

Approved March 3, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:09 a.m./~~p.m.~~ on February 27, 1987 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Theresa Kiernan and Lila McClaflin

Conferees appearing before the committee:

George Barbee, Executive Director, Kansas Lodging Association
Jeanne Mogenson, Director of the Reno County Convention and
Vistors Bureau
Nick Jordan, Legislative Chairman, Travel Industy Association
of Kansas
Jean Weber, Director of Convention and Tourism Council, Lenexa,
Ks.
Marshall Gordon, Vice-President, Lenexa Economic Development
Council, Lenexa, Ks.
Roger Kroh, Lenexa Economic Development Council, Lenesa, Ks.
John Moir, Director of Finance, City of Wichita, Ks.
Joe Allen Lang, Assistant City Attorney
Robert W. Manske, Southeast Kansas Tourism Region, Yates Center,
Ks.
Jim Kaup, League of Kansas Municipalities, Topeka, Ks.

S.B. 211 - concerning cities and counties; relating to the
transient guest tax.

S.B. 254 - relating to the transient guest tax; requiring
counties to impose such tax.

The hearing on S.B. 211 and S.B. 254 was opened.

George Barbee stated they supported the bill if the amendments
that he offered were adopted. His written testimony includes a balloon
of those amendments. (ATTACHMENT I)

Jeanne Mogenson opposed S.B. 211 in its present form. They
support the amendments offered by Kansas Lodging Association (ATTACHMENT
II)

Nick Jordan stated his association would support S.B. 211,
with the amendments proposed by the Kansas Lodging Association. They
recommended S.B. 254 be killed. (ATTACHMENT III)

Jean Weber opposed any legislation which would take away the
local option to charter out. The present law is working well for Lenexa.
(ATTACHMENT IV)

Marshall Gordon and Roger Kroh both of Lenexa, stated the
present law is working well for them and they oppose any change.
(ATTACHMENT V AND ATTACHMENT VI)

John Moir and Joe Allen from the City of Wichita appeared
in opposition to S.B. 211. They took no position on S.B. 254. But
noted it was inconsistent with S.B. 211. (ATTACHMENT VII)

Robert W. Manske stated they could not support S.B. 211 and
S.B. 254, but would encourage the Committee to recommend an interim

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 LOCAL GOVERNMENT,
room 531-N, Statehouse, at 9:09 a.m./~~p.m.~~ on February 27, 1987

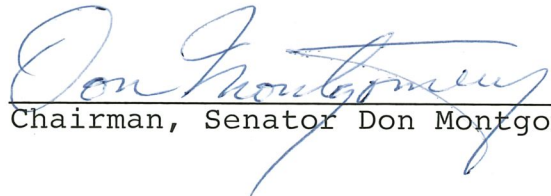
committee to study the issue. (ATTACHMENT VIII) They did support the amendments offered by the Kansas Lodging Association and recommended the bills not be killed.

Jim Kaup opposed both bills. The home rule power can handle this situation. The home rule power has been used well, now you are suggesting taking away this power.

There was discussion if counties could charter out. Staff stated they could. Senator Bogina presented a copy of an Attorney General opinion No. 82-17, that he had received on the home rule powers - charter ordinances. (ATTACHMENT IX)

Senator Daniels moved to adopt the minutes of February 26, 1987. The motion was seconded by Senator Salisbury. The motion carried.

The meeting adjourned at 10:00 a.m., next meeting will be on March 3, 1987.


Chairman, Senator Don Montgomery

Date: February 27, 1987

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
<i>Julius Duke</i>	<i>Liberal C.V.B</i>	<i>Liberal C.V.B</i>
<i>Edson Therman</i>	<i>TOPEKA, KS Ks Lodging</i>	<i>P.O. Box 196 CLAY CENTER, KS 67432</i>
<i>Jim Edwards</i>	<i>KOCT</i>	<i>Topeka</i>
<i>Ken Wright</i>	<i>Ks Lodging</i>	<i>3032 W. Hwy 50 Emporia, KS</i>
<i>FRANCIS HAWPE</i>	<i>Ks. Lodging</i>	<i>Box 822 HAYS, KANSAS 67601</i>
<i>Robert M. Collins</i>	<i>Hays Chamber of Commerce</i>	<i>Box 220 Hays, KS 67601</i>
<i>Carl Mungler</i>	<i>Ks. Dept. of Revenue</i>	<i>SOB</i>
<i>Bob Manske</i>	<i>SEKT Reg. Ass.</i>	<i>Box 100, Yates Center, KS</i>
<i>Sen. N. Ken</i>		<i>Hutchinson</i>
<i>Rep. Jan Pottstaff</i>		<i>Wichita</i>
<i>Hank Miller</i>	<i>Topeka Convention & Visitors Bureau</i>	<i>722 Ks. Ave. Topeka, KS 66603</i>
<i>JOE BOYD</i>	<i>WICHITA CONVENTION & VIS. BUREAU</i>	<i>100 S. MAIN, #100 WICHITA, KS 67202</i>
<i>JOHN MOIR</i>	<i>CITY OF WICHITA</i>	<i>455 N MAIN, WICHITA KS 67202</i>
<i>Joe Allen Lang</i>	<i>City of Wichita</i>	<i>455 N Main Wichita 67202</i>
<i>Janne Mogensen</i>	<i>Reed County Convention & Visitors Bureau</i>	<i>309 N. Main Hutchinson 67502</i>
<i>Nick Jordan</i>	<i>Travel Industry Assn. of Kansas</i>	<i>4300 Mitchell STE 240 OPRS 66212</i>
<i>Chip Wheelen</i>	<i>Legis. Policy Group</i>	<i>400 W 8th, Topeka</i>
<i>SEST LAMBERS</i>	<i>CITY OF OVERLAND PARK</i>	<i>OVERLAND PARK</i>
<i>Randy Martin</i>	<i>Olathe Chamber of Commerce</i>	<i>Olathe</i>
<i>Roger Kroh</i>	<i>Lenexa Economic Development Council</i>	<i>PO 14244 Lenexa KS 66215</i>
<i>Guan Weber</i>	<i>Lenexa Conventions & Tourism</i>	<i>Lenexa, KS 66215</i>
<i>Marshall Grayson</i>	<i>Lenexa Economic Development LEX KS</i>	
<i>Linda Pruitt</i>	<i>Lenexa Chamber of Commerce</i>	<i>Lenexa, KS 66215</i>
<i>Skip Leonard</i>	<i>City of Lenexa</i>	<i>Lenexa, KS</i>
<i>Jim Kaup</i>	<i>League of Municipalities</i>	<i>Topeka</i>

Marcella Anderson

1347 Lewellen
Wichita, KS

Lecky Blake

Manhattan Conv. Bureau

Box 988, Manhattan

Rev Bradley

KS Association of Counties

Topeka



STATEMENT

DATE: February 27, 1987
TO: Senate Committee on Local Government
FROM: George Barbee, Executive Director
RE: SB-211

Mr. Chairman and members of the committee, my name is George Barbee, President of Barbee & Associates, an association management company. I am appearing today on behalf of the Kansas Lodging Association. The members of the Kansas Lodging Association total approximately 170 hotels and motels located in Kansas. I appreciate the opportunity to appear on SB-211. The bill repeals some of the sections of statutes pertaining to the transient guest tax which is collected by hotels and motels. While KLA did not make the request for this bill's introduction, it has been looked at and recognized that perhaps with some amendments it could serve the purpose of restoring some uniformity to the statutes.

Transient Guest Tax collection began with the original statute adopted in 1975 whereby the city of Wichita was allowed to impose a 2% Transient Guest Tax on hotel and motel room sales, with the funds to be used by the city for the promotion of convention and tourism business.

In 1977 additional statutes were added which would apply to all cities and counties. The legislation called for a 2% tax to be administered by a committee of ten people with a majority of those people coming from the businesses involved, in other words hotels and motels. The tax was to be collected and transmitted to the state with 98% of it returned to the city or county to go into the Transient Guest fund for the promotion of convention and tourism. That law specifically states that if a city has imposed the guest tax, the county in which the city resides may not also impose the tax. Nor could a city impose a guest tax if the county in which it resides already has the tax imposed. So, the aggregate tax allowed is 2%, with the idea being that this would give some flexibility to the system depending upon the spread of population within given counties and cities.

Most of the lodging industry favored the 2% tax because it was generally agreed that promoting convention and tourism meant putting transient guests in the vacant rooms of hotels and motels.

The 1977 statute caused the formation of convention and visitors bureaus which now total approximately 44 in the state of Kansas. Everything seemed to be going along rather well until some convention and visitors bureaus, or city or county commissions, determined that

they needed additional funds to carry out their duties. It was discovered through a 1982 Attorney General's opinion that the statutes were not ruled to be uniform and equal, therefore, cities could exercise their home rule powers and "charter out" of the state statute. So, now we have several cities including Wichita, Topeka, Lawrence, Arkansas City, Lenexa and others that have "chartered out" at rates as high as 5%.

Monies from this new and higher tax is being used to do a number of things. Perhaps most of those activities can be construed to be for the promotion of convention and tourism, however, in some cases that is not so and that has become a major concern to the Lodging Association members.

Because of the exercise of the home rule power by chartering out of state statutes, not only have several cities increased their guest tax rate, they are no longer bound by the statute on the expenditure of those funds. It is my understanding that in some instances a portion of the tax money is being used to retire bonds for various building projects. Under existing statutes, either a city or county could charter out, ignore the restrictions of levying the guest tax in both a city and county, ignore the statutory rate, and ignore the statutory restrictions on expenditure of those funds. Seeing more and more of that action, the industry that once supported the guest tax collection believes that the major intent of the collection of transient guest tax is not being fulfilled.

The original legislative intent of the statute was for the promotion of Convention and Tourism. The original intent was that the committees making recommendations for expenditures and programs would have a majority of its members from the hotels and motels. And, it was the original intent of the Legislature that the tax be limited to 2%.

