated with Kansas City (By state law)
- 1887--South Topeka consolidated with Topeka (May 10)
- 1899--Potwin Place consolidated with Topeka (April 13)
- 1907--Empire City consolidated with Galena (July 10)
- 1910--Argentine consolidated with Kansas City (January 1; state law)
- 1922--Rosedale consolidated with Kansas City
- 1926--Oakland consolidated with Topeka (February 28; state law)
- 1960--Provence Village consolidated with Olathe (February 1)

There have been at least four city consolidation proposals which have failed, all in Johnson county. Voters of Mission on September 26, 1953 rejected a proposal to merge with the city of Roeland Park, the vote being 116 yes and 608 no. Voters in Countryside twice turned down merger proposals with the city of Mission. On June 2, 1959 the vote was 57 yes and 140 no. At the August 9, 1960 election the vote was 58 yes and 158 no. At an election held on January 23, 1973, a referendum proposal to consolidate the cities of Westwood and Westwood Hills was defeated.

City Dissolutions

Accurate information is not available as to the number of Kansas cities which have been disincorporated or dissolved (excludes consolidations). Part of the uncertainty results from lack of information as to whether some communities which called themselves a "city," were ever actually and legally incorporated. For example, the territorial legislatures during territorial days provided for the incorporation of numerous cities, towns and villages, many of which no longer exist and some of which probably never existed as an operating city.

Records of the League of Kansas Municipalities indicate there was at one time an Army City located in Geary county. In 1961 the city of Irving was disincorporated as a result of the area being inundated by the Tuttle Creek dam reservoir. In 1975, the city of Wellsford, located in Kiowa county, was dissolved; Wellsford was incorporated in 1917 and had a population of 17 when disincorporated in 1975.

Dormant Cities

During the history of Kansas, some cities became dormant and were later reactivated. For example, the city of Hugoton was dormant for a number of years and reorganized in 1911. The city of Wallace in Wallace county was reorganized in 1931 after being dormant for 33 years. In 1957, Richfield (Morton) was reactivated after being dormant for over 60 years. In 1964, Roseland (Cherokee) became an active city.

The Chanute Area

A century ago, a situation in the Chanute area of Neosho county, while not considered a consolidation, came close to being one. The city of New Chicago was incorporated in 1870 and in the same year the city of Tioga was also incorporated. Voters in New Chicago dissolved the city with the following result: "For a city" one; "against a city" 91. The city of Tioga was also dissolved and this entry appeared in the Revised and Compiled Ordinances of the city of Chanute, 1911, page viii: "The above officers held their position until the 9th day of December 1872, when the town of Tioga was dissolved as a corporated body by an election held on said date for the purpose of uniting with New Chicago to be incorporated as the city of Chanute." Chanute was incorporated as a city of the third class in January 1873, and encompassed the former cities of Tioga and New Chicago.

City Incorporations by 5-Year Periods

The list below presents the approximate number of city incorporations in each five-year period, and the cumulative totals, since 1855. The figures are approximate up to 1930 since it is based on the incorporation dates of existing cities. Accurate information as to legally incorporated cities in earlier days is unavailable.

<u>Period</u>	<u>Number</u>	<u>Cumulative Total</u>	<u>Period</u>	<u>Number</u>	<u>Cumulative Total</u>
1855-61	16	16	1921-25	24	550
1861-65	1	17	1926-30	28	580**
1866-70	24	41	1931-35	6	586
1871-75	48	89	1936-40	4	590
1876-80	43	132	1941-45	1	591
1881-85	75	207	1946-50	11	601
1886-90	111	318	1951-55	10	612
1891-95	11	329	1956-60	7	618*
1896-1900	18	347	1961-65	6	623*
1901-05	56	403	1966-70	2	625
1906-10	64	467	1971-75	1	625*
1911-15	30	497	1976-80	0	625
1916-20	29	526	1981-85	2	627

**Net number of active cities at end of 1930

*Net of consolidations and disincorporations

Cities Incorporated Since 1930

The list above excludes Piper in Wyandotte county, incorporated by action of the board of county commissioners on October 1, 1971 but ruled invalid by the Kansas Supreme Court on January 26, 1974 (213 Kan. 777). Also excluded are three cities which were reactivated since 1930 (see Dormant Cities, above). The list includes Provence Village, incorporated in 1955, but consolidated with Olathe in 1960.

