Approved 4-17-87 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 ~~XXX~~ p.m. on March 16, 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:
Senator Don Montgomery
Doug Wright, Mayor, City of Topeka
Nicholas Saldan, Assistant County Counselor, Johnson County
Marla Howard, City of Wichita
Representative Marvin Smith
Representative Ginger Barr
Karen McClain, Kansas Association of Realtors
Bev Bradley, Kansas Association of Counties
Representative Nancy Brown
Bernie St. Louis, Citizens Against Unilateral Annexation
Ernie Mosher, League of Kansas Municipalities

Chairman Sand called the meeting to order.

Mike Heim gave the committee an overview of SB 246. He stated that the bill was similar to HB 2117 which passed both houses last year, but was vetoed by the Governor. He explained each section of the bill.

Senator Montgomery testified in support of SB 246, stating that the bill is similar to HB 2117, but leaves out the parts the Governor vetoed last year. He stated that the Governor indicated that he would sign this bill in its present form.

Mayor Doug Wright testified in opposition to SB 246, stating that the bill has many good things to offer, but with the provision found in Sec. 2, (c) he could not support the bill. He also stated that as written, SB 246 is protectionist legislation, protecting 2000 residents of the Sherwood area from having their property taxes shared with other Topekans to build a stronger community, and that if this legislation was enacted, the residents of the Sherwood area will be excluded from sharing the costs of local projects that will directly benefit them. Mayor Wright also stated that it is in the long term best interest of the city to annex. (Attachment 1)

Nicholas Saldan testified in opposition to SB 246, stating that the current process does and can work beneficially for the interest of all citizens, counties and the cities. He proposed 4 amendments to the bill: 1) striking lines 326 and the first four words in 327; 2) amend lines 338 to 346 to read: board. In making its findings and conclusions, the board's considerations shall include, but not be limited to, the following factors; 3) amend line 384 to change the time for decision from seven days after sine die to either 90 to 60 days after the close of the hearing; and, 4) amend new section 7 to substitute two years for five years to hold the review hearing and amend lines 454 and 456 to provide "whether or not the city has made good faith efforts and substantial progress toward providing services in" and "the city has not made adequate progress toward providing the services as provided in its service." (Attachment 2)

Marla Howard testified on SB 246, stating that the City of Wichita does not wish to support or oppose the bill, but given a choice they would prefer the current annexation powers. She also stated that the City does oppose the amendment excluding annexation of improvement districts contained in lines 104 through 110. (Attachment 3)

Representative Smith testified in support of SB 246, stating that it is an improvement over present law, and that it is a more workable document for representation under unilateral annexation. (Attachment 4)

Representative Barr testified in support of SB 246, stating that this bill does not keep the Sherwood area from being annexed, and that she supports the amendment regarding improvement districts (lines 104 through 110).

Karen McClain testified in support of SB 246, stating that it is important to do anything and everything possible to help provide any reasonable means to help Kansas grow and expand. She stated that if the laws must change, this bill is a workable compromise and will not stunt the potential growth of the cities of this state. (Attachment 5)

Bev Bradley testified on SB 246, stating that the most common objection of property owners being annexed is the lack of access to a representative entity which has authority to hear and arbitrate the dispute between the city and the owners of property proposed for annexation. She stated that the Board of County Commissioners is the logical body to assume this responsibility. She also stated that she was concerned with the seven days time period for rendering a judgement, that 30 days is more reasonable, but no less than 21 days would be sufficient. (Attachment 6)

Representative Brown testified in support of SB 246, stating that the bill is a compromise position.

Bernie St. Louis testified in support of SB 246, stating that the bill is a compromise and that it is fair to Sherwood. He stated that all Kansans have a right to equal representation.

Ernie Mosher testified on SB 246, stating that the League's position is one of reluctant acceptance, as the bill would place substantially greater burden upon a city desiring to annex land. He also stated that the League does not support the language in lines 104 through 110. (Attachment 7)

Chairman Sand closed the hearing on SB 246.

Motion was made by Representative Miller and seconded by Representative Baker to favorably pass SB 246. The motion carried.

A division was called for. The result was 9 members voting yes; 6 members voting no.

The minutes of March 5 were approved as presented.

Meeting adjourned.

Testimony before the Kansas House of Representatives
Local Government Committee
March 16, 1987

My name is Doug Wright and I am the Mayor of the City of Topeka. I appear in opposition to SB 246. I joined with the League of Kansas Municipalities and a number of other leaders statewide, both pro- and anti-annexation people, in support of this bill as it was originally introduced, but the Senate saw fit to amend the bill and add the language found in Paragraph 2(c) which is of statewide application, but in reality only applies to the City of Topeka. This bill has many good things to offer, improvements in our state's annexation process, but with this provision in it, I cannot support this bill and I urge you to remove Paragraph 2(c).

My friends, let me tell you, as the Mayor of Topeka, this bill drives a wedge through my community. We in Topeka have accomplished a great deal in recent years and it has been because we've all pulled together. We have a lot more we need to accomplish, in terms of economic development, construction of streets and highways and continued job growth and urban development, but if this bill passes as is, the Legislature will succeed in dividing our community to the benefit of a few and the detriment of many.

The Sherwood area lies immediately adjacent to the southwestern city limits of Topeka. (map) There is no longer any rural land between Topeka and the Sherwood area, although when this affluent, urban residential area was established over 20 years ago, Sherwood was definitely out-of-town.

Sherwood is the improvement district referred to in SB 246, Paragraph 2(c). But, you should know that Sherwood's improvement district does not allow the area to exist as an independent governmental unit. Not only do the residents consider themselves to be Topekans, but they depend upon Topeka for basic urban services. Sherwood's water service is provided by the City of Topeka. Their sewer plant is operated by the City of Topeka. Streets connect the area to Topeka.

As written, SB 246 is protectionist legislation, protecting the 2000 residents of the area from having their property taxes shared with other Topekans to build a stronger community. If SB 246 is adopted as is, the residents of the Sherwood area will be excluded from sharing the costs of local projects that will directly benefit them. For example, Governor Hayden has suggested that local units join in a partnership with the State to build needed highways. The Topeka community needs the I-70/I-470/Wanamaker Road interchange completed and this is just the type of highway project the Governor envisions being constructed with a mixture of State and local dollars. But, why should the residents of the City of Topeka contribute their dollars to this

Attachment 1
3-16-87

project if the affluent residents of Sherwood don't contribute theirs. Why should the residents of Highland Park, Oakland, and North Topeka be taxed to build this road when the Legislature will, by this measure, grant a property tax exemption to the people who will drive through the interchange two times a day. As far as I am concerned, this much-needed interchange won't be built if local dollars are required and the residents of the Sherwood area are excluded from the formula.

The property taxpayers of Topeka, not Sherwood, are already footing the bill for the widening of Wanamaker Road which is necessitated by the tremondous economic boom being felt along Topeka's west side. The 5-anchor mall, the Wal-Mart superstore, and a Target store are locating on Wanamaker Road, not because the area is rural, but because it is urban. (letters & charts) The jobs and the economic impact will benefit the Sherwood area and the rest of the Topeka community. The spirit of a Community is Sharing---those who share the benefits should share the burdens and the Legislature shouldn't pass a law that says all but the wealthy residents of one area of the community must share the property tax burdens.

In the early days of medicine, it was said that the one certain way to stop the spread of disease was to kill the patient. The proponents of this measure obviously view annexation as a disease and they want to stop its' spread. But, if they succeed, they are going to kill the patient, the city of Topeka, in the process. Annexation isn't a disease, it's the cure for the disease called "tax unfairness"---something I'm sure everyone in this room is against. Tax unfairness exists in a community when one group of residents are allowed to enjoy the benefits of the community without having to pay for them.

As the elected representatives of over 2 million Kansans, it is your responsibility to set state policy which will benefit us all. SB 246 offers no benefit to the State of Kansas. It allows less than one-tenth of 1% of the State's people to enjoy a free ride and escape doing their civic duty to contribute to the growth of their community. If this committee is intent on writing sound state policy and you truly want to address the annexation issue, I urge you to find some threatened area 3, 4 or 5 miles outside of a city and deal with it. But, don't use an area such as Sherwood that is right across the street from the city on several sides. Don't let the results of your legislation divide and hurt a community as this legislation will hurt mine.