Senate Bill 211 is an attempt to restore some uniformity back to the collection and distribution of the Transient Guest Tax. This week, following a conference call with the leadership of the Kansas Lodging Association and the Travel Industry Association of Kansas, it was determined that three basic amendments might accomplish that purpose.

In front of you is a handout that shows the remains of the statutes if SB-211 were to be enacted. SB-211 essentially repeals the 1975 statutes as well as 16-1299 which is the provision that causes some problems relative to uniform and equal rule. However, in view of those towns and cities that have "chartered out" at higher rates, it is quickly understood that these remaining statutes would not be able to accommodate the higher tax that's already obligated in many cases.

Our first amendment would take care of those existing rates by increasing the statutory rate from 2% to 6%, with an aggregate limit not to exceed 6%. To our knowledge there are no Transient Guest taxes in the State of Kansas above 5%. However, it is understood that perhaps some cities see a need in the near future to increase at least another percent. Consequently, the 6% figure was agreed upon.

The second amendment would address the convention and tourism committee as described in the statutes. Presently the statutes say the committee will make recommendations to the governing body. The Kansas Lodging Association requests that the word "recommend" be amended to "administer". It is believed that those in the industry within the city or county where the tax is imposed are better capable of determining the best utilization of guest tax funds.

Our third amendment would change existing language which calls for the size of the committee to be ten members, to language that would allow for a committee that would "not exceed 20 members". This would afford more flexibility to cities and counties of varying populations. It would allow large cities who want to get several hotel and motel people involved, because of the number of hotels and motels within their city limits, to have a large committee. It would allow small towns to have small committees of three or five people and still have a majority of the lodging people from their community involved. In the past, some smaller cities had difficulty meeting the statutory requirement of ten because there weren't that many lodging people within the community.

Now that we've told you our problems with the way the existing law is being implemented, and how we think we could amend this bill to alleviate those problems, we need your help. Our real concerns are with the ability of a city or county to utilize the taxing procedures of the statute, but to ignore the restrictions imposed by that same statute for the use of the funds. They have every right to do that so long as the statute is not uniform and equal for each city and county. We want to make the statute uniform and equal and we don't want the aggregate amount of taxes that have to be collected by hotels and motels on their room sales to be so exorbitant that it prevents, rather than enhances, travel and tourism.

We need your help to draft the proper language or perhaps allow us the time to study the problem further.

On behalf of the Kansas Lodging Association I appreciate the time to present these amendments to you and would be glad to stand for any questions.

12-1696. Promotion of tourism and conventions; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) "Hotel, motel or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than eight (8) bedrooms furnished for the accommodation of such guests;

(c) "Transient guest" means a person who occupies a room in a hotel, motel or tourist court for not more than twenty-eight (28) consecutive days;

(d) "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court.

History: L. 1977, ch. 93, § 1; April 2.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," R. Chris Robe, 27 K.L.R. 313, 318 (1979).

12-1697. Same; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy. (a) In order to provide revenues to promote tourism and conventions, the governing body of any county ~~or~~ the governing body of any city is hereby authorized to levy a transient guest tax at not to exceed the rate of ~~two percent (2%)~~ upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax shall be determined by the board of county commissioners or the city governing body and shall be specified in the resolution authorizing the same.

and

and

six percent (6%)

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 12-1698 and the state department of revenue shall administer and enforce the collection of such taxes.

(d) A transient guest tax authorized by this section shall not be levied until the governing body of such county or city has passed a resolution authorizing the same.

History: L. 1977, ch. 93, § 2; April 2.

12-1698. Promotion of tourism and conventions; collection, payment and disposition of transient guest tax; administration by secretary of revenue; rules and regulations. (a) Any tax levied and collected pursuant to K.S.A. 12-1697, and amendments thereto, shall become due and payable by the business monthly, on or before the last day of the month immediately succeeding the month in which it is collected, with the first payment due and payable on or before the last day of the month specified in the resolution of the governing body which levies the tax, but any person filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time such person pays the retailers' sales tax. Each business shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross rental receipts for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross rental receipts shall be kept separate and apart from the records of other retail sales made by a business in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a business as may be necessary to determine the accuracy of such reports.

(c) The secretary of revenue is hereby authorized to administer and collect any transient guest tax levied pursuant to this act and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any busi-

ness liable to pay any transient guest tax refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto. All of the taxes collected under the provisions of this act shall be paid into the state treasury daily by the secretary of revenue, and the state treasurer shall place 2% of all taxes so collected in the state general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of such taxes shall be credited to the county or city transient guest tax fund, which fund is hereby established. All moneys in the county or city transient guest tax fund shall be remitted at least quarterly by the state treasurer to the county or city treasurer of each county or city levying a transient guest tax under the provisions of this act in the proportion, as certified by the director of taxation, that the amount collected from such tax in each such county or city bears to the total amount collected from such taxes in all counties or cities for the period covered by the distribution.

(d) All such moneys received by the county or city treasurer from disbursements from the county or city transient guest tax fund shall be credited to the tourism and convention promotion fund of such county or city and shall only be expended for convention and tourism promotion.

History: L. 1977, ch. 93, § 3; L. 1984, ch. 351, § 3; July 1.

12-1698a. Interest and penalties for failure to pay or untimely payment of transient guest tax. From and after July 1, 1984, (a) if any taxpayer shall fail to pay the tax levied pursuant to K.S.A. 12-1697, and amendments thereto, at the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added

to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) If any person fails to make a return, or to pay any tax, within 30 days after notice from the director, except in the case of an extension of time granted by the director, there shall be added to the tax due a penalty equal to 25% of the amount of such tax.

(d) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(e) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(f) Whenever, in the judgment of the director, the failure of the taxpayer to comply with the provisions of subsections (b) and (c) was due to reasonable causes and not willful neglect, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(g) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under K.S.A. 12-1697, and amendments thereto, or who makes a false or fraudulent return, or fails to keep any books or records necessary to determine the accuracy of the person's reports, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of the provisions of K.S.A. 12-1696 to 12-16,101, inclusive, and amendments thereto, or who aids and abets another in attempting to evade the payment of any tax imposed by K.S.A. 12-1697, and amendments thereto, or who violates any other provision of K.S.A. 12-1696 to 12-16,101, inclusive, and amendments thereto, shall, upon conviction thereof, be fined not less than \$100 nor more than \$1,000; or be imprisoned in the county jail not less than one month nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

History: L. 1984, ch. 351, § 4; May 3.

~~12-1699. Same; levy of tax prohibited, when. No county shall levy a transient guest tax within the corporate limits of any city in such county where a transient guest tax is being levied and collected according to law. No city located within a county where a transient guest tax is being levied and collected according to law shall levy any such tax.~~

History: L. 1977, ch. 93, § 4; April 2.

12-16,100. Same; transient guest tax refund fund. There is hereby established in the state treasury the "transient guest tax refund fund" which shall be used for the payment of refunds of the transient guest tax which is levied and collected pursuant to this act. The transient guest tax refund fund shall be held by the state treasurer for prompt refunding of all transient guest tax overpayments. Said fund shall be maintained by the secretary of revenue from the transient guest tax collections in an amount determined by the secretary of revenue as necessary to meet the current refunding requirements for the transient guest tax under this act but such amount shall not exceed five thousand dollars (\$5,000).

History: L. 1977, ch. 93, § 5; April 2.

12-16,101. Same; convention and tourism committee; appointment; terms; contracts and programs. The governing body of any city or county which levies a transient guest tax pursuant to this act shall establish a convention and tourism committee to ~~make recommendations concerning~~ the programs and expenditures for promotion of conventions and tourism. Such board of county commissioners or city governing body shall appoint ~~ten (10) members to such committee,~~ a majority of which shall be rep-

administer

a committee not to exceed twenty (20)

representatives of businesses coming within the terms of this act. In appointing such members, the board of county commissioners or city governing body shall attempt to create a representative balance of large and small businesses and businesses from the various geographic areas of such county. The board of county commissioners or city governing body shall provide, by resolution, for the appointments and terms of service not to exceed four (4) years for such members. The board of county commissioners or city governing body adopting such tax shall have the authority to contract for convention and tourism programs to be implemented.

History: L. 1977, ch. 93, § 6; April 2.

12-1692

Promotion of tourism and conventions; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) "Hotel, motel or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than eight (8) bedrooms furnished for the accommodation of such guests;

(c) "Transient guest" means a person who occupies a room in a hotel, motel or tourist court for not more than twenty-eight (28) consecutive days;

(d) "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court.

History: L. 1975, ch. 490, § 1; Feb. 27.

12-1693. Same; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy; election; reduction or increase in rate. (a) In order to provide revenues to promote tourism and conventions, the governing body of any county having a population of more than three hundred thousand (300,000) or the governing body of any city, all or any portion of which is located within such county, is hereby authorized to levy a transient guest tax at not to exceed the rate of two percent (2%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations in any hotel, motel or tourist court. The percentage of such tax shall be determined by the governing body levying

the same and shall be specified in the resolution authorizing the same.

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 12-1694, and the state department of revenue shall administer and enforce the collection of such taxes.