15-115. Incorporation of cities; purpose of act. It is the purpose of this act to provide by general law for the incorporation of all cities, as required by section 5 of article 12, of the state constitution.

History: L. 1963, ch. 509, § 1; June 30.

Source or prior law:

15-102, 80-2309 to 80-2323.

Research and Practice Aids:

Municipal Corporations=10.

C.J.S. Municipal Corporations § 15.

Law Review and Bar Journal References:

"City Home Rule in Kansas," Wright W. Crummett, 9 W.L.J. 1, 9, 10 (1969).

"State Control of Local Government in Kansas: Special Legislation and Home Rule," Barkley Clark, 20 K.L.R. 631, 657 (1972).

CASE ANNOTATIONS

1. Act cited in appeal by city aggrieved by decision to incorporate nearby area; order incorporating held invalid. *City of Kansas City v. Board of County Commissioners*, 213 K. 777, 518 P.2d 403.

2. Denial of petition for incorporation of city upheld; decision not arbitrary or unreasonable. *In re Reincorporation of Piper City*, 220 K. 6, 12, 551 P.2d 909.

15-116. Incorporation of cities; petition; enumeration; affidavit; map; statement of assessed valuation. (a) When a petition for the incorporation of a city, signed by 50 or more electors of the territory described therein, and containing the information hereafter required, is filed with the county clerk if all the territory is within one county, or the county clerk of the county in which the greater or greatest area lies if the territory lies in two or more counties, the require-

ments and proceedings shall be as hereinafter stated.

The petition shall: (1) Be addressed to the board of county commissioners, or where the territory lies in two or more counties, to the board of commissioners of the county having the greater or greatest area; (2) describe the territory by metes and bounds; (3) request the incorporation of the territory as a city by the name of "the city of _____" (giving name).

Each page of signatures shall bear the following heading:

"I, whose name appears as one of the signers below, state that I reside in and am an elector of the territory petitioned to become the city of _____; that I signed my name in my own handwriting; that I read the description of the metes and bounds of said territory or saw the map of the territory attached as an exhibit to the petition.

Signatures

Addresses"

If registration for voting purposes is required in all or any part of the area, signers in the registration area must sign their names the same as they are shown on the registration books. The signatures of signers in registration areas shall be checked against the registration books by the officer in charge of registration. Where all or a part of the territory is not in a registration area, an elector who signs the petition shall make an affidavit that to the best of the elector's knowledge and belief, the persons who signed the petition and who are not in a registration area are electors of the territory. The affidavit shall be attached to the petition before the petition is filed. Any person desiring to withdraw their name from the petition may do so by filing in person with the county clerk of the county where the petition will be filed, and before the petition is filed, a statement substantially as follows: "I the undersigned, hereby withdraw my name as a signer of the petition for the incorporation of the territory proposed to be called the city of _____." The county clerk shall sign and endorse on the face of the statement the month, day, year and hour of the filing and, if and when the petition is filed, shall attach such withdrawal statement thereto.

The sufficiency of the number of peti-

tioners shall be determined as of the day of the filing of the petition by registration books, if any, and as of the date of the affidavit as to persons in nonregistration area.

(b) No territory shall be incorporated as a city except as provided in subsection (d)(2) unless it has 300 or more inhabitants or has 300 or more platted lots each of which is served by water and sewer lines owned by a nonprofit corporation. The number of inhabitants shall be determined by an enumeration by a qualified signer of the petition who shall make an affidavit that an enumeration has been made of the inhabitants of the territory after the beginning of the circulation of the petition, and stating the number of inhabitants found, and specifying the dates when it was begun and when completed. The number of platted lots served by water and sewer lines owned by a nonprofit corporation shall be determined by the county engineer, who shall state the findings by affidavit. Such affidavits shall be attached to the petition before it is filed. The board of county commissioners may cause another enumeration to be made if it believes the number of inhabitants may be less than 300.

(c) The petition shall have attached thereto a statement containing the following information regarding the proposed city: (1) Quantity of land embraced, platted and unplatted; (2) a brief description of existing facilities and services currently received by the area, including water supply, sewage disposal, fire and police protection; (3) reasons for desiring city government and services.

