

Approved February 16, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on February 13, 1987 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano,
Langworthy, Steineger, Talkington and Winter.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Senator James Francisco
Tom Powell, Interim Wichita City Attorney
Phil Alexander, Hutchinson City Attorney
Scott Lambers, City of Overland Park
Julene Miller, Office of the Attorney General
Brenda Braden, Office of the Attorney General

Senate Bill 172 - Bonds; nonlitigation certificate.

Senator Francisco, one of the sponsors of the bill, stated this legislation was introduced by the Sedgwick County Senators at the request of the City of Wichita. The City of Wichita maintains that this change is necessary in order to reduce temporary note interest in situations where a challenge is made by a landowner against the spreading of special assessment costs on projects that are financed by general obligation bonds. A copy of his testimony is attached (See Attachment I).

Tom Powell, Interim Wichita City Attorney, testified the City of Wichita does support the enactment of this bill. It will allow cities to issue general obligation bonds upon the completion of a public improvement project in situations where a challenge to a special assessment has been made. The enactment of Senate Bill 172 will lessen the tax burdens for taxpayers at large and will not affect the ability of a property owner in a benefit district to challenge a special assessment. A copy of his testimony is attached (See Attachment II). During committee discussion a committee member requested the minutes reflect this is not eliminating a challenge to the method of assessment, only to the amount.

Phil Alexander, Hutchinson City Attorney, appeared in support of the bill. He passed out a copy of a letter he felt would help explain the problem more clearly (See Attachment III). He stated the letter illustrates that there are some citizens who have no compunction to use the tool for the purpose of holding the city over the barrel for purpose of reducing their cost. Considerable committee discussion with him followed.

The chairman announced The League of Kansas Municipalities are supportive of the bill, but were unable to come in to testify.

Scott Lambers, City of Overland Park, testified he would like to raise another issue of the cost associated with the bonds. He

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 13, 1987

Senate Bill 172 continued

explained they go to the bond market and try to decide what time is best to sell the bonds. This would create another delay. He stated they do support this bill.

The hearing on Senate Bill 172 were concluded.

Julene Miller, Office of the Attorney General, presented six proposals for introduction as bills (See Attachment IV). The first proposal concerned proof of age of a child. Following her explanation, Senator Burke moved to introduce the bill. Senator Steineger seconded the motion, and the motion carried.

Julene Miller presented a proposal for introduction as a bill concerning asset forfeiture. Following explanation, Senator Burke moved the bill be introduced. Senator Winter seconded the motion, and the motion carried.

Julene Miller, requested introduction of a bill concerning sex offender registration. Following her explanation, Senator Burke moved the bill be introduced. Senator Hoferer seconded the motion, and the motion carried.

Julene Miller requested a bill be introduced concerning theft by deception. Brenda Braden, Office of Attorney General, explained the proposal to the committee. Senator Burke moved the bill be introduced. Senator Langworthy seconded the motion, and the motion carried.

Julene Miller requested a bill be introduced concerning Kansas Law Enforcement Training Act. Brenda Braden explained the proposal to the committee. Senator Steineger moved the bill be introduced. Senator Feleciano seconded the motion and the motion carried.

Julene Miller requested a bill be introduced concerning attorney fees in consumer cases. Following her explanation, Senator Burke moved the bill be introduced. Senator Steineger seconded the motion, and the motion carried.

Senate Bill 172 - Bonds; nonlitigation certificate.

Senator Steineger moved to report the bill favorably. Senator Talkington seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

SB-172 IS AN ACT CONCERNING BONDS RELATING TO NON-LITIGATION CERTIFICATES. THIS LEGISLATION WAS INTRODUCED BY THE SEDGWICK COUNTY SENATORS AT THE REQUEST OF THE CITY OF WICHITA.

IF SB-172 IS PASSED, IT WILL PROVIDE THAT, NOTWITHSTANDING ANY CONTROVERSY OR LITIGATION DISPUTING THE SPREADING OF SPECIAL ASSESSMENTS, THE GOVERNING BODY MAY ISSUE BONDS WITHOUT EXECUTING THE NON-LITIGATION CERTIFICATE REQUIRED CURRENTLY BY KANSAS STATUTE.

THE CITY OF WICHITA MAINTAINS THAT THIS CHANGE IS NECESSARY IN ORDER TO REDUCE TEMPORARY NOTE INTEREST IN SITUATIONS WHERE A CHALLENGE IS MADE BY A LANDOWNER AGAINST THE SPREADING OF SPECIAL ASSESSMENT COSTS ON PROJECTS THAT ARE FINANCED BY GENERAL OBLIGATION BONDS.