WAL-MART

WAL-MART STORES INC. • MITCHELL BLDG. • 701 SOUTH WALTON BLVD. • HWY. 71 • BENTONVILLE, AR 72716 • 501-273-4000

February 10, 1987

Mayor Douglas S. Wright
3536 Avalon Lane
Topeka, KS

RE: Topeka, KS

Honorable Mayor Wright:

Again following up our meeting of last Thursday, this is to reiterate our estimates concerning the Wal-Mart Super Center statistics:

1. Size: 213,143 square feet
2. Annual Sales $80,000,000
3. Employment:
   A. Hourly - 438 (local)
   B. Management - 12
   C. Weekly Payroll - $75,000
4. Departments: Wal-Mart basic 35 plus Pharmacy and Auto Center as well as grocery departments including fresh produce, meats, dairy, bakery, delicatessen, dry foods, etc.
5. Anticipated Opening:
   Early Fall 1987
6. Sales Tax Rebate to City of 1% based on $80,000,000 sales would generate $800,000 of revenue to City.
7. Utility consumption, while not pinpointed at this time, would generate additional revenue to the entity providing the services.
8. Ad Valorem Taxes would generate further revenues both in upgrading zoning and in value added through structures to be erected.

If I can provide additional information I'll be glad to do so.

Very truly yours,

W. G. Bothwell
Real Estate Manager

WGB/jt

cc: Gerald Goodell
215 E. 8th Ave.
Topeka, KS 66603

WEST RIDGE MALL: REVENUES GENERATED TO CITY AND ITS RESIDENTS

1,750 Employees, once built.

900 employees, during construction.

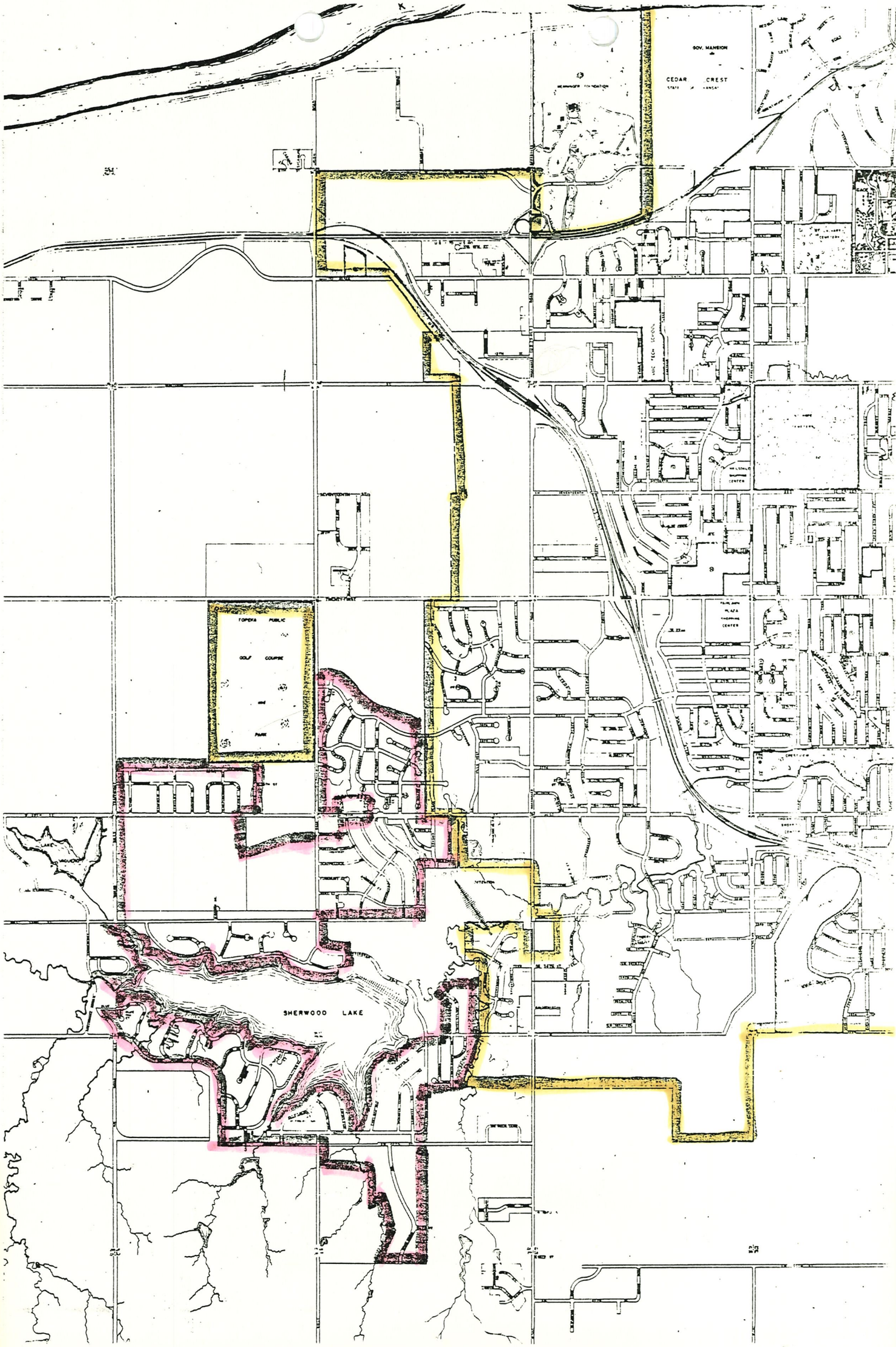
Almost $1 million in new sales tax revenues.

Over $500,000 in property tax revenues.

Increase school district's tax base by 32%.

Over $40,000 for water and sewer usage.

Source: Realty Development Research (1981)


K
GOV. MANSION
CEDAR CREST
TOPEKA PUBLIC
GOLF COURSE
PARK
SHERWOOD LAKE

STATEMENT IN OPPOSITION
TO SENATE BILL 246

PRESENTED TO
THE HOUSE LOCAL GOVERNMENT COMMITTEE

ON BEHALF OF
THE BOARD OF COUNTY COMMISSIONERS
JOHNSON COUNTY, KANSAS

Attachment 2
3-16-87

INTRODUCTION

Over the last several years, the Legislature has considered a variety of proposals to amend the statutory provisions of KSA 12-521 relating to procedures for annexation by cities. The Board of County Commissioners of Johnson County has consistently opposed those proposals which would substantially alter the current process. It is the firm position of the Board that the current process does and can work beneficially for the interests of all citizens, the counties, and the cities.

The Board is fully aware that residents of unincorporated areas generally disfavor any annexation and have urged this Legislature to amend the statutes to make annexation requests more and more difficult. Likewise, the Board does recognize that there are a number of examples where the annexation procedure has been apparently misused.

At the same time, however, the Board would strongly suggest that this Legislature must not operate one-sidedly and must recognize that many annexation decisions, both granting and denying, have been appropriately made.

Undoubtedly improvements can be made to the process and perhaps some should be made. The process is not perfect. However, it is equally important to recognize the extent and impact of the changes, as well as the ultimate purpose to be achieved by the process.

Senate Bill 246 is now before the Legislature for consideration. That Bill makes major and substantial changes to the annexation process under KSA 12-521. **The Board of County Commissioners of Johnson County must oppose Senate Bill 246 and must request that the Legislature either amend the Bill significantly or defeat the Bill.** As written, Senate Bill 246 will accomplish little if anything to improve the substantive decision-making on annexation requests. What it will accomplish is to increase the level of controversy already plaguing the process, increase the amount of legal issues and argument, encumber the process with increased aggravation, and increase the lawsuits filed.

The Board does understand that a major purpose of the Bill is to appease those who are unconditionally opposed to annexation and that it is the intent to make the process very troublesome and aggravating for the cities and counties. The Board would respectfully suggest that aggravation is not a sound basis nor appropriate purpose for the adoption of major uniform legislation.

RATIONALE OF OBJECTIONS

Because of the degree of changes proposed by Senate Bill 246, there are a number of amendments to the language of the current law and a number of new provisions. Some of those changes standing alone may not be objectionable. However, when packaged with the others, they are objectionable. The major objections to the Bill are:

1. QUASI-JUDICIAL STATUS. Under current law, the Board acts in a dual capacity - legislative in determining advisability and quasi-judiciary in determining manifest injury. Senate Bill 246 purports to state that the action of the board shall be quasi-judicial. That change is very substantial, does not effectively accomplish any positive purpose, and adds many legal questions to the process.