There shall also be attached to the petition a map of the territory showing the location of the proposed city within the county or counties and the more densely built-up area or areas and designating in general the platted and unplatted areas.

There shall also be attached a statement of the assessed valuation of the platted real property and improvements and unplatted real property and improvements and the assessed valuation or an estimate thereof of the tangible personal property for each county in which any area lies, certified by the county clerk or county assessor.

(d) No territory shall be incorporated as a city unless: (1) The inhabitants of the territory number 300 or more or the territory

contains 300 or more platted lots each served by water and sewer lines owned by a nonprofit corporation, and 50 or more electors of the territory have signed a petition; or (2) the territory has been designated a national landmark by the congress of the United States.

History: L. 1963, ch. 509, § 2; L. 1967, ch. 113, § 1; L. 1981, ch. 86, § 1; July 1.

Research and Practice Aids:

Municipal Corporations—7, 12(2-4).

C.J.S. Municipal Corporations §§ 9, 17.

CASE ANNOTATIONS

1. Mentioned in appeal by city aggrieved by decision to incorporate nearby area; order incorporating held invalid. *City of Kansas City v. Board of County Commissioners*, 213 K. 777, 778, 518 P.2d 403.

15-117. Same; duties of county clerks; hearing. The county clerk shall examine the petition, if such a petition is required, signatures and attached matter as prescribed by K.S.A. 15-116, as amended, and if it appears the petition is in proper form, that the inhabitants of the territory number 300 or more or that the territory contains 300 or more platted lots each served by water and sewer lines owned by a nonprofit corporation, and that 50 or more electors of the territory have signed the petition, or that the territory has been designated as a national landmark, the county clerk shall so report to the board of county commissioners at its next regular meeting and it shall designate a time and place for a hearing on the petition, such time to be not less than 30 nor more than 90 days from the date the petition was filed. The place of the hearing shall be at a place convenient for most of the inhabitants of the territory.

History: L. 1963, ch. 509, § 3; L. 1967, ch. 113, § 2; L. 1981, ch. 86, § 2; July 1.

Research and Practice Aids:

Municipal Corporations—12(7).

C.J.S. Municipal Corporations § 22.

15-118. Same; notice of hearing; publication; posting. The county clerk shall cause a copy of the petition, without the signatures, and a notice of the time and place of the hearing to be published once in the official county newspaper of each county in which any of the territory lies and the publication shall be not less than fifteen (15) days before the hearing. Notice of the hearing shall also be posted in not less than three (3) public places in the territory not

less than fifteen (15) days before the hearing.

History: L. 1963, ch. 509, § 4; June 30.

Research and Practice Aids:

Municipal Corporations § 12(6).
C.J.S. Municipal Corporations §§ 18, 19.

CASE ANNOTATIONS

1. Cited; notice of hearing requirements for incorporation of cities discussed. *City of Kansas City v. Board of County Commissioners*, 213 K. 777, 782, 783, 784, 518 P.2d 403.

15-119. Incorporation of cities; notice of hearing required for certain officials. The county clerk shall, not less than 15 days before the hearing, send notices of the hearing with a copy of the petition, without the signatures, to the county clerk of any other county in which any part of the territory lies; to the clerk, secretary or chairperson of any duly constituted city, county, regional or metropolitan planning commission exercising planning authority over all or part of the territory; to the director of the division of community development of the department of economic development; and to the city clerk of any city, any portion of whose area is within five miles of the nearest boundary of the territory as described in the petition.

History: L. 1963, ch. 509, § 5; L. 1985, ch. 256, § 4; July 1.

C.J.S. Municipal Corporations §§ 18, 19.

CASE ANNOTATIONS

1. Cited; notice of hearing requirements for incorporation of cities discussed. *City of Kansas City v. Board of County Commissioners*, 213 K. 777, 778, 780, 782, 783, 784, 786; 518 P.2d 403.

15-120. Same; conduct of hearing. The hearing shall be conducted in such manner as the board of county commissioners deems best suited to the occasion. Where the territory is in two or more counties the county commissioners of the counties involved shall sit as a joint board with the chairman of the board of the county having the greater or greatest area presiding: *Provided*, That if he or she be not present, all of the commissioners present shall choose one of their number as presiding officer. All persons residing within the territory, owners of property within the territory whether residing there or not, all persons, agencies, and representatives of governmental units notified as provided in K.S.A. 15-119, shall be entitled to be heard and to present documen-

tary information and briefs. The hearing may be adjourned from time to time.

