

Approved 3-16-1987
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

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

9:11 a.m./~~xxx~~ p.m. on March 6, 1987 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Arden ~~Ensley~~, Emalene Correll and Lila McClaflin

Conferees appearing before the committee:

Steve Wiechmann, Kansas Automotive Dismantlers and Recyclers Association, Topeka, Ks.
Joseph Krahn, Kansas Department of Transportation, Topeka, Ks.
Robert Elliott, State Corporation Commission, Topeka, Ks.
Jerry Coonrod, Kansas Gas and Electric Company

S.B. 321 - Relating to county and district appraisers; concerning powers and duties. Staff reviewed the bill and stated it was a cleanup measure. It could probably be put on the Consent Calendar.

The Committee was of the opinion the bill was noncontroversial in nature. Senator Mulich moved to pass S.B. 321 and have it placed on the Consent Calendar. The motion was seconded by Senator Ehrlich. The motion carried.

The hearing was opened on S.B. 311. S.B. 311 would amend the junkyard and salvage act; requiring a certificate of compliance.

Steve Wiechmann gave some background information concerning the recycling business and explained why they had requested the bill. (ATTACHMENT I) He suggested the bill be amended. A copy of that amendment is (ATTACHMENT II).

Joseph Krahn stated the amendment was only cleanup language, and they had no problem with the bill or the suggested amendment.

Senator Mulich moved to adopt the amendment. The motion was seconded by Senator Gaines. The motion carried. Senator Mulich moved to report S.B. 311 favorably as amended. The motion was seconded by Senator Ehrlich. The motion carried.

S.B. 333 - Concerning public utilities; relating to retail electric suppliers.

Robert Elliott, State Corporation Commission, was present and responded to questions from members of the Committee.

Jerry Coonrod stated this could be important legislation to protect their territory.

A balloon suggesting amendments to the bill was presented. Senator Gaines moved to adopt the amendments. (ATTACHMENT III). The motion was seconded by Senator Ehrlich. The motion carried. Senator Gaines moved S.B. 333 be passed as amended. The motion was seconded by Senator Mulich. The motion carried.

S.B. 171 - Relating to the abatement of nuisances.

A letter was distributed to the Committee from Marla J. Howard, City of Wichita, she suggested several amendments that they felt were necessary in S.B. 171. The amendments were discussed by the Committee. Ms. Howard's letter is (ATTACHMENT IV). of these minutes.

CONTINUATION SHEET

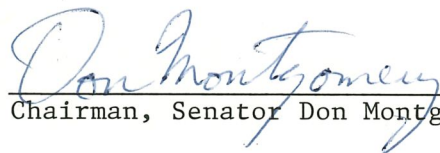
MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,
room 545-N, Statehouse, at 9:11 a.m./~~pm~~ on March 6, 1987.

Senator Daniels moved to accept the proposed amendments. The motion was seconded by Senator Gaines. The motion carried.

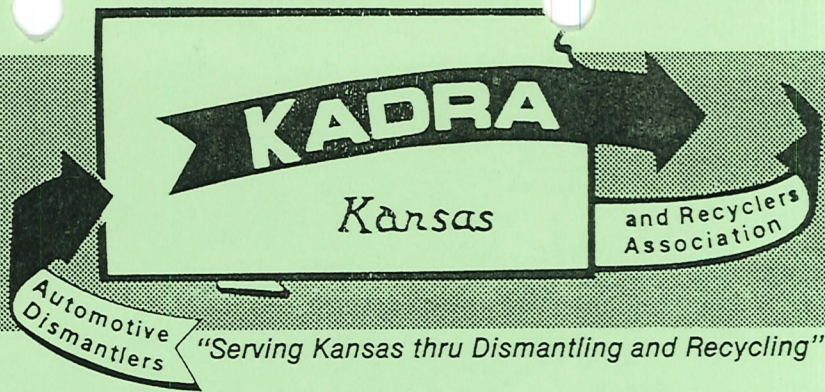
Senator Mulich moved to pass as amended S.B. 171. The motion was seconded by Senator Daniels. The motion carried.

Senator Gaines moved to adopt the minutes of March 4, 1987. The motion was seconded by Senator Ehrlich. The motion carried.

The next meeting will be March 9, 1987, the meeting adjourned at 10:00 a.m.



