

Approved

Ivan Sand  
Date 3/2/88

MINUTES OF THE House COMMITTEE ON Local Government

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

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

All members were present except:

Representative Baker, absent  
Representative Sawyer, absent

Committee staff present:

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

Conferees appearing before the committee:

Ed Redmon, State Fire Marshall  
Doug Smith, Johnson County Waste Water Administrator  
Bev Bradley, Kansas Association of Counties  
Roger Kroh, Lenexa Economic Development Council  
John C. Christlieb, Leawood attorney and township trustee  
Charlotte Rutlar, client of John C. Christlieb

Mike Heim gave an overview of HB 2973.

Ed Redmon testified in favor of HB 2973, stating that this bill cleans up the law to have fire trucks any color approved by the State Fire Marshall.

Representative Brown stated regarding HB 2973, that the color of the vehicles should be stated in the statute.

Chairman Sand closed the hearing on HB 2973.

Representative Brown reviewed HB 2974, stating that it prohibits a county from chartering out from the state sewer statutes. She also stated that this bill will correct this loophole and provide some of the protective measures written in the law for the people. (Attachment 1)

Doug Smith testified on HB 2974, stating that this bill has both advantages and disadvantages. He also stated that there are adequate safeguards in the present Charter and that HB 2974 is not needed. (Attachment 2)

Bev Bradley testified against HB 2974, stating that this bill would erode the power of the county commissioners. (Attachment 3)

Roger Kroh testified on HB 2974, stating that he has serious concerns about this bill and that Johnson County's current regulations provide a more than adequate system of checks and balances. (Attachment 4)

John C. Christlieb testified in support of HB 2974, stating that passage of this bill would be beneficial to development of the area and requested that this bill be passed.

Charlotte Rutlar testified in favor of HB 2974, stating that Johnson County did not keep Representative Brown informed on their chartering out. She also stated that Johnson County is growing and that this bill should be passed.

Representative Brown mentioned that there is a technical problem with Section 2 of HB 2974.

Chairman Sand closed the hearing on HB 2974.

The meeting adjourned.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE 3/6/88

NAME

ADDRESS

REPRESENTING

NAME	ADDRESS	REPRESENTING
James A. Todd	Wichita	K.S.T.A.
Ed Robinson	Topeka	Kans State Fire Marshal
Douglas Z. Smith	Johnson County	Johnson County Wastewater
John A. Metzler	"	"
Kathleen Pottle	Johnson County	Self
Glenn Ewing	Johnson County	Retired
Donald G. Ewing	Johnson County	Retired
Paul Christel	Johnson County	Attorney
BOB BRADLEY	Topeka	KS Association of Counties
Barbara Muhl	Holland	self

Please don't take this pen





TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: GOVERNMENTAL ORGANIZATION  
INSURANCE  
LOCAL GOVERNMENT

NANCY BROWN  
REPRESENTATIVE, 27TH DISTRICT  
15429 OVERBROOK LANE  
STANLEY, KANSAS 66224-9744  
TOPEKA: (913) 296-7692  
STANLEY: (913) 897-3186

Date: March 1, 1988

To: Chairman Ivan Sand and Members of the House Local Government Committee

From: Nancy Brown

Re: HB 2974 - An Act concerning counties; relating to sewers and sewer districts

Mr. Chairman and members of the committee, I appreciate the opportunity to testify before you and explain HB 2974. Though long in length, it actually is a simple bill with one major provision. It prohibits a county from chartering out from the state sewer statutes.

In order to help you understand why this bill was introduced, a little history is in order, particularly for those individuals new in the legislature. In 1983, after much discussion and very emotional testimony before this very committee, the legislature ultimately passed a law that revised the sewer statutes. The passage of this bill was a direct result of a most unfortunate situation in Stanley, Kansas, which some of you recall.

To make a very long story short, the small community of Stanley (approximately 400 people) were billed for oversized lines, a treatment plant located miles from the sewer district, basically for projected future growth which still has not arrived. The price tag was approximately \$12 million. The costs to the residents and farmers were in the thousands, and some in hundreds of thousands. The people took the county to court and a settlement was ultimately made.

Ten years later a similar situation is being proposed in the Olathe area, also in my legislative district. The difference this time is that the people know the estimated costs, approximately \$8.3 million to be paid by less than 300 people. The treatment plant is located miles from the district's boundaries, a very similar situation to the Stanley sewer fiasco.

The Olathe project was initiated by a former congressman and former county commissioner, who wanted to put a shopping center on 78 acres he owned. The proposed sewer system is designed to handle a 30 fold increase in population, again the costs to be borne by the few landowners. While no one wants to stop "progress", the people in the fringe rural areas should not be expected to pay for the development costs or the estimated increase in population through the oversizing of lines, or the location of the treatment plant miles outside of their district.

The 1983 law was designed to prevent such a fiasco from ever happening again, yet they chartered out of the law and wrote their own, removing several protective clauses. This is an action never intended by the drafters of the bill in 1983. Let me remind you the bill was written specifically to deal with Johnson County.