(d) A transient guest tax authorized by this section shall not be levied until:

(1) The governing body of such county has either passed, or received from the governing body of any city within such county, a resolution calling for an election for approval by the qualified electors of a transient guest tax;

(2) the governing body of the county has notified all of the incorporated cities, all or any portion of which are located within said county, of the intent to call such election. Incorporated cities, all or any portion of which are located within such county, shall have the option to decline participation in such election within thirty (30) days of the date of such notification. The governing body of the county shall have the option to decline participation in such election within the same thirty (30) day period as provided to incorporated cities, in which case individual cities may hold separate elections to submit the proposition to the qualified electors of such city: *Provided*, That such propositions, if approved, would have force only in cities adopting the tax. If the governing body of the county resolves to participate in such election, it shall submit such proposition for approval by the qualified electors of the unincorporated portions of such county and all incorporated cities within such county which have not declined participation in the election; and

(3) the governing body of the county or, if the county declines to hold such election, the governing body of the city, has given

notice of its intention to submit any such proposition for approval by the qualified electors in the manner required by K.S.A. 10-120 for giving notice of elections for the issuance of bonds. Said notice shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the votes cast and counted on any such proposition are not in favor thereof, such proposition may be resubmitted under the conditions and in the manner provided herein. If a majority of the votes cast and counted on any such proposition are in favor thereof, the governing body of the county or city shall provide by resolution for the levy of such tax. Any repeal of such tax or any reduction or increase in the rate thereof shall be accomplished in the manner provided herein for the adoption and approval of such tax.

History: L. 1975, ch. 490, § 2; Feb. 27.

12-1694. Same; collection, payment and disposition of transient guest tax; records, inspection; penalty for unpaid tax; administration of tax by secretary of revenue; rules and regulations; disposition of moneys. (a) Any tax levied and collected pursuant to K.S.A. 12-1693 shall become due and payable by the business monthly, on or before the last day of the month immediately succeeding the month in which it is collected, with the first payment due and payable on or before the last day of the month specified in the resolution of the governing body which levies the tax, but any person filing an annual or quarterly return under

the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, may, with the approval of the secretary of revenue and upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time he or she pays said retailer's sales tax. Each business shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross rental receipts for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross rental receipts shall be kept separate and apart from the records of other retail sales made by a business in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a business as may be necessary to determine the accuracy of such reports.

(c) For each and every month, or any part thereof, any tax provided for by this act remains unpaid after the same becomes due and payable by the business, there shall be added to such tax, as a penalty, ten percent (10%) of the amount of such tax for the first month or any part thereof the same is unpaid, and for each and every month thereafter, two percent (2%) of the amount of such tax shall be added until the same is fully paid. In no case shall the total penalty exceed thirty percent (30%) of said tax.

(d) The secretary of revenue is hereby authorized to administer and collect any transient guest tax levied pursuant to this act and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any business liable to pay any transient guest tax refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto. All of the taxes collected under the provisions of this act shall be paid into the state treasury daily by the secretary of revenue, and the state treasurer shall place two percent (2%) of all taxes so collected in the state general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of said taxes shall be credited to the "county and city transient guest tax fund," which fund is hereby established. All moneys in the county and city transient guest tax fund shall be remitted at least quarterly by the state treasurer, on instruction from the secretary of revenue, to the treasurers of those cities which, by virtue of their participation in the election provided for in K.S.A. 12-1693, are qualified to receive disbursements from said transient guest tax fund for the amount collected within such city, and to the treasurer of said county for the amount

collected in the unincorporated areas of said county.

(e) All such moneys received by the county treasurer or city treasurer from disbursements from the county and city transient guest tax fund shall be credited to the "tourism and convention promotion fund" of said county or city and shall only be expended for convention and tourism promotion, except that not more than twenty percent (20%) of the moneys credited to such fund shall be expended for tourism promotion.

History: L. 1975, ch. 490, § 3; L. 1976, ch. 81, § 1; L. 1977, ch. 61, § 1; July 1.

12-1694a. Establishment of transient guest tax refund fund; maintenance by secretary of revenue. There is hereby established in the state treasury the "transient guest tax refund fund" which shall be used for the payment of refunds of the transient guest tax which is levied and collected pursuant to K.S.A. 12-1692 to 12-1695, inclusive, and amendments thereto. The transient guest tax refund fund shall be held by the state treasurer for prompt refunding of all transient guest tax overpayments. Said fund shall be maintained by the secretary of revenue in an amount determined by the secretary of revenue as necessary to meet the current refunding requirements for the transient guest tax under said statutes but such amount shall not exceed five thousand dollars (\$5,000).

History: L. 1976, ch. 81, § 2; April 23.

12-1695. Same; convention and tourism committee; appointment; terms; contracts for programs. The governing body of any city or county which levies a transient guest tax pursuant to this act shall establish a convention and tourism committee to make recommendations concerning the programs and expenditures for promotion of conventions and tourism. Such governing body shall appoint ten (10) members to such committee, a majority of which shall be representatives of businesses coming within the terms of this act. In appointing such members, the governing body shall attempt to create a representative balance of large and small businesses and businesses from the various geographic areas of such city or county. The governing body shall provide,

by resolution, for the appointments and terms of service not to exceed four (4) years for such members. The governing body adopting such tax shall have the authority to contract for convention and tourism programs to be implemented.

History: L. 1975, ch. 490, § 4; Feb. 27.

12-1696. Promotion of tourism and conventions; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) "Hotel, motel or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than eight (8) bedrooms furnished for the accommodation of such guests;

(c) "Transient guest" means a person who occupies a room in a hotel, motel or tourist court for not more than twenty-eight (28) consecutive days;

(d) "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court.

History: L. 1977, ch. 93, § 1; April 2.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," R. Chris Robe, 27 K.L.R. 313, 318 (1979).

12-1697. Same; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy. (a) In order to provide revenues to promote tourism and conventions, the governing body of any county or the governing body of any city is hereby authorized to levy a transient guest tax at not to exceed the rate of two percent (2%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax

shall be determined by the board of county commissioners or the city governing body and shall be specified in the resolution authorizing the same.

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 12-1698 and the state department of revenue shall administer and enforce the collection of such taxes.

(d) A transient guest tax authorized by this section shall not be levied until the governing body of such county or city has passed a resolution authorizing the same.

History: L. 1977, ch. 93, § 2; April 2.

12-1698. Promotion of tourism and conventions; collection, payment and disposition of transient guest tax; administration by secretary of revenue; rules and regulations. (a) Any tax levied and collected pursuant to K.S.A. 12-1697, and amendments thereto, shall become due and payable by the business monthly, on or before the last day of the month immediately succeeding the month in which it is collected, with the first payment due and payable on or before the last day of the month specified in the resolution of the governing body which levies the tax, but any person filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time such person pays the retailers' sales tax. Each business shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross rental receipts for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross rental receipts shall be kept separate and apart from the records of other retail

sales made by a business in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a business as may be necessary to determine the accuracy of such reports.

(c) The secretary of revenue is hereby authorized to administer and collect any transient guest tax levied pursuant to this act and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any business liable to pay any transient guest tax refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto. All of the taxes collected under the provisions of this act shall be paid into the state treasury daily by the secretary of revenue, and the state treasurer shall place 2% of all taxes so collected in the state general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of such taxes shall be credited to the county or city transient guest tax fund, which fund is hereby established. All moneys in the county or city transient guest tax fund shall be remitted at least quarterly by the state treasurer to the county or city treasurer of each county or city levying a transient guest tax under the provisions of this act in the proportion, as certified by the director of taxation, that the amount collected from such tax in each such county or city bears to the total amount collected from such taxes in all counties or cities for the period covered by the distribution.

(d) All such moneys received by the county or city treasurer from disbursements from the county or city transient guest tax fund shall be credited to the tourism and convention promotion fund of such county or city and shall only be expended for convention and tourism promotion.

History: L. 1977, ch. 93, § 3; L. 1984, ch. 351, § 3; July 1.

12-1698a. Interest and penalties for failure to pay or untimely payment of transient guest tax. From and after July 1, 1984, (a) if any taxpayer shall fail to pay the tax levied pursuant to K.S.A. 12-1697, and amendments thereto, at the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall

be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added

to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) If any person fails to make a return, or to pay any tax, within 30 days after notice from the director, except in the case of an extension of time granted by the director, there shall be added to the tax due a penalty equal to 25% of the amount of such tax.

(d) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(e) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(f) Whenever, in the judgment of the director, the failure of the taxpayer to comply with the provisions of subsections (b) and (c) was due to reasonable causes and not willful neglect, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(g) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under K.S.A. 12-1697, and amendments thereto, or who makes a false or fraudulent return, or fails to keep any books or records necessary to determine the accuracy of the person's reports, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of the provisions of K.S.A. 12-1696 to 12-16,101, inclusive, and amendments thereto, or who aids and abets another in attempting to evade the payment of any tax imposed by K.S.A. 12-1697, and amendments thereto, or who violates any other provision of K.S.A. 12-1696 to 12-16,101, inclusive, and amendments thereto, shall, upon conviction thereof, be fined not less than \$100 nor more than \$1,000; or be imprisoned in the county jail not less than one month nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

History: L. 1984, ch. 351, § 4; May 3

12-1699. Same; levy of tax prohibited, when. No county shall levy a transient guest tax within the corporate limits of any city in such county where a transient guest tax is being levied and collected according to law. No city located within a county where a transient guest tax is being levied and collected according to law shall levy any such tax.

History: L. 1977, ch. 93, § 4; April 2.

12-16,100. Same; transient guest tax refund fund. There is hereby established in the state treasury the "transient guest tax refund fund" which shall be used for the payment of refunds of the transient guest tax which is levied and collected pursuant to this act. The transient guest tax refund fund shall be held by the state treasurer for prompt refunding of all transient guest tax overpayments. Said fund shall be maintained by the secretary of revenue from the transient guest tax collections in an amount determined by the secretary of revenue as necessary to meet the current refunding requirements for the transient guest tax under this act but such amount shall not exceed five thousand dollars (\$5,000).

History: L. 1977, ch. 93, § 5; April 2.