History: - L. 1963, ch. 509, § 6; June 30.

Research and Practice Aids:

Municipal Corporations § 12(7).
C.J.S. Municipal Corporations § 22.

CASE ANNOTATIONS

1. Mentioned in appeal by city aggrieved by decision to incorporate nearby area; order incorporating held invalid. *City of Kansas City v. Board of County Commissioners*, 213 K. 777, 780, 518 P.2d 403.

15-121. Same; factors considered in determining advisability of incorporation. As a guide in determining the advisability of incorporating the territory, the board or joint board of county commissioners shall consider the following factors, among others:

(1) Population and population density of the area within the boundaries of the territory;

(2) Land area, topography, natural boundaries, and drainage basin;

(3) Area of platted land relative to unplatted and assessed value of platted land relative to assessed value of unplatted areas;

(4) Extent of business, commercial, and industrial development;

(5) Past expansion in terms of population and construction;

(6) Likelihood of significant growth in the area, and in adjacent areas, during the next ten (10) years;

(7) The present cost and adequacy of governmental services and controls in the area and the probable effect of the proposed action and of alternative courses of action on the cost of adequacy of local governmental services and regulation in the area and in adjacent areas;

(8) Effect of the proposed action, and of alternative actions, on adjacent areas, and on the local governmental structure of the entire urban community.

If the territory or any part thereof is within five (5) miles of an existing city, the board or joint board of county commissioners shall take into consideration [:]

(1) The size and population of such city;

(2) Its growth in population, business and industry during the past ten (10) years;

(3) The extension of its boundaries during the past ten (10) years;

(4) The probability of its growth toward the territory during the ensuing ten (10) years, taking into consideration natural bar-

riers and other reasons which might influence growth toward the territory;

(5) The willingness of the city to annex the territory and its ability to provide city services in case of annexation;

(6) The general effect upon the entire community, should there be additional cities in the area; all of these and other considerations having to do with the over-all orderly and economic development of the area and to prevent an unreasonable multiplicity of independent municipal governments.

History: L. 1963, ch. 509, § 7; June 30.

Research and Practice Aids:

Municipal Corporations—12(1).

C.J.S. Municipal Corporations §§ 12, 16 et seq.

CASE ANNOTATIONS

1. Mentioned in appeal by city aggrieved by decision to incorporate nearby area; order incorporating held invalid. *City of Kansas City v. Board of County Commissioners*, 213 K. 777, 780, 784, 518 P.2d 403.

2. Applied; petition for incorporation of city denied; upheld on appeal. *In re Reincorporation of Piper City*, 220 K. 6, 13, 551 P.2d 909.

15-122. Same; consultants; witnesses; records; expense, how paid. The board or joint board of county commissioners shall have authority to hire expert consultants to provide information and assistance and gather information as required; to issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books and documents; and to cause a stenographic or other record made of the proceedings. The expense shall be a proper charge against the county general fund and, when there are two or more counties involved, the expense shall be prorated to the counties in proportion to area.

History: L. 1963, ch. 509, § 8; June 30.

Research and Practice Aids:

Counties—158; Witnesses—1, 8.

C.J.S. Counties § 234; Witnesses §§ 2 et seq., 13, 19 et seq.

CASE ANNOTATIONS

1. Applied; petition for incorporation of city denied; upheld on appeal. *In re Reincorporation of Piper City*, 220 K. 6, 13, 551 P.2d 909.

15-123. Same; consideration of matter after hearing; denial of petition, when; order; unanimous vote for incorporation, when; election of city officers, procedure. After the hearing has been adjourned *sine die*, the board or joint board of county commissioners shall consider the matter. It may