The primary objection to the change is that a quasi-judicial status is not suited for or appropriate to the determination of advisability. Under current law, the board does act in a quasi-judicial capacity in determining manifest injury - the weighing of benefit and burden for the protection of the residents of the unincorporated area. Thus, the change adds nothing positive to protect the interests of those residents.

Rather, it changes only the status then of the advisability consideration. Within that consideration is the analysis of whether or not part or parts but not the whole should be annexed. The Bill does not change the requirement that the board must consider the requests in parts as well as a whole. The consideration of parts is not at all suited to the taking and weighing of factual evidence. Rather, it is a matter of circumscribing boundaries and distinguishing one area from another - considerations which have universally been held to be legislative in nature. Clearly, this Legislature would not be receptive to drawing voting district lines in a quasi-judicial capacity.

Moreover, the change is objectionable because it severely restricts the information which the board may consider in making the advisability decision (again the change only affects advisability - it adds no more protection to the citizens in the manifest injury consideration). In its legislative capacity, the board may consider any facts or information within its knowledge or county records. As a quasi-judicial body, the board is limited to that information presented formally as a part of the hearing record. Thus, either the record will be extremely voluminous and the hearing greatly protracted or the board will be required to make a decision ignoring relevant information. In that manner, everyone (including the citizens) get less protection of interests from their elected officials. **The change in status to all quasi-judicial does not accomplish any positive result, is not appropriate for the advisability consideration, is**

inconsistent with and renders nearly meaningless the requirement to consider the annexation in parts, and can only result in a poorer decision-making process which is more cumbersome but less meaningful. In essence, the change is a matter of form with no substance and does not appreciably benefit anyone.

The argument in support of the change is that it makes the board make a more considered decision in an open process. The fallacy of that position is that the only real effect of the change is to limit information to the board and to make it extremely difficult to consider parts. Thus, rather than accomplishing what it wishes, it will result in a less considered decision. The decision is now made openly based upon findings.

2. MULTIPLE MANIFEST INJURY CONSIDERATIONS. Senate Bill 246 adds a substantial provision to current law prescribing the decision-making process of the board with respect to manifest injury. The drafted language encompasses most of the current state of the law established by court cases, but then goes on to add a number of provisions evidently intended to broaden the considerations to be made by the board. **The additions, however, even if well intentioned, are so broad that they effectively render the manifest injury issue so complex that it becomes unreasonable in scope.**

First, the Bill requires that the board decide whether or not the annexation will cause manifest injury to the landowners if granted and to the city if not granted. That requirement is not at all reasonable nor practical. Manifest injury as it is now legally defined is the placing of burden without equivalent benefit. In all candor, that determination could not be reasonably applied to the city. If the criteria for consideration of manifest injury are also changed to make them applicable to cities, then the board is nearly always going to be faced with a dilemma whenever it considers the issue of manifest injury. The dilemma arises because the board must initially decide if the annexation is advisable. To do so, the board must consider whether or not conditions exist that warrant the annexation and which parts. If the board finds that the annexation is not advisable, then it does not consider manifest injury, but merely denies the request. In essence then, the advisability issue covers some consideration of the need to the city, or in other words, the injury if not granted. Thus, if the board finds that annexation is advisable, then it effectively concludes that there is some cause to grant it in whole or in part. If there is some cause to grant it, then obviously the city will be adversely affected by a denial. That being so, the board is faced with the dilemma of some manifest injury to the city if denied and weighing manifest injury to the residents of the area if granted. It is quite possible then that many annexations will end up with findings that the residents are injured if granted and the city is injured if not granted.

The board respectfully suggests that the concept of manifest injury is designed as a test to protect the owners of land in the area sought to be annexed and is not an appropriate standard to be applied to the city (which is protected under the determination of advisability) or to others. Broadening application of the concept will only create conflicting considerations for the test and most likely weaken the protection now afforded the landowners.

Those who support the change contend that it provides more definitive protection to both the citizens and the cities. The fallacy of that contention is that the increase in protection is totally illusory, is not practicable in application and mixes apples and oranges.

The annexation process is not the simple adversary proceeding that those opposed to annexation claim it to be. Very seldom are annexation requests made that are totally black and white. To attempt to reduce annexation proceedings to a simple issue of right and wrong or harm and no harm is to totally misconceive the process. Understandably, both opponents of annexation and the cities want statutory protection to the maximum extent possible for their separate interests, particularly where, as here, there a definite atmosphere to make radical changes in the annexation statutes. However, the rush to change cannot overlook the need for practical application. Senate Bill 246 will result in inappropriate standards for decisions.

Secondly, the Bill effectively requires manifest injury consideration of a long list of criteria applied to a list of persons or entities. The Board objects to that change because it would again misapply the manifest injury test, would lend itself to conflicting findings, would base some annexation decisions not on the merits but on interests which may not be very relevant to the overall issue of annexation AND MOST IMPORTANTLY WOULD RESULT IN A DRASTIC ALTERATION OF THE MANIFEST INJURY TEST FROM ONE OF GENERAL APPLICATION TO THE WEIGHING OF THE PERSONAL INTERESTS OF INDIVIDUALS, FIRMS, ETC.

The Bill, at lines 0338 to 0346, requires that the board, in determining manifest injury, must consider the affect of listed criteria upon the city, the residents of the city, the area to be annexed, the citizens of the area and then other governmental units, utilities, and any other public or private person, firm or corporation. Not only is then provision a total misapplication of manifest injury and an unreasonable list both by its vagueness and breadth, but it totally alters the manifest injury test. Under current law, manifest injury is determined as a matter of general application. Separate findings are not considered or made for each particular citizen or landowner, whether in or out of the city. Under the new language proposed in the Bill, separate considerations will be required for every public and private person, firm or corporation affected. Thus,

under this bill, the board will have to consider individual impacts and could conceivably find that one neighbor is manifestly injured but not another. More significantly, under this language, the board could find the annexation advisable, could find that all of the residents are benefitted and not manifestly injured, and that the annexation should be granted. However, the board could then find that some one particular firm or individual or a utility would be harmed. The board would then be faced with the position of denying an annexation that is in the best interests of the city and residents but not some one utility or firm or whatever. That requirement is totally unreasonable. While it may be unfortunate that a utility loses some customers or that a particular business like a landfill has new zoning or regulatory requirements, the real interests in an annexation is the residents and area as a whole. Individual considerations and findings are unreasonable and abusive.

The supporters of the provision contend that it is just an emphasis of factors to be considered. If that is so, the change should be made by putting the list of people with the list of criteria and removing the reference to manifest injury. More honestly, the provision is a knee-jerk reaction to recent annexations that affected rural utility companies and improvement districts. Moreover, it is an attempt to find another cause to deny annexation where the opponents can not show manifest injury to the area itself.

The real danger of the provision is that it distorts a valuable concept of manifest injury as it is intended to really protect residents and places unrealistic individual considerations into a general public interest determination.

Finally, the same factors are then duplicated in the same provision in the bill, where they are included in the long detailed list of criteria the board must consider. Clearly, they do not require multiple consideration.

3. LIST OF CRITERIA. While the list of criteria for consideration is probably a good addition to the statute, although case law has well established many of those criteria, a number of the items contained in that list are way too vague and way too broad and some have very, very limited relevance to annexation. The most questionable of the criteria listed are those numbered (10), (11), (12) and (14).

Item no.(10) relates to the dependency of residents upon the city for social, economic, employment, cultural or recreational opportunities. That item is extremely vague and moreso questionable because it is impossible to quantify any of the criteria. Just what is dependency for cultural or social opportunities? Clearly, residents of an unincorporated area can socialize within and without the city or even within a number of different cities. Also, what degree of economic interaction or employment constitutes dependency or lack thereof? Certainly, residents of the

unincorporated area will travel to the city or some city from time to time to shop or obtain supplies or do banking etc. Likewise, even the most rural and agrarian areas are dependant upon nearby cities for supplies and for employment and for marketing their grain, produce or livestock. Few if any unincorporated areas can support themselves with employment, financial institutions, supplies, etc. Furthermore, in the developing urban areas where annexation generally occurs, the residents interact with a number of cities, often working in one, shopping in others, and socializing in others.