Chairman, Senator Don Montgomery



SENATE COMMITTEE ON LOCAL GOVERNMENT

March 6, 1987

SENATE BILL NO. 311

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I am Steven R. Wiechman, representing the Kansas Automotive Dismantlers and Recyclers Association. K.A.D.R.A. wishes to express our appreciation for allowing us to appear in support of SB 311.

This bill was requested to be introduced by the Committee on Transportation and Utilities based upon a belief that the amendments address concerns of the salvage vehicle industry.

As a matter of background, salvage vehicle dealers are subject to licensing requirements by the Department of Revenue and the Department of Transportation. The Department of Revenue issues what is commonly known as the salvage vehicle dealer license. This license entitles the holder to operate a salvage vehicle business, buying used or new vehicles and dismantling them for the purpose of selling the parts and converting the remaining portion to scrap metal. In addition to this requirement, a salvage dealer must also obtain what is presently referred to as a license from the Department of Transportation. The use of the term "license" imparts a misbelief that it entitles a person to do some act. Presently, the license is called a "Salvage Storage License." To obtain this license a person need only to indicate to the Department of

Transportation that he is storing ten (10) or more vehicles or is participating in any one of a laundry list of activities found in K.S.A. 68-2201; this includes dealing in rags, rubber, ferrous and nonferrous metals, as well as, other items. In addition, a person who operates a tow truck service and will store vehicles for a period of time is required to have this license. The Department of Transportation administers the "Junkyard and Salvage Control Act" which came about as a result of what has been sometimes affectionately referred to as the "Lady Bird Johnson Beautification Act." The Federal government used certain incentives and restrictions for state government compliance.

Presently, the Department of Transportation can and does issue the Salvage Storage License without approval of local governments. Sometimes, local governments either do not have requirements or do not issue their zoning approval. When this occurs, the DOT will issue the salvage control license and then cancel it should they receive an objection from local authority.

The problem which we are attempting to address arises from a situation which follows this scenario: A tow truck operator determines that he wishes to start a towing service, storing disabled vehicles until they can be claimed by an owner. The city or county government issues a zoning approval upon the representation by the owner of the tow truck service of his business activity. With this local zoning approval, he applies to the Department of Transportation for a salvage storage license which the Department of Transportation issues if he is in compliance with

certain screening requirements or has on file a plan for coming into compliance with the DOT requirements. After he receives the salvage storage license, he then decides that since he is storing certain disabled vehicles which have not been claimed or for which he receives title in return for the tow bill, that it would be convenient and profitable for him to commence doing business as a salvage yard. He may, or may not, apply to the Division of Vehicles for a salvage dealer license for which he shows the prior zoning approval for the storage of disabled vehicles. The Division of Vehicles then issues the dealer license and he proceeds with doing business as a salvage dealer, contrary to the local laws and ordinances. Now local government is faced with legal proceedings to attempt to eliminate the salvage yard operation as a nuisance but faces the problem of overburdened and inexperienced county or district attorneys, as well as, courts who have difficulty distinguishing the implication of the licenses issued by two difference state agencies.

As you can see, what starts as a simple licensing and compliance requirement escalates into litigation and sometimes major battles for local government, as well as, causing a blackeye and anger by salvage dealers who have met all of the requirements for both state and local government.

To address this situation, we requested, as shown in SB 311, that the word "license" be changed to "certificate of compliance." These words were suggested by the Department of Transportation and we believe more accurately reflect the nature of the requirement of

the Junkyard and Salvage Control Act. We believe that this will contribute to the ease, understanding and distinction between the requirements of the Department of Transportation and the Department of Revenue.

In addition, the substantive change in the law is reflected on Line 36. This substantive change creates an orderly process and a sequential procedure for obtaining licenses from both the state departments. Line 36 provides that a certificate of compliance cannot be issued by the Secretary of Transportation until an approval has been received by a city or county governing body.

In order to completely carry out the intent of the amendment additional words need to be added. On Line 36, before the word "application" add the word "initial;" at the end of the new language in Line 38 add "if such approval is required by the local governing body." This language addresses the situation where there are no local zoning requirements for any activity covered by the beautification law and addresses the concern of the Department of Transportation.

In addition, this committee could also require that local government specify in the initial zoning approval the kind of business activity in which the applicant for the certificate of compliance may engage at the approved location. However, this could be left to the discretion of the local authority.

By requiring a certification of zoning approval before the initial issuance of a certificate of compliance with the Junkyard and Salvage Control Act, local governments can control what kinds of

activities they are approving for the business location; and it will cause one loop hole in the requirements to be at least reduced and hopefully eliminated.