12-16,101. Same; convention and tourism committee; appointment; terms; contracts and programs. The governing body of any city or county which levies a transient guest tax pursuant to this act shall establish a convention and tourism committee to make recommendations concerning the programs and expenditures for promotion of conventions and tourism. Such board of county commissioners or city governing body shall appoint ten (10) members to such committee, a majority of which shall be rep-

representatives of businesses coming within the terms of this act. In appointing such members, the board of county commissioners or city governing body shall attempt to create a representative balance of large and small businesses and businesses from the various geographic areas of such county. The board of county commissioners or city governing body shall provide, by resolution, for the appointments and terms of service not to exceed four (4) years for such members. The board of county commissioners or city governing body adopting such tax shall have the authority to contract for convention and tourism programs to be implemented.

History: L. 1977, ch. 93, § 6; April 2.

12-16,102. Certain taxing subdivisions; employee benefits contribution fund; tax levy, use of proceeds. (a) As used in this section, "taxing subdivision" means any city, county, township, community junior college district or other political subdivision of the state of Kansas, except a school district, having authority to levy taxes on tangible property.

(b) Any taxing subdivision may create and establish an employee benefits contribution fund for the purpose of paying the employer's share of any employee benefits, exclusive of any salaries, wages or other direct payments to such employees, as may be prescribed in the ordinance or resolution of the governing body creating such fund. The taxing subdivision may receive and place in such fund any moneys from any source whatsoever which may be lawfully utilized for the purposes stated in the ordinance or resolution creating such fund, including the proceeds of tax levies authorized by law for such purposes.

(c) The governing body of any taxing subdivision having established an employee benefits fund under subsection (b) of this section is hereby authorized to levy an annual tax upon all taxable tangible property within the taxing subdivision in an amount determined by the governing body to be necessary for the purposes for which such fund was created and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Taxes levied by a city or county

pursuant to this section shall be exempt from the limitations imposed by K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto, but only if and to the extent that such taxes would otherwise be exempt if levied as a separate fund or for a purpose specifically exempt by law.

History: L. 1978, ch. 67, § 1; L. 1978, ch. 163, § 3; L. 1979, ch. 52, § 48; July 1.



TESTIMONY BEFORE

LOCAL GOVERNMENT COMMITTEE

February 27, 1987

Room 531-N Statehouse

TO: Chairman Montgomery and Members of the Committee

I am Jeanne Mogenson, Director of the Reno County Convention and Visitors Bureau.

I am here today because we are opposed to SB-211 in its present form, however, with the inclusion of the amendments suggested jointly by the Kansas Lodging Association and the Travel Industry Association of Kansas we would be highly in favor of this bill.

First SB-211 continues to levy the transient guest tax at a level not to exceed 2%. We cannot support this portion of the bill. It would be difficult for some bureaus, who have been allowed to charter out of current state statutes to continue to provide existing services and programs to conventions and visitors.

Limiting their tax collection at a 2% level would effectively eliminate them from competition with other states to attract major conventions to Kansas cities. That would have a very negative effect on the economic impact of Kansas second largest industry.

The amendments offered by KLA and TIAK would ask for a transient guest tax not to exceed 6%. Currently no city or county in the state has a tax at that level, so everyone would be brought back under state statutes. We would support that amendment.

Second, we agree with SB-211 that 12-1699 should be repealed. It has been determined that 12-1699 is non-uniform in application to cities and therefore is subject to the local option of chartering out. Counties, however, were not allowed the privilege. Counties are restricted to the 2% tax limitation. This has allowed for unfair advantage of cities over counties when they are in direct competition to bring conventions and visitors and thereby economic growth to individual areas. It is imperative that the law be made uniform and equal for cities and counties.

Third, we would support the proposed amendment to allow local tourism boards to administer the tax funds. We believe this could help eliminate possible misuse of the tourism funds by putting the decision of how to expend these monies in the hands of the hotel/motel representatives that collect the tax.

Fourth, we also support the proposed amendment that would allow expansion of tourism boards up to 20 members, the majority of whom shall be hotel/motel representatives. This would allow smaller communities who collect the tax but have only 2 or 3 facilities to operate under the law by allowing them smaller boards. It would also allow greater representation of hotel/motels in larger cities.

In conclusion we ask that you give consideration to accepting the proposed amendments as presented. It would allow a consistent law uniformly applicable to all convention visitors bureaus. The 6% tax lid would allow fair and equitable competition within the state as well as allow large Kansas cities to seek major convention business for Kansas.

We would then have a bill that Reno County Convention/Visitors Bureau could support.

LEGISLATIVE TESTIMONY

SENATE BILLS 211 AND 254

SENATE LOCAL GOVERNMENT COMMITTEE

FRIDAY, FEBRUARY 27, 1987

BY

NICK JORDAN

LEGISLATIVE CHAIRMAN - TRAVEL INDUSTRY ASSOCIATION OF KANSAS

(ATTACHMENT III) LOCAL GO 2/27/87

Thank you for this opportunity to testify concerning Senate Bills 211 and 254 pertaining to the Transient Guest Tax in the State of Kansas.

In the last three months there has been numerous conversation about the transient guest tax. At one point these led to a meeting between the Executive Committee of the Kansas Lodging Association and five convention bureau's from across the state. At that meeting, it was agreed that all organizations involved would not instigate anything in the legislature concerning "the tax".

Subsequent to this meeting a problem did come to our attention. According to an Attorney General's opinion, counties cannot charter out under current statutes, like cities, to increase their transient guest tax. Counties are, according to the opinion, uniform and equal, but cities are not.

Earlier this week, we participated in a conference call which included the President and President-Elect of both the Kansas Lodging Association and the Travel Industry Association of Kansas to discuss both Senate Bill 211 and 254. The following recommendations are a result of that call.

SENATE BILL 211

By repealing KSA 12-1699 we would make both cities and counties uniform and equal across the State.

In repealing this statute and leaving in tact KSA 12-1697, we are limiting cities and counties across the State to a two (2) percent lid. This is difficult since cities across the State have "chartered out" and now have 3% to 5% transient guest taxes. It also obviously eliminated the

flexibility of cities to levy an appropriate transient guest tax to adequately promote convention and tourism business and compete in the marketplace. If the lid could be increased to six (6) percent, we feel it would handle the various situations across the State.

While we are discussing current statutes relating to the tax, we would like to recommend two amendments to KSA-16,101 relating to the convention and tourism committee. Currently the committee is charged to offer recommendations concerning the programs and expenditures for promotion of conventions and tourism and shall be a ten (10) member committee a majority of which shall be representatives of businesses coming within the terms of the act--actually lodging representatives.

It was the clear intent of the Legislature when adopting these statutes that the transient guest tax was established to promote conventions and tourism...a \$1.9 billion business in Kansas and the second largest employer. There is concern in many communities across the State, that the funds are being used for other purposes. Attached to my testimony is an article concerning the National Association of Exposition Managers and their stand on transient guest tax expenditures. While some of our towns are not convention towns, we must remain aware that organizations representing our guests are noticing the amount of the guest taxes being charged.

We would make the following recommendations about the committee. The wording in KSA 12-16,101 would be changed to read that, the committee would administer, not just make recommendations, the programs and expenditures

for promotion of conventions and tourism. This fulfills the original intent of the Legislature. We would also recommend that the committee size would not exceed twenty (20) members, a majority of which shall be representatives of businesses coming within the terms of the act.

This amendment concerning the size of the committee allows communities to structure the group to their needs. Some communities don't have enough lodging representatives to have a ten member committee, while others need a larger representation.

With these recommendations, everyone in the State becomes uniform and equal. One problem remains, we certainly would not want a situation where a city could levy a maximum six (6) percent guest tax and the county also would levy six (6) percent. Possibly wording could be structured to allow cities and counties the opportunity to levy a transient guest tax which combined would not exceed six (6) percent.

If these recommendations could not be implemented making everyone in the State uniform and equal; we could not support Senate Bill 211. The bill in its current form would take away the flexibility needed in cities across the State to levy an appropriate transient guest tax for their community. We would recommend the bill be killed.

If Senate Bill 211 were to be ~~killed~~, we are left with counties in the State who can not charter out. Somehow it would be nice to find a way to help counties have the same flexibility cities currently enjoy. Maybe the only way to resolve the problem is to simply raise the lid of two (2) percent to six (6) percent in the current statute, KSA 12-1697.

SENATE BILL 254

In relation to Senate Bill 254, we simply cannot support mandating to counties that they must levy a transient guest tax of at least two (2) percent with no lid. The bill also limits cities to a two (2) percent lid, which as mentioned before is unacceptable. We feel this bill is designed to solve one local problem and does not enjoy statewide support. We recommend this bill be killed.

Thank you once again for this opportunity to testify on behalf of these bills. Hopefully, we can all continue to work together to encourage growth in the convention and tourism business in our state.

MEETING NEWS

FACTS, NEWS, IDEAS FOR CONVENTION AND MEETING PLANNERS EVERYWHERE

Rising Room Taxes Minimize Benefits Of Rate Negotiation

By Bonnie Schwartz, assistant editor

NEW YORK CITY—With bed taxes rising to as much as 15 percent in some U.S. convention cities, meeting planners are becoming increasingly displeased about the fact that revenues from such taxes do not always go back to the convention and visitor industry. In addition, they are concerned about the impact such taxes have on attendees' final bills.

"Planners work very hard to negotiate favorable discounts on rooms for their meeting attendees. Then, when it comes time to check out of the hotel, delegates find an extra ten dollars tacked onto their per night stays because of taxes," said Joe Vancisin, executive director of the National Association of Basketball Coaches (NABC) of the United States.

"I don't mind my attendees paying taxes in cities where that money goes back to the visitor bureau," said another planner, Audrey Forman, Professional Secretaries International. "In those cities, the bureau provides me with assistance that saves me a lot of time, and consequently my group a lot of money."

Although in most cases a portion of the bed tax is channeled back to the bureau, all too often the cities that impose the bed taxes glean a high percentage of the revenue for their general funds. Bed tax money represents a

clean source of income for many municipalities, bureau officials explain, because it does not affect the purse of local taxpayers.

