

Approved January 22, 1987
Date

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m. ~~p.m.~~ on Wednesday, January 21, 1987 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn, Research Department
Chris Courtwright, Research Department
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Richard Funk, Kansas Association of School Boards
Jim Sullins, Kansas Motor Car Dealers Association
Don Schnacke, Kansas Independent Oil and Gas Association
Tom Severn, Research Department
Harley Duncan, Secretary of Department of Revenue

Chairman Kerr called the meeting to order and said that the first item of business would be to consider bill draft requests.

Richard Funk, KASB, distributed "KASB Legislative Manual" (Attachment 1), and asked that legislation be introduced to clearly restrict and prohibit any authority of cities and counties to abate taxes on any existing valuation. He said that this is in reference to the constitutional amendment passed by Kansas voters in August, 1986. Senator Allen moved that the bill be introduced. Senator Mulich seconded the motion, and the motion carried.

Jim Sullins, KMCD, asked that a bill be introduced relating to the "Motor Vehicle Dealer's Stamp Tax Act" for automobiles. He said that this concerns the taxation of motor vehicles held by dealers as inventory and his request is that the K.S.A. 79-1018, 79-1020, 79-1021, 1023, and K.S.A. 1985 Supp. 79-1019 be repealed. He advocated an effective date of January 1, 1989 which would be the effective date of the end of inventory taxes in Kansas as per the constitutional amendment passed in November, 1986. Senator Mulich moved that the bill be introduced. Senator Thiessen seconded the motion and the motion carried.

Don Schnacke, KIOGA, (See Attachment 2) asked that legislation be sought to introduce a bill that would amend KSA 79-3602(m) by adding a new section and include the following in the list of consumables: (1) cement, (2) drill bits, and (3) unrecoverable pipe that is cemented in place. Senator Hayden moved that we introduce this bill. Senator Salisbury seconded the motion, and the motion carried.

Senator Thiessen moved that we request a bill introduction to reduce interest rates on delinquent taxes from 18% to 12%. Sendor Mulich seconded, and the motion carried.

Tom Severn of the Research Department gave a synopsis of H.B. 2065, a bill which has recently been introduced which would freeze State General Fund transfers, (Attachment 3).

Dr. Severn then briefed the committee on the state policy regarding the taxation of corporations which do business in states in addition to Kansas or in foreign countries. He said that Kansas uses the three factor formula, which includes percentages of operations in Kansas for sales, property, and payroll, as incorporated in UDIPTA. He said that one problem is that some

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 519-S, Statehouse, at 11:00 a.m./p.m.~~X~~ on Wednesday, January 21, 1987

other states use other methods. For example he indicated that Iowa uses either sales only or double weights sales in the formula and that Missouri allows "sales only" as an option. This can give other states advantages and it can mean that in some instances, not all of a company's income is taxed.

As for companies which do business in foreign countries, he explained that a world wide combination or "Waters Edge" method which a state can use averages only domestic factors. One problem in this area is that Kansas starts with Federal tax ability income which includes foreign dividends and "gross-up." The federal government allows a credit for such tax that Kansas does not allow. In summary, he mentioned four policy issues. 1. Defining income. 2. Establishing the method of combining income. 3. The policy of how the state should apportion income. 4. Determining if a set of companies is unitary.

Secretary Harley Duncan distributed information on the Unitary Business principle and combined reporting. (Attachments 4, 5, & 6) He said that Kansas is a domestic combination state. Kansas requires a combined report of corporate income taxes when the corporations are interdependent and interrelated. He said that courts consistently have ruled that the appropriate method of taxing such income is to treat the income arising from the interrelated activities as a single business unit and to divide that income among the states on the basis of an acceptable apportionment formula. Operations, management, and ownership revenue are all considered. We use the unitary business principle when the relationships between companies are so interwoven that the income cannot reasonably be attributed to a particular portion of a company or state.

Secretary Duncan then explained Executive Order 87-91 which was issued on January 8, 1987 by then Gov. Carlin. In essence it said that the gross-up and foreign dividends provisions of our policy would be eliminated. It further said that Kansas should tighten up on unitary tests. Secretary Duncan then answered several questions pertaining to the policy and the executive order.

Senator Allen moved that minutes of January 14, 1987 meeting be approved. Senator Thiessen seconded the motion, and the motion carried.

Meeting was adjourned.

Senate
ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
1-21-87	RON CALBERT	NEWTON	U. I. U.
1-21-87	JEFF RUSSELL	TOPEKA	UNITED TEL. CO. OF KS
✓	Scott Stanley	Westwood	United Telecom
"	Rebecca Crenshaw	Topeka	Mesa Limited
✓	Pat Wiechman	Topeka	Ks. Automotive Disassemblers & Recyclers Assn.
✓	Pat Barnes	Topeka	Ks. Motor Car Dealers Assn.
✓	Jim Sullins	Topeka	Ks. Motor Car Dealers Assn.
✓	ALAN ANDERSON	TOPEKA	NONE
✓	JACK MONTGOMERY	TOPEKA	KDOC
	J Vacel	Topeka	KSCPA
	Shelley Sutton	Topeka	Ks. Eng. Society
✓	Wally Dunn	✓	FKOGA
	Robert Anderson	Ottawa	Milk Cont. Dist. Co.
	J. C. Anderson	Topeka	KSCPA
	Richard S. Funk	Topeka	KAIB
	Danbur? Schu	Topeka	KICOGA-
✓	Janet Robinson	Topeka	NONE
	Tom Shind	✓	Dept. Revenue
	Dave Progn	✓	✓
	MARK BURGART	✓	✓
	HARLEY T. DUNCAN	✓	✓
	Alvie Price	Topeka	KBA
	ROY CACHES	WICHITA	BMAC
	Dale [unclear]	Topeka	KCCCT
	Mary Ellen [unclear]	Wichita	Ks. Assoc. for Small Bus.
	Ken [unclear]	Wichita	✓
	J Schwab	Topeka	United Telecom
	Bevera [unclear]	Topeka	People Nat. Gas
	Lynette [unclear]	Topeka	KLSI