If there are any questions, I will be happy to attempt to address them.

Respectfully submitted,

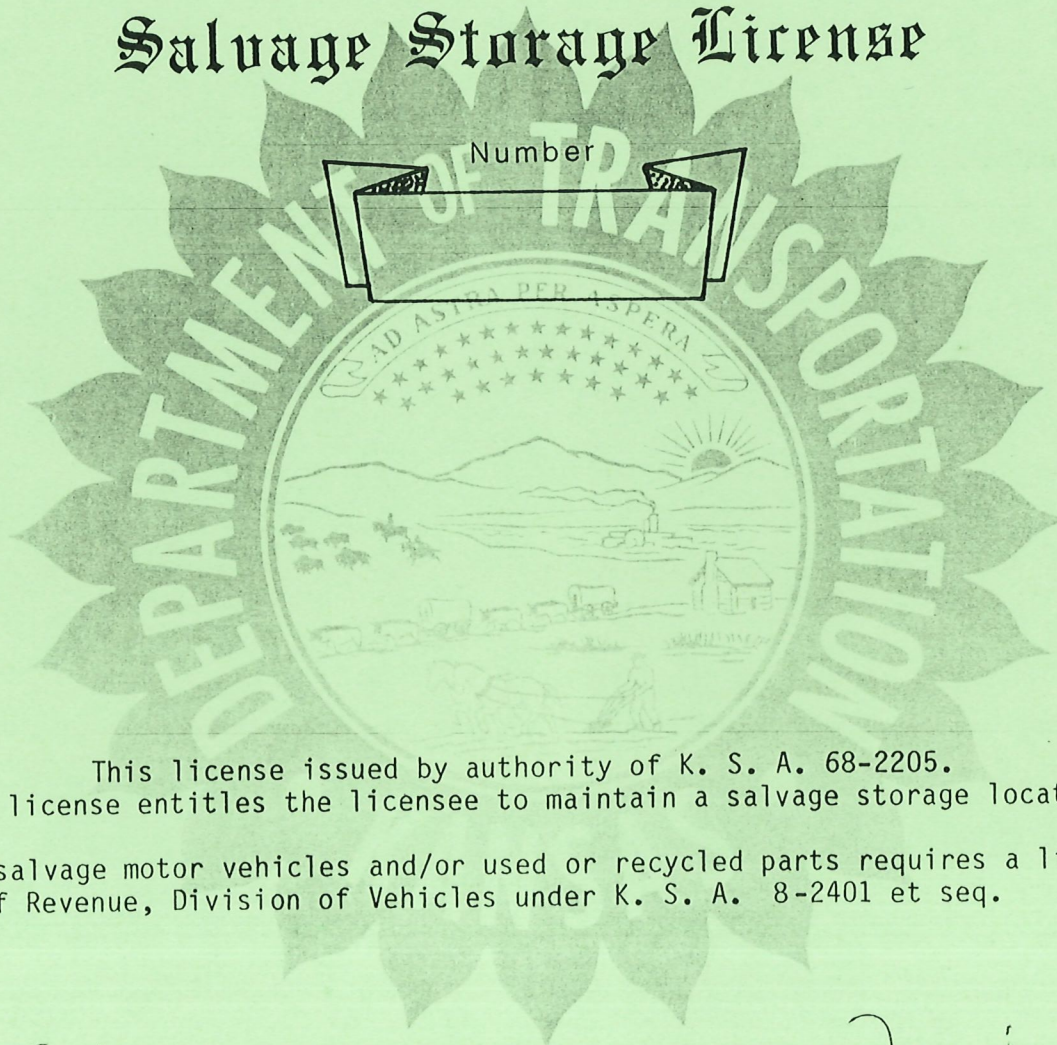
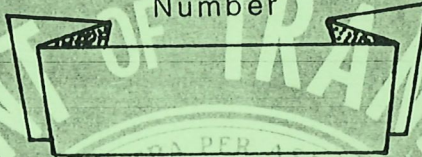
STEVEN R. WIECHMAN
Legislative Counsel for
Kansas Automotive Dismantlers and
Recyclers Association

1987

State of Kansas

Salvage Storage License

Number



This license issued by authority of K. S. A. 68-2205.
This license entitles the licensee to maintain a salvage storage location.