*Attachment 1*  
*3/1/88*

Attached to this testimony are some of the provisions that were written in the original law to "protect" the citizens, which were altered by the county through their charter. In my opinion, if Johnson County felt the law was too restrictive, or presented an undue burden on them, they should have come before the legislature through the amendment process, to let the legislature decide. Again, the law was written in reaction to actions by Johnson County. It was never the legislature's intent for them to charter out of the law. HB 2974 will correct that loophole and provide some of the protective measures written in the law for the people.

Let me emphasize, before I close, that complying with the 1983 sewer statutes in no way impedes economic development or restricts a county from moving forward with sewer districts. Johnson County can certainly continue with development and sewer districts; by complying with the 1983 law rather than the charter, they must do so more responsibly.

# Bill on sewer districts sparks county ire

By STEVE PORTER

Daily News Reporter

A bill that would limit Johnson County's powers regarding sewer districts, introduced in the Kansas Legislature last week and supported by Rep. Nancy Brown, has raised the eyebrows and ire of Johnson County Commissioners.

Commissioners Monday urged Brown, R-Stanley, to withdraw House Bill 2974, which would repeal an existing law spelling out formation and taxation within sewer districts.

The new law would void the county's charter resolution, passed in June 1984, that exempts it from the state law and establishes sewer rules specifically tailored for Johnson County.

Four years ago the county "chartered

out" of the existing state law that was passed in 1983 to address sewer district concerns, particularly in Johnson County. Property owners in Blue River Sewer District No. 5 had sued the county over high assessments caused by what opponents said was "overbuilding" the sewer facility. It became known as the Stanley Sewer case.

Brown said Monday evening that the same issues could come up again regarding another sewer proposal in her district. She was referring to Blue River Sewer Subdistrict No. 8, a 1,768-acre, \$8.33 million sewer subdistrict proposed south of 151st Street and west of Johnson County Executive Airport.

"My concern about what they did was over location of the treatment plant, which was down on US-69 and 175th,

several miles from the district," Brown said.

She said property owners are concerned about who will pay to construct the trunk line connecting the district with the treatment plant. A similar cost controversy prompted the Stanley sewer suit.

"It's almost like *deja vu*. They're doing it again," Brown said.

"When you're chartering out of the law, you're basically rewriting the law itself," she said.

About six weeks ago, more than 53 percent of the property owners within the proposed Blue River SSD No. 8 filed a petition to form the district, and the county must bring the proposal to a public hearing within 120 days of the petition filing. Brown acknowledges the

interest for sewers, but points out the boundaries were drawn to benefit those who want it.

"The district was gerrymandered to get 53 percent, which is what they want. I'm not going to fault that," she said.

Doug Smith, county director of health and wastewater, said the new bill doesn't specifically allow creation of sewer subdistricts, or allow creation of privately-financed districts without requiring a hearing. It does allow property exemptions from sewer districts at the discretion of the commission.

"Those are some concerns we had over it," Smith said.

Brown, during a telephone conference with commissioners Monday afternoon, acknowledged that her con-

(Continued to page 3)

(Continued from page 1A)  
stituents pressed for the change. The bill was introduced last Wednesday by the House Committee on Local Government.

A day later, on Thursday, the commission also responded to pressure from constituents in Brown's district who oppose creation of Blue River SSD No. 8.

The commission decided to postpone a public hearing specifically regarding a petition to form Blue River Sewer Subdistrict No. 8 and instead schedule a "generic" hearing March 14 to address the concerns of affected residents. The move was an attempt to defuse a threatened lawsuit that might block or slow formation of the district.

"They are having the March 14 hearing, so I can't be too hard on them," Brown said.

During Monday's teleconference, Commissioner Johnna Lingle asked Brown whether she had conferred with any of the commissioners before introducing the bill. Brown said no.

Commission Chairman Bill Franklin came to the point.

"I think that it's pretty clear that we don't see any value to the bill, and don't want to see it move forward in any manner," he said.

He mentioned the commission's attempt last week to approach the Blue River SSD No. 8 issue cautiously and openly, and Brown said she was pleased with the

commission's efforts.

"Are you pleased enough to pull the bill?" Franklin asked.

"Pull the bill?" Brown said.

"Yeah."

"No. It's not doing anything sitting there in committee," Brown said.