There are three cases in which bed taxes are justified, according to Don Walter, executive director of the National Association of Expositon Managers (NAEM), which is one of the industry organizations confronting the issue:

1) When bed tax money is used to support the official convention and visitors bureau;

2) When bed tax money is used to enhance or maintain the city's convention hall;

3) When bed tax money is used to provide increased security in the main hotel or convention district.

"NAEM is not set against bed taxes, just how they are being used in some cities," Walter explained. He further indicated that, although site selections have not yet been noticeably affected by the issue, it "may have long-term effects on occupancies in certain cities." Walter added that high, non-dedicated bed taxes are a phenomenon that is occurring throughout the nation in a random fashion, not just in cities where convention business thrives.

According to the most recent Bureau Funding Survey, published by the International Association of Convention & Visitors Bureaus (IACVB) in 1985, the average tax a guest paid for a room

was 8.71 percent. This represented a hike of almost a full percentage point from the year earlier, and predictions

for 1986 point to even higher room taxes. The highest reported total room tax was 15 percent, the study indicated.

Many major convention cities charge room taxes in the 10- to 12-percent range, according to an informal MEETING NEWS survey. Tacked onto fairly high room rates, this additional charge can push a planner's budget over the top, making visits to certain cities prohibitively expensive or requiring that the group be lodged in substandard facilities.

"What I suspect will occur is planners will book their groups into smaller cities that can offer more attractive room rates. This will not only offset high room rates but bed taxes as well, insofar as they further explode room rates," predicted Dr. Kent Mayfield, director of education and conference planner for the Medical Library Association. Groups involved in health care and higher education will continue to be those most severely affected by the issue, Mayfield noted, because these groups work on fairly limited budgets and many attendees pay for meetings out-of-pocket.

Some groups, primarily associations, are locked into meetings in certain cities, which can make matters worse due to the decreased leverage a planner has in such situations. For example, the Consumer Electronics

Show, one of the largest trade shows in the world, must meet in cities that can provide it with the 800,000 net square feet it requires for its exhibits. "We can't shop around at all," said Jack Wayman, senior vice president of the Electronics Industries Association. "Consumer Electronics has enough trouble getting the number of rooms it needs to accommodate everybody. We can't quibble over tax rates, or room rates for that matter," he said.

NABC's Vancisin is in the same boat: "We have to go where the National Collegiate Basketball Association has its tournaments, not where we can necessarily negotiate the best group rates," he said.

Bed taxes are being singled out by planners with more frequency, then, insofar that they apply upward pressure on total meeting costs. One planner booked a group into Honolulu instead of San Francisco recently because despite higher air fares to the island, she could get a better deal all around.

The average lodging cost in San Francisco, based on recent statistics from hotel accounting firm Laventhol and Horwath, is \$76.78. Honolulu's average lodging cost per day is a flat \$67. When each city's bed taxes are included in a total per diem lodging costs, San Francisco's rate climbs to \$84.26, while Honolulu's rises to only \$69.68. San Francisco laws levy a tax of 9.75 percent on hotel occupancies:



"NAEM IS NOT SET against bed taxes, just how they are being used in some cities," said Don Walter, the association's executive director.

Honolulu, four percent.

"Because about 80 percent of our members have to pay for their meeting costs out-of-pocket, I owe it to them to get the best deal possible," said Kathleen Rossell, director, meeting services, Emergency Nurses Association. "That's why I shopped around when I realized how high San Francisco would be," she explained.

"Bed taxes will soon be studied in the same light as transportation costs, food and beverage and entertainment by planners," said Gail Gorman, planner for the American Society for Surgery of the Hand. "This hasn't been something we've been overly concerned with up until now, but the issue of bed taxes is becoming something we have to evaluate more seriously when looking at potential meeting sites," she added.

Date: Feb. 27, 1987

To: Senate Committee on Local Government

Re: SB-211 & SB-254

Name: Jean Weber
Director of Convention & Tourism Council
Lenexa, Kansas

In Lenexa, the City Council contracts with the Chamber of Commerce to conduct the Convention & Tourism Program. Program plans and a budget to support those plans are presented to the city council each year during the budgeting process. Funds are allocated from the transient guest tax fund. Each year, for the three years I have been involved with the program, the City Council has granted the full amount requested by the Convention & Tourism Council. Our 1987 budget is \$91,500, which is actually \$500 more than we requested.

Our 17-member Convention & Tourism Council includes managers of Lenexa's 5 motels; the Chamber executive director, president and advisor from their board of directors; Lenexa's director of economic development, director of Parks & Recreation Department, a member of the city council and five people representing the residential and business community. They include a co-owner of a local restaurant, and employees of Coca Cola, and a large printing/manufacturing company and two community leaders and volunteers.

As you can see, our Convention & Tourism Council clearly represents a cross section of the interests of our community. We have worked through early struggles of a new program getting starting, setting goals and clarifying our direction. We are excited about our activities and our program plans. We enjoy widespread community support. On many occasions, we work closely with economic development people. For example, last summer we share the cost of a Kansas City area-wide cooperative summer tourism promotion. The economic development council recognized that the line between their goals and ours is often fuzzy. Lenexa Economic Development contributed to the ad campaign, knowing that promoting Lenexa as good place to visit (our theme was "shop, sightsee and save on your room in Lenexa!) and promoting Lenexa as a good place to live and work reinforced each other. We currently are working together to produce audio/visual productions--separate productions, but saving money by using much of the same photography, etc.

The chairman of the Convention & Tourism Council sits on the board of the Economic Development Council. Our programs are often very close, and we work cooperatively together.

The corporate community is extremely important to our motels. Although we enjoy tourist trade from motorists along I-35, we are primarily dependent upon the business travelers to fill our rooms. I recently asked the GM of a major property in Lenexa why he felt the occupancy rate at his motel was steadily increasing. He replied that it reflected the growth and development of the many businesses locating in Lenexa.

Lenexa's Convention & Tourism Council is opposed to any legislation which would take away the local option to charter out of a statute regulating appropriations of guest tax funds. We are happy with the situation as it is in Lenexa; our local governing body has worked out a dispersement of the monies that is appropriate for our community. As one motel manager recently said to me in reference to our convention & tourism program, "what we have is perfect for Lenexa." We don't want to see our successful local boat rocked. We're working hard, and we're working together. And it's working! It's working for Lenexa, and that means it's working for Kansas. Let us continue.

February 26, 1987

PRESENTATION ON S.B. 211
(and companion S.B. 254)

Marshall Gordon, Vice President
Lenexa Economic Development Council

Mr. Chairman, Senators....

I am Marshall Gordon, President of Gordon Real Estate and Vice Chairman of the Lenexa Economic Development Council.

I am speaking in opposition to S.B. 211 and also its companion, S.B. 254, as they now stand. Both would eliminate the ability of cities to decide for themselves how best to encourage economic activity in their community and the State of Kansas, whether it be tourism or economic development.

Lenexa has evaluated its strengths, and based upon them, utilized the guest tax to its maximum effectiveness for Lenexa and the State of Kansas. In Lenexa we are fortunate enough to have a very strong and rapidly growing business base. More than 200 new businesses have opened their doors each year for the last 3 years, making a sizable contribution in taxes to the State of Kansas. Consequently, in Lenexa a major source of customers for our 5 hotels come from businesses in our community. This hotel business ranges from meetings and seminars to rooms for people visiting our companies. It is because of our unique situation that Lenexa has felt it wisest to utilize transient guest tax revenues for both convention and tourism and economic development....two programs that we believe are highly successful.

Lenexa's economic development work has brought a great deal of jobs and tax revenues to the State of Kansas. This bill would greatly jeopardize an effort that has proven successful, and we ask you to not approve it.

(ATTACHMENT V.1) LOCAL GO 2/27/87

February 26, 1987

PRESENTATION OUTLINE ON S.B. 211

(and companion S.B. 254)

Roger Kroh, Director
Lenexa Economic Development Council

Mr. Chairman and Senators:

I am Roger Kroh, Director of Lenexa Economic Development Council:

In Lenexa, we do not have a We-They attitude pitting convention and tourism verses economic development. When both programs were established, the same people worked to establish both the convention and tourism council and the economic development council.

This cooperative attitude has continued and in fact, the Director of Economic Development now sits on the convention and tourism board, while, in turn, the President of the Convention and Tourism Council sits on the Economic Development Council board.

An example of this cooperative effort is in 1985 when the Royals went to the World Series. With 24 hours notice, both the convention and tourism council and economic development council put together a hospitality program for the press, who headquartered in Lenexa, that resulted in an exchange with Puerto Rico, national publicity, and even international publicity for Lenexa.

Lenexa believes that both economic development and convention and tourism (both financed from guest tax dollars as proven clearly legal by the State) working together maximizes the economic activity that Lenexa can produce for the State and itself. What can be more important for Kansas than jobs, income and taxes. Looking at the big picture, we feel like we're doing our best to do what we spent all last session saying in the Redwood Study we needed to do for ourselves and Kansas, and in return getting kicked in the tail by this bill.

If we can no longer use the guest tax for economic development, we would be immensely crippled. Lenexa's General Fund cannot afford it as its stretched to the limit playing catchup with roads and utilities for the businesses that provide jobs and taxes. Remember, the Federal and State Governments are getting out of the local government business. We're now having to do for ourselves.

Lenex'a economic development and convention and tourism programs have been fortunate enough to be very successful bringing revenue to Lenexa and Kansas. Please do not destroy something that works well.

(ATTACHMENT VI.) LOCAL GO 2/27/87



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4681

February 26, 1987

Senate Local Government Committee
Senator Don Montgomery, Chairperson
State Capital
Topeka, Kansas 66612

Re: Senate Bill 211 -- Transient
Guest Tax - Comments of
John Moir and Joe Allen Lang

Ladies and Gentlemen:

On behalf of the City of Wichita, we appear in opposition to SB 211. If enacted, this bill would have a very detrimental impact upon the promotion of conventions and tourism in the City of Wichita.