KASB LEGISLATIVE MANUAL



*1987 Session of the
Kansas Legislature*

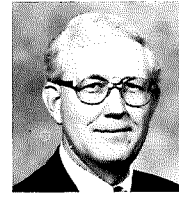
Sen. A & T
1/21/87

Att. 1

KASB State Officers



Martha Miller
President
Manhattan



Nick Slechta
Past President
Ellsworth



Karen Schadel
President-Elect
Alexander

KASB Regional Vice Presidents

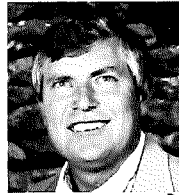
Juanita Barnett
Goodland



Janis Lee
Kensington



Maurice Sharp
Clay Center



Curtis Hartenberger
Topeka



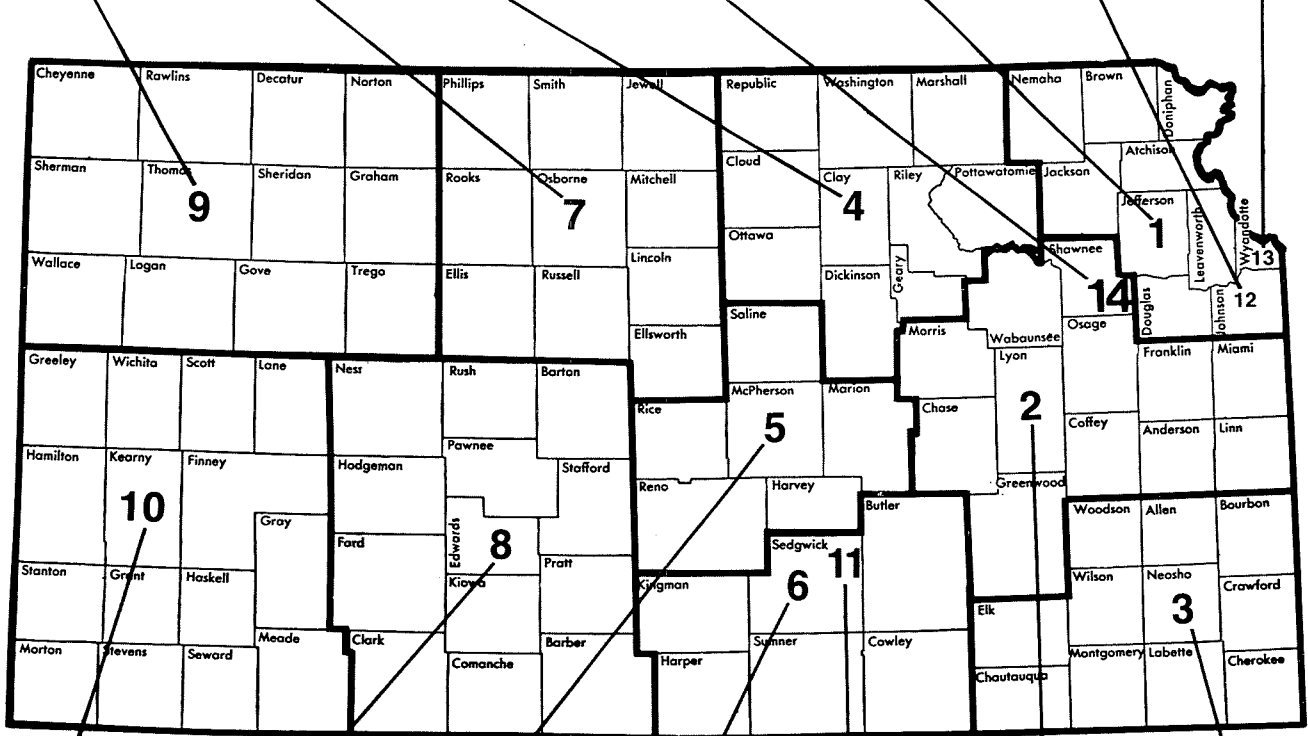
Shirley Brown
Gardner



Ruth Roubush
Shawnee Mission



Peter Pomeranke
Kansas City



Sonny Rundell
Syracuse



Lorraine Ryan
McCracken



Jim LaDuke
McPherson



Larry McCully
El Dorado



Joyce Focht
Wichita



Richard Grant
Osawatomie



Dr. James Rowland
Erie

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Legislative Policies of the Kansas Association of School Boards

As Amended by the KASB Delegate Assembly

December 6, 1986

PREAMBLE

Every Kansas school district has a board of education elected by the district's resident electors and composed of citizens of all walks of life who render their services on a voluntary basis and without remuneration except expenses. The constitution of the Kansas Association of School Boards provides the cooperative working relationships of Kansas school boards for the improvement of public education.

The members of KASB believe that the American system for local and state control of public education by non-partisan, nonsalaried lay boards of education is superior to a centralized, national, and/or professional control as does exist in all other countries of the world. KASB feels that the American system keeps the schools close to the people and

makes possible those variations of educational program which best fit the needs of each local school district.

KASB supports the principles of separation of church and state set forth in the First Amendment to the United States Constitution as interpreted by the courts and opposes any changes therein.

KASB believes that a universal system of public education does help to provide for each child, youth, and adult the opportunity to attain the fullest development of their individual potentiality, no matter where they live or whoever they may be. It is only in this manner that the local community can guarantee the benefits of American citizenship with all its privileges and opportunities.

Federal Legislation

I. Federal Aid to Education

A. KASB believes that federally mandated federal programs in education should be fully funded by the federal government, and KASB is opposed to any further reductions in federal categorical aid programs.

B. KASB supports the effort of the federal government to combine many separate aid programs into block grants as the program is presently drawn, provided that true deregulation occurs giving greater discretion to local school districts in the use of these funds with minimal reporting requirements.

C. KASB believes that all federal funds should be channeled to local districts through the State Department of Education. This should not affect the distribution of money from PL 815, PL 874, or PL 366. KASB further believes that

any advisory committee appointed to determine distribution formulas for federal funds should have school board representation.

II. Federal Collective Bargaining Law

KASB will oppose any federal legislation in the area of public employee collective bargaining.

III. Federal Tuition Tax Credits and Voucher Systems

KASB is opposed to legislation which would use tuition tax credits or voucher systems as a method of providing aid to private schools at the elementary and secondary school level.

State Legislation

I. State Board of Education

State Structure for Supervising Education.

KASB believes the following constitutional provisions to be of critical importance:

A. The State Board of Education shall be elected by the people.

B. The State Commissioner of Education should be appointed by the State Board of Education.

C. The supervision of all school — kindergarten, elemen-

ta and secondary, area vocational-technical schools, and community colleges — should be vested in the State Board of Education which shall have such authority as the legislature may provide.

II. Finance

A. State School Finance.

KASB believes that the educational opportunity of every individual should be a function of the taxable wealth of the state and should not be limited to the taxing ability of a local school district. KASB believes that a new plan should be developed which would incorporate the following elements:

1. State Aid Distribution Formula

Any formula for the allocation of state funds to local school district involves two major elements: (1) a method of establishing the state-shared guarantee and (2) a plan for determining the local contribution rate — that portion which is to be borne by local sources and deducted from the guarantee.

a. State-Shared Guarantee. The guarantee should be based upon the individual pupil enrolled through the use of pupil units rather than upon classroom units or teacher units. Because of the widely varying needs of pupils in Kansas and the varying nature of school districts in the state, KASB endorses the concept of weighting wherever it can be shown that local variations necessarily result in higher expenditures of pupil units. Some of the types of weighting which should be considered are:

(1) Special types of students (vocational education, developmentally disabled) which can be demonstrated to produce higher unit costs.