Item no.(11) is questionable because there is no reasonable way that an annexation of ground, if the area is appropriate for annexation will not have an affect upon other governmental service entities. The criteria is, therefore, a catch 22. If the area is not developing to the level where it has no major governmental service entities, then the finding under this criteria would be that there was no major negative impact, which would be a finding in support of annexation when in fact annexation would not be appropriate. On the other hand, if the area has substantially developed to the point where annexation ought to be considered, then there is going to be some impact on whatever entities supported the services that allowed the development. Under these criteria then, that finding of impact would indicate that annexation should not be granted since those service agencies, or some of them, would be displaced or affected adversely, when in fact annexation would be more appropriately considered at that stage of development. Furthermore, the impact is only going to get greater and greater the more the area develops and demands services and improvements to support the residents. The more the development, the more appropriate annexation yet the more likely that this criteria would indicate a negative against annexation. Such a result is not at all logical or good planning of the public interests.

Item no.(12) is likewise a catch 22 and not very logical for most of the same reasons as item (11). If the area is in fact under consideration for creation of a new city or special benefit district, then it is more likely that annexation to an existing city would be appropriate. Likewise, if the area is not ready for inclusion within a city, then it is not likely to be ready or in need of special improvement or benefit districts and the creation of a whole new city.

Item no. (14) is highly questionable since it introduces into the annexation equation the private business interests of some utility. If in fact the utility needs consideration for protection, it is protection from loss of business and confiscation of investment. Those interests are either currently well protected or certainly can be better protected by other means, such as requiring cities to allow service to continue or to compensate the utility, rather

than encumbering the issue of annexation with utility business interests.

4. THE TIMING OF THE DECISION. Senate Bill 246 requires that the board render its decision in writing within seven days after close of the hearing. The seven day time period is totally unreasonable. The Board would respectfully submit that a good, well considered decision, including all of the important factors to decide cannot reasonably be made in seven days.

The supporters of this provision say, on the one hand, that the seven day provision is not unreasonable because the seven days do not begin to run until the hearing is adjourned sine die and the board can continue the hearing indefinitely until then. On the other hand, they say that the seven day provision is necessary because they do not want the decision put off indefinitely and want to shorten the process. Not only are the two intentions totally in conflict, but neither has any real merit.

First, adjourning sine die is not appropriate in a quasi-judicial session. It is a term peculiar to the legislative process. Further, it says no more that the judicial equivalent of closing the hearing or closing the record. The real problem is that the board in an annexation proceeding, no more than a judge, cannot reasonably consider evidence and begin the process of a decision until the hearing and record are closed. Clearly, if the record is left open, then the parties are going to take the time to formulate and present other evidence and argument.

THE MOST SERIOUS PROBLEM WITH THE SEVEN DAY REQUIREMENT IS THAT A WELL REASONED AND FULLY SUPPORTED WRITTEN DECISION CANNOT BE MADE IN THE SEVEN DAYS. If this Legislature is really serious about its desire that the board consider all the criteria it has included in this bill, and to do so under the standards it attempts to impose under this bill, and to accept the responsibility for the decision in a serious manner, then the legislature can not be serious about the seven day requirement. Reality and reason simply indicate that it is not feasible to make that kind of decision in that time.

In reality, a board of county commissioners will receive the evidence at a public hearing, which may cover several days. Most of the evidence will be either oral statements or lengthy written reports. To properly consider that evidence then the board will need a transcript of the proceedings, will need to read and review the written materials, will need to discuss the facts and findings amongst themselves to arrive at a mutual decision, and will need to draft a decision stating all of the findings and evidence. That can not be done in seven days. The court reporter or transcriber will likely need more than seven days. The drafters of the decision, once made, will need more than seven days.

As an analogy, the judges of the courts consider 90 days as the reasonable outside time to issue a decision on a trial matter where written findings and conclusions are required. Those judges are trained to hear, weigh, and evaluate evidence and write decisions. The judge decides alone and does not need to form a mutual decision. Even the appellate courts and supreme court in deciding appeals where there is no weighing of evidence and only decisions of law to make, given the benefit of full written briefs, do not issue decisions ordinarily in less than 60 days.

THE BOARD WOULD RESPECTFULLY SUGGEST THAT THE SEVEN DAY REQUIREMENT IS TOTALLY UNREASONABLE AND THAT 90 OR AT A MINIMUM 60 DAYS AFTER THE DATE OF THE HEARING (NOT CLOSING THE RECORD) IS NECESSARY.

The interests of all concerned should be focused not upon arbitrary time constraints but upon the rendering of a well thought, thoroughly considered decision, which provided everyone who wanted to provide necessary information or evidence. The merits of the decision should not be lost or compromised for the mere sake of time limitations. If the seven day limitation is adopted, it is a certainty that the merits of the deliberation will be seriously if not totally compromised.

5. PLANNING COMMISSION REVIEW. Senate Bill 246 adds a new provision to the current law which requires that the request for annexation must be presented to the planning commission having jurisdiction in the area to be annexed for review. The Board respectfully submits that this new provision is not reasonable in that it is a change without meaning and significance and is inserted into the law only to impose a mechanical hurdle to be leapt in the process.

The provision is especially objectionable since it has so little substantive meaning. In the first place, there generally is no planning commission that exercises jurisdiction (which planning commissions do not exercise in any event) in the unincorporated areas. More typically there is a township zoning board. That board is inappropriate for use since it would have an adverse interest in the process but also because it does not exercise any comprehensive planning functions. Nevertheless, it is a rare occurrence if there is a planning commission.

More significantly, however, is the function required by Senate Bill 246 - to determine if the annexation is compatible or incompatible with the comprehensive plan. Assuming that there is a comprehensive plan for the area, which is not likely in most counties (only Johnson County), that plan will have no relation to the issues of annexation. On what basis will the review determine compatibility? What planning is incompatible with annexation, or compatible for that matter? In essence the requirement is a meaningless one because there are no relevant factors or standards relating annexation and any comprehensive plan. If the intent is to assure that the plan contemplates annexation, that too is

useless since comprehensive plans for unincorporated areas do not and should not anticipate annexation prior to consideration of an annexation request.

Moreover, if the area is developing to the point which would support consideration for annexation, then the plan, if there is one, would either contemplate such development or the the plan has no practical value. Thus, it could not logically be incompatible. On the other hand, if the area is totally rural or mostly so, comprehensive planning and zoning, by law, is not applicable or meaningful. Thus, it is of little use to review it.

Finally, the proposed statutory provision does not provide any procedure for the review. It does not indicate whether a hearing is required, whether public comment is to be received, or whether the city is required to make any presentation. Since the planning commission is a public body subject to the open meeting requirements, it is obvious that the members must at least meet and deliberate in open session. It would, therefore, be folly to suggest that the public and city will not desire or feel compelled to present their views to the planning commission. Once that presentation process starts, it clearly will evolve into a full airing of all portions of the city's petition and service plan. Thus, is created a whole separate second hearing process on the annexation; thereby, merely increasing the time, legal hassles, cost, and controversy of the whole process. And for what? The so-called compatibility or incompatibility finding has no real significant meaning then in the board hearing process other than one bit of information - a bit of information which could be presented to the board by anyone at the hearing anyway or which a board would most likely consider anyway since it adopts and approves the plan in the unincorporated area anyway.

The only purpose for the requirement is to add mechanical burdens to the process to create delay or aggravation. The same consideration is subsumed within the criteria now considered and if not adequately stated, it can be easily added to the long list already drafted into the bill. The obvious practical affect of the requirement is to get a second hearing forum, which allows the opponents more opportunity to oppose the city.

IT WOULD APPEAR TO THE BOARD THAT THE OBVIOUS INTEREST OF THE LEGISLATURE, THE CITY, AND THE LANDOWNERS, AS IT IS WITH THE BOARD, SHOULD BE DIRECTED TO WHETHER OR NOT THE AREA IS AT A LEVEL OF DEVELOPMENT SUCH THAT ANNEXATION WOULD BE ADVISABLE AND THEN WHETHER OR NOT THE CITY CAN PROVIDE ADEQUATE PLANNING AND SERVICES WITHOUT CAUSING MANIFEST INJURY. Those issues cannot be addressed by a planning commission review of a comprehensive plan in the unincorporated area. If comprehensive planning is an important factor, which it should be, then it is the city's comprehensive plan as it would apply in the area that is important. The legislature should direct its attention to requiring cities to include the proposed area in its

comprehensive plan, along with the service plan, prior to a request for annexation so that the board and residents can then determine whether or not the proposed planning is compatible and beneficial to the area.

AS IT IS WRITTEN, THE REQUIREMENT FOR PLANNING COMMISSION REVIEW HAS LITTLE MEANING AND WILL ONLY ENCUMBER THE PROCESS WITH A SECOND HEARING, WHICH WOULD NOT HAVE ANY OFFICIAL STATUS OR EFFECT.