There are now two Transient Guest (Hotel/Motel) Tax Acts. K.S.A. 12-1692, et seq. was enacted in 1975 and applies to counties over 300,000 and the cities in them. K.S.A. 12-1696, et seq. was enacted in 1977 for all cities and counties. While both Acts provide for a tax of 2% on gross revenues from transient guests for sleeping accommodations, there are some significant differences between them.

SB 211 would repeal K.S.A. 12-1692, et seq., the non-uniform Act. This would leave K.S.A. 12-1696, et seq., the 1977 Act, as the only Act authorizing a Transient Guest Tax. The result would be that the City of Wichita and other cities and counties, which established their taxes under the 1975 Act, may have to switch to the procedures and provisions of the 1977 Act. If required, this would result in a great deal of confusion and hardship.

Background of the City of Wichita's use of the tax. Upon the enactment of L. 1975, chap. 490 (K.S.A. 12-1692, et seq.), Wichita immediately took steps to call an election under the provisions of that Act. The imposition of the tax was approved

(ATTACHMENT VII) LOCAL GO 2/27/87

by the voters and the tax began in 1975. In August, 1980, the City Commission adopted Charter Ordinance No. 73, chartering out of the provisions of the Act. The Charter Ordinance was subsequently amended by Charter Ordinance Nos. 74, 83, and 91, most recently in August, 1983. These amendments primarily changed the tax rate and the priority of use of the tax funds.

Current City of Wichita tax provisions. The transient guest tax is currently levied by Charter Ordinance No. 83 as amended by No. 91. It provides for a 5% tax. It sets up a Convention and Tourism Committee to advise the governing body on program and expenditures in much the same manner as the state law, but with more detail and guidelines. Finally, the charter ordinance provides a list of priorities for expenditure of the revenues including payment of the bonds for the new Expo Hall, payment of operating expense deficits of Century II, and payment for convention and tourism activities.

Effect of SB 211 upon the City of Wichita. Repeal of the 1975 non-uniform act may leave the City of Wichita in the position that it could only use the uniform 1977 Act. No provision is made for the continuation of the current tax, and the City may have to start from the beginning to levy a new tax (by resolution). Further, no provision is made for the City's pledge of future tax revenues. (SB 211 would repeal K.S.A. 12-1699, which now prohibits both a city and county from levying the tax, so both could have a tax.)

The two major impacts are that 1) K.S.A. 12-1697 only allows a 2% tax instead of the 5% tax now levied, and 2) K.S.A. 1986 Supp. 12-1698 restricts the use of the revenue to "convention and tourism promotion" which may seriously affect payments for Century II and the Expo Hall (this point is unclear but of concern).

If enacted, SB 211 would reduce by 60% annual revenues to the City's Tourism and Convention Promotion Fund. The City would lose \$1,150,000 in 1988. Total lost revenues would amount to approximately \$5,000,000 by the end of 1991. In addition, if the City is prohibited from using transient guest tax revenues for debt service on the existing Century II bonds, the City's governing body would be confronted with the unpleasant options ranging from raising current general property taxes by about four percent or reducing annual expenditures by \$1,152,000 to \$1,385,000 over each of the next four years. The following table details the financial impact of SB 211.

Financial Impact of SB 211

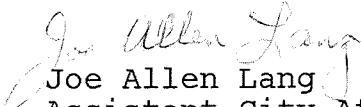
<u>Year</u>	<u>Revenues from Current 5% Tax</u>	<u>Revenues from SB 211 2% Tax</u>	<u>Reductions in Revenues from SB 211</u>
88	\$ 1,919,925	\$ 767,970	\$ 1,151,955
89	2,035,125	814,048	1,221,073
90	2,167,403	866,961	1,300,442
91	2,308,285	923,314	1,384,971

It is submitted that if there is any legislation amending the Transient Guest Tax Law, it should at the very least allow local governments flexibility in the rate and use of revenue. It should further provide for the continuation of those taxes now being levied and which have been used for planning and projection of future activities and for bond payment for past construction.

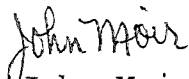
SB 254. This bill is noted because it would amend the 1977 Act. Standing alone, it has no impact on the City, and the City would have no comment on it. It is inconsistent with SB 211, however, in that it still references the K.S.A. 12-1699 prohibition on both a city and county tax. Further, it would require a county to levy a tax of at least 2% but continue to restrict a city to no more than 2%. This is illogical and would impact revenues. It is noted that most of the hotels and motels in Sedgwick County are in Wichita with very few outside the city limits.

In sum, the City of Wichita strongly opposes SB 211 as it would have a very serious, negative impact on its convention and tourism program. We will be happy to answer any questions the committee may have.

Sincerely,


Joe Allen Lang
Assistant City Attorney

and


John Moir
Director of Finance



Southeast Kansas Tourism Region

P.O. Box 100
Yates Center, Kansas 66783
(316) 625-3559

February 20, 1987

Dear Senate Local Government Committee:

It is no secret that rural communities across Kansas are fighting for their lives in the face of today's desperately depressed agriculture and oil and gas industries.

Southeast Kansas Tourism Region, Inc. asks the Senate Local Government Committee to help small Kansas towns win their struggle for self-directed economic development through enactment of a mandatory, statewide 2% transient guest tax.

In existence since 1975, the guest tax has provided revenues that have become an excellent vehicle for promotion of conventions and tourism in the state's major concentrations of population, cities like Topeka, Wichita, Lawrence, Hutchinson, Overland Park, Salina and Hays. These cities and some urban counties are using guest tax revenue to mount impressive sales and promotional campaigns to market their respective facilities and attractions to travelers, tourists and convention planners all over the world.

Small towns also can profit from such promotions and marketing plans, but the relative benefits of guest tax revenue are harder - and in many cases impossible - to sell in rural areas dependant upon industry not traditionally involved with sophisticated advertising and promotion. Indeed, guest tax funding now can provide small communities with discretionary money for vital promotional brochures and advertising at a time when all other local industrial and economic development is at a standstill.

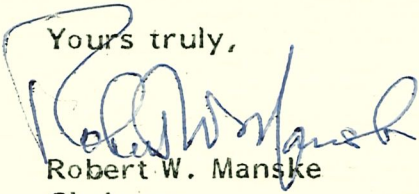
SEKTR, a non-profit tourism organization, has worked to promote region-wide implementation of a 2% transient guest tax since 1982. In the 12-county region to date, the City of Fort Scott and the counties of Woodson, Cherokee, Montgomery and Wilson, and most recently Crawford, have adopted this motel tax, the revenues from which are used solely to promote conventions and tourism. The tax has become a controversial and emotional issue in counties where it is not yet in place, and uniform regional adoption of the tax seems doubtful under the present permissive tax statute.

We believe that current economic conditions dictate that rural Kansas must use every available resource to rebuild a viable, diversified economic base. Tourism is an available, existing industry that brought \$58 million into Southeast Kansas alone in 1985. With the proper promotion, tourism expenditures can be expected to increase through the 1990's, providing a vital boost to economic development in Southeast Kansas and throughout the state. A mandatory, statewide two-percent guest tax will make it possible for our most depressed counties to avail themselves finally of the benefits of a tax that their residents will not have to pay - a tax that local County Commissions have, for some reason, been reluctant to levy.

(ATTACHMENT VIII) LOCAL GO 2/27/87

We ask you, our legislators, to help us become a more effective part of the economic development we know rural Kansas can achieve. Thank you for your consideration.

Yours truly,

A handwritten signature in blue ink, appearing to read "Robert W. Manske", written over a large, stylized blue scribble or flourish.

Robert W. Manske
Chairman
SEKTR Legislative Committee

RWM:ei



Southeast Kansas Tourism Region

P.O. Box 100
Yates Center, Kansas 66783
(316) 625-3559

1987 LEGISLATIVE AGENDA

Resolved this 10th day of January, 1987, by the Executive Committee of Southeast Kansas Tourism Region, Inc. that SEKTR, Inc. effect legislation during the 1987 Legislative Session of the State of Kansas regarding the following concerns:

1. Creation of a mandatory statewide transient guest tax
2. Statutory establishment of tourism regions
3. Establishment of dedicated funding for tourism regions

The Executive Committee further recommends that SEKTR, Inc. acquaint Southeast Kansas legislators with the current status of tourism in SEK and with the above Legislative Agenda at a special Legislative Seminar to be held in Topeka before the end of February, 1987.

RECOMMENDED CHANGES IN K.S.A. 12-1697

12-1697. An act relating to a transient guest tax levied by counties; basis of tax; payment and collection.

(a) In order to provide revenue to promote tourism and conventions, each county shall levy a transient guest tax not less than the rate of two percent (2%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations in any hotel, motel or tourist court. The percentage of such tax shall be determined by the Board of County Commissioners of each county levying the same.

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the State Department of Revenue in the manner prescribed by K.S.A. 12-1698, and the State Department of Revenue shall administer and enforce the collection of such tax.

NEW K.S.A. 12-1698 (e)

(e) All such monies received by the county from the disbursements from the county transient guest tax fund shall be credited to the tourism and convention promotion fund of said county and shall only be expended for convention and tourism promotion. Twenty-five percent (25%) of all such funds collected in each county shall be paid to the respective tourism region pursuant to K.S.A. 12-1699.

NEW K.S.A. 12-1699

(It is recommended that the present K.S.A. 12-1699 be repealed and the following statute adopted to replace it.)

12-1699. There are hereby established five Kansas tourism regions, the boundaries of which have heretofore been designated by the Department of Commerce. The Secretary of the Department of Commerce is hereby empowered to promulgate regulations concerning the withdrawal and addition of counties to the presently established Kansas tourism regions.