(2) Grade level of students (kindergarten, elementary, junior high, and senior high).

(3) Density/sparsity of pupil population.

(4) Size of district (total pupil enrollment).

b. Local Contribution Rate. In establishing the local contribution rate, the following factors should be considered:

(1) The measure of ability to finance the local district's share of the state guarantee should be determined by considering only those tax resources that are available to local boards of education.

(2) The local contribution rate should consist of the sum of an ad valorem tax on real and personal tangible property and a net personal income tax on Kansas residents. The net income tax should be state-collected and distributed back to the school district in which the individual income taxpayer resides. The level of both the property tax and the net income tax used for arriving at the local contribution rate should be fixed by the state legislature. In the event that the local contribution rate exceeds the state-shared guarantee, the school district will not receive state aid.

c. Enrollment Categories. Enrollment categories should be provided, both for the calculation of state equalization aid and for the establishment of the budget control, wherever justifiable differences may be established on the basis of objective criteria.

d. Multiyear Funding. The legislature should be encouraged to give serious consideration to the establishment of the

basic rules relative to the distribution of equalization aid on a multiyear basis, with annual review and establishment of state appropriations.

e. PTR Penalty. KASB is opposed to the establishment of a penalty under the equalization aid law for districts with very low pupil-teacher ratios.

f. State Share of School Funding. KASB supports the concept of raising the share of state funding of school district general fund budgets to the 50% level.

2. Tax Revenue Sources

a. Local. Tax sources at the local level should include the ad valorem property tax, the intangibles tax, and a personal income tax. This personal income tax should be state-collected and distributed back to the school district in which the individual income taxpayer resides.

b. State. It is recognized that the implementation of the finance plan meeting the above concepts will necessitate substantial additional state revenue. Local ad valorem property taxes should not be sent to the state for redistribution.

As a practical matter, therefore, this will require that these sources be either the personal and corporate income tax, statewide sales tax, the various "sin" taxes, or a combination thereof.

The legislature, in considering sources of state revenue, should also take into consideration the flexibility and expansibility of the state tax sources selected, as well as the sources of financing the local district's share of the state guarantee.

3. Other State School Finance Recommendations

a. Local Control. The state school finance plan should provide for the greatest possible degree of local autonomy in the educational decision-making process.

b. Local Leeway. Boards of education should be authorized to enrich their educational programs beyond the level of the state-shared guarantee, so long as all districts can exercise the same degree of leeway by making the same amount of effort.

c. Budget Limitation. It is recognized that, for practical reasons, there must be some limitation on school budgets. However, any such limitation must be reasonable and should include at least the following features:

(1) The limitation should be based upon pupil enrollment in order to provide flexibility for districts faced with either increasing or decreasing enrollment.

(2) Because of the relative inequality in educational offerings among the various school districts of the state at the present time, provisions should be made to permit those school districts which have been restrained in the past to accelerate their budgets at a faster rate than other school districts.

(3) The effects of inflation should be recognized.

(4) An emergency appeal should be provided to the State Board of Education for exigencies that cannot be anticipated at the time the budget is prepared.

d. Financial Incentives. Financial incentives should be used to encourage the attainment of objectives and the development of programs which are of sufficient importance to be made a matter of state policy.

Summer School. The state aid plan should provide financial support for summer school and extended school year programs which meet standards adopted by the State Board of Education.

f. Guaranteed Minimum. The state plan should provide that any reduction in state aid which occurs because of a revision in the state aid formula should take effect over a period of years rather than being effective in the first year after the enactment of the new formula.

g. Driver Training. The state distribution for driver education should be raised to a more nearly compensable level. The legislature should also take advantage of the federal funds available under the driver improvement program.

h. Classification of Property for Taxation. KASB supports a constitutional amendment which would classify property for assessment purposes and which would provide for assessment percentages for each class of property in the constitutional amendment. KASB also believes that any such constitutional amendment should provide for the reinstatement on the tax rolls of farm machinery and business aircraft on a suitable depreciation schedule.

i. Reassessment of Property. KASB believes that a reappraisal of all real property in Kansas should be completed before classification is implemented.

j. Property Tax Limitation. KASB opposes legislation which would assign an arbitrary limit on the amount of property tax which could be levied by all units of government upon real or tangible personal property. Such legislation cannot provide an equitable means of distributing the tax limitation among local units of government and could seriously hamper the effectiveness of school districts.

k. Gasoline Tax Exemption. KASB supports legislation providing that no state gasoline tax be paid by school districts. KASB also supports legislation that requests that state gas tax refunds be allowed those districts with contracted bus service.

l. Earmarking Funds. KASB will oppose legislation which would have the effect of earmarking any portion of school district general fund receipts or expenditures for any particular purpose or cause.

m. Auxiliary Services for Private Schools. KASB will oppose any legislation which would mandate any increase in the scope of auxiliary services to private schools by public school districts.

n. Excess Cost for Special Education. KASB will support legislation which would provide for the funding of mandated special education programs at the excess cost level using the formula found in 1980 House Bill 2982.

o. State General Fund Transfers. KASB is opposed to legislation which would result in the transfer of state general fund dollars to other state funds which have traditionally been funded by user fees.

p. State Tuition Tax Credits and Voucher Systems. KASB is opposed to legislation which would use tuition for credits or voucher systems as a method of providing aid to private schools at the elementary and secondary level.

4. Alternative School Finance Plan

KASB supports legislation which would provide for a new

plan for school finance in the State of Kansas. The new plan must provide for a balance in revenue sources, a reduction in property taxes, a recognition of differing expenditure levels among school districts of various sizes, and state assistance for support of a basic educational program for every school district.

B. Local School Finance.

1. Investment of School Funds

In making such investments, preference should be given to time deposits, certificates of deposits, or other authorized investment instruments, in Kansas banks or savings and loan institutions, at such rates as the board shall negotiate. However, if a local bank is unable or unwilling to pay interest on such deposits equal to that available through direct obligations of the United States Government, such as treasury bills, school boards should be authorized to utilize such sources to maximize the savings to the local taxpayers.

School boards should not be engaged in speculative investments of any type. Any investment, either in banks or savings and loan institutions, should be adequately secured, and the security provisions should be substantially the same for both types of institutions.

2. Miscellaneous Revenue

School boards should be authorized by law to deposit funds derived from such sources as donations and bequests, the sale of oil leases, sale of school property, and other similar transactions in which revenue is derived from sources other than taxation or aid funds in the general fund, capital outlay fund, bond fund, or a special fund for a designated purpose.

3. Sales Tax Exemptions

School districts should be exempt from paying sales tax on any purchase paid from tax funds.

4. Intra-State Tuition

KASB is opposed to requiring the board of education to pay tuition for students to attend regular public schools outside of the district. This does not apply to AVTS or special education tuition.