The supporters of the provision claim that the review has no affect upon the board but is desirable to have an independent group review the request. With all due respect, those reasons are hollow. If the review has no affect, it should not be required. The desire for an independent look is likewise flawed if the decision must be made by the board on the evidence and record for it. In reality, the provision is in the bill to clog up the process and not to accomplish anything of value.

6. THE FIVE YEAR AND TWO AND ONE-HALF YEAR REVIEW HEARING. The bill adds two new requirements to current law for follow-up or review hearings after an annexation is granted to ensure that the city is fulfilling its service commitments - one five years after and another two and one-half years later.

The board does support the concept that some mechanism is desirable to check on the city to ensure that services are being provided. However, the board does object to the provisions as drafted in the senate bill. First, the length of the check-up period is too long if it is to be done by the board. At the point of five years, too many changes can occur - from the public officials involved to the landowners to the stage of development. Quite likely, the five year review will require that newly elected officials will be reviewing the decision of a prior board and the actions of subsequently elected city officials. Likewise, by the five year period, there will be a substantial investment already made by the residents in taxes paid and by new development in the area by going through city zoning, etc.

Secondly, the standard for review at the five year period is not appropriate. A determination of whether or not the city has provided the services stated in the plan is stated in objective terms but is so subject to subjective argument - no different than the complaints of city residents in other areas of the city. The standard should be one of good faith compliance with the plan in providing services equivalent to those provided to other residents of the city.

Finally, the remedy provided by the bill is not at all realistic. The real interest is to assure that the services are provided. Waiting seven years to do so is not an appropriate remedy. Likewise, having the only ultimate remedy to deannex land after the seven years is not realistic. If the area is removed from the city because of lack of service extension after seven years, then all the

residents achieved from the whole process was to be in the city for 7 1/2 years, complying with its laws, using its address, and paying its taxes. If deannexation is warranted, then the resident got no or very limited services for that money, and then will still not get them or have them when they are returned to unincorporated status. It may also be safely assumed that some of the residents, whether annexed or developing after the annexation may not want to be annexed, and thus controversy between neighbors would occur.

Finally, as the bill is now written, individuals may seek annexation after the 7 1/2 years, which could lead to many little deannexations of scattered partials of land.

IT IS THE POSITION OF THE BOARD THAT THE RELIEF NEEDS TO BE PROVIDED AT AN EARLIER DATE TO REALLY ENSURE THAT THE RESIDENT GETS THE BENEFIT PORTION OF ANNEXATION, AND IF THE BENEFIT IS NOT BEING PROVIDED IN GOOD FAITH, THEN THE RESIDENT NEEDS A REAL REMEDY OF EITHER FORCING THE APPROVAL OR COMPENSATING THE RESIDENT FOR THE LOSS OF THE SERVICES AND THE TAX DOLLARS.

It is the belief of the board that meaningful relief is more appropriately provided through the court process or some compensation process to either abate taxes or repay the taxes.

However, the Board does not advocate creating rights to sue. Nor does the Board desire to shunt the responsibility. Rather, the Board would urge the Legislature to initiate a process, first, for the complaints to go through the city itself to rebate taxes or pay for the services, and then if necessary, through the county to either abate future taxes until service is adequately provided or to provide the services itself and retain collected city tax dollars to pay for the promised services. In that way the residents receive the services in a meaningful time or do not pay for them.

CONCLUSION

The Board of County Commissioners finds itself in the awkward position of taking a strong stand in opposition to Senate Bill 246, even though the League of Cities has drafted the bill and supported it, even though the Legislature has worked long hours to formulate an annexation bill, and even though most others are willing to accept the bill. Quite frankly, though, very few people or organizations are pleased or satisfied with the bill.

The opposition of the Board is not taken lightly. However, the bill has too many negative and adverse provisions for the Board to simply step back and accept it. In addition, the main objectives sought to be achieved by the bill are not appropriately achieved and the results of the bill are merely to create a more cumbersome and aggravating process without compensating gain in the real issues to be addressed in an annexation proceeding. The Board is therefore required to oppose the bill as a

principal party which must function under it and to ask that it be amended or defeated.

RESPECTFULLY SUBMITTED
BOARD OF COUNTY COMMISSIONERS
JOHNSON COUNTY, KANSAS

The Board of County Commissioners of Johnson County, Kansas would respectfully request that, at a minimum, the following amendments be made to Senate Bill 246 for the reasons indicated.

1. Amend page nine by striking lines 0326 and the first four words (quasi-judicial in nature.).

Reason: The Board currently acts in the dual capacity of legislative and quasi-judicial during consideration of an annexation request. The bill would change the status to all quasi-judicial. That capacity would not be appropriate for consideration of the advisability of the annexation nor consideration of parts of the annexation. The Board already acts in a quasi-judicial capacity where appropriate - in the consideration of manifest injury.

2. Amend lines 0338 to 0346 to read:

board. In making its findings and conclusions, the board's considerations shall include, but not be limited to, the following factors:

Reason: The bill as written refers to manifest injury consideration for persons and entities other than the residents of the area sought to be annexed. The manifest injury test ought to be applied only to the residents and is not appropriate to apply to others, in particular others on an individual basis. Further the numbered listing of criteria already includes considering the affect on those same entities. The extra language in the bill only confuses and duplicates.

3. Amend line 0384 to change the time for decision from seven days after sine die to either 90 or 60 days after the close of the hearing.

Reason: Seven days is not sufficient. The phrase sine die does not appropriately apply to quasi-judicial proceedings. A time period of 90 or minimum 60 days is much more realistic, considering the time required for transcribing the record, deliberating the facts, and writing an appropriate set of findings.

4. Amend new section 7 to substitute two years for five years to hold the review hearing and amend lines 0454 and 0456 to provide "whether or not the city has made good faith efforts and substantial progress toward providing services in" and "the city has not made adequate progress toward providing the services as provided in its service".

Reason: The time for review provided in the bill is too long to be meaningful and can only create problems of review

Attachment 2
(Cont.)
3-16-87

since officials and persons involved will undoubtedly change, and after five years to 7 1/2 years, the resident really has no good remedy.

THE CITY OF WICHITA

PUBLIC AFFAIRS OFFICE
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351

March 16, 1987

TO: Chairman Sand and Members of the House Local Government Committee

FROM: Marla J. Howard, Public Affairs Officer

RE: SB 246, Annexation

Dear Chairman Sand and Members of the Committee:

While the City of Wichita does not wish to testify in support of, or opposition to, Senate Bill 246 overall, we would like to make a few comments.

Given our choice, it is naturally the City's desire to maintain our current annexation powers and authority. However, we understand there is also another side to this issue. We do ask that the Legislature continue to carefully examine any changes to the annexation laws, with consideration for the needs of municipalities, the unannexed areas, and the citizens at large.

In addition, the City of Wichita does wish to express its opposition to the amendment excluding annexation of improvement districts contained in lines 104 through 110. This amendment further erodes cities annexation powers and impacts our ability to grow. We believe improvement districts should be handled the same as any other area being considered for annexation.

Thank you.

Attachment 3
3-16-87

STATE OF KANSAS

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

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER EDUCATION
TAXATION
TRANSPORTATION

HOUSE OF
REPRESENTATIVES

March 16, 1987

SB 246 HOUSE LOCAL GOVERNMENT COMMITTEE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I SUPPORT SB 246 BECAUSE IT IS AN IMPROVEMENT OVER THE PRESENT LAW, ALTHOUGH SUBSTITUTE FOR HB 2117, WHICH PASSED THE HOUSE AND SENATE LAST YEAR AND WAS EVENTUALLY VETOED BY GOVERNOR CARLIN, WAS A MORE WORKABLE DOCUMENT FOR REPRESENTATION UNDER UNILATERAL ANNEXATION.

1. THE 21 ACRE IS A DESIRABLE IMPROVEMENT OVER 55 ACRES.
2. HOLDING THE PUBLIC HEARING AS NEAR AS POSSIBLE TO THE ANNEX AREA IS A PLUS.
3. I SUPPORT THE ADDITION OF LINES 173 THROUGH 190 FOR NOTIFICATION OF THE PUBLIC HEARING ON TO PROPOSED ANNEXATION RESOLUTION.
4. LINES 224 THROUGH 244 ARE VERY VERY IMPORTANT TO THOSE AREA PROPERTY OWNERS THAT WILL BE AFFECTED WITH INCREASED SERVICES AND TAXES.
5. LINE 276 THROUGH 295 REINFORCES THE OBJECTIVES FOR A TIMETABLE FOR SERVICES.
6. THE INCLUSION OF LINES 326 THROUGH 394 IS INDEED A GREAT IMPROVEMENT OVER PRESENT STATUTORY REQUIREMENTS.