Dealing in used or salvage motor vehicles and/or used or recycled parts requires a license issued by the Kansas Department of Revenue, Division of Vehicles under K. S. A. 8-2401 et seq.

William L. Menden

Salvage Control Administrator

Joseph Krain

Chief of Bureau of Right of Way

MR. PRESIDENT:

Your Committee on Local Government

Recommends that Senate Bill No. 311

"AN ACT amending the junkyard and salvage control act; requiring a certificate of compliance; amending K.S.A. 68-2205 and 68-2207 and K.S.A. 1986 Supp. 68-2213 and repealing the existing sections."

Be amended:

On page 1, in line 36, preceding the word "application" by inserting "initial"; in line 38, preceding the period, by inserting "if such approval is required by the local governing body";

And the bill be passed as amended.

Chairperson

(ATTACHMENT II) 3/6/87 Local Go.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Local Government

Recommends that Senate Bill No. 333

"AN ACT concerning public utilities; relating to retail electric suppliers; amending K.S.A. 12-811 and repealing the existing section."

Be amended:

On page 1, in line 21, by striking "New"; in line 29, by striking the word "in" and inserting ". Such compensation shall be an amount mutually agreed upon by the affected parties or";

On page 2, in line 69, by striking ", but in no case fewer than five"; in line 82, by striking all after the period;

On page 3, by striking all of lines 83 to 119, inclusive;

On page 4, by striking all of lines 120 to 156, inclusive;

On page 5, by striking all of lines 157 to 169, inclusive; in line 170, by renumbering section 4 as section 2;

In the title, in line 18, by striking all after the semicolon; in line 19, by striking the word "section" and inserting in lieu thereof "concerning the termination of service rights";

And the bill be passed as amended.

Chairperson

3/6/87

SENATE BILL No. 333

By Committee on Assessment and Taxation

2-24

0017 AN ACT concerning public utilities; relating to retail electric
0018 suppliers; ~~amending K.S.A. 12-811 and repealing the existing~~
0019 ~~section.~~

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. (a) When the service rights of a retail electric
0022 supplier are terminated by a city during the period in which a
0023 valid franchise is in effect and the service rights are assumed by
0024 the terminating city, the governing body of the city shall acquire
0025 from the terminated supplier the parts of the local electric
0026 distribution system necessary to serve all customers within the
0027 previously franchised area and the terminated supplier shall sell
0028 the system to the governing body of such city for which it shall
0029 be fairly compensated ~~in~~ an amount determined by the following
0030 formula:

. Such compensation shall be an amount mutually agreed upon by the affected parties or

0031 (1) The depreciated replacement cost for the electric utility
0032 facilities in the territory in which the service rights have been
0033 terminated. As used in this paragraph, "depreciated replacement
0034 cost" means the original installed cost of the facilities, adjusted
0035 to present value by utilizing a nationally recognized index of
0036 utility construction costs, less accumulated depreciation based
0037 on the book depreciation rates of the selling utility, as filed with
0038 and approved by the state corporation commission, which are in
0039 effect at the time of acquisition;

0040 (2) the depreciated replacement costs of the remaining pro-
0041 portion of any take or pay power contracts or participation power
0042 agreements;

0043 (3) the depreciated replacement cost for the electric utility
0044 facilities outside the affected territory used in providing service
0045 to the formerly franchised area. Such facilities shall include all

0046 generation facilities and all transmission facilities throughout the
0047 terminated utility's integrated system, the value of which shall
0048 be determined by the depreciated replacement cost formula in
0049 paragraph (1) multiplied by the percentage of the terminated
0050 utility's total retail kilowatt-hour sales to customers in the af-
0051 fected area during the 12 months next preceding the effective
0052 date of the sale;

0053 (4) all reasonable and prudent costs of detaching the electric
0054 system facilities to be sold, including the reasonable costs of
0055 studies and inventories made to determine the facility's value
0056 and all reasonable and prudent costs of reintegrating the re-
0057 maining electric system facilities of the retail electric supplier
0058 whose service rights are terminated;

0059 (5) an amount equal to the net revenues received during the
0060 12 months next preceding the date of termination of the service
0061 rights from the customers within the affected area of the retail
0062 electric supplier whose service rights are terminated. As used in
0063 this paragraph, "net revenues" means the total revenues re-
0064 ceived by the terminated utility for electric service within the
0065 affected area less franchise and sales taxes collected; the cost of
0066 fuel or purchased power recovered in the revenues; and labor,
0067 maintenance, administration and insurance. This number shall
0068 be multiplied by the number of years remaining in any franchise
0069 contract, ~~but in no case fewer than five~~, and

0070 (6) an amount equal to the state and federal tax liability
0071 created by the taxable income pursuant to the provisions of this
0072 paragraph and paragraphs (1), (2), (3), (4) and (5) by the retail
0073 electric supplier whose service rights are terminated, calculated
0074 without regard to any tax deductions or benefits not related to the
0075 sale of assets covered herein.

