Approved Ivan Sand
Date 2/9/88

MINUTES OF THE House COMMITTEE ON Local Government.

The meeting was called to order by Representative Ivan Sand
Chairperson
at

1:30 ~~a.m.~~/p.m. on February 3, 1988 in room 521-S of the Capitol.

All members were present except:

Representative Miller, Excused
Representative Larkin, Absent

Committee staff present:
Mike Heim, Legislative Research Dept.
Bill Edds, Revisor of Statutes' Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Jim Kaup, Kansas League of Municipalities
Joe Snell, Kansas Historical Society

The minutes of January 26, January 27 and January 28, 1988 were approved.

A motion was made by Representative Bowden and seconded by Representative Baker to approve and send to the Consent Calendar HB 2664. The motion carried.

Jim Kaup testified on HB 2698, stating that this bill eliminates the potential mayor vs. council disputes that might erupt due to AGO No. 87-115 by providing that when sitting as the acting mayor, the council president has all the power and authority given by law to the mayor except the statutory power to appoint city officers. He also stated that this bill would clarify revelant statutes for second and third class cities. (Attachment 1)

Representative Sand closed the hearing on HB 2698.

Jim Kaup testified on HB 2699, stating that it is intended to provide some physical limitation upon the statutory phrase "environs of (historic) property" as used in the Historic Preservation Act. He also stated that this bill provides a simple, workable remedy to the problem by amending K.S.A. 75-2716 to provide a definition for the term "environs" that is precise enough to let a unit of local government know when a project or activity it is about to undertake involves the "environs" of "historic property," thereby triggering the duty to notify the Historic Society. (Attachment 2)

Joe Snell testified on HB 2699, stating that the Kansas State Historical Society is concerned about the restrictive limitation of the proposed definition of "environs" in HB 2699. (Attachment 3)

Representative Sand closed the hearing on HB 2699.

The meeting adjourned.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE FEB. 3, 1988

NAME	ADDRESS	REPRESENTING
JOSEPH W. SNELL	120 W. 10th	STATE HISTORICAL SOCIETY
JOHN C. IRWIN	Forbes Field	Dept. of Health & Environment
Richard Pankratz	120 W. 10th	State Hist. Soc.
Alan E. Sims	8500 Santa Fe, Overland Park	City of Overland Park
Jim Kaup	Topeka	League of Municipalities

League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Sand and Members,
House Local Government Committee

FROM: Jim Kaup, General Counsel

RE: HB 2698; Amending Statutes for Elected and Appointive City Officers

DATE: February 3, 1988

The purpose of HB 2698 is to clarify two separate questions of municipal law raised by a single Attorney General's opinion issued last August (AGO No. 87-115). The bill was introduced by this Committee at the request of the League, and enactment of HB 2698 is supported by the League's convention-adopted Statement of Municipal Policy.

(1) Powers of Council Presidents. AGO No. 87-115 opined that K.S.A. 14-308 grants city council presidents the power to appoint city officers in the temporary absence of the mayor. The League believes the AG's broad reading of the statutory powers of council presidents creates an undesirable usurpation of mayoral power for both mayor-council cities of the second class and for mayor-council cities of the third class as the statute for those cities (K.S.A. 15-311) has similar language. It is the mayor who is elected by the voters to serve as the executive officer of the city. Council presidents are councilmembers, elected by their fellow councilmembers to serve in the mayor's place in the event of the mayor's temporary absence, and to become mayor when the mayor's office becomes vacant. The League believes it should fall to the mayor, not someone filling in during the mayor's temporary absence, to appoint city officers. Moreover, it has been the common understanding and practice of cities that only the mayor has the legal power to make appointments.

The League suggested the amendments found at lines 46:48 of Section 2 (for cities of the second class) and at lines 81:83 of Section 4 (for cities of the third class) to resolve this question of the proper authority of council presidents.

The bill language eliminates the potential mayor vs. council disputes that might erupt due to AGO No. 87-115 by providing that when sitting as the acting mayor (i.e., when presiding during the temporary absence of the mayor) the council president has all the power and authority given by law to the mayor except the statutory power to appoint city officers. The League does not foresee any practical problems arising from this language. Even in the event of a prolonged, temporary absence of the mayor appointive positions would be continously filled by either (1) the common-law and statutory rule of "holdover" of incumbant officers until the time their successor is appointed and qualified to hold office, or (2) the implied authority of a governing body to appoint "interim" officers where there is no incumbant officer.