THANK YOU FOR THE OPPORTUNITY TO SHARE MY CONCERNS ON SB 246.

Attachment 4
3-16-87

KANSAS ASSOCIATION OF REALTORS®

REALTOR®

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: THE HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: MARCH 16, 1987

SUBJECT: ANNEXATION, SB 246

ON BEHALF OF THE KANSAS ASSOCIATION OF REALTORS(R), I APPEAR TODAY TO SUPPORT SB 246, AND TO SUPPORT THE ABILITY OF CITIES AND MUNICIPALITIES TO ANNEX LAND.

THIS IS A TIME WHEN KANSAS IS MAKING STRIDES IN IMPROVING ITS IMAGE AND ENCOURAGING ECONOMIC GROWTH. WE BELIEVE IN AND ARE ACTIVE PARTICIPANTS IN THE GROWTH AND IMPROVEMENT OF THIS STATE.

ACCORDINGLY, WE FEEL IT IS VERY IMPORTANT TO DO ANYTHING AND EVERYTHING POSSIBLE TO HELP PROVIDE ANY REASONABLE MEANS TO HELP KANSAS GROW AND EXPAND. THE KANSAS ASSOCIATION OF REALTORS(R) WOULD RATHER SEE THE ANNEXATION LAWS STAY IN THE FORM WHICH THEY ARE NOW IN. HOWEVER, IF THE LAWS MUST CHANGE, WE FEEL THIS BILL IS A WORKABLE COMPROMISE, AND WILL NOT STUNT THE POTENTIAL GROWTH OF THE CITIES OF THIS STATE.

THIS IS A TOUGH ISSUE FOR US, BECAUSE THE KANSAS ASSOCIATION OF REALTORS(R) HAS ALWAYS REPRESENTED THE RIGHTS OF PROPERTY OWNERS. HOWEVER, WE ALSO RECOGNIZE THAT THERE ARE TIMES WHEN THE RIGHTS OF INDIVIDUAL PROPERTY OWNERS ARE OUTWEIGHED BY THE GOOD OF THE COMMUNITY. THIS IS ONE OF THOSE RARE TIMES. EVERYONE IN A COMMUNITY BENEFITS WHEN THERE ARE OPEN OPPORTUNITIES AND ATTITUDES FOR GROWTH, EVEN THOUGH IT MAY BE TEN YEARS AFTER AN ANNEXATION, THAT THE LAND IS USED. GROUNDWORK FOR GROWTH SOMETIMES BEGINS WELL AHEAD OF THE END PRODUCT. THE CITIES CANNOT LEAVE THAT GROUNDWORK IN THE HANDS OF SOMEONE ELSE.

Attachment 5
3-16-87

WE FEEL THE TRADEOFF OF DEANNEXATION PROCEDURES, IN RETURN FOR PERMITTING THE CITIES TO CONTINUE TO ANNEX MORE THAN 21 ACRES OF PLATTED LAND IS A WORTHWHILE COMPROMISE. THOSE OF YOU WHO HAVE BEEN ON THIS COMMITTEE FOR THE PAST SEVERAL YEARS KNOW THAT THIS IS A MAJOR MOVEMENT ON THE PART OF CITIES TO AGREE TO THIS.

KAR TAKES THE POSITION THAT, WHILE CITIES HAVE THE NEED TO ANNEX AS THEY SEE FIT, SUCH ANNEXATION MUST BE REASONABLE, AND WHERE CITIES HAVE PROMISED TO PROVIDE SERVICES TO THE ANNEXED AREAS, THEY HAVE AN OBLIGATION TO DO SO AND PROPERTY OWNERS ARE ENTITLED TO A MEANS TO ENFORCE THE OBLIGATION.

IN CONCLUSION WE ASK THAT, IF THE ANNEXATION LAWS MUST BE CHANGED, YOU PASS SB 246 AS AMENDED BY THE ~~HOUSE~~ Senate COMMITTEE, OUT OF THIS COMMITTEE FAVORABLY.

Kansas Association of Counties

Serving Kansas Counties

212 S.W. Seventh Street, Topeka, Kansas 66603 Phone (913) 233-2271

March 16, 1987

To: Representative Ivan Sand, Chairman
Members of the House Local Government Committee

From: Bev Bradley, Legislative Coordinator
Kansas Association of Counties

Re: SB-246

Good afternoon Ladies and Gentlemen of the committee. I am Bev Bradley, representing the Kansas Association of Counties.

The legislative policy statement of the Kansas Association of Counties addresses annexation by saying "the most common objection of property owners being annexed is the lack of access to a representative entity which has authority to hear and arbitrate the dispute between the city and the owners of property proposed for annexation. We feel the Board of County Commissioners is the logical body to assume this responsibility."

SB-246 designates the Board of Commissioners as the hearing board. Our only concern is with the time constaint p. 11 part (d) of Section 5, which says. "The board of county commissioners shall render a judgement within 7 days after the hearing has been adjourned sine die."

Later in the same section the bill states. "All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of the board."

Our concern is the 7 days. 58 boards of commissioners meet once each week. 21 boards meet twice each month and others only monthly. This does not give much time for consideration and preparation of the resolution. We believe 30 days is more reasonable, but at least 21 should be allowed.

Mr. Chairman and members of the committee these are our major concerns with the bill.

Thank you for your attention.

Attachment 6
3-16-87

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: E.A. Mosher, League Executive Director
RE: SB 246; Annexation Law Amendments
DATE: March 16, 1987

I. Annexation Overview.

The League's position on SB 246, in its original form, can best be characterized as one of "reluctant acceptance." The bill was introduced at the League's request by the Senate Local Government Committee. While the bill, as introduced, does not conflict with any of the provisions of the League's convention-adopted Statement of Municipal Policy on annexation, if written into law, it would place substantially greater burdens upon a city desiring to annex land.

SB 246 is the culmination of two years of non-stop, intensive and at times rancorous debate between property owners and cities, with the Legislature caught in the middle. This bill has been characterized as a "compromise" between the position taken by some property owners and the cities' position of continued advocacy on behalf of the present annexation law. While this bill may in fact be a compromise when viewed from that perspective, the base of comparison of SB 246 should be with the present Kansas annexation law. Viewed from that perspective, it must be recognized that virtually every amendment to the annexation law embodied within SB 246 represents a reduction or restriction upon a city's authority to annex land. In other words, while SB 246 may well represent a compromise between interested parties, when compared to present law, SB 246 is all give and no take as far as cities are concerned.

While the annexation debate has continued for many years, the past two years has seen the most intense action. In 1985 an informal, ad hoc group of state legislators and local officials accepted the responsibility of reviewing the annexation powers and practices of Kansas cities with the purpose of recommending to the legislature any needed statutory changes. While this State-Local Task Force on Annexation never prepared a final report to the legislature, many of its findings and conclusions were used by the League as the basis for SB 246. The work of the State-Local Task Force on Annexation also overlapped in time with the legislative interim study on annexation during the summer and fall of 1985. That interim study was brought about by the House's passage of HB 2117 during the 1985 session. During the 1986 legislative session, a host of annexation-related bills were considered, with the culmination being the legislature's passage of a heavily-amended version of HB 2117, which was opposed by the League and vetoed by then-Governor Carlin.

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As stated above, SB 246 is a bill which does virtually nothing for the cities of Kansas. In simple terms, as introduced, SB 246 represents everything the cities of Kansas are willing to give up in order to end the discord and preserve at least some basic annexation authority. The specific proposals made in SB 246 are detailed in Part II of this paper. Following are the more specific policy objectives which guided the drafting of SB 246. Once again, these policy objectives are based in large part on those of the State-Local Task Force on Annexation.

1. Expand, where possible, the legal due process "rights" of landowners subject to annexation, without effectively destroying the power to annex.

2. Expand the political due process "rights" of landowners involved in prospective annexations, while maintaining the essential power of cities to annex.

3. Further facilitate, where possible, the convenience of the annexation process to the owners and residents of areas being considered for annexation.