request the director of the division of community development of the department of economic development to make a study of the general area in which the territory is located, information in possession of the county board and other sources, and render an opinion as to the advisability of the proposed incorporation. The petition for incorporation shall be denied if it is determined that present or future annexation to an adjacent city, or the creation of an authorized special service district, or districts, would better serve the interest of the area or that the proposed incorporation would be otherwise contrary to the public interest. If the board or joint board determines that the territory should not be incorporated, it shall make an order so stating. In addition to other requirements, if any of the territory wholly within one county is within five miles of an existing city, the territory shall not be incorporated except by the unanimous vote of the commissioners. If the board or joint board determines that the territory should be incorporated, it shall prepare an order or joint order incorporating the territory as a city by the name of "the city of _____" as stated in the petition and describing the metes and bounds thereof. When the order has been adopted, the inhabitants within such bounds and such further territory as from time to time may be lawfully added thereto shall be a body politic and corporate by that name, and they and their successors (except such corporation be lawfully dissolved) shall have perpetual succession. The order shall be adopted at the next regular meeting of the board. Where two counties are involved, the board of each county shall adopt the joint order at its next regular meeting and not less than two commissioners of each county shall vote in favor thereof, except that in addition to other requirements, if any of the territory is within five miles of an existing city, the territory shall not be incorporated except by the unanimous vote of the commissioners of each county involved. The order or joint order so incorporating the city shall order the first election in the city for city officers. The order or joint order shall be entered at length upon the journal of the proceedings of the board or boards of county commissioners and shall be published once in some newspaper printed or in general circulation in the city at least one week before the city election. Nomination

papers for candidates for city office shall be filed with the county election officer of the county where the petition for incorporation was filed and the county election officer shall conduct such election.

History: L. 1963, ch. 509, § 9; L. 1965, ch. 143, § 1; L. 1968, ch. 274, § 43; L. 1985, ch. 256, § 5; July 1.

CASE ANNOTATIONS

3. Order of board of county commissioners incorporating city upheld; authority of board considered; scope of judicial review. *City of Wichita v. Board of Sedgwick County Comm'rs*, 232 K. 149, 159, 652 P.2d 717 (1982).

15-124. Same; operation as mayor-council city upon incorporation. The city, regardless of the number of inhabitants (three hundred (300) or more) at the time of incorporation, shall operate as a mayor-council city of the third class and the statutes relating thereto and home rule powers under the constitution until such time as by proper proceedings the class is changed or form of government changed.

History: L. 1963, ch. 509, § 10; June 30.

Research and Practice Aids:

Municipal Corporations—64½.

C.J.S. Municipal Corporations § 188.

15-125. Same; expenses and costs from county general fund; proration, when. The expense of publications, notices, mailing charges, first city election and other costs incurred shall be paid from the county general fund, and if the city lies in two (2) or more counties, the expense shall be prorated to the counties in proportion to area.

History: L. 1963, ch. 509, § 11; June 30.

Research and Practice Aids:

Counties—158.

C.J.S. Counties § 234.

15-126. Incorporation of cities; appeals to district court from commissioners' decision; reversal of decision; duties of board.

(a) Any person who has an interest in and is aggrieved by the decision of the board of county commissioners under the provisions of K.S.A. 15-115, *et seq.*, and amendments thereto, may appeal to the district court of the same county in the manner provided by K.S.A. 19-223, and amendments thereto. Upon appeal the district court shall have jurisdiction to affirm or, if the court is of the opinion that the decision of the board was arbitrary, unlawful or capricious, to reverse the decision complained of or direct the county commissioners to take proper action. Neither the filing nor the pendency of any appeal of the decision of the board of county commissioners incorporating the territory to the district court, or any appeal therefrom, shall limit in any way the exercise of the corporate powers of the city by its officers, employees and agents.

(b) In the event the appellate court enters an order pursuant to subsection (a) reversing the decision of the board of county commissioners incorporating the territory, the board shall take immediate responsibility for the administration of the assets, debts and obligations of the former city. In doing so, the board, by resolution, shall create and serve as officers of a special taxing district covering the territory of the former city. If the proceeds of the sale of the property and the remaining assets of the former city are insufficient to pay its debts and obligations, the board shall provide for the levy of taxes on the tangible taxable property within the limits of the special taxing district sufficient to pay the remaining debts and obligations.

History: L. 1967, ch. 117, § 1; L. 1984, ch. 81, § 1; July 1.

CASE ANNOTATIONS

3. Order of board of county commissioners incorporating city upheld; authority of board considered; scope of judicial review. *City of Wichita v. Board of Sedgwick County Comm'rs*, 232 K. 149, 150, 151, 652 P.2d 717 (1982).