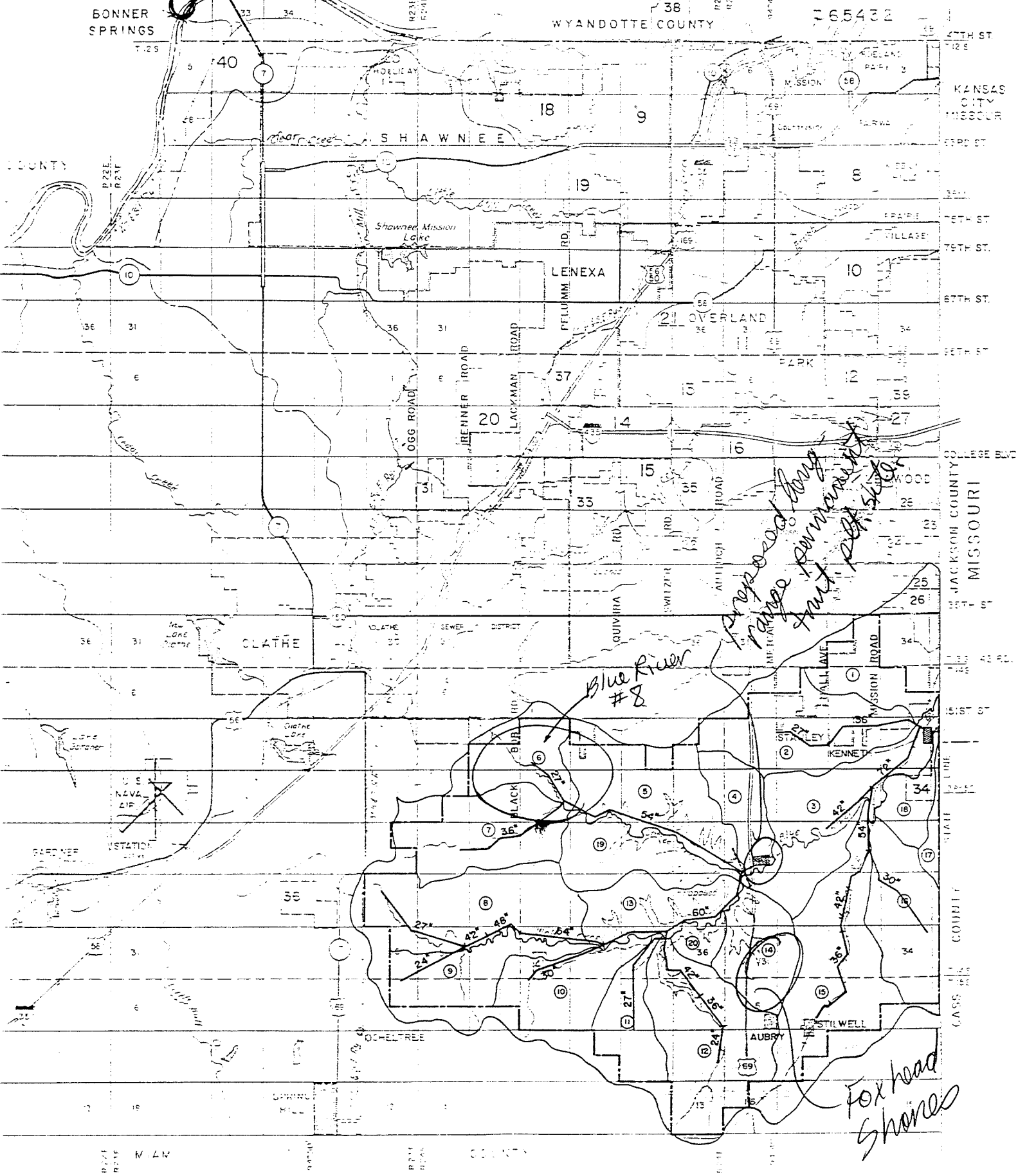
When asked about Brown's failure to confer with county commissioners prior to the introduction of HB-2974, Lingle showed her disappointment.

"Our manners seem to be lacking," she said.

But Brown says she may be doing the commission a service.

"They're going to get sued. They think I'm nitpicking. Well, they can look at it another way. I'm saving them some trouble," she said.

*From Upper Blue River Basin  
Study - 1977 by BTV*



\*DIFFERENCES BETWEEN KSA 19-27a AND JOHNSON COUNTY CHARTER  
RESOLUTION 18-84

19-27a01. (b) "sewer district" means any wastewater, main, lateral, joint or submain storm or sanitary sewer district;

Charter: (B) "sewer district" means any classification of wastewater or storm sewer district;

Charter - new section (E) "project cost" shall mean all costs including engineering, legal, fees, easement acquisition, construction or any other cost which relates to completion of the improvement project;

Charter - new section (K) "publicly financed district" means a created sewer district as provided herein where the improvements in the district are financed by the issuance of municipal bonds or by federal, state or other local municipal funds.

Charter - new section (L) "privately finance district" means a created sewer district as provided herein where the improvements in the district are paid for by the developer or other owners without public financing.

Charter - new section (M) "area wide district" means a district lying within two or more adjacent counties.

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KSA 19-27a02: (b) sue and be sued;

Charter: (B) To commence legal action of any kind.

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KSA 19-27a02: (k) create lateral sewer districts and assess the cost thereof against the owner of the property benefited or against the maintenance budget of the main sewer district. There may not be included in a lateral sewer district any unplatted contiguous tract of land, under one ownership, which exceeds 10 acres in area without the consent of the owner of the land;

important omission  
in the Charter -  
eliminates the  
protection of farmer  
and large acreage

Charter: (K) create sewer districts and assess the cost thereof against the owner of the property benefited.

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KSA-27a02 (7) (o) reads: take any action necessary to prevent, control, reduce and eliminate water pollution in order to comply with the clean water act, 33 U.S.C. 1251 et seq., and amendments thereto; and (p) take any action consistent with the provisions of this act for the safe, proper and economical operation of any sewer district.