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Attachment 1

(2) **Terms of Office.** AGO No. 87-115 also opined that because K.S.A. 14-201 says that city appointive officers are to "hold their offices for a term of one year...", a city's attempt to appoint a police chief to a probationary six-month period was unlawful. This conclusion of the AG was based upon an 1895 Kansas Supreme Court decision. The League disagrees with the AG on this point, as appointment to a term of less than one year would not constitute a "conflict" between local law and state law under accepted tests of Home Rule as applied by the Supreme Court. In short, while the Attorney General may have correctly stated the law as it was before Home Rule was adopted by the voters in 1961, his position in AGO No. 87-115 is at odds with Article 12, Section 5 of the Kansas Constitution--the Home Rule Amendment.

While the League strongly disagrees with the Attorney General's conclusion on this point, and while the affected statutes are all subject to city exemption by passage of Home Rule Charter Ordinances, we feel the issue has been clouded enough to warrant clarification by the Legislature of the relevant statutes for second-class cities (K.S.A. 14-201) and third-class cities (K.S.A. 1987 Supp. 15-204).

The amendments found in HB 2698 at line 31 (second-class cities) and line 70 (third-class cities) simply provide that the term of office an appointive officer can be appointed to cannot exceed one year. Regardless of the actual term of an appointment, the rule of incumbants' "holding over" until their successor is appointed and confirmed would continue to apply.

We believe it is clearly in the public's interest for their city elective officers to be able to appoint people to office for periods of less than a one-year term of office. A great many Kansas cities are not blessed with an abundance of candidates for appointive office. Often those positions are filled only as a result of recruitment by the city. When faced with an "unknown quantity" as a prospective public officer, some cities prefer the flexibility of appointing someone on a trail or probationary basis. It seems unusual to mandate by law that the citizens of a city be "locked into" an incompetent or otherwise undesirable officer because of such a literal reading of these statutes.

The balance of the amendments, striking references to city engineers (lines 35:38 and 67:69) and changing councilman to councilmember (lines 57 and 59), are offered as clean-up.

The League respectfully requests this Committee's favorable action on HB 2698.

League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Sand and Members,
House Local Government Committee

FROM: Jim Kaup, General Counsel

RE: HB 2699; Amending the Historic Preservation Act to Define "Environs"

DATE: February 3, 1988

HB 2699 is intended to provide some physical limitation upon the statutory phrase "environs of (historic) property" as used in the Historic Preservation Act. The bill was introduced by this Committee at the request of the League, and enactment of HB 2699 is supported by the League's convention-adopted Statement of Municipal Policy.

Background. Cities are subject to the Kansas Historic Preservation Act, K.S.A. 75-2701 et seq. That Act requires, at K.S.A. 1987 Supp. 75-2724, that Kansas governmental agencies, including cities, give the state historical preservation officer notice and an opportunity to investigate and comment upon any proposed "project" (activities) which affects any recognized "historic property...or the environs of such property."

K.S.A. 75-2716(c) defines "project" (see lines 33:43 of HB 2699) to include:

"(1) Activities directly undertaken by the state or any political subdivision of the state, or any instrumentality thereof;

(2) Activities undertaken by a person which are supported in whole or in part through grants, subsidies, loans or other forms of financial assistance from the state or any political subdivision of the state, or any instrumentality thereof; and

(3) Activities involving the issuance of a lease, permit, license, certificate or other entitlement for use, to any person by the state or any political subdivision of the state, or any instrumentality thereof."

K.S.A. 75-2716(b) defines "historic property" (see lines 29:32) as: "any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of the state of Kansas, its communities or the nation."

In January 1987 the City of Lawrence approved a zoning change for six lots located across the street from the east boundary of the Old West Lawrence Historic District. The City did not contact the preservation officer of the State Historical Society for review of the effects of the zoning change.

Subsequently the Historical Society requested an Attorney General opinion on the question of whether the City of Lawrence had complied with the Act. That opinion (AGO No. 87-114) brought to the League's attention the shortcoming to the Act which creates an unnecessary and expensive burden upon cities, counties and other units of government without serving any constructive purpose.

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Issue. AGO 87-114 opined that a rezoning of land, such as that undertaken by the City of Lawrence, was a "project" subject to the Act, and that the rezoning of land that did not adjoin a historic property, but was in the surrounding area, was within the "environs" of the historic property. This conclusion followed from the Attorney General's reliance upon a Webster's Dictionary definition of "environs". Specifically, the Attorney General said "environs" encompassed "the suburbs or districts around about a city or other populated place," and "any adjoining or surrounding region or space."

Such a definition of "environs", taken literally, would mean anytime any "project" (activity) occurs anywhere within a local government's jurisdiction, and there is a historic property anywhere within that jurisdiction, then notice must be given the Historical Society of the proposed action.

This is obviously an absurd situation for governmental units to be placed. Coupling the Act's broad definition of "project" with the Attorney General's definition of "environs" creates a tremendous burden upon local governments and would flood the Historical Society with an enormous volume of notices from just proposed land use-related "projects" alone.