5. Deposit of Investment Income

KASB believes that legislation should be enacted which would allow school districts to deposit investment income in the school district general fund in any year in which the use of an allotment system causes state aid to school districts to fall short of the amount anticipated.

6. Capital Outlay Funds

KASB supports legislation which would allow school districts to transfer funds from their capital outlay fund to cooperatives or interlocals to which they belong for capital outlay purposes.

II School Administration

A. School District Unification.

KASB endorses the following:

1. KSA 72-8213 should be amended to authorize boards of education to close any school attendance center.

2. KASB will oppose special legislation which will establish special types or systems of district structure within the unified school district law.

3. KASB believes that the established policy of the State of Kansas should be to stabilize school district boundaries in order that boards of education will have reasonable security in planning attendance centers and educational programs. Changes of district boundaries should be authorized only for the purpose of simplifying tax administration by causing school district boundaries to conform to section lines, natural boundaries, or for eliminating irregular boundary lines.

B. Admission to First Grade.

The entrance age for admission to first grade should be established as age six on or before September 1.

C. Use of Attendance Facilities.

KASB believes that state law concerning the changing use of attendance facilities (KSA 72-8213(e)) should be amended so as not to limit the use of such facilities so long as the facilities are being used for public educational purposes as determined by the local board of education.

D. Administrator Tenure.

KASB believes that school administrators should not be granted tenure by statute. KASB believes that school administrator employment contracts should remain subject to the Kansas continuing contract law. However, in the event an administrator employment contract is breached during the term of said contract, KASB believes that the school administrator should be granted due process.

E. Election Law.

KSA 25-2019 should be amended to allow boards of education to hold more than one special bond election per year if permission is granted by the State Board of Education.

F. Emergency Authority to Operate Schools Less Than 180 Days or 1080 Hours.

KASB supports legislation to provide that the State Board of Education may authorize a school district to operate school less than 180 days or 1080 hours without loss of state aid or accreditation for any emergency which closes school.

G. Executive Session.

School board business is public business, and all official actions of the board of education should be taken in open, public sessions. Executive sessions may be needed, however, on certain occasions, to discuss matters prior to action by the board of education. The following subject matter areas are appropriate for discussion in executive session:

1. Personnel matters which, if discussed in public, would constitute an invasion of privacy.

2. Consultations between the board of education and its legal counsel, with regard to pending or proposed litigation.

3. Consultations between the board of education and its negotiations team.

4. Discussions pertaining to the acquisition and disposition of real property.

KASB believes that language should be incorporated into the Kansas Open Meetings Act to make it clear that casual meetings and travel by members of governing bodies at which no business is transacted are exempt from the provisions of the Act.

H. Curriculum and Certification.

1. KASB believes that the curriculum of the schools should be established by local boards of education and not by state statute.

2. KASB supports the right of unified school districts to set the local curriculum of the schools so long as the present requirements of 30 units for high schools (9-12) and present unit requirements are met. Furthermore, specialized teachers in areas of physical education, music, counseling, foreign language, and library should be certified for grades K-12.

I. Traffic Control.

The control of vehicular and pedestrian traffic in the vicinity of school buildings is the responsibility of the appropriate civil authorities and should not be imposed upon boards of education.

J. Corporal Punishment.

KASB opposes any legislation which either prohibits or requires corporal punishment.

K. Financing Social Welfare Cost.

KASB will support legislation which would require the state to fully finance social welfare costs relating to school services such as free textbooks for indigent children and student fees.

L. School District Boundaries.

KSA 72-7108 should be amended by adding a subsection (c) as follows: (c) When boards of education of unified school districts which include a city of the first class request a transfer of territory from any adjoining unified school district(s) to their district, said request shall have the written approval of the involved unified school district board(s) of education. If said agreement for approval is not reached, the issue shall be brought before the qualified voting residents of the unified school district from which the area has been requested for transfer. The voting is to be accomplished within 90 days of the date of board of education disapproval.

If the majority of those voting are in favor of the transfer, said area(s) proposed for transfer shall be transferred. If the majority of those voting are not in favor of the transfer, said area(s) shall remain as in the original unified school district.

Any election expense shall be borne by the unified school district which requested the transfer.

Whenever a request for transfer of territory has been

d by the voters of said district, no request for transfer of substantially the same territory shall be submitted to the voters for a period of two years.

M. Uniform Publications Act.

KASB will support legislation to standardize publication procedures when notice is required by a public body and will also support legislation to repeal superfluous and redundant public notices. KASB will oppose legislation requiring school districts to pay for publications of monthly or quarterly school district expenditures.

N. School Board Elections.

KASB supports the present time schedule of electing school board members in April of odd numbered years and inducing such school board members on July 1.

O. Employees Serving on School Boards.

KASB will support legislation which would prohibit school district employees from serving on the school board of the district in which they are employed.

P. Open Records.

KASB endorses the concept that board deliberations and actions should be taken in public session, and that all records of such decisions shall be open to public inspection.

The association does believe that certain documents which are not official in nature, such as those that have been compiled for the consideration of the board, should not be subject to public disclosure prior to board action.

The association further believes that language should be included in any open records statute to ensure the privacy of information relative to students, particularly with respect to those matters protected by the Family Educational Rights and Privacy Act.

Q. School Board Member Inservice.

KASB opposes legislation which would mandate inservice training for school board members.

R. Tort Reform.

KASB supports legislation that would exempt members of boards of education from individual liability under the Kansas Tort Claims Act.

IV. Professional Negotiations

A. Performance Criteria for Teacher Compensation.

KASB supports legislation which would free the hands of local boards of education to deal with such issues as merit pay and differentiated staffing outside the professional negotiations process.

B. The professional negotiations act, KSA 72-5413 *et seq.*, should be amended as follows:

1. So that it makes clear that the intent of the law is that boards of education and professional employees are required only to meet and confer and are not compelled to reach agreement.

2. So that it provides for a ballot to be used in the ratification of the proposed negotiations agreement by the members of the appropriate negotiations unit.

3. So that it provides that it shall be a prohibited practice for a teacher organization, as well as a public employee organization, to endorse candidates, spend any of its income, directly or indirectly, for partisan or political purposes or engage in any kind of activity advocating or opposing the election of candidates for any public office.

4. So that it makes it more definite and certain as to exactly what evidence the board must consider or may require to determine if a legally sufficient application for recognition has been filed by a professional employee association; provides that any professional employee organization which is recognized pursuant to the meet and confer law may be decertified as a representative of the negotiating unit. The board of education shall have the right to challenge the recognized negotiating unit to prove majority membership in an election held according to law.

5. So that those parts of KSA 72-5413 *et seq.* relating to the period of time concerning prior recognition of a professional employee association be clarified and made uniform.

6. So that it provides in more detail when, where, and how elections to determine recognition should be held.

7. So that it provides clearly that all negotiations requests submitted by both sides must be in clear and understandable detail.