19-270. Special benefit districts; creation or enlargement; approval of board of county commissioners, required. (a) (1) A special benefit district shall include any:

- (A) Sewer district;
- (B) water district, rural water district and water supply district;
- (C) fire district;
- (D) improvement district;
- (E) industrial district; and
- (F) drainage district.

(2) The fringe area of a city means the area of unincorporated territory lying outside of but within three miles of the nearest point on the city limits of a city which has adopted subdivision regulations under K.S.A. 12-705, and amendments thereto.

(b) No special benefit district shall be created, established or otherwise formed within the fringe area of any city unless approved by at least a $\frac{3}{4}$ majority vote of the board of county commissioners of the county in which the city is located. The boundaries of any such district shall not be extended unless approved by at least a $\frac{3}{4}$ majority vote of the board of county commissioners of the county in which the city is located. If the boundaries of the district cross county lines, the board of county commissioners of each county in which the district is located shall be required to approve the creation or extension of the boundaries of the district by at least a $\frac{3}{4}$ majority vote of the board of county commissioners of each county. If a hearing is not already required to be held prior to the creation or expansion of a special benefit district, the board of county commissioners shall call and hold a hearing on the proposed action. Notice of the hearing shall be published once in the official county newspaper. The notice shall be published at least seven days prior to the date of the hearing.

At the hearing, the board shall receive testimony from the city, township, county or regional planning commission having jurisdiction over any of the affected land area. Such testimony shall address any incompatibilities between the creation or expansion of the district and any adopted land use or comprehensive plans. The governing body of the city may present testimony of any proposed annexation of the affected land area. Any interested person may present testimony before the board. As a guide in determining the advisability of authorizing the creation or change in boundaries of a special benefit district located within the fringe area of a city, the board shall take into consideration: (1) The size and population of such city; (2) the city's growth in population, business and industry during the past 10 years; (3) the extension of its boundaries during the past 10 years; (4) the probability of its growth toward the territory during the ensuing 10 years, taking into consideration natural barriers and other reasons which might influence growth toward the territory; (5) the willingness of the city to annex the territory and its ability to provide city services in case of annexation; and (6) the general effect upon the entire community, all of these and other considerations having to do with the overall orderly and economic development of the area and to prevent an unreasonable multiplicity of independent municipal and special district governments. The board shall approve or disapprove the creation or change in boundaries of the special benefit district within seven days of the hearing. Any person or city aggrieved by the decision of the board of county commissioners may appeal from the decision of the board within 30 days following the rendering of the decision to the district court of the county in which the affected area is located. The appeal shall be taken in the manner provided by K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

History: L. 1986, ch. 70, § 1; May 15.

SB 425

ELAINE L. WELLS
 REPRESENTATIVE, THIRTEENTH DISTRICT
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TOPEKA

COMMITTEE ASSIGNMENTS
 MEMBER AGRICULTURE AND SMALL BUSINESS
 INSURANCE
 PUBLIC HEALTH AND WELFARE

HOUSE OF
 REPRESENTATIVES

February 23, 1987

TESTIMONY
 ON H.B. 2290

by
 Rep. Elaine Wells

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify on behalf of H.B. 2290.

Following an election recount in my district at which six election clerks and two judges worked twelve hours to hand count each ballot, it was brought to my attention that they were being paid \$3.00 per hour according to K.S.A. 25-2811. This pay applies to all elections.

The people that we as a government request and entrust to perform the responsibility for the overall operation of an election are surely important enough to pay them at least the federal minimum wage. This bill amends the statute to that such amount.

It should be our intent to secure persons who are qualified and worthy of this important task. As a government, we need to continually seek to improve the process of electing officials rather than let it deteriorate.

As times have changed, the availability of qualified persons and their willingness to participate has lessened. In many precincts, those who have worked on election boards have done so for many years and have expressed a desire to retire. How can we encourage new replacements to work if we are not willing to at least compensate them fairly?

In my own township, I know of a clerk who was not willing to take off from her job to work the election because she would have lost income for the day. In this time of economic hardship, where both heads of households are employed, it will become increasingly difficult to secure people to work on election boards.

The bill continues to allow the county commissioners to set the amount. It requires that it not be less than the federal minimum wage.

I have asked two election board members from my district to testify on this bill. They will also request for you to pass H.B. 2290 favorably from committee.

Again, thank you.

Attachment 8
2-23-87