JAMES L. FRANCISCO
SENATOR
DISTRICT TWENTY-SIX

*Atch. I
Judiciary Comm.
2-13-87*

THE CITY OF WICHITA

OFFICE OF THE CITY CLERK AND CITY ATTORNEY
CITY OF WICHITA, KANSAS



OFFICE OF THE CITY CLERK AND CITY ATTORNEY
CITY OF WICHITA, KANSAS
100 SOUTH MAIN STREET
WICHITA, KANSAS 67202

February 12, 1987

Senate Judiciary Committee
Robert Frey, Chairman
State Capital Building
Topeka, Kansas 66612

RE: Senate Bill No. 172 Re-
lating to Non-Litigation
Certificates

Ladies and Gentlemen:

As a supplement to my oral testimony concerning Senate Bill No. 172, I am submitting the following written testimony. The City of Wichita does support the enactment of Senate Bill No. 172. The reason this Bill is being supported by the City is set forth below.

Ordinarily, the cities finance the construction of public improvements including public improvements involving streets, sanitary sewers, storm sewers and water lines by issuing temporary notes. Depending on the length of time a public improvement is under construction, the City may issue several different temporary note issues during the time a public improvement is being constructed.

Upon completion of a public improvement project, cities issue general obligation bonds. General obligation bonds when issued, retire all of the temporary notes that were issued during the time a public improvement was being constructed.

Cities, under present law cannot however, issue general obligation bonds upon the completion of a public improvement project if a challenge has been made by a property owner as to the amount of special assessments to be levied against the property owner's property. This inability to issue general obligation bonds to retire temporary notes remains in effect during the entire period of time that litigation is pending.

During the period of time that litigation involving the challenge of special assessments is pending, interest on the temporary notes

*Attach. II
Senate Judiciary
2-13-87*

Senate Judiciary Committee
Page 2
February 12, 1987

left outstanding continues to accumulate. Examples of temporary note interest incurred by the City of Wichita in recent cases involving challenge to special assessments are set forth in Exhibit A that is attached hereto.

Senate Bill No. 172, if enacted, will allow cities to issue general obligation bonds upon the completion of a public improvement project in situations where a challenge to a special assessment has been made. It is important to understand that the enactment of Senate Bill No. 172 will not prevent a property owner from challenging a special assessment. The enactment of Senate Bill No. 172 simply allows a city to avoid accumulating temporary note interest expense during the time a challenge to a special assessment is pending in court. Temporary note interest is, when general obligation bonds are issued, paid by the city at large taxpayers. Thus, the enactment of Senate Bill No. 172 will lessen the tax burdens for taxpayers at large and will not affect the ability of a property owner in a benefit district to challenge a special assessment.

Very truly yours,

Thomas R. Powell

Thomas R. Powell
Interim City Attorney &
Director of Law

TRP:kh

*Attch II
Senate Judiciary
2-13-87*

*Attach. II
Senate Judiciary
2-13-87*

EXHIBIT A

SPECIAL ASSESSMENT LITIGATION

<u>Case Name</u>	<u>Project Name</u>	<u>Date Filed</u>	<u>Final Disposition</u>	<u>Assessment</u>	<u>Temporary Note Interest</u>
Derby Refining, Inc.) Garvey Elevators, Inc.) Coleman Company, Inc.) Wichita Union Stockyards) Clarkland, Inc.) Burlington Northern)	Main Storm Water Drain #14	10/12/76	04/03/86	\$ 1,096,964.80	\$ 532,475.00
Billy Compton)	Lateral 38, Main 3, South- west Interceptor Sewer	12/21/84	12/18/86	\$ 40,467.01	\$ 5,406.00
Dondlinger & Sons Construc-) tion Co., Inc.) Sherwood Construction) Company, Inc.)	Storm Water Sewer #232	07/18/85	11/10/86	\$ 1,579,582.87	\$ 114,606.00
Vernon Jacobs	Kellogg and Webb	07/22/85	07/29/86	\$ 125,952.08	\$ 7,065.00
Bounous, et al.) Richard E. Smith) Metropolitan Life Insur-) ance Company)	Lateral 1, Main 8 South- west Interceptor Sewer	01/18/85	04/08/86	\$ 1,847,770.20	\$ 98,647.00

2-13 87

CHARLES E. STEVENS

SUITE 304 WOLCOTT BLDG.
201 N. MAIN

HUTCHINSON, KANSAS 67501

November 21, 1986

JAN 23 1987

COPY

Mr. & Mrs. Bob Boyd
Willowbrook
Hutchinson, KS

Dear Bob and Mary Jane:

I have tried on several occasions to give you some information on the 30th Street property, but have not been very successful. I sometimes find that if I put it in letter form that I can do a better job of explaining.

In October, I sent a letter to the Western Front, complaining about this very improvement. Before I took the letter to the newspaper, I paid John Robinson, a former City Attorney, more than \$150.00 to make sure that I was reading the resolution correctly.

The resolution is 2217. The language in that resolution and in the assessment ordinance says that draining, grading, curbing, guttering, paving, widening and construction of sidewalks for 30th Avenue. Nothing is said about the paving of 30th Street.

I am also enclosing a copy of a letter from Dorothea Riley to Phil Alexander saying that the City can curb out your property and proceed to sell bonds on all the projects, except your property. It would seem that the only way you could come out a winner, would be to tie up the whole project.