8. So that it provides that all negotiations shall cease by May 1 of the school year in which negotiations are commenced and that any item not agreed upon by that time shall be disposed of in any manner that the board deems advisable.

9. So that it adds a new section to the law which would assure that board of education policies affecting negotiation topics which were approved prior to the effective date of the negotiations law will not be binding after a unit is recognized unless the board of education ratifies such policies.

10. So that, in the event a negotiations bill covering other school district employees which is satisfactory to KASB's Board of Directors is introduced into the Kansas Legislature, professional employees should be added to the coverage of such bill and KSA 72-5413 *et seq.* be repealed in order that all school district employees would be covered by the same act.

11. So that it specifically excludes the number of teaching periods, the starting and ending times of the school day, the starting and ending dates for the school year, and professional employee appraisal procedures from the list of mandatorily negotiable items.

12. So that KSA 72-5423 specifically states that all terms and conditions not covered by an existing negotiated agreement shall be subject to the control of the board of education until the commencement of negotiations for a successor to the existing contract.

C. Arbitration.

KASB is opposed to legislation which would establish compulsory and binding arbitration of contract terms between public employers and employees.

Teachers and Employment Practices

A. Employment Practices.

1. Regulation by State Board

KASB is opposed to any grant of authority to the State Board of Education to adopt rules and regulations having the force and effect of law in the area of employment policies and practices.

2. Notification Date

KASB believes that the notification dates for teachers and administrators should be standardized. We would support the dates of April 15 and May 1.

B. Leaves of Absence.

1. Boards of education should be authorized to enter into contractual arrangements to extend leaves of absence to school employees for professional growth. Such agreements may provide that the employee will be entitled to compensation in full or in part during the period of the leave of absence and that the employee shall agree to return to the school district for a specified number of years as a condition precedent to the granting of the leave. In the event that the employee leaves the district prior to the expiration of the specified term provided in the contract, the employee shall be required to reimburse the school district for all payments made to the employee during the period of the leave. Such agreements may further provide that the tenure status of such employee shall not be terminated by the granting of said leave.

2. No teacher employment or other employment contract shall make reference to or incorporate provisions relative to leaves of absence for professional improvement, nor should boards of education be authorized to adopt policies providing for automatic leaves of absence after the passage of a specified period of employment. Each such leave shall be granted by the board upon the specific application of the individual employee and after due consideration by the board of education.

3. KASB opposes legislation which would require local boards of education to contract for sabbatical leave and payment of unused sick leave time.

C. Discrimination in Employment.

KASB endorses the principle of equal opportunity in employment, regardless of race, religion, color, national origin, ancestry, or sex except where sex is a bona fide requirement for the position being considered.

D. Temporary Suspension of Professional Personnel.

KASB supports legislation to provide that teachers could be suspended with loss of pay for just cause with provision for due process review.

E. Certification.

KASB will support legislation which would require all teachers to pass subject matter and communicative skills examinations for the purpose of initial certification. Teachers

presently holding certificates would be required to pass subject matter examinations only when applying for certification in a new subject matter area. The State Board of Education will be responsible for developing and administering the examination.

KSA 72-5421 should be amended to (1) authorize the State Board of Education to determine the period of time for which a teacher's certificate shall be suspended, which period shall begin as of the date of the hearing; (2) require the State Board of Education to hold a hearing before reinstating the certificate of any teacher whose certificate has been revoked; and (3) make the suspension and revocation of teachers' certificates effective as to teachers leaving the State of Kansas, through our reciprocal agreements with other states.

F. Teacher Evaluation.

KASB recognizes the need for improvement in the procedures used for the evaluation of administrators, teachers, and other school district employees. However, if school boards are to be held responsible for the development of school district goals and objectives, then it necessarily follows that boards of education must determine the criteria to be used in the evaluation of the performance of school district employees.

G. Teacher Tenure.

Legislation should be enacted which would incorporate the following:

1. Support legislation either to repeal the present tenure law or to extend the probationary period to at least five years.

2. Oppose any legislation which would remove the final decision on teacher termination or nonrenewal from the hands of the local board of education.

3. Support legislation to make it clear that only full-time teachers would be eligible for the due process procedures outlined in KSA 72-5436 *et seq.*, following the appropriate probationary period.

4. Support legislation which would make it clear that two hearings are required when a non-tenured teacher alleges that nonrenewal is due to constitutionally protected reasons. The first hearing would be to determine whether substantial evidence on the part of the teacher supports the claim. A second hearing on the merits of the issue would be held at a later date.

H. Standards Boards and Practices Commission.

The Professional Teacher and Administrator Standards Boards and the Professional Practices Commission should remain as advisory bodies to the State Board of Education and should not be granted autonomy.

I. "Fair Share" Fees.

KASB will oppose legislation which would require any employee to pay a fee to a bargaining unit representative as a condition of employment.

J. Kansas Public Employees Retirement System.

KASB will oppose legislation which would make KPERS a noncontributory system.

K. Inservice Training and Internship Plan.

KASB opposes the establishment of state mandates relative to inservice training to teachers, administrators, or other employees. KASB also opposes the implementation of the Kansas Internship Plan.

KASB will support efforts to increase funding for the state sponsored voluntary inservice training program for school employees and encourages the Kansas Legislature to amend the Internship law to make that plan a voluntary option.

L. Reduction in Force.

KASB supports legislation which would allow school districts to determine which teachers to retain in cases of reduction in force, regardless of seniority or tenure.

M. Supplemental Contract Law.

KASB supports legislation which would amend the supplemental contract law to give boards of education greater flexibility in dealing with the assignment of supplemental duties.

VI. Miscellaneous

A. Educational Television.

KASB recommends that legislation be enacted to develop a state-wide educational television network in Kansas.

B. Controlled Substances.

1. Drug Abuse.

Legislation should be enacted to provide that a student who seeks assistance, advice, or counseling from school personnel regarding drug abuse, venereal disease, or other personal health problems will not be prosecuted by school authorities nor will such student's parents be informed without the student's permission.

2. Immunity for Drug and Alcohol Referral

KASB supports legislation which would provide for immunity from any civil or criminal liability for school board members, administrators, and all other school district employees for any statement made or action taken in assisting, or referring for assistance to any medical or social service agency or facility, any pupil reasonably believed to be harmfully using alcohol or other controlled substances.

C. Supervision of Nonpublic Schools.

Legislation should be enacted to require nonpublic schools to meet the same standards with respect to school accreditation which presently apply to public schools.

D. Education of Children in State Institutions.

The State of Kansas should assume the full responsibility for the education of children who are residents of institutions under the control and supervision of the State Department of Social and Rehabilitation Services.

E. Initiative and Referendum.

KASB believes that the adoption of a constitutional amendment providing for Initiative and Referendum procedures for amending the state constitution and statutes is not in the best interest of the people of Kansas.