HB 2699. This bill provides a simple, workable remedy to the problem by amending K.S.A. 75-2716 to provide a definition for the term "environs" that is precise enough to let a unit of local government know when a project or activity it is about to undertake involves the "environs" of "historic property," thereby triggering the duty to notify the Historic Society.

That amendment, found at lines 52:53 of HB 2699 would limit the "environs" of "historic property" to the property adjoining the historic property, excluding public rights-of-way. This language is intended to thereby limit "environs" to each parcel of land under separate ownership which touches upon the historic property, or which would touch upon the property but for an intervening public right-of-way.

The League respectfully requests this Committee's favorable action on HB 2699.

STATEMENT OF JOSEPH W. SNELL, EXECUTIVE DIRECTOR, KANSAS STATE HISTORICAL SOCIETY, BEFORE THE HOUSE COMMITTEE ON LOCAL GOVERNMENT IN RE HB 2699, FEBRUARY 3, 1988.

The state historic preservation law provides a degree of protection for historic properties and their environs. The law has been in effect for ten years and has in our opinion been reasonably effective.

The Kansas State Historical Society has no objection to adding a definition of the term "environs" to the act but we are concerned about the restrictive limitation of the proposed definition in House Bill No. 2699. For some of the projects we review, the definition would pose no problems, but in other cases that definition could remove protection from historic properties.

The proposed definition limits "environs" to one property on either side of the historic property; it excludes properties across the alley, across the street, and excludes public rights of way. In some historic neighborhoods the brick streets and the street lamps are integral parts of the historic district. They help to define the character and significance of the neighborhood. The definition would appear to remove those elements from our review.

The Potwin neighborhood in Topeka has long been proud and protective of its brick streets; we would not be able to assist them in retaining them.

The Westheight Manor District in Kansas City has its original historic street lamps still gracing its wide curving streets; we could not help that group in their efforts to retain the lights which are on public right of way.

Other examples could probably be cited, but these should help to convey our concern.

Large projects can have impacts much beyond the one adjacent property the proposed definition would allow as environs. High rise housing construction

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affects not only the one residence that might be adjacent to the project but also the entire surrounding neighborhood.

We would point out that historic properties are located in rural areas as well as in cities and that the definition seems primarily oriented to cities and may not function well in a rural area.

We can understand the frustration that some communities have experienced with the ambiguity of the law as it stands. Also, some persons feel that the attorney general's opinion of August 5, 1987 gives us, that is, the state historical society, a great deal of latitude in determining environs. We can understand how that would create some concern. The vagueness of the law frustrates us also, but we would urge the legislature not to make the definition so restrictive that the level of protection is diminished and the welfare of the historic, architectural, and archeological resources of our state become endangered.

The state historic preservation laws, in the words of the Attorney General, "do not absolutely prohibit destruction or alteration of historic properties. Rather, they provide a procedure for preventing ill-considered destruction and an opportunity for state and local officials to consider preservation issues."

Later in his opinion number 87-114 the Attorney General states that "'Environs' is defined in Webster's Third New International Dictionary 760 (1968) as 'the suburbs of districts around about a city or other populated

place,' and 'any adjoining or surrounding region or space.'. . . (See Attorney General Opinion No. 79-207, for a similar interpretation of the term "environs" allowing a city to issue industrial revenue bonds for the development of a site which "surrounds," but does not "adjoin," issuing city.). . .

"As noted previously in this opinion, a statute which is designed to protect the public must be construed in light of legislative intent. . . . The legislature's choice of the term 'environs' should be read to effectuate the purpose of the Act, namely the protection of historic properties from unnecessary destruction, damage or encroachment. . . ." The definition proposed in House Bill No. 2699 would severely limit that protection.

I might point out that the federal historic preservation law does not define environs. The term "area of potential effects" is used and is defined by the Advisory Council on Historic Preservation to mean "the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties. . . ."

I urge the committee's consideration of a different definition, one that would incorporate the distances already recognized in state law for zoning purposes. Those state statutes, by the way, are K. S. A. 12-708 for zoning in urban areas and 19-2907 for rural areas. We think this is a reasonable solution because the definition would utilize measurements cities and counties are already using. We would like also to see some flexibility in terms of projects that have the potential to overwhelm historic neighborhoods.

May we suggest the following definition:

"Environs" means minimally all properties within 200 feet of a designated historical property in cities and within 1,000 feet in rural areas. Where the nature of the project by virtue of its height, massing, depth, volume, noise, odors, etc., makes it obvious to the state historic preservation officer that the effects of the project will extend beyond the limits specified above, the state historic preservation officer shall have the discretion to extend the area of review to coincide with the area potentially affected.