\* incomplete

Charter: New Sections

(O) To prevent, control, reduce and eliminate water pollution within the county; to protect, restore and maintain the integrity of the county's waters; and to plan, alter, enlarge, improve, construct, reconstruct, develop, redevelop, operate and maintain a sewerage system;

(P) To apply for and to accept advances, loans, grants, contributions or any other form of financial assistance from the federal government, the state or other private or public body for the purposes of providing or operating or maintaining a sewerage system;

(Q) To conduct or to contract with any person or government agency for the making of any plan or study required by federal law;

(R) To provide for the recovery of the costs of planning and studies required by federal or state law through the annual wastewater district budget for operation, maintenance and planning of the sewerage system;

(S) To adopt by resolution such fees, charges and assessments as are provided for in this act;

(T) To use the proceeds of such fees, charges and assessments in such manner and for such purposes as the Board of County Commissioners shall determine are reasonable and necessary to comply with federal and state law for the planning, altering, enlarging, extending, improving, constructing, reconstructing, developing, redeveloping, operating and maintaining the sewerage system;

(U) To establish such funds as are authorized by this act;

(V) To invest proceeds of fees, charges and assessments.

KSA 19-27a02: Charter eliminated (n) (2), (3), (4), (5), (6), (7) dealing with industrial users.

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Charter: Section 3 - NEW;

Section 3. Connection Charges: The board of county commissioners may by resolution establish sewer connection charges for making connection to any sewer constructed under this act. Such charges may be graduated based on the sewer capacity required to service the property to which the

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connection is made and where the connection is made to property consisting of more than one family living unit the connection charge shall be based on the number of family living units. No such resolution shall be adopted until the board of county commissioners publish a notice of its intention to adopt the same; and such notice shall describe the proposed sewer connection charges in sufficient detail to advise the owners of the property within the district or districts in which they are to be applicable as to the amount and application of such charges. The notice shall inform such owners that the board of county commissioners will meet at a specified time and place to consider the adoption of a resolution establishing sewer connection charges. Such notice shall be published once a week for two consecutive weeks in a newspaper having general circulation within such district. All moneys derived from the imposition of such sewer connection charges shall be placed in a special account and shall be used at the direction of the Board of County Commissioners. Such sewer connection charges shall be collected before a sewer connection permit is issued.

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Charter: New Section 4:

Section 4. User Charges: The Board of County Commissioners may, by resolution, establish and collect, on an ad valorem tax basis or as a service charge, or both, a user charge or system of user charges, for the purpose of paying all or any portion of the construction and reconstruction of the sewerage system and for the costs operation, maintenance and planning thereof including replacement costs, to be assessed against all persons connected to or using the sewerage system of such district or combined districts. The user charge or system of user charges may be apportioned among classes of users or graduated as to individual users based upon the use required of the sewerage system and shall include consideration of, but not be limited to, the quantity, quality and rate of delivery of wastewater contributed. Any such user charge shall become a lien upon the property against which the charge is made from the date said user charge becomes due. Any such user charge may be in addition to any ad valorem tax levy authorized for such sewer district or combined districts.

Charter - New Section 5: Fee schedule for applications, inspections and other services (see attached). -3a

Charter - New Section 6: Plans, studies and hearings; protest petition. (See attached) -3b

Charter - New Section 7: Pretreatment and powers relating thereto. (see attached) 3-c, d, e

3a

sewer district or combined sewer districts and shall not be subject to any limitation upon the tax levy for such district or combined districts.

SECTION 5. Fee schedule for applications, inspections and other services.

(A) The Board of County Commissioners may, in addition to any other tax levy or service or user charge authorized by law, adopt a charge or fee schedule for applications to create, enlarge and extend any lateral, joint, main or submain sewer district; for the preparation, review or approval of design or plans and specifications for any proposed sewerage facilities to be provided or constructed by any private developer of land in or for a proposed or created sewer district; for the issuance of any permit; for any required inspection of any connection to the sewerage facilities of the district or of any installed sewerage facilities which were or are being installed other than under a contract issued by the sewer district; for the testing and monitoring of the wastewater discharged to the sewerage facilities of such district by any person for whom pretreatment standards or regulations have been promulgated pursuant to this act; and for any other service performed by personnel of the sewer district at the specific request of any person connected to and using, or requesting to be connected to and to use, the sewerage system of the district and for which the sewer district is not required by law to perform.

(B) Prior to the assessment or collection of any fee or charge authorized by this section, the Board of County Commissioners shall publish as provided in Section 9(J) a notice of its intention to adopt such fees, describing in sufficient detail to advise all interested persons the amount of the fee and the services to which the fee applies and informing all interested persons that the Board of County Commissioners shall meet at a specified time and place to consider the adoption by resolution of the fee or fees. Mailing of notice is not required. All fees or charges collected pursuant to this section shall be used for sewer district purposes.

SECTION 6 Plans, studies and hearings; protest petition.

(A) The Board of County Commissioners may conduct or contract with any person or governmental agency for the making of any plan or study required by federal or state pollution control laws or determined by the Board of County Commissioners to be necessary for the effective and efficient operation and maintenance of the sewerage system. For the purpose of paying the costs and expenses of such plans or studies, the Board of County Commissioners shall be authorized to levy an annual tax of not to exceed three mills upon all lands or improvements, or both, within such sewer district except public roads, public parks and public cemeteries, or within such combined sewer districts if the Board of County Commissioners determines that a levy throughout the combined district will result in imposing substantially equal burdens or shares of the cost on property similarly benefited. As an alternative, the Board of County Commissioners may, in its discretion, provide for the payment of the costs of such plan or study by installments instead of levying the entire tax for such cost at one time and may issue and sell general obligation bonds of the county in like manner as is provided in K. S. A. 10-1009 and any amendments thereto. In addition thereto for the purpose of paying for all or any part of the costs of such plan or study, the Board of County Commissioners may establish and collect just and equitable rates or charges to be paid to such sewer district or combined sewer districts by all persons, firms, corporations, departments of government of the state or of the United States and political subdivisions thereof and any other organizations or entities located within the boundaries of such sewer district or combined sewer districts.