F. Child Health Assessments.

KASB will oppose legislation which would mandate child health assessments as a condition of entering school in Kansas for the first time.

G. Kansas State High School Activities Association.

KASB will oppose legislation which would provide for review of the rules of the Kansas State High School Activities Association by the State Board of Education. KASB will support legislation which would provide for greater school board representation on the KSHSAA Board of Directors.

H. Fiscal Audits.

KASB believes that present legislative requirements for school district fiscal audits should not be changed. The state law should be amended to authorize the State Board of Education to prescribe the budget form for unified school districts, rather than the Department of Administration.

I. Early Childhood Education.

KASB is opposed to the extension of the present mandates on special education to include pre-school children.

KASB will support incentive funding for preschool early childhood education programs.

J. Bidding on Professional Services.

KASB is opposed to legislation which would either mandate or prohibit bidding on professional services.

K. Minimum Competency Assessment Program.

KASB believes that the Kansas Minimum Competency Assessment Program should be continued, with substantial revisions to meet objections which have been made to past practices in the program. KASB supports the concepts recommended by the State Board of Education Skills Assessment Committee for the continuance of the program.

L. Strobe Lights on School Buses.

KASB supports legislation which would authorize the use of strobe lights on school buses for safety purposes.

M. Support for the Gifted Mandate.

KASB supports the continued inclusion in the special education mandate of education for the gifted child.

N. Compulsory Attendance Age.

KASB is opposed to any changes in the present statutes, rules and regulations governing the compulsory attendance age of Kansas school children.

O. Recreation Commissions.

KASB believes that the present statutes governing recreation commissions should be recodified and clarified. The legislation should make clear how recreation commission board members are to be appointed, who can serve on recreation commission boards, and what entity bears the responsibility for the liability of recreation commissions.

Resolutions of the Kansas Association of School Boards

As Adopted by the KASB Delegate Assembly

December 6, 1986

(All KASB Resolutions expire in one year after adoption by the Delegate Assembly.)

1. Compulsory Attendance Enforcement.

WHEREAS KASB believes the appropriate agency for the enforcement of compulsory attendance laws is the Department of Social and Rehabilitation Services; and

WHEREAS the Department of Social and Rehabilitation Services has consistently sought to have this authority transferred to other entities due to funding shortages;

NOW, THEREFORE BE IT RESOLVED that the Delegate Assembly of the Kansas Association of School Boards go on record in support of seeking sufficient funding for the Department of Social and Rehabilitation Services to meet its statutory responsibilities in the area of truancy enforcement.

2. Home Schools.

WHEREAS considerable controversy has arisen regarding the issue of home schools and their legality;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards that any legislation or rules and regulations enacted relating to home schooling should contain the following provisions:

1. A definition of private school and home study programs. Such definition shall specifically state that home study programs may only include the teaching of children, in their own homes, by the lawful guardians of the children.

2. Classes in all private schools, including home schools, must be conducted by a certificated teacher.

3. That the State Board of Education and the Kansas State Department of Education shall be responsible for oversight, program evaluation, testing and inspection of home study programs.

4. That the local school district shall not be responsible for the education of students enrolled in home study programs with the exception of special education students who are in a home study program in compliance with applicable state and federal laws and regulations.

5. No financial burden shall be borne by local school districts as the result of voluntary withdrawal of students from the public schools for participation in a home study program.

6. The State Board of Education shall establish rules and regulations governing the criteria for approval, subjects to be taught, the review to be conducted, and the minimum length of a home study school day and school year.

7. That special education students be required to participate in educational programs of the district within the facilities of the district if the district is to be responsible for any special education services.

3. Early Retirement.

WHEREAS legislation was passed during the 1986 legislative session which eliminated early retirement penalties for KPERS covered school employees under certain circumstances; and

WHEREAS the early retirement legislation passed contained a sunset provision pending actuarial studies;

NOW, THEREFORE BE IT RESOLVED that the Delegate Assembly of the Kansas Association of School Boards expresses its full support for the permanent extension of this early retirement legislation if it is shown to be actuarially sound.

4. Property Tax Exemption Authority.

WHEREAS a constitutional amendment has been approved by the voters of Kansas giving cities and counties the authority to grant property tax exemptions to certain business when new jobs are created; and

WHEREAS it is not clear from the language of that amendment that the exemption authority is limited to newly created property valuation, and;

WHEREAS it would restrict the ability of school districts to provide quality education if the exemption authority of cities and counties were to be extended to existing property valuation;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards that legislation be sought to limit the authority of cities and counties to grant property tax exemptions under the new constitutional provision to newly created valuations; and

BE IT FURTHER RESOLVED that legislation clearly restrict and prohibit any authority of cities and counties to abate taxes on any existing valuation.

5. Insurance Pools.

WHEREAS, insurance costs for school districts are increasing at rates far in excess of school district budget authority; and

WHEREAS expenditures for insurance costs harm both taxpayers and the quality of educational programs; and

WHEREAS school districts in many states have experienced significant reductions through pooling arrangements;

NOW, THEREFORE BE IT RESOLVED that the Delegate Assembly of the Kansas Association of School Boards asks that legislation be enacted which would allow local boards of education to enter into pooling arrangements for insurance purposes through KASB.

6. Teacher Internship.

WHEREAS the preparation of teachers is a vital concern to all segments of education; and

WHEREAS local initiative should be encouraged and rewarded whenever possible; and

WHEREAS the proposed "5th Year Internship" proposal for teacher education will be costlier to local districts and more difficult to administer;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards that the Association support pilot studies of alternative programs prior to any legislative mandate.

7. Administrator Training.

WHEREAS the recent "reform" movement in public education has had the classroom teacher as its focal point; and

WHEREAS many changes have been proposed in teacher training and inservice; and

WHEREAS many of these changes require the presence and involvement of skilled school administrators; and

WHEREAS a considerable body of research has been developed which indicates that building administrators are the key to a quality education program;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards that the Association urge the Legislature, the State Board of Education and administrator training institutions to thoroughly review administrator training and inservice programs; and

BE IT FURTHER RESOLVED that the Association support efforts by all involved to upgrade the training and skills of school administrators at all levels in order to allow them to meet the increased demands being placed upon them.

8. Employee Benefit Trust Fund.

WHEREAS legislation may be introduced permitting school districts to form an "Employee Benefit Trust Fund;" and

WHEREAS boards of education are concerned with providing fringe benefit plans for employees which are fair and equitable to all involved; and

WHEREAS "Employee Benefit Trust Funds" would make it very difficult for districts to budget each year in an efficient and accurate manner;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards

that the Association oppose legislation which would establish an employee benefit trust fund.