It is further recommended that all other statutes concerning the transient guest tax be amended to reflect the appropriate language changes which will be necessary by reason of the creation of a mandatory state-wide transient guest tax, statutory establishment of tourism regions, and the establishment of dedicated funding for tourism regions.

board may accept bequests, gifts, donations or loans of documents, records and articles of historical value or interest for such museum and also bequests, gifts or donations of money or other things of value to be used in carrying out the provisions of this act.

History: L. 1974, ch. 53, § 11; July 1.

12-1692. Promotion of tourism and conventions; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) "Hotel, motel or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than eight (8) bedrooms furnished for the accommodation of such guests;

(c) "Transient guest" means a person who occupies a room in a hotel, motel or tourist court for not more than twenty-eight (28) consecutive days;

(d) "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court.

History: L. 1975, ch. 490, § 1; Feb. 27.

12-1693. Same; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy; election; reduction or increase in rate. (a) In order to provide revenues to promote tourism and conventions, the governing body of any county having a population of more than three hundred thousand (300,000) or the governing body of any city, all or any portion of which is located within such county, is hereby authorized to levy a transient guest tax at not to exceed the rate of two percent (2%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations in any hotel, motel or tourist court. The percentage of such tax shall be determined by the governing body levying

the same and shall be specified in the resolution authorizing the same.

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 12-1694, and the state department of revenue shall administer and enforce the collection of such taxes.

(d) A transient guest tax authorized by this section shall not be levied until:

(1) The governing body of such county has either passed, or has received from the governing body of any city within such county, a resolution calling for an election for approval by the qualified electors of a transient guest tax;

(2) the governing body of the county has notified all of the incorporated cities, all or any portion of which are located within said county, of the intent to call such election. Incorporated cities, all or any portion of which are located within such county, shall have the option to decline participation in such election within thirty (30) days of the date of such notification. The governing body of the county shall have the option to decline participation in such election within the same thirty (30) day period as provided to incorporated cities, in which case individual cities may hold separate elections to submit the proposition to the qualified electors of such city: *Provided*, That such propositions, if approved, would have force only in cities adopting the tax. If the governing body of the county resolves to participate in such election, it shall submit such proposition for approval by the qualified electors of the unincorporated portions of such county and all incorporated cities within such county which have not declined participation in the election; and

(3) the governing body of the county or, if the county declines to hold such election, the governing body of the city, has given

notice of its intention for a proposition for a election in the month of 10-120 for giving issuance of bonds at the time of the elective date of the proposition the votes cast a proposition may r proposition may r conditions and herein. If a major counted on any su thereof, the govern city shall provide of such tax. Any reduction or incre be accomplished herein for the adop tax.

History: L. 1975, ch. 490, § 1; Feb. 27.

12-1694. Same; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy; election; reduction or increase in rate. (a) Any tax levied pursuant to K.S.A. 12-1694 shall be payable by the consumer or user before the last day of the month succeeding the month in which collected, with the file on or before the date specified in the resolution of the governing body which levies the tax. The filing an annual report to the Kansas retailer's association as prescribed in K.S.A. 12-1694, approval of the state department of revenue upon such condition that the revenue may prescribed by this act on the same time he or she pay the tax. Each business shall file with the department of revenue by the secretary of the department information as may be required to determine the amounts of such tax shall apply for all the applicable months. The report shall be accounted closed thereby. Receipts shall be kept in the records of other business in order to

by resolution, for the appointments and terms of service not to exceed four (4) years for such members. The governing body adopting such tax shall have the authority to contract for convention and tourism programs to be implemented.

History: L. 1975, ch. 490, § 4; Feb. 27.

12-1696. Promotion of tourism and conventions; definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Person" means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) "Hotel, motel or tourist court" means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than eight (8) bedrooms furnished for the accommodation of such guests;

(c) "Transient guest" means a person who occupies a room in a hotel, motel or tourist court for not more than twenty-eight (28) consecutive days;

(d) "Business" means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court.

History: L. 1977, ch. 93, § 1; April 2.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," R. Chris Robe, 27 K.L.R. 313, 318 (1979).

12-1697. Same; tax levy by city or county; basis of tax; payment and collection; requirements prior to levy. (a) In order to provide revenues to promote tourism and conventions, the governing body of any county or the governing body of any city is hereby authorized to levy a transient guest tax at not to exceed the rate of two percent (2%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court. The percentage of such tax

shall be determined by the board of county commissioners or the city governing body and shall be specified in the resolution authorizing the same.

(b) Any transient guest tax levied pursuant to this section shall be based on the gross rental receipts collected by any business.

(c) The taxes levied pursuant to this section shall be paid by the consumer or user to the business and it shall be the duty of each and every business to collect from the consumer or user the full amount of any such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each business collecting any of the taxes levied hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 12-1698 and the state department of revenue shall administer and enforce the collection of such taxes.

(d) A transient guest tax authorized by this section shall not be levied until the governing body of such county or city has passed a resolution authorizing the same.

History: L. 1977, ch. 93, § 2; April 2.

12-1698. Same; collection, payment and disposition of transient guest tax; records, inspection; penalty for unpaid tax; administration of tax by secretary of revenue; rules and regulations; disposition of moneys. (a) Any tax levied and collected pursuant to K.S.A. 12-1697 shall become due and payable by the business monthly, on or before the last day of the month immediately succeeding the month in which it is collected, with the first payment due and payable on or before the last day of the month specified in the resolution of the governing body which levies the tax, but any person filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time he or she pays said retailers' sales tax. Each business shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross rental receipts for the applicable month or months, which report shall be ac-

under the provisions of K.S.A. 12-1694, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) If any person fails to make a return, or to pay any tax, within 30 days after notice from the director, except in the case of an extension of time granted by the director, there shall be added to the tax due a penalty equal to 25% of the amount of such tax.

(d) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of K.S.A. 12-1694, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(e) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(f) Whenever, in the judgment of the director, the failure of the taxpayer to comply with the provisions of subsections (b) and (c) was due to reasonable causes and not willful neglect, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(g) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under K.S.A. 12-1693, and amendments thereto, or who makes a false or fraudulent return, or fails to keep any books or records necessary to determine the accuracy of the person's reports, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of the provisions of K.S.A. 12-1692 to 12-1695, inclusive, and amendments thereto, or who aids and abets another in attempting to evade the payment of any tax imposed by K.S.A. 12-1693, and amendments thereto, or who violates any other provision of K.S.A. 12-1692 to 12-1695, inclusive, and amendments thereto, shall, upon conviction thereof, be fined not less than \$100 nor more than \$1,000, or be imprisoned in the county jail not less than one month nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

History: L. 1984, ch. 351, § 2; May 3.

12-1698. Promotion of tourism and conventions; collection, payment and disposition of transient guest tax; administration by secretary of revenue; rules and regulations. (a) Any tax levied and collected pursuant to K.S.A. 12-1697, and amendments thereto, shall become due and payable by the business monthly, on or before the last day of the month immediately succeeding the month in which it is collected, with the first payment due and payable on or before the last day of the month specified in the resolution of the governing body which levies the tax, but any person filing an annual or quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time such person pays the retailers' sales tax. Each business shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross rental receipts for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross rental receipts shall be kept separate and apart from the records of other retail sales made by a business in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a business as may be necessary to determine the accuracy of such reports.

(c) The secretary of revenue is hereby authorized to administer and collect any transient guest tax levied pursuant to this act and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any business liable to pay any transient guest tax refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto. All of the taxes collected under the provisions of this

act shall be paid into the state treasury daily by the secretary of revenue, and the state treasurer shall place 2% of all taxes so collected in the state general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of such taxes shall be credited to the county or city transient guest tax fund, which fund is hereby established. All moneys in the county or city transient guest tax fund shall be remitted at least quarterly by the state treasurer to the county or city treasurer of each county or city levying a transient guest tax under the provisions of this act in the proportion, as certified by the director of taxation, that the amount collected from such tax in each such county or city bears to the total amount collected from such taxes in all counties or cities for the period covered by the distribution.

(d) All such moneys received by the county or city treasurer from disbursements from the county or city transient guest tax fund shall be credited to the tourism and convention promotion fund of such county or city and shall only be expended for convention and tourism promotion.

History: L. 1977, ch. 93, § 3; L. 1984, ch. 351, § 3; July 1.

12-1698a. Interest and penalties for failure to pay or untimely payment of transient guest tax. From and after July 1, 1984, (a) if any taxpayer shall fail to pay the tax levied pursuant to K.S.A. 12-1697, and amendments thereto, at the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) If any person fails to make a return, or to pay any tax, within 30 days after notice from the director, except in the case of an extension of time granted by the director,

there shall be added to the tax due a penalty equal to 25% of the amount of such tax.

(d) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of K.S.A. 12-1698, and amendments thereto, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(e) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(f) Whenever, in the judgment of the director, the failure of the taxpayer to comply with the provisions of subsections (b) and (c) was due to reasonable causes and not willful neglect, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(g) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under K.S.A. 12-1697, and amendments thereto, or who makes a false or fraudulent return, or fails to keep any books or records necessary to determine the accuracy of the person's reports, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of the provisions of K.S.A. 12-1696 to 12-16,101, inclusive, and amendments thereto, or who aids and abets another in attempting to evade the payment of any tax imposed by K.S.A. 12-1697, and amendments thereto, or who violates any other provision of K.S.A. 12-1696 to 12-16,101, inclusive, and amendments thereto, shall, upon conviction thereof, be fined not less than \$100 nor more than \$1,000, or be imprisoned in the county jail not less than one month nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

History: L. 1984, ch. 351, § 4; May 3.

12-16,102. Employee benefits contribution fund in certain taxing subdivisions; tax levy; use of proceeds. (a) Except as provided in this section, "taxing subdivision" means any city, county, township, community junior college district or other political

subdivision of authority to levy property. A subdivision created for the purpose of making a mission.