0076 (b) If the parties are unable to agree upon the amount of
0077 compensation to be paid pursuant to this act after 60 days
0078 following the date of termination of service rights, either party
0079 may apply to the district court having jurisdiction where any
0080 portion of the facilities is located for determination of compen-
0081 sation. Such determination shall be made by the court sitting
0082 without a jury. ~~The court shall use the formula provided in~~

0083 ~~subsection (a) when making its determination of compensation.~~
0084 ~~Sec. 2. K.S.A. 12-811 is hereby amended to read as follows:~~
0085 ~~12-811. (a) Except as provided in subsection (b), in any city~~
0086 ~~wherein in which the franchise of a corporation supplying water,~~
0087 ~~natural or artificial gas, electric light or power, heat, or operating~~
0088 ~~a street railway, has expired or will expire before the completion~~
0089 ~~of the proceedings contemplated by this section, unless an ear-~~
0090 ~~lier date is fixed by the franchise, the governing body may, by~~
0091 ~~resolution, may declare it necessary and for the interest of such~~
0092 ~~city to acquire control and operate any such plant. Upon the~~
0093 ~~passage of such resolution an application may be presented in~~
0094 ~~writing to the district court of the county in which such city is~~
0095 ~~located, which shall set forth the action of the said city relative~~
0096 ~~thereto, and a copy of the resolution so passed by the city, and~~
0097 ~~praying for the appointment of commissioners to ascertain and~~
0098 ~~determine the value of such plant.~~
0099 ~~Thereupon a time shall be fixed for the hearing thereof, of~~
0100 ~~which either at least ten 10 days' notice shall be given in writing,~~
0101 ~~or at least thirty 30 days' notice shall be given by publication~~
0102 ~~once in the official city paper, to the person, company or corpo-~~
0103 ~~ration owning said the plant and to all persons having or claiming~~
0104 ~~liens on such property; Provided, That. Publication in the city~~
0105 ~~paper shall not be made until an affidavit has been filed showing~~
0106 ~~that actual service of notice cannot be made and that a diligent~~
0107 ~~effort has been made to obtain such service, and said the court~~
0108 ~~shall make an order granting such application, and provide for~~
0109 ~~the appointment and selection of three commissioners, one of~~
0110 ~~whom shall be selected by the city; and; one by the person,~~
0111 ~~company; or corporation owning such plant; and the third one~~
0112 ~~shall be designated by the judge of the court, who and shall be an~~
0113 ~~expert engineer; and the said. The commissioners shall take an~~
0114 ~~oath to faithfully, honestly and to the best of their skill and~~
0115 ~~ability appraise and ascertain the fair cash value of said the plant~~
0116 ~~and the appurtenances thereunto belonging or in any way ap-~~
0117 ~~pertaining to same; but. In the determination of such value said,~~
0118 ~~the commissioners shall not take into account the value of the~~
0119 ~~franchise or contract given or granted by said the city to such~~