(B) Such taxes, assessments or charges shall be levied and collected annually and shall be in addition to any ad valorem tax levy authorized for such district or combined districts and shall be placed upon the tax roll by the county clerk of the

county in which the sewer district lies or combined sewer districts lie. All taxes, assessments or charges so collected shall be used for the cost of such plan or study.

(C) Before any such tax, assessment or charge shall be levied or assessed under the provisions of this section, the Board of County Commissioners shall hold a public hearing on the proposed tax assessment or change giving an opportunity for interested persons to be heard. Notice of the public hearing shall be published once each week for two consecutive weeks in the official county newspaper or newspapers, said notice to provide information on the amount and purpose of the tax proposal, date and place of hearing and any other information pertinent to the proposal.

SECTION 7. Pretreatment and powers relating thereto.

(A) The Board of County Commissioners shall have the power to adopt by resolution a permit and pretreatment program to control and regulate the discharge of wastewater and pollutants by industrial users to the sewerage system of the sewer district. As a part of the permit and pretreatment program, the Board of County Commissioners shall have the power to:

(1) Adopt and enforce any rule, regulation, standard, effluent limitation or treatment requirement adopted by the Kansas State Department of Health and Environment or the United States Environmental Protection Agency pursuant to state law or federal pollution control law.

(2) Require any industrial user of the sewerage system of the district to:

(a) Obtain a permit from the wastewater district prior to connecting to the sewerage system or, if connected, prior to a specified time of not less than thirty days after notice of the requirement for a permit;

(b) Satisfy conditions on the quantity, quality and rate of flow of discharged wastewater which are necessary to prevent dangers to the public health, safety and welfare, to protect the proper operation of the sewerage system, pursuant to Sewer Use

Resolution No. WD82-233 adopted 12/13/82 and any amendments there-  
to, and to comply with state or federal pollution control laws;

(c) Comply with any effluent limitation or pre-  
treatment standard promulgated by the Kansas State Department of  
Health and Environment or the United States Environmental Protec-  
tion Agency applicable to the industry of which the industry user  
is a part;

(d) Cease or control the discharge of any pollutant  
determined to be a toxic or hazardous substance by the Kansas  
State Department of Health and Environment or the United States  
Environmental protection agency;

(e) Control and regulate the amount and manner of  
wastewater discharge necessary to ensure compatibility with the  
sewerage system and treatment process and to protect the proper  
operation of the sewerage system;

(f) Install and operate such equipment and treat-  
ment processes as are necessary to comply with state and federal  
pollution control laws, with pretreatment standards and effluent  
limitations adopted by the Kansas State Department of Health and  
Environment and the United States Environmental Protection Agency,  
with rules and regulations of the sewer district, and with the  
provisions of this act;

(g) Install and operate such equipment and proces-  
ses as are necessary to measure, test, and monitor the quantity,  
quality, and rate of flow of wastewater discharged to the sewerage  
system, including that necessary to determine the existence and  
amount of certain pollutants proscribed by the sewer district,  
Kansas State Department of Health and Environment or the United  
States Environmental Protection Agency;

(h) Prepare, maintain and submit to the sewer dis-  
trict such information and reports as the Board requires to effec-  
tively determine, measure, test and monitor the pollutants in and  
quantity, quality and rate of flow of wastewater discharged to the  
sewerage system;



(i) Provide access by wastewater district personnel to the premises of the industrial user to inspect and examine the records and reports required pursuant to this act, to inspect and examine the equipment and treatment processes required pursuant to this act, and to measure, test, determine and monitor the pollutants in, and the quantity, quality and rate of flow of, wastewater discharged by the industrial user to the sewerage system; and

(j) develop and submit to the sewer district a compliance schedule and technical data to demonstrate progress toward obtaining, developing or installing equipment and technique commensurate with advancements in new technologies.

(3) Deny or condition any increased or new discharge of wastewater by an industrial user where such increased or new discharge would result in a violation of the permit issued for the industrial user, a violation of the permit issued for the treatment plant, a danger to the public health, safety or welfare, interference with the proper operation of the treatment plant or a violation of state or federal pollution control laws and the Sewer Use Resolutuion, No. WD82-233 and any amendments thereto.

(4) Adopt appropriate enforcement measures in accordance with the provisions of this act.

(5) Take any action necessary to prevent, control, reduce and eliminate water pollution in order to comply with the clean water act, 33 U.S.C. 1251 et seq., and amendments thereto;

(6) Take such actions and adopt such rules and regulations which are consistent with the powers authorized in this act and which are reasonable and necessary by implication to adopt and enforce an adequate permit and pretreatment program within the requirements of state and federal pollution control laws.