9. Mandatory Seat Belts.

WHEREAS Kansas school boards have a vital interest in the safety of children riding school buses; and

WHEREAS recent trends in other states may lead to possible legislation being introduced, mandating the installation and use of seat belts in school buses; and

WHEREAS there is considerable research to indicate that the use of seat belts in school buses does not improve safety;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards that the Association oppose the mandatory installation and use of seat belts in school buses.

10. Enforcement of Illegal Passing of School Buses.

WHEREAS Kansas school boards have a vital interest in the safety of children riding school buses; and

WHEREAS there is a problem with vehicles illegally passing school buses stopped to pick up or unload children; and

WHEREAS bus drivers are occupied when picking up or unloading children as they are watching the children to insure their safety;

NOW, THEREFORE BE IT RESOLVED by the Delegate Assembly of the Kansas Association of School Boards that the Association oppose legislation which requires school bus drivers to report vehicles which illegally pass stopped school buses; and

BE IT FURTHER RESOLVED that the association urge and encourage local districts to work cooperatively with law enforcement agencies to resolve this problem without placing an undue burden upon the bus driver.

EXECUTIVE COMMITTEE



**Martha Miller
President**

**KASB President Martha Miller
USD 383 Manhattan**

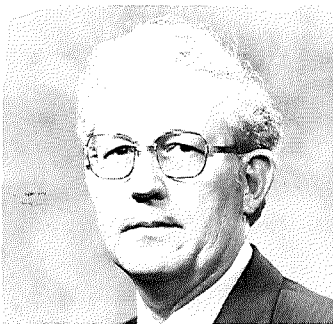
KASB President Martha Miller will soon complete her 10th year on the Manhattan Board of Education where she has served as both the Vice-President and President. She is a former Region 4 Vice-President of KASB and has also served on the KASB Legislative Committee. Martha has been extremely active with the CARE group having been that group's chairman from 1983-1986. She has been very active in a number of church, school and civic functions. She is the Operations Manager for Brown's Ladies Wear in Manhattan.

**KASB President-Elect Karen Schadel
USD 496 Pawnee Heights**

KASB President-Elect Karen Schadel has been the president of her local board since 1979. Before being elected to the Executive Committee she was in her second term as the KASB Region 8 Vice-President. She has served on the CARE Board of Directors and both the KASB Nominating Committee and Insurance Study Committee. She has also been the president of Schools for Quality Education and a member of the Rural Education Association. She, too, has been active in church and community activities.



**Karen Schadel
President-Elect**



**Nick Slechta
Past President**

**KASB Past President Nick Slechta
USD 327 Ellsworth**

KASB Past-President Nick Slechta has been involved in a number of local and state activities to promote public education. He has been on the Ellsworth board for 11 years, including four years as president. Before being elected to the Executive Committee he had been the KASB Region 7 Vice-President and served on the KASB Nominating and Legislative Committees. He is also a member of CARE. Besides his work in the field of education he has been involved in a number of civic and church activities. He is a supervisor for the Northern Natural Gas Company in Bushton.

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KASB Annual Conventions:

1987 — Topeka December 5-7
1988 — Wichita December 10-12

NSBA Annual Conventions:

1987 — San Francisco April 4-7
1988 — New Orleans April 16-19
1989 — Anaheim March 31-April 3

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Mrs. Jacque Oakes, *Chairman*
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Assistant Executive Director — William W. Curtis
Assistant Executive Director — Richard S. Funk
Senior Legal Counsel — Patricia E. Baker
Director of Labor Relations — Norman D. Wilks
Staff Legal Counsel — Cynthia K. Lutz
Director of Communications — Rodney R. Lake
Director of Research — James H. Hays
Director of Information Services — Neely R. Murphy
Secretaries — Mary A. Goodman
 Deanna K. Hanrahan
 Lisa M. Harold
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 Theresa L. Smith
Legal Assistant — Donna Gonzales Rogers
Bookkeeper — Pamela K. Schwartz
Computer Operators — Frances M. Timmons
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Data Recorder Operators — Jean Ann Maupin
 Rosella J. Mayhew
Printers — Helen O. Burkett
 Roger L. White
Custodian — Odeville Boyd



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

January 21, 1987

TO: Senate Committee on Assessment & Taxation

RE: Retail Sales Tax

KSA 79-3603, the sales tax act, has placed the oil and gas industry into its definition of exemptions under the "original construction" and "facility" to include "oil and gas well". The industry also qualifies many of its activities under the consumable exemptions, under KSA 79-3602(m).

There are no rules and regulations that help further define the many oil field transactions and services. There have been a few Department of Revenue letters written. There have been audits, appeals, and limited court decisions. The application of the sales tax to oil field activities is still very confusing. Most taxpayers complain of this confusion and want clarification so they will know when to collect or pay the sales tax.

The Department and the industry long ago developed a list of 105+ transactions and services commonly found in the oil field. Each transaction is identified as "taxable" or "exempt". That list has only been a source of continued confusion.

If you study the list of 105 transactions and services, it boils down to a simple application - a new well - old well concept. New well activity and services are generally exempt and old well activities are taxable. We have always thought if the Department could draw up simple rules and regulations relating to the new well-old well concept, relating to the transactions and services, the average taxpayer could understand and follow them.

During 1986 an audit brought by the Department of Revenue concerning Frontier Oil Company shocked our industry by a court decision that cement, drill bits, and pipe used in the oil fields were not consumables and were subject to the sales tax. The Department is presently going back and trying to collect past years' sales tax on these items that the taxpayer thought all along were consumables. (Sun Cementing and Acidizing, Inc., Eureka, Ks. audit.)

We recommend; in the interest of stimulating further drilling and oil field activity in Kansas, that a bill be introduced to undo what the Department sought and the court ordered. We suggest your Committee introduce a bill that would amend KSA 79-3602(m) by adding a new Section (3) and include the following in the list of consumables: (1) cement, (2) drill bits, and (3) unrecoverable pipe that is cemented in place.

We also urge your Committee to send a message to the Department of Revenue to clarify by rules and regulations the application of the 105+ oil field transactions and services into a simple new well-old well concept, so the taxpayer will simply know how to apply the sales tax to oil field activities.

Thank you for your consideration.

Sen. A & T
1/21/87

Att. 2

MEMORANDUM

H.B. 2065 -- GENERAL FUND TRANSFERS

Shown below is a summary of the General Fund fiscal effect of H.B. 2065 pertaining to General Fund Transfers introduced by the House Appropriation Committee on January 20. The bill would freeze at the FY 1986 actual level of transfers certain demand and revenue transfers from the General Fund for the year specified.