0120 ~~person, company or corporation.~~
0121 The ~~said~~ commissioners shall carefully examine ~~said the~~ plant
0122 ~~and~~ may examine experts and persons familiar with the cost,
0123 construction and reproduction cost of such plant; and *may* resort
0124 to any other means by which they may arrive at the value thereof;
0125 ~~and~~. The city or the person, company or corporation owning such
0126 plant may produce such testimony before ~~said the~~ commission-
0127 ers as in their judgment seems necessary and desirable. ~~Said~~ The
0128 commissioners shall make their report in writing under oath and
0129 file the same with the clerk of the district court. Each party shall
0130 have ~~ten~~ 10 days from the filing of ~~said the~~ report to file excep-
0131 tions thereto. Thereupon at a time to be fixed by the court, of
0132 which each party shall have ~~ten~~ 10 days' notice in writing, a
0133 hearing shall be had upon the ~~said~~ report and the exceptions
0134 thereto, and the court thereupon shall confirm, reject or modify
0135 ~~said the~~ report, and its decision therein shall be a final order from
0136 which an appeal may be taken to the supreme court. If any city,
0137 by a majority vote of the electors voting upon the proposition at
0138 an election called and held according to *the general election* law,
0139 shall elect to take the property at the amount so ascertained, the
0140 governing body is hereby authorized to enact a proper ordinance
0141 providing for the issue of bonds according to law to be sold and
0142 the proceeds thereof used for the purchase of such plant.
0143 If the city elects to pay the award of ~~said the~~ commissioners as
0144 approved by the district court it may do so at any time within six
0145 months from the date of final order of the district court on the
0146 report of the commissioners if no appeal to the supreme court be
0147 taken, or from the final judgment in case thereafter an appeal is
0148 determined, by paying the amount of the award to the clerk of
0149 the district court, and thereupon the title, right and possession of
0150 such plant and appurtenances shall vest absolutely in the city
0151 and the city shall have the right to enter into and take possession
0152 thereof. The court shall make all orders necessary to protect such
0153 city in the possession of the property and plant. When the
0154 purchase money is paid into court for such plant, it shall be paid
0155 out only upon the order of the court. If there are any liens or
0156 ~~encumbrances upon such plant, the nature and extent thereof~~

0157 ~~shall be ascertained by the court after fixing a time for the~~
0158 ~~hearing, of which all parties in interest shall have sufficient~~
0159 ~~notice. The ascertained liens and encumbrances shall first be~~
0160 ~~paid out of the said fund and the balance to the person, company~~
0161 ~~or corporation owning such plant.~~

0162 ~~(b) If the service rights of a retail electric supplier are~~
0163 ~~terminated upon the expiration of a valid franchise and the city~~
0164 ~~elects to acquire from the terminated supplier the parts of the~~
0165 ~~local electric distribution system necessary to serve all custom-~~
0166 ~~ers within the previously franchised area, the city shall com-~~
0167 ~~pensate the terminated supplier in an amount determined by the~~
0168 ~~formula provided in section 1.~~

0169 ~~Sec. 3. K.S.A. 12-811 is hereby repealed.~~

0170 ~~Sec. 4. This act shall take effect and be in force from and~~ {2
0171 ~~after its publication in the Kansas register.~~

March 4, 1987

Senator Montgomery,

I believe the amendments to SB 171, Abatement of Nuisances, included in the attached letter resolve the problems discussed on this bill in Local Government last week. Norma Daniels suggested I give you a copy of this and also let you know that legislative staff are of the opinion that restricted mail is the correct term to use. I would appreciate it if you could bring this bill before the committee for a vote this week. Would you let me know if that will be a problem, or if you need any additional information? I can be reached at 234-5500. Thank you.



Marla J. Howard
City of Wichita

(ATTACHMENT IV) LOCAL GO 3/6/87

THE CITY OF WICHITA

JOHN DEKKER, Director of Law and City Attorney
JOE ALLEN LANG, Assistant City Attorney



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

March 2, 1987

Senator Norma Daniels
Statehouse
Topeka, Kansas 66612

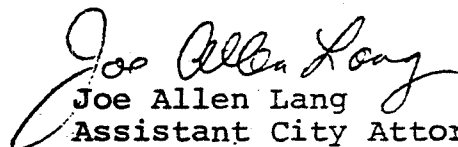
Re: Senate Bill 171 -
Abatement of Nuisances

Dear Senator Daniels:

I discussed with you on Friday, February 27, concerns raised by the Committee over certain language in SB 171. We have no objection to the changes you discussed if it would help the chances of this bill.

These changes would be the deletion of the last sentence of the first paragraph (power to define nuisance), deletion of "occupant" in line 50, and substitution of another description of "restricted mail." Please let us know if we can provide any more information.

Very truly yours,


Joe Allen Lang
Assistant City Attorney

JAL:kj

cc: Marla Howard
Thomas R. Powell

MR. PRESIDENT:

Your Committee on Local Government

Recommends that Senate Bill No. 171

"AN ACT concerning cities; relating to the abatement of nuisances; amending K.S.A. 1986 Supp. 12-1617e and repealing the existing section."

Be amended:

On page 1, in line 36, by striking all after the period; by striking all of lines 37 to 40, inclusive;

On page 2, in line 50, by striking ", occupant"; in line 53, by striking ", occupant"; in line 58, by striking ", occupant";

. And the bill be passed as amended.

Chairperson