SECTION 8. Enforcement procedures.

(A) The Board of County Commissioners shall have the power to establish by resolution enforcement procedures and penalties as provided in this section for violations of any charge, rule, regulation, standard or requirement adopted pursuant to this act.

(B) The Board of County Commissioners may refer any complaints or charges for such violations to the district attorney or county counselor for the county wherein the sewer district is located, who shall immediately prosecute the action in the district court of that county seeking any of the relief provided for in this section.

(C) In the event that any person shall wrongfully neglect, fail or refuse to pay any charge or fee authorized by this act, in addition to any other remedy available by statute or common law, the Board of County Commissioners is hereby authorized, after notice and opportunity for hearing, to refuse the discharge of wastewater from the premises of the user into the sewerage system of the district and to take such action as may be necessary to prevent unauthorized discharges into the sewerage system until such time as such charges are fully paid.

(D) In the event that any user shall violate any rule or regulation duly adopted by the wastewater district or any state law regulating water pollution in addition to any other remedy available by statute or common law, the Board of County Commissioners is hereby authorized, after notice and opportunity for hearing, to refuse the discharge of wastewater from the premises of the user into the sewerage system of the district and to take such action as may be necessary to prevent violating discharges into the sewerage system until such time as such violations cease and are corrected. Any such violation shall be punishable by a fine in an amount not to exceed \$500 for the first violation and in an amount not to exceed \$5,000 for the second violation and in an amount not to exceed \$10,000 for the third and each successive violation.

For the purposes of this subsection, each day of violation after notice and a reasonable time to cease or correct the violation shall be considered a separate and successive violation.

(E) In the event that any violation by a user of the rules, regulations, standards, limitations or requirements adopted

pursuant to this act is determined by the Board of County Commissioners to pose a threat or danger to the public health, safety or welfare or to the proper operation of the sewerage system, the Board of County Commissioners is hereby authorized to take immediate and effective emergency action to issue or obtain any preliminary injunctive relief as is authorized by law to prevent the discharge of the wastewater creating such threat or danger.

(F) All penalties, damages and costs assessed or awarded pursuant to the authority of this section shall be a lien upon the premises of the user from the date assessed or awarded until the date fully paid. All proceeds received or collected from such fines, penalties, damages or costs shall be used by the Board of County Commissioners first to defray the costs of administering the rules, regulations and other requirements adopted pursuant to this act and then to defray the costs of any repairs, replacements, maintenance or reconstruction necessitated by violations of the rules and regulations or other requirements, and then to defray the general operation, maintenance and planning costs of the sewer district.

Section 7 deals with industrial users which is dealt with in KSA 19-27a02 (n) (2).

Charter - New Section 8: Enforcement Procedures. (see attached) - 3 E, F, G.

KSA 19-27a03 is related to Section 9 in the Charter with the following differences:

Charter - New Section:

Broadens the powers of county and the engineer to create or combine sewer districts

(3) The Wastewater District engineer recommends the creation of a joint sewer district or

(4) It is necessary to combine sewer districts or

(5) It is necessary for planning purposes as provided herein.

KSA 19-27a03 (2) (b): The petition shall state. . . (B) The estimated cost of the improvement

Charter (B) (3) The estimated costs of the project including a proportionate share of costs due other districts for use of facilities and the annual operation, maintenance and general planning tax;

KSA 19-27a03 (E): The proposed apportionment of cost, if any, between the district and any other sewer district operated and maintained by the governing body.

Difference in language with reference to same subjects on petitions:

The difference in this language is significant in that the Charter states that the district, even those opposed, would have to pay the costs.

The statute states that it would be paid only by those signing the petition, which is only fair.

KSA 19-27a03: The petition also shall state that if the board of county commissioners determines the improvement project is not feasible that all costs and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board shall be assessed against the property of persons signing such petition. Any person signing the petition who desires to withdraw such person's name may do so by giving written notice to the county clerk on or before the date of the hearing on the petition. The petition shall be null and void after the board has determined not to create the district or after a period of two years from the date of the first signature on the petition, whichever occurs first.

1.15

CHARTER

(5) The petition also shall state that if the board of county commissioners determines the improvement project is not feasible that all costs and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board may be assessed against the district if the Board of County commissioners so determines.

(6) The Board of County Commissioners shall give consideration to excluding from the sewer district those areas located within floodways as defined by written policy of the Board.

(C) Any person signing the petition who desires to withdraw such person's name may do so by giving written notice to the county clerk on or before the date of the hearing on the petition. The Board shall hold a public hearing on the petition within one hundred and twenty (120) days of filing with the County Clerk. The petition shall be null and void after the board has determined not to create the district.

(D) Petitions for the creation of districts without public financing are exempt from the requirements of Section (9)(B), (2), (3), (4) and (5) of this resolution.

This is the most significant change in the Charter. Without a preliminary survey the county must rely on the engineering work of those who want the district created. This would not be an unbiased survey.

Or they may not even need to have a survey done to create the district -

KSA 19-27a04: Preliminary survey required; cost of survey, creation of district to conduct survey; cost paid from county general fund.