4. Expand, where possible, both the intergovernmental cooperation and comprehensive planning aspects of annexations.

5. Lessen the need for, and discourage the premature annexation of, undeveloped fringe areas.

6. Restrict the unilateral authority of cities to the annexation of clearly urbanized areas.

7. Restrict the unilateral authority to annex land actually used for agricultural purposes.

8. Establish a procedure whereby property may be deannexed, on petition of the landowners, upon the failure of the city to meet municipal service obligations.

II. Analysis of League-Supported Annexation Amendments in SB 246.

Section 1. K.S.A. 12-519; Definitions.

"Land devoted to agricultural use" (see subsection (f)) is substituted for the present law's definition of "agricultural purposes". This new phrase was found in HB 2117, passed in the 1986 Session, and is taken from the 1985-passed reappraisal law. This definition is important principally because of the limitation upon unilateral annexation of unplatted land devoted to agricultural use found at K.S.A. 12-520(b) of SB 246.

"Watercourse" (see subsection (g)) is a term undefined in the present law. It relates to the definition of "adjoins" (K.S.A. 12-519(d)), and therefore is important to the use of unilateral annexation authority for platted land (K.S.A. 1986 Supp. 12-520(a)(1)). A city may now unilaterally annex platted land which adjoins the city. Because "adjoins" is now defined to mean "to lie upon or touch... a... watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed...", a city that has annexed up to one side of any-sized watercourse may now "jump over" that watercourse to annex

platted land which "lies upon or touches" that watercourse. The proposed amendment limits the definition of watercourse, and thereby limits the ability of cities to "jump over" water to annex platted land, by providing that water impoundments that are five or more acres in size are not watercourses.

Section 2. K.S.A. 1986 Supp. 12-520; Unilateral Annexation Authority.

This statute identifies that land which the Legislature has in the past deemed to be urban or urbanizing in character, and therefore appropriate for unilateral annexation by a city.

The League supports two of the amendments to this statute. First, at Supp. 12-520(b) (lines 99:100), we accept a restriction upon the ability to unilaterally annex unplatted land used for agricultural purposes. The present law allows a city to annex such land if it is held as a tract of land of less than 55 acres. The amendments would (1) limit authority to annex such land to only those tracts of less than 21 acres, and (2) clarify the law to expressly prohibit a city from taking "bites" out of an unplatted, agricultural tract of larger than 21 acres. This is done by prohibiting a city from taking any "portion of" such unplatted land.

The second League-supported amendment affects conditions (a)(5) and (a)(6) by raising from 20 to 21 acres the amount of land that can be unilaterally annexed to "make the city boundary line straight or harmonious" or annexed under the "2/3 boundary line" criteria.

The Senate amendment found on lines 104:110, prohibiting unilateral annexation of land within certain improvement districts, is not supported by the League, and is discussed at Part III of this paper.

Section 3. K.S.A. 1986 Supp. 12-520a; Unilateral Annexation Procedure.

This statute sets out the public notice and hearing procedures a city must follow when annexing unilaterally. The public hearing requirement would be amended to require it to be held in, or near to, the area proposed to be annexed (lines 146:149), and be held at a time the city determines to be "most convenient for the greatest number of interested persons" (lines 150:151).

The city's duty to provide notice would be expanded, with a copy of the resolution calling the public hearing having to be sent by certified mail to all political and taxing subdivisions located in the area proposed to be annexed (lines 173:190).

Section 4. K.S.A. 12-520b; Unilateral Annexation Procedure.

This statute requires a city which unilaterally annexs to prepare a plan for the extension of municipal services in the area proposed to be annexed.

Generally, the amendments would require much greater content and detail in the service extension plan than is now required by law. The plan must (1) provide a "full and complete" statement of the city's plan for services (lines

224:226); (2) provide for the maintaining of services being enjoyed by the area to be annexed at the time of the annexation, even if those services are not being provided elsewhere within the city (lines 236:241); and (3) show the "cost impact" upon residents, both of the area annexed and the city, of providing those services (lines 230:233).

Section 5. K.S.A. 12-521; Bilateral (County Board-Approval) Annexation Procedure.

The proposed amendments to the bilateral annexation procedure are intended to make the county board's deliberations and findings more formal. Generally the new language is intended to insure that those annexations that are necessary for the orderly growth and development of the community will be approved by the county board.

The first amendment would clarify that the bilateral procedure may be used by a city even though some or all the land proposed to be annexed meets the criteria for K.S.A. 12-520 unilateral annexation (lines 254:257).

The new language at lines 276:295 relates to the increased duty a city would have to provide greater scope and detail in its plan for extending services to annexed areas and is identical to the amendment proposed to the unilateral annexation procedure at lines 224:244.

A fundamental change in the manner in which county boards act on annexation petitions is found at lines 326:394. Under current law the county's actions are part legislative and part quasi-judicial in nature. The amendment would expressly classify the action on the petition as "quasi-judicial" (lines 326:327). As a quasi-judicial action, the consideration of the annexation petition means the board will make written findings of fact and conclusions regarding manifest injury that would result from approval or disapproval of the request.

The amendment specifies what the board must consider in its deliberations on manifest injury. Those 14 listed criteria are set out at lines 347:382. This list of criteria is virtually identical to the language of HB 2117, passed by the 1986 Legislature.

Section 6. Planning Commission Review of Unilateral and Bilateral Annexations.

This section of SB 246 mandates an additional step in the annexation process. A review of each proposed annexation must be made by any planning commission with jurisdiction over the area proposed to be annexed. Such review would be required for all annexations except unilateral annexations with the landowner's consent and annexations of city-owned land. This proposal for planning commission review was first suggested by the State-Local Annexation Task Force in 1985, and was part of HB 2117 as passed in 1986. It requires the planning commission(s) to submit an advisory finding as to whether the proposed annexation is compatible or incompatible with any adopted land use or comprehensive plans applicable to the area to be annexed and the annexing city (lines 424:438).

Section 7. County Follow-up of Service Extension Plan.

This section is identical to the language of HB 2117. It requires the county board to call a hearing, five years after any annexation, to detemine whether the annexing city has complied with its plan for extending services to the annexed area. If the board finds the city has not provided services as planned, it is to notify the city that if the services are not provided within the ensuing 2½ years, the county may order the land deannexed, as provided in Section 8 (lines 455:460).

Section 8. County-Ordered Deannexation.

If 2½ years have passed since the Section 7 hearing and order to the city to comply with its service extension plan, and the city has still not complied, the county board may order deannexation of the area. The deannexation is triggered by a petition to the county board by the landowner (lines 467:469). The board must then give notice (lines 469:477) and hold a hearing on the requested deannexation (lines 478:489). The decision to deannex is a discretionary one of the county board, if the board finds that "the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein" (lines 481:483). Once deannexed, property cannot be reannexed for one year without consent of the landowner. Provisions also exist for excluding the deannexed property from city general tax liability and for continuing its liability for taxes or special assessments levied for improvements to the land which were approved by the city prior to the owners' petitioning for deannexation (lines 497:505). Finally, under certain fact situations the county board would be prohibited from ordering deannexation (lines 506:525). It should be noted that under present law (K.S.A. 12-504 et seq.) only the city has authority to order deannexation of land. Section 8 is virtually identical to the wording of HB 2117.

Section 9. Court-Ordered Deannexation.

Section 9 would give a right to sue the city to any landowner who has entered into an agreement with a city to consent to an annexation in exchange for a written promise by the city to provide specified services. The amendment essentially makes the agreement to provide services a contract, and the breach of that contract (i.e., the failure to provide the services promised) gives the property owner significant remedies. The initial remedy is for the district court to order the city to comply with the provisions of the pre-annexation agreement. If the city fails to so comply within the time ordered by the court, the ultimate remedy of deannexation may be ordered (lines 537:548). The same provisions found in the county-ordered deannexation procedure (sections 7 and 8) relative to tax liability of deannexed land (lines 556:565) and conditions where deannexation is prohibited (lines 566:585) are repeated in this section of SB 246.

Section 10. Pre-Annexation Consent-For-Services Agreements.

This section declares written agreements between landowners and cities which condition the provision of municipal services upon consent to future annexation as being lawful consents to annexations under the unilateral (K.S.A. 12-520) procedure. Further, once recorded, those agreements would be binding

and enforceable upon the landowner and any successors in interest of the affected property. Landowners who are parties to an agreement under this section receive the statutory right to the cause of action under Section 9 of SB 246 to sue a city for failure to comply with the agreement.