(b) Any tax levied and established for the purpose of creating a fund for (2) any political subdivision is levied by such subdivision for the purpose of paying any employee salaries, wages, or benefits of such employees under the ordinance of the governing body creating the fund. A subdivision may create a fund for any purpose other than the purposes stated in this section, but the proceeds of tax levied for such purposes shall be used for such purposes.

(c) The governing body of a subdivision having a benefits fund hereby authorized upon all taxable property within the subdivision, the tax levied thereon shall be used for the purposes for which the fund was created. The principal and interest on any debt incurred under the authority of amendments to the constitution of the county. Tax levied pursuant to this section shall be limited to the limit of 5001 to 79-5001 amendments thereto, that such taxes if levied as a special tax shall be specifically exempted from the limit.

History: L. 1963, § 3; L. 1965, § 1; July 1.

12-16,103. Any tax levied for the purpose of financing a realty; sale of property by a governing body of a subdivision for the purpose of condemnation, the underlying property in which it holds an interest in order to merge with the estate.

accompanied by the tax disclosed thereby. Records of gross rental receipts shall be kept separate and apart from the records of other retail sales made by a business in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a business as may be necessary to determine the accuracy of such reports.

(c) For each and every month, or any part thereof, any tax provided for by this act remains unpaid after the same becomes due and payable by the business, there shall be added to such tax, as a penalty, ten percent (10%) of the amount of such tax for the first month or any part thereof the same is unpaid, and for each and every month thereafter, two percent (2%) of the amount of such tax shall be added until the same is fully paid. In no case shall the total penalty exceed thirty percent (30%) of said tax.

(d) The secretary of revenue is hereby authorized to administer and collect any transient guest tax levied pursuant to this act and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any business liable to pay any transient guest tax refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto. All of the taxes collected under the provisions of this act shall be paid into the state treasury daily by the secretary of revenue, and the state treasurer shall place two percent (2%) of all taxes so collected in the state general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of said taxes shall be credited to the "county or city transient guest tax fund," which fund is hereby established. All moneys in the county or city transient guest tax fund shall be remitted at least quarterly by the state treasurer to the county or city treasurer of each county or city levying a transient guest tax under the provisions of this act in the proportion, as certified by the director of taxation, that the

amount collected from said tax in each such county or city bears to the total amount collected from said taxes in all counties or cities for the period covered by the distribution.

(e) All such moneys received by the county or city treasurer from disbursements from the county or city transient guest tax fund shall be credited to the "tourism and convention promotion fund" of said county or city and shall only be expended for convention and tourism promotion.

History: L. 1977, ch. 93, § 3; April 2.

12-1699. Same; levy of tax prohibited, when. No county shall levy a transient guest tax within the corporate limits of any city in such county where a transient guest tax is being levied and collected according to law. No city located within a county where a transient guest tax is being levied and collected according to law shall levy any such tax.

History: L. 1977, ch. 93, § 4; April 2.

12-16,100. Same; transient guest tax refund fund. There is hereby established in the state treasury the "transient guest tax refund fund" which shall be used for the payment of refunds of the transient guest tax which is levied and collected pursuant to this act. The transient guest tax refund fund shall be held by the state treasurer for prompt refunding of all transient guest tax overpayments. Said fund shall be maintained by the secretary of revenue from the transient guest tax collections in an amount determined by the secretary of revenue as necessary to meet the current refunding requirements for the transient guest tax under this act but such amount shall not exceed five thousand dollars (\$5,000).

History: L. 1977, ch. 93, § 5; April 2.

12-16,101. Same; convention and tourism committee; appointment; terms; contracts and programs. The governing body of any city or county which levies a transient guest tax pursuant to this act shall establish a convention and tourism committee to make recommendations concerning the programs and expenditures for promotion of conventions and tourism. Such board of county commissioners or city governing body shall appoint ten (10) members to such committee, a majority of which shall be rep-



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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January 28, 1982

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ATTORNEY GENERAL OPINION NO. 82- 17

The Honorable August Bogina, Jr., P.E.
Kansas State Senator
13513 West Ninetieth Place
Lenexa, Kansas 66215

Re: Cities and Municipalities--Home Rule Powers--
Charter Ordinances

Synopsis: The provisions of the transient guest tax act, K.S.A. 1980 Supp. 12-1696 et seq., are non-uniform in application to cities and hence are subject to charter ordinance pursuant to Article 12, Section 5 of the Kansas Constitution. However, after having exempted itself from the provisions of a non-uniform state statute, a city may not impose administrative duties upon a state agency. Cited herein: K.S.A. 1980 Supp. 12-1696, 12-1697, 12-1699, 12-16,101; Kan. Const., Art. 12, §5.

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Dear Senator Bogina:

You have requested our opinion as to the legality and validity of Charter Ordinance No. 16 of the city of Lenexa, Kansas. Said ordinance, which is attached hereto as Exhibit "A," exempts the city of Lenexa from the provisions of K.S.A. 1980 Supp. 12-1696, 12-1697, 12-1698, and 12-16,101 and provides substitute and additional provisions relating to the levy of a transient guest tax for tourism and conventions. You specifically question the legality of the city of Lenexa imposing said tax at a rate not to exceed six percent, as is permissible under section 3 of the charter ordinance, and the use of the tax levy, under section 11 of the ordinance, to retire existing bonds for

(ATTACHMENT IX) LOCAL GO. 2/27/87

The Honorable August Bogina, Jr., P.E.

Page Two

"community centers, parks, or recreational facilities," and "to defray the cost of providing municipal services to convention and tourism functions, such as, but not limited to, police, fire, street department or park and recreation departments."

Article 12, Section 5(c)(1) of the Kansas Constitution provides as follows:

"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city." (Emphasis added.)

In City of Junction City v. Griffin, 227 Kan. 332 (1980), the Kansas Supreme Court observed the following test regarding uniform applicability:

"The grant of home rule power to cities under Article 12, §5 of the Kansas Constitution has therefore added a new dimension to be considered in determining whether the legislature has occupied a field. Legislative intent to preempt a field is alone insufficient. It is now necessary to examine the provisions of the State enactment to determine whether the constitutional standard of uniform application to cities has been met. If not uniform, legislative intent as expressed within the enactment will not overcome the constitutional requirement for uniform application.

. . . .

"Regardless of whether an enactment of the State legislature addresses a matter of statewide or a matter of local concern, a city may in either case act by charter ordinance to exempt itself from all or part of the enactment unless the State enactment applies uniformly to all cities." Id. at 336-337.

The Honorable August Bogina, Jr., P.E.
Page Three

In Griffin, the Kansas Supreme Court also held that Section 5(d) of the Home Rule Amendment requires a liberal construction of the powers and authority granted cities for the purpose of giving cities the largest measure of self-government. Id., Syllabus No. 1.

In accordance with these pronouncements of the court, the Lenexa ordinance is valid unless the 1977 transient guest tax act, K.S.A. 1980 Supp. 12-1696 et seq., applies uniformly to all cities. In this regard, it should be noted that K.S.A. 1980 Supp. 12-1697(a) authorizes the governing body of any city to levy a transient guest tax at not to exceed the rate of 2% upon the gross receipts derived from or paid by transient guests for sleeping accommodations in any hotel, motel, or tourist court. However, another section of the 1977 Act, K.S.A. 1980 Supp. 12-1699, provides, in part, that "no city located within a county where a transient guest tax is being levied and collected according to law shall levy any such tax."

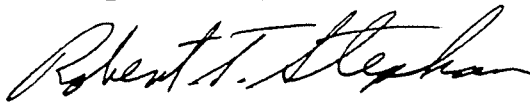
Therefore, cities located within the subject three counties are prohibited from levying a transient guest tax under the 1977 Act, whereas all other cities are permitted to levy such a tax. Under such circumstances, it is our opinion that the 1977 transient guest tax act, K.S.A. 1980 Supp. 12-1696 et seq., is not uniformly applicable to all cities, and that a city may, in accordance with the Home Rule Amendment, exempt itself from any part of said act. As a factual matter, we are advised that there are currently three counties (Finney, Geary, and Reno) in which county-wide transient guest taxes are being levied and collected.

Having concluded that a city may exempt itself in whole or in part from the provisions of K.S.A. 1980 Supp. 12-1696 et seq., it follows that sections 3 and 11 of Charter Ordinance No. 16 of the city of Lenexa, Kansas, constitute a valid exercise of the city's power of home rule under Article 12, Section 5(c)(1) of the Kansas Constitution. Said sections prescribe substitute provisions relating to the levy of a transient guest tax under the 1977 Act, as is specifically authorized under subsection (c)(2) of the Home Rule Amendment. However, we note that section 7 of the ordinance attempts to impose the responsibility for collection of the city tax upon the State Department of Revenue. Having exempted itself from the statute which authorizes a state agency to collect the transient guest tax, the city is not free to impose similar burdens on a state agency. Simply stated, state agencies are creatures of the state legislature, and cities, even in the exercise of their extensive home rule powers, lack authority to impose administrative duties on state agencies, as such is not a matter of local concern within the meaning of Article 12, Section 5.

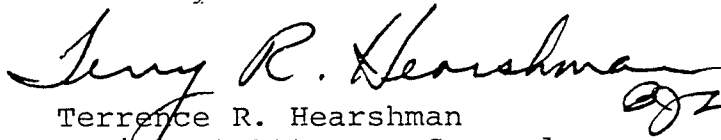
The Honorable August Bogina, Jr., P.E.
Page Four

Therefore, in our judgment the provisions of the transient guest tax act, K.S.A. 1980 Supp. 12-1696 et seq., are non-uniform in application to cities and hence are subject to charter ordinance pursuant to Article 12, Section 5 of the Kansas Constitution. However, after having exempted itself from the provisions of a non-uniform state statute, a city may not impose administrative duties upon a state agency.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm