

Approved 2-25-87  
Date

MINUTES OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Senator Wint Winter, Jr. at  
Chairperson

12:45 ~~a.m.~~/p.m. on February 19, 1987 in room 123-S of the Capitol.

All members were present except: Senator Daniels - Excused  
Senator Hayden - Excused  
Senator Karr - Excused

Committee staff present:

Arden Ensley, Revisor of Statutes  
Lynne Holt, Legislative Research Department  
Mary Allen, Secretary to the Committee

Conferees appearing before the committee:

Harold Stones, Kansas Bankers Association  
Charles A. Becker, Campbell-Becker, Inc.  
James Maag, Kansas Bankers Association  
David Barclay, Department of Commerce

The meeting was called to order at 12:45 p.m. by the Chairman, Senator Wint Winter, Jr..

Senate Bill 70 - An Act concerning Kansas Venture Capital, Inc..

Chairman Winter announced that although a hearing had previously been held on SB 70 two concerns about the bill had been expressed by some Committee members: (1.) Exemption of private venture capital companies from ad valorem taxes; and (2.) The issue of trade and business secrets.

The Chairman called on Harold Stones, Kansas Bankers Association, to brief the Committee on the question of an ad valorem tax exemption for venture capital companies. Mr. Stones said that Kansas Venture Capital, Inc. contemplates having capital stock in the amount of ten million dollars from the private sector and ten million dollars from the state. Without an exemption an ad valorem tax would be contemplated on this of five mills on the common and on the capital stock of the corporation. This would amount to a \$100,000.00 tax on Kansas Venture Capital, Inc.. He observed that the Committee had already adopted an amendment to SB 70 which would exempt KVC I from this ad valorem tax. He said that the issue remaining is whether this same exemption from ad valorem taxes should apply to private venture capital companies.

The Chairman asked Charles Becker, Campbell-Becker, Inc., to comment on this tax issue. The Chairman observed that Campbell-Becker, Inc., a certified venture capital company in Kansas, is a limited partnership and would, therefore, not be subject to an ad valorem tax. Mr. Becker said that should private venture capital companies be organized through the use of corporate capital stock issuance, an ad valorem tax might be a detriment to the formation of those companies. He pointed out that a limited partnership formation is not always the most appropriate way to organize a venture capital company.

Senator Feleciano questioned whether a policy decision should be made by the Committee on exempting private venture capital firms from the ad valorem tax. He stated that the law already provides tax incentives for these firms. He suggested that perhaps this matter should be referred to the Assessment and Taxation Committee for hearing. He expressed surprise that the cities and counties are not present to speak to this issue for they are the ones who would be adversely affected by this proposed tax exemption. The Chairman observed that the city and county groups were notified of today's hearing. He stated that the ad valorem tax is not, at this time, a problem with the private companies for they are organizing as limited partnerships. If for some market reason or other investment reason they might chose the corporate form, they would be taxed as the law now stands.

Senator D. Kerr stated that the state is trying to get people to use the new capital venture company law and is encouraging them to put pools of money together to help to provide

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT,  
room 123-S, Statehouse, at 12:45 ~~a.m.~~/p.m. on February 19, 1987.

capital for companies. He observed that any money collected from an ad valorem tax would not go to the state but rather would go to the counties and that an exemption from that tax for private venture capital companies should cause no revenue drop to counties.

Senator Burke said that as he recalls the testimony from the Task Force on Capital Markets and Taxation the most critical area in the State of Kansas was the critical shortage of risk capital. He pointed out that exempting private venture capital companies from the ad valorem tax has no fiscal impact today and the trade off between potential revenue and turning the economy in Kansas around makes it doubly important that the state encourage availability of large sums of high risk capital. He said that this proposed tax exemption is a very small encouragement but it is a public statement and is an important thing to do.

Senator D. Kerr moved that SB 70 be amended by including certified private venture capital companies in the ad valorem tax exemption which was granted to Kansas Venture Capital, Inc. at a previous meeting of the Committee. Senator Burke seconded the motion. The motion carried. Senator Feleciano voted no.

Staff briefed the Committee on the application of the Uniform Trade Secrets Act to Kansas Venture Capital, Inc.. (Attachment I)

Senator Feleciano asked about the people's right to know and public access to records due to the fact that ten million dollars of taxpayers money is being used in Kansas Venture Capital, Inc.. Chairman Winter pointed out that, according to the law, all of the records of KVC I are public information and are subject to scrutiny on a continuing and annual basis by the Secretary of Commerce. He said that all of the records regarding investments etc. of private venture capital companies are subject to review by the Department of Commerce and the Department of Revenue to insure that these companies are making investments as required by law and in order to maintain their certification. The Chairman said that the question, as he understands it, is not whether the records of those firms are public, because they are generally speaking, but rather whether the records of other private businesses who borrow money from these firms are public. The answer, he said, is that the records of the private customers would be protected, not the records of the public or private venture capital companies.

Chairman Winter asked Mr. Becker to comment on the matter of confidentiality of records. Mr. Becker said that it would be inappropriate for open records to be provided when it comes to research and development of new products that are not yet patented. He observed that a small emerging portfolio company, which may not have the greatest looking balance sheet because it is going over the hurdles of beginning a business, may have a product or a method of service which is unique and may have tremendous potential. This company will be approached by and will be in negotiations with other companies which may act as distributors, possible acquirers, licensees etc. of its product. Because of the financial status of that portfolio company, it would not be appropriate to have its records exposed because the other companies negotiating with it might examine the records to find out its financial status. This might put the emerging company at a true financial disadvantage.

The Chairman reminded the Committee that the main purpose of SB 70 is to insure that one hundred percent of the investments of KVC I are in Kansas.

Jim Maag, Kansas Bankers Association, told the Committee that their legal counsel has raised the question as to whether subsection (c) of Section 3 of SB 70, which is the subsection dealing with one hundred percent investment by KVC I in Kansas businesses, should be under K.S.A. 74-8203, considering the purpose of that amendment.

David Barclay, Department of Commerce, called the attention of the Committee to lines 110 and 111 of SB 70 and noted that the impact of those lines is to state that until the fifth year, the private venture capital companies do not have to invest sixty percent in Kansas and that KVC I does not have to invest one hundred percent in Kansas until the fifth year. He suggested that all of line 110 and all of line 111 up to the comma be stricken from the bill.

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room 123-S, Statehouse, at 12:45 a.m./p.m. on January 19, 19 87

Senator Feleciano moved that SB 70 be amended by striking all of line 110 and all of line 111 up to the comma and inserting in lieu thereof the word "Invest". Senator Salisbury seconded the motion. The motion carried.

Senator Feleciano moved that SB 70 be amended by placing subsection (c) of Section 3 in both K.S.A. 74-8307 and 74-8203. The motion was seconded by Senator Salisbury. The motion carried.

Senator Salisbury moved that SB 70 be recommended favorably for passage as amended. Senator Langworthy seconded the motion. The motion carried. Senator Feleciano voted no.

Senator Burke moved that the minutes of the February 17, 1987, meeting of the Committee be approved. Senator Langworthy seconded the motion. The motion carried.

The meeting was adjourned by the Chairman at 1:35 p.m..

GUEST LIST

NAME

REPRESENTING

Jim Tjeperman

Harold Stoner

Charles A. Becker

Harold Pitts

Sydney Van Alst

Tom Redwood

Jim May

Intern, Dept. of Comm.  
K. Bonkers Assn

Campbell-Becker Inc.

KLSI

KU

KBA

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

ROOM 545-N -- STATEHOUSE

Phone 296-3181

February 17, 1987

TO: Senator Wint Winter

Office No. 120-S

RE: Application of Uniform Trade Secrets Act to Kansas Venture  
Capital, Inc. (KVC)

This memorandum is in response to your request for information about the Uniform Trade Secrets Act and its application to the Kansas Venture Capital, Inc.

A "trade secret," pursuant to K.S.A. 60-3320, is defined as "information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

K.S.A. 74-8307(e) provides that "documents and other materials submitted by Kansas venture capital companies or by Kansas businesses for purposes of the continuance and certification shall not be public documents if such records are determined by the Secretary [of Commerce] to be trade or business secrets under the Uniform Trade Secrets Act and shall be maintained in a secured environment by the Secretary." This provision would also apply to investments in common stock of the Kansas Venture Capital, Inc. (K.S.A. 74-8203(d)).

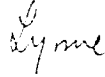
I contacted both Charles Becker and James Thompson to elicit their reactions toward the need for that statutory provision. They responded that confidentiality would be needed to protect companies engaged in the research and development of products that are not yet patented. Mr. Becker noted that small companies would be dissuaded from using the services of the Capital Research Management Group (CRMG) if such confidentiality could not be ensured. To date, neither CRMG nor the Kansas Funds Management Group (Thompson's company) have requested a determination by the Secretary of Commerce on this issue.

*Senate Economic Development*  
2-19-87

*Attachment I*

With respect to the contention that KVCII should be required to disclose all records, since it is supported in part by public funds, Mr. Becker noted that this argument could also be applied to private venture companies insofar as investors in a certified Kansas venture capital company are allowed to claim 25 percent state income tax credits on their investments. He also asserted that such a requirement would undermine the operations and intent of venture capital companies.

I hope this information has been helpful to you. If I may be of further assistance, please let me know.



Lynne Holt  
Fiscal Analyst

LH/aem