Section 11. Agreement to Guarantee Cost of Public Improvements.

This section statutorily recognizes a right to contract between cities and landowners to guarantee the apportionment of costs of public improvements to be provided an area following annexation. If the city fails to comply with the agreement, the remedy is certain -- the landowners may bring an action in district court seeking deannexation (lines 612:616).

III. Senate Amendments to SB 246.

The Senate made two amendments to SB 246. One, at line 633, changed the effective date of SB 246 to publication in the Kansas Register. The League does not oppose that amendment.

By action of its Governing Body, however, the League does oppose the second Senate amendment. We refer to the language in Section 2 of SB 246, at lines 104:110. This is the so-called "Sherwood Amendment" which would prohibit any city from unilaterally annexing any or all land lying within the boundaries of an improvement district created on or before January 1, 1987. Improvement districts are created by action of the county board pursuant to K.S.A. 19-2753 et seq.

The League's opposition to this amendment is based on the following:

1. It is protectionist legislation, specifically drawn to "defuse" the Topeka-Lake Sherwood annexation controversy. While there now exist at least some 20-odd improvement districts in Kansas, the League knows of no fact situation similar to that of Topeka-Lake Sherwood. We suggest that a sound public policy regarding annexation authority should be based upon the interests of all Kansans and all 627 Kansas cities which can exercise that authority.

2. The expression "changing the rules in the middle of the game" seems to fit nicely here. Kansas cities have never had any special reasons to oppose, in the past, the creation of improvement districts by the county board. When an improvement district was formed near a city, it was done so with the knowledge that the area might be annexed to that city in the future. Suddenly, if this amendment is approved, something which had never affected a city's ability to unilaterally annex will be determinative of that city's legal authority to unilaterally annex. The arbitrariness of such action brings a confused public policy to the state's annexation law.

IV. Closing.

The League's position on SB 246, excluding the "Sherwood Amendment" is best described as one of "reluctant acceptance". The proposed amendments are molded more out of a desire to appease the concerns of a few than they are out of a desire to improve the annexation law for the benefit of the many. SB 246 is a reaction to unceasing criticism,

which is to be expected when many landowners want the advantages of being located within an urban community, but not the responsibilities of being within the legal city--when private interests and the public interest conflict.

We continue to argue that the present annexation law is a good, fair and workable law that adequately protects the interests of private landowners in securing the public interest and the public need for planned, orderly municipal development, and for the economic growth of cities and the state.

It is only because we are aware of the political realties of 1987, and because of our belief that the amendments in the original SB 246, however burdensome, can be lived with, that the League can support the original bill. The bill is a delicately-balanced one. It will slow down or stop some annexations, and it will make others more expensive--and that displeases the cities of Kansas, and it will also be provocative of litigation. It nonetheless does retain the basic legal authority for unilateral annexation--and that displeases those who believe no city should annex without the consent of landowners.

We submit SB 246 to you as the best of a bad situation. We reluctantly recommend your favorable consideration of the bill, with an amendment to delete the "Sherwood Amendment".

SOME KEY PROVISIONS OF SB 246 AS INTRODUCED

1. Mandates local planning commission review of all non-petitioned annexations.
2. Mandates a comprehensive service extension plan, with a cost impact analysis and financing program.
3. Requires service extension plan to state how services currently provided in the area to be annexed shall be maintained.
4. Requires expanded notices of proposed annexations.
5. Requires public hearing to be at the place and time most convenient to the landowners.
6. Prohibits unilateral annexation of farm land of more than 21 acres (now 55).
7. Prohibits splitting tracts of farm land which are larger than 21 acres.
8. Establishes factors which must be met to obtain approval of county board in bilateral annexations.
9. Establishes procedure for mandated deannexation by county upon petition of property owner, for city's failure to provide services as set out in service extension plan.
10. Permits landowners to bring action in district court to order city to comply with service-annexation consent agreements, or in alternative, to order de-annexation.
11. Authorizes city to use county board procedure even where land to be annexed meets unilateral annexation conditions, thus encouraging the use of this procedure.
12. Requires cities to file service-annexation consent agreements with register of deeds.
13. Authorizes contracts between city and landowner to guarantee method of financing services after annexation.
14. In general, requires more advance planning by cities for proposed annexations.

LEAGUE of KANSAS MUNICIPALITIES

1986-1987 STATEMENT of MUNICIPAL POLICY on ANNEXATION

I-4. **Annexation.**

(1) Cities are of vital importance to the state and to the general public, both city residents and non-residents. Cities are where three-fourths of all Kansans live. Cities provide people with a sense of place or community. Cities are where most jobs now are, and where most jobs will be in the future. Cities, through their taxpaying residents, contribute the large bulk of the taxable income and retail sales which support the state general fund. It is contrary to the public interest, to the future economic development of Kansas, and to the long-term interest of state government itself, to bring about the gradual destruction of cities as viable places to live and work by denying cities adequate power to annex and grow--to make that which is part of the urban community a part of the legal corporate municipality.

(2) If Kansas is to meet the governmental and public service needs of people, property and businesses in urbanized areas, there are only two alternatives to annexation -- either the continued growth and proliferation of special districts, or the expansion of county government as a municipal service agency. We believe either alternative is undesirable and unacceptable. The number of special purpose districts required as a substitute to city growth through annexation would result in a quagmire of our already complex local government structure; an increase in the number of general improvement districts would simply result in the creation of a confusing jungle of pseudo-cities, under a different name. Perhaps, in the distant future, counties may legally replace cities. We believe this would simply shift certain problems to a different arena. There is also the very practical reality that, in all but Wyandotte County, the urban portion of counties is but a fraction of the whole county, and farmland should not be taxed to provide services of exclusive benefit to non-farm fringe areas, any more than property within cities should be taxed to provide services of exclusive benefit to non-city areas.

(3) For the past two decades, Kansas has benefited from effective and workable general annexation laws. These laws have been used responsibly, by locally elected governing bodies, to achieve the long-term public interest of the entire community. We recognize that conflicts often result from annexation, since the private interest of the individual landowners and the long-term public interest are not always compatible. Cities do understand the financial, tax advantages of property owners being located in the "community city" but outside the "legal city." Cities also understand that annexation is often not the politically popular thing to do, even though the landowners may have created the situation by making residence and development decisions with the intent to obtain the benefits, services and amenities of a city, but not the responsibilities. It may be more appropriate to criticize cities for past failures of annexing too little, too late, rather than too much. Such criticism may be especially valid where governing bodies have failed to undertake timely annexations because of a lack of concern about the long-term future of the city, or simply out of fear of provoking the wrath of non-city property owners.

(4) We believe that state laws should favor the annexation of land into existing, functioning cities as the preferred avenue for providing municipal services to unincorporated areas now urbanized or which are becoming urbanized. We believe it imperative that the legislature retain for cities adequate and workable annexation authority, which will secure the long-term public interest and total community needs.

(5) We believe that the owners or residents of land adjoining a city should not be granted a statutory right to vote on or consent to annexation. It is essential that the long-term public interest of the whole community be given priority in municipal growth, in the same manner that other, over-all community needs in our society occasionally require the sacrifice of some private goals and interests in order to achieve the greatest social utility of the area and benefits to the many. It is untenable to us that the owners of land within the fringe area, whose location has benefits and value primarily in relation to the existence of the city, should be given veto power over the geographic, economic and governmental destiny of the whole community.

(6) We oppose any legislation which further restricts the basic power of cities to annex adjacent territory that is now urbanized or is becoming urbanized. However, we are supportive of actions to assure by law greater political due process for the owners of land subject to annexation, which still maintains workable and effective annexation authority, as follows:

(a) requiring planning commission review of proposed annexations;
(b) providing for notice of intent to annex to other governmental units;
(c) mandating public hearings in areas under consideration for annexation;
(d) specifically authorizing service extension agreements, conditioned on possible future annexation; and
(e) establishing a procedure for deannexation upon the failure of a city to timely provide major municipal services, as specified in the city's service delivery plan.

(7) Cities should have full authority to control who provides utility services to areas annexed to the city. The existing electric territorial act should not be changed except to provide for reasonable compensation for existing facilities when the city or another supplier assumes jurisdiction as a result of an annexation.

(8) We request an interim legislative study of the adequacy of the planning and development regulations applicable to the fringe areas of cities. We believe that cities should have more control or influence over adjacent developments which may become a part of the city in the future, or other assurance that urbanized development in the fringe area will meet urban standards.