(a): After a sufficient petition is filed with the board, but prior to creating a sewer district, the board of county commissioners shall have a preliminary survey and plan prepared to gather data and information relating to the possible creation of the district. The board shall employ engineers or other skilled persons to make the preliminary survey of the territory sought to be sewerred, determine the approximate boundary lines of the sewer district, the feasibility of the proposed improvement, the treatment required, the approximate size of sewers and disposal plant required, the approximate cost of the improvements when completed and any other information pertinent to the construction of the sewer facility.

Charter: (E) The board may employ engineers or other skilled persons to make the preliminary survey of the territory sought to be sewerred, determine the approximate boundary lines of the sewer district, the feasibility of the proposed improvement, the treatment required, the approximate size of sewers and

1-16



disposal plant required, the approximate cost of the project when completed and any other information pertinent to the construction of the sewer improvements.

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KSA continues:

The Board may contract to pay the engineers or other skilled persons for the preliminary work by a fixed fee or by a fee contingent upon the final petition for the preliminary work being presented to the county commissioners and allowed by them and the work done. If the project is authorized, the cost of the preliminary survey shall be a part of the cost of the completed project. If the engineers employed to make the preliminary survey are not employed on the final survey and plans and construction work, the board may require the engineers employed on the final plans and construction work to reimburse the county for the amount it may have expended on the preliminary work and the cost thereof shall become a part of the cost of the completed project. It shall be the duty of the board of county commissioners to have a copy of all engineering notes, memoranda, data, plats, plans and surveys for which they pay or agree to pay directly or indirectly or conditionally filed in the office of the county clerk.

KSA 19-27a04: If the board of county commissioners determines that a project is not feasible, all the cost and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board shall be assessed against the lots and pieces of property located within the district. The assessment shall be levied and collected as one tax, in addition to the other taxes and special assessments, and upon the order of the board, the county clerk shall place the assessment upon the tax roll for collection subject to the same penalties, entitled to the same rebate and collected in the same manner as other taxes.

Charter - different from KSA - (see attached) - *6a*

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KSA 19-27a04 (b): The board of county commissioners may, in its discretion, create a sewer district for the sole purpose of making a preliminary survey and plan and not for the construction of sewer improvements. The board may employ engineers or other skilled persons to gather data, make the preliminary survey of the territory to be sewerred, determine the approximate boundary lines of the sewer district, the feasibility of the proposed improvement, the treatment required, the approximate size of sewers and disposal plants required and the approximate cost of the improvement and any other information pertinent to the construction of the sewer facility. Thereafter, a sewer district or districts may be

*1-17*

6a

(F) If the board of county commissioners determines that a proposed construction district is not feasible, then the cost and expense of the work, including preliminary planning, engineering, legal and other work of skilled persons employed by the board may be paid from the planning fund of the Unified Wastewater Districts if the proposed district lies within the boundaries of the Unified Wastewater Districts. If the proposed district lies outside the boundaries of the Unified Wastewater Districts then the costs may be assessed to the planning district as provided for in Section 16 of this resolution.

(G) If the district is created, the cost of the preliminary survey shall be included in the cost to the district. If the engineers employed to make the preliminary survey are not employed on the final survey and plans and construction work, the board may require the engineers employed on the final plans and construction work to reimburse the county for the amount it may have expended on the preliminary work and the cost thereof shall become a part of the cost of the completed project. It shall be the duty of the board of county commissioners to have a copy of all engineering notes, memoranda, data, plats, plans and surveys filed in the office of the county clerk.

(H) If the board of county commissioners determines that subsequent to the creation of a district a project is not feasible, all the cost and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board may be assessed against the parcels of property located within the district. The assessment shall be levied and collected as one tax, in addition to the other taxes and special assessments, in the manner provided in Section 10 of this Resolution.

(I) The board of county commissioners may, in its discretion, create a planning district for the sole purpose of making a preliminary survey and plan and not for the construction of sewer improvements. The board may employ engineers or other

1-18

created as otherwise provided by this act. For the purpose of paying for the costs of the preliminary planning, the board of county commissioners may apportion the costs against the tracts of land within the district in the manner provided by K.S.A. 1983 Supp. 19-27a07.

Charter:

(I) The board of county commissioners may, in its discretion, create a planning district for the sole purpose of making a preliminary survey and plan and not for the construction of sewer improvements. The board may employ engineers or other skilled persons to gather data, make preliminary survey of the territory to be sewerred, determine the approximate boundary lines of the sewer district, the feasibility of the proposed improvement, the treatment required, the approximate of sewers and disposal plants required and the approximate cost of the improvement and any other information pertinent to the construction of the sewer facility. For the purpose of paying for the costs of the preliminary planning, the board of county commissioners may apportion the costs against the tracts within the district in the manner provided by section 16.

KSA 19-27a04 (last paragraph): If the board of county commisioners determines that a project is not feasible, all the cost and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board shall be paid from the county general fund.

Charter (H): If the board of county commissioners determines that subsequent to the creation of a district a project is not feasible, all the cost and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board may be assessed against the parcels of property located within the district. The assessment shall be levied and collected as one tax, in addition to the other taxes and special assessments, in the manner provided in Section 10 of this Resolution.

KSA 19-27a05: Notice; hearing; district extending into city limits:

. . . Notice of the hearing also shall be mailed by prepaid first class mail, at least 14 days prior to the date of the hearing, to all landowners within the proposed district.