That is why I keep talking about Resolution 2217, the City is trying to collect \$3 million to build sidewalks on either side of 30th? Also, resolution 2217 had two parts; part one the signalization of certain streets and part two being the sidewalks. In the assessment ordinance it talks only about sidewalks and there is no talk of signalizations.

12-6a09 says that the total costs of any improvement must be determined. On October 2, 1986, the City Engineer told the Commission that \$7,462.86 was still in dispute. I attend every City Commission meeting and can tell you that the amount is still in dispute. My point is that the total costs have not been determined.

Going back to 2217 (resolution), the proposed benefit district is described and it would seem that your property is contained within the first tract. It says, a tract of land that is bordered

Attch. III
Senate Judiciary
2-13-87

CHARLES E. STEVENS

SUITE 304 WOLCOTT BLDG. HUTCHINSON, KANSAS 67501
201 N. MAIN

Bob & Mary Jane Boyd
November 21, 1986
Page 2

on the south by 30th, on the west by the east line extended on Garden Grove 2nd Addition, on the north by Mission Village Sub-division, and on the east by Lorraine. Does Mission Village Sub-division extend from Garden Grove all the way to Lorraine? 12-6a04 says that a benefit district can not exceed the district in the resolution.

It would just seem that you could tie up all of the assessments, because of the sloppy way the City went about setting this whole project up.

Sincerely,



Charles E. Stevens

CES:cw

Encl.

P.S. Norman Garr in 1983 testified in a case called City of Hutchinson, Kansas, Plaintiff vs Louis O'Riordan, Defendant Case No. 83 C 248. Anyway, Garr (the same Garr who wrote the letter to Phil Alexander) testified and I have a copy of his testimony, that bonds can not be issued for even one cent more and that's a quote, then the final costs of the project. That is why I mentioned the \$7,000.00 earlier in my letter - the final costs have not been determined and Mr. Bell himself said that bonds couldn't be issued.

CES



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERALMAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

MEMORANDUM

To: Senator Robert G. Frey, Chairperson
Senate Judiciary Committee

From: Attorney General Robert T. Stephan
Presented by: Julene L. Miller, Deputy Attorney
General, Civil Division

Date: February 13, 1987

Attorney General Stephan requested that I express his appreciation to Chairperson Frey and the members of the Senate Judiciary Committee for allowing the Attorney General's office this opportunity to suggest possible legislation for the committee's consideration.

In an attempt to be brief, the following outline has been prepared which indicates areas of concern the Attorney General believes exist. Chairperson Frey has photostatic copies of suggested language in rough bill form which could be used as a guide for the Attorney General's proposals.

-- Child Pornography and Habitual Sex Offenders - New sections providing for the following:

1. Proof of age of a child: When it becomes necessary to determine the age of a child who participated in a sexual performance was under the age of 16, the court or jury may make such determination by any of the following:

- a. Personal inspection of the child;
- b. Inspection of a photograph or motion picture which constituted the sexual performance;
- c. Oral testimony by a witness;
- d. Expert medical testimony.

Atch. IV
Senate Judiciary
2-13-87

2. Asset Forfeiture: New legislation regarding seizure and forfeiture of articles and property used to produce child pornography, making sexual exploitation of children a common nuisance.

3. Sex Offender Registration: New legislation requiring a habitual sex offender to register within 30 days of entry of a city or county with the chief of police or sheriff respectfully.

-- Theft By Deception - Revision of definition of theft by deception to allow prosecution based on false promises that the defendant does not intend to perform or knows will not be performed.

-- Kansas Law Enforcement Training Act, K.S.A. 74-5607a, amending the statute to provide an individual may not exercise the grandfather clause exempting an individual from 320 hours of law enforcement training unless one "has been continuously employed as a police officer or law enforcement officer since that time." (Underline indicates new language.)

-- Attorney Fees in Consumer Cases - K.S.A. 50-632(a)(4) should be amended to allow the attorney general to be awarded attorney fees in actions brought under the consumer protection act. In order to complete this statutory amendment, a portion of K.S.A. 50-634(e) would have to be amended, striking the following: "Except for services performed by the office of the attorney general or the office of a county or district attorney, the court may award the prevailing party a reasonable attorney's fees limited to the work reasonably performed, if:" and adding "The court may award the prevailing party reasonable attorney's fees if:" Further, a revolving fund should be established in which the attorney general may deposit such money recovered and from which such could be spent.

The justification for this modification of the Kansas Consumer Protection Act is the theory that in these times of state financial crises, there is no good reason taxpayers should be denied reimbursement for the prosecution of successful consumer protection act cases. If a supplier is practicing deceptive or unconscionable acts, the state or the county should receive reimbursement for bringing this person to justice. This proposed amendment would place the state and/or the county or district on an equal footing with private parties who may collect attorney's fees, pursuant to the current K.S.A. 50-634(e).

I would be happy to answer your questions. Thank you, once again, for allowing me to appear before the Senate Judiciary Committee.

*Attach. IV
Senate Judiciary
2-13-87*