	Millions		
	<u>Estimated Existing Law</u>	<u>Proposed</u>	<u>Reduction</u>
<u>Demand Transfers</u>			
<u>Local Ad Valorem Tax</u>			
Reduction Fund			
FY 1988	\$ 31.1	\$ 24.6	\$ 6.5
<u>County and City</u>			
Revenue Sharing Fund			
FY 1988	22.4	18.6	3.8
<u>Revenue Transfers</u>			
<u>State Highway Fund</u>			
FY 1987	27.7	16.1	11.6
FY 1988	35.8	16.1	19.7
<u>City and County Highway</u>			
Fund*			
FY 1988	9.3	7.4	1.9
<u>Summary</u>			
FY 1987			\$ 11.6
FY 1988			31.9
			<u>\$ 43.5</u>

* Motor Carrier Property Tax Receipts.

2065-memo/bd

THE UNITARY BUSINESS PRINCIPLE AND COMBINED REPORTING

The unitary business principle is a judicial concept dating back to the 1920's. It basically provides that for purposes of corporate income taxes when the activities of multijurisdictional corporations are interdependent and interrelated, the income generated by those activities cannot reasonably be attributed or "separately accounted" for to a particular state. The courts have consistently ruled that the appropriate method of taxing such income is to treat the income arising from the interrelated activities as a single business unit and then to divide that income among the states on the basis of an acceptable apportionment formula. The unitary business principle may be applied to one company or to a group of interrelated companies. The Kansas Supreme Court on three occasions - Morton Salt in 1939, Crawford Manufacturing in 1956, and Pioneer Container in 1984 - has held that application of the unitary business principle is appropriate under Kansas law.

When the unitary business principle is applied to more than one company, a combined report is required for all companies that comprise the unitary enterprise. The combined net income (excluding intra-group transactions to avoid double counting) is apportioned among the states in which all or any members of the unitary group are doing business.

The unitary business principle and combined reporting are used when the relationships between companies are so interwoven that income cannot reasonably be attributed to a particular company or state. Combined reporting prevents firms from manipulating income between related entities and thus prevents the under reporting of income generated from business activities in Kansas. Without the ability to require a combined report, additional state auditors would need to be retained to examine transactions between related companies to determine that such transactions are in fact "arms length" and to reallocate income and expenses between companies.

For example, combined reporting would be utilized in a situation where a holding company domiciled in Kansas operates as a financing and cost center for a group of subsidiaries. Absent a combined report, the holding company would report operating losses to Kansas while the profits generated from the expenditures would be reported in the subsidiaries operating in other states. If none of the profitable subsidiaries do business in Kansas, the commercial domicile of the holding company, the state would be able to tax only the loss corporation and not be able to tax the income to which the activities of the holding company materially contributed. The combined report alters this result by allowing Kansas to tax the income which is attributable to the business activities of the holding company within the state which activities generate income for the unitary group of companies.

Under the Department's current policy, two corporations will be treated as unitary if there is functional integration between them. This assures that unitary assessments are based upon meaningful and substantial interrelationships between the combined companies. The Department believes that functional integration provides a more reasonable, definite and predictable basis for combination.

Fifteen states require that unitary companies file combined reports. Another four states make the filing of a combined report optional.

**THE THREE-FACTOR FORMULA INCOME
APPORTIONMENT METHOD-KANSAS CORPORATE INCOME TAX**

A multistate corporation must apportion or divide its taxable income among the states in which it conducts business so that each state taxes its share of the income. Kansas utilizes the equally-weighted, three-factor (property, payroll, and sales) apportionment method to apportioned such income (K.S.A. 79-3271 et seq.). Three-factor apportionment is the most widely accepted method. It has been adopted in Kansas and approximately 36 other states, principally under U.D.I.T.P.A., the Uniform Division of Income for Tax Purposes Act. (K.S.A. 79-4301 et seq. and K.S.A. 79-3271 et seq.)

Example: Corporation A does business in several states. The three-factor apportionment percentage for Kansas is determined as follows:

$$\begin{array}{l}
 \text{Property Factor} = \frac{\text{Property in Kansas}}{\text{Total Property}} = \frac{\$1,000,000}{\$10,000,000} = 10\% \\
 \text{Payroll Factor} = \frac{\text{Payroll in Kansas}}{\text{Total Payroll}} = \frac{\$150,000}{\$3,000,000} = 5\% \\
 \text{Sales Factor} = \frac{\text{Sales in Kansas}}{\text{Total Sales}} = \frac{\$1,500,000}{\$10,000,000} = 15\% \\
 \text{Average of the Three Factors} = \frac{10\% + 5\% + 15\%}{3} = 10\%
 \end{array}$$

Ten percent of Corporation A's income is apportioned to Kansas. If its total taxable income is \$1,000,000, its Kansas taxable income is \$100,000.

The property, payroll, and sales factors give weight to the various factors which are responsible for earning income. They are also a good measure of state services utilized and they provide a relatively simple method of income apportionment.

Iowa is the only state which apportions income based solely on the proportion of total sales occurring in the state (although Missouri allows this as an option). Colorado allows corporations to choose the simple average of the three factors or the average of two factors, sales and property. Six states use a weighted average of the three factors: Wisconsin, New York, Massachusetts, Florida, Connecticut, and Minnesota. All of these except Minnesota weight the factors as follows: property 25%, payroll 25%, and sales 50%. Minnesota allows the option of either the three-factor simple average or apportioning using the following factor weights: property 15%, payroll 15%, and sales 70%.

1/21/87

**KANSAS CORPORATE INCOME TAXATION OF
FOREIGN DIVIDENDS AND GROSS-UP**

Foreign dividends and gross-up are often a part of the federal taxable income of multinational corporations. To the extent their incomes are apportioned to Kansas, this state taxes a portion of their foreign dividends and gross-up. (K.S.A. 79-32,138(a)) Foreign dividends are simply a cash payment made from foreign subsidiaries to a U.S. parent. The gross-up arises under I.R.C. §78 when the parent elects to take a federal income tax credit for foreign income taxes related to the foreign dividends.

Example:

Assume that a U.S. parent company (P) receives \$15,000 of dividends from its foreign subsidiary (FS) and that FS paid foreign taxes of \$18,000 on \$40,000 of income. P can take a federal tax credit for \$12,273 of taxes relating to the dividend:

$$\begin{aligned} \text{Federal Tax Credit} &= \frac{\text{Dividend}}{\text{FS After-tax Income}} \times \text{Foreign Taxes} \\ &= \frac{15,000}{40,000 - 18,000} \times 18,000 = \underline{\underline{\$12,273}} \end{aligned}$$

If P takes the tax credit, it must "gross-up" or increase its dividends by the amount of the tax credit:

FS Dividend	\$15,000
Plus Gross-up	<u>+12,273</u>
Total Amount of Foreign Dividends and Gross-up in Federal Taxable Income	<u><u>\$27,273</u></u>

Thus, federal and Kansas taxable income contain both foreign dividends, which are cash income to the Parent, and gross-up, which represents the proportion of foreign taxes which the dividends bear to the foreign subsidiary's after-tax income.

Sixteen states include foreign dividends in taxable income, fifteen states exempt the dividends in part and fourteen states wholly exempt foreign dividends.