Charter: . . . Except for main sewer districts (including treatment facilities), combined sewer districts and the Johnson County unified Wastewater District, notice of the hearing shall

A significant change in payment policy - the statute says county general fund - the charter says assess it against the district, even those who do not want to be in it

Why is the hearing notice limited - and to what?

See omissions

119

also be mailed by prepaid first class mail, at least 14 days prior to the date of the hearing, to all landowners within the proposed district.

Why was word initially deleted - what impact does this have on other action?

KSA 19-27a05 (b): The board of county commissioners shall not create any sewer district within or extend any sewer district into the limits of any incorporated city without the consent of the governing body of the city.

Why was this last sentence included? Note definition of sewer districts

Charter (K) The board of county commissioners shall not create initially any sewer district within or extend any sewer district into the limits of any incorporated city without the consent of the governing body of the city. Once the city consents such consent shall extend to all types of county sewer districts within that created district.

KSA 19-27a06: Resolution; cost exceeding estimate; second hearing required notice; continuation or discontinuation of project.

The charter differs considerably and is not a separate section (see attached). (L) through (P). *su*

Why was this omitted from the Charter?

KSA 19-27a06 (b) states: If at any time after creating a sewer district and prior to the letting of contracts for construction, the governing body of a sewer district determines that the cost of an improvement project will increase more than 10% of the initial estimated cost, the governing body shall hold another public hearing thereon. Notice of any subsequent hearings shall be given in the same manner as for the first hearing. After the hearing, the governing body may stop work on the project and dissolve the sewer district or approve the continuation of the project with any changes it deems necessary.

Why was this added?

Charter: (P) If at any time after creating a sewer district and prior to the letting of contracts for construction, the Board of County commissioners determines that the project cost of the initial improvement project will increase by more than 10% of the initial estimated project cost, the Board of County Commissioner shall hold another public hearing thereon. Notice of any subsequent hearings shall be given in the same manner as for the first hearing.

KSA 19-27a07 is Charter Section 16. The majority of the language is the same with the following exceptions:

1-20

consent shall extend to all types of county sewer districts within that created district.

(L) The board of county commissioners shall act on the petition at any time within 120 days after the conclusion of the public hearing required herein. The sewer district shall be created substantially as requested by the petition or other authorized request except that no area shall be added which was not described in a notice of public hearing, except as provided in Sections 13 and 14 of this resolution.

(M) Whenever the Board of County Commissioners adopts a resolution creating any public improvement or special benefit district or any other district having the power to impose special assessments upon the taxable tangible real property in the district, the clerk shall file a certified copy of the resolution, within five days of the adoption thereof, with the register of deeds of the county. No fee shall be charged for the filing, and the register of deeds shall file, record and index the certified copy. The resolution shall state:

(1) The boundaries of the improvement district;

(2) The nature of the improvement and where feasible the estimated number of project phases and the estimated population equivalent serviced by the project phases;

(3) The estimated cost of the project;

(4) The method of assessment.

(N) Requirements of Paragraph (M) (2), (3), and (4) above shall not apply to districts with private financing.

(O) A resolution authorizing additional improvements or any resolution which has been amended, shall be filed in the same manner as the original resolution.

27-<sup>cl</sup> (P) If at any time after creating a sewer district and prior to the letting of contracts for construction, the Board of County Commissioners determines that the project cost of the initial improvement project will increase by more than 10% of the initial estimated project cost, the Board of County Commissioners



Charter added (5) Consideration shall be given to excluding from assessment those areas located within floodways as defined by written policy of the Board.

The remaining sections of the charter differ somewhat from the statutes, but time was not available for a thorough review.

One noted change is a bidding procedure in KSA 19-27a19. The charter states \$3,000; KSA \$1000.

The Charter deals with area-wide districts; KSA 19-27a does not, to my knowledge, but this was not reviewed or compared.

1.22

JOHNSON COUNTY UNIFIED WASTEWATER DISTRICTS

March 1, 1988

MEMORANDUM

TO: House Committee on Local Government

FROM: Douglas L. Smith, Wastewater Administrator, Johnson County, Kansas

SUBJECT: Testimony Concerning HB No. 2974

In 1983, the Kansas legislative enacted far reaching changes to Article 27 of Chapter 19 upon the passage of Senate Bill 155. The act appears as Chapter 99, Laws of Kansas, 1983, which is contained in K.S.A. 1983 Supp. 19-27a01, etc. seq.

Our primary concern about HB No. 2974 is the removal of local authority to solve local problems concerning sewers or other matters.

The Board of County Commissioners of any county are elected by the local populus and they should have local control. There is no standard model to use throughout the state for sewers. Differences exist in several aspects:

1. With the exception of Johnson County, the large population centers of Kansas are located primarily on a large river and do not need a multiplicity of treatment plants.
2. Due to the topography of Johnson County, 13 treatment facilities are operated by Johnson County, with most located outside the district(s) served.
3. No one large city in Johnson County finances wastewater facilities city-wide; therefore, the formation of many districts occurs on a benefit district basis. Johnson County Unified Wastewater Districts has 808 districts as of March 1, 1988.

There were 44 items, major and minor, that were of concern to Johnson County in regards to Senate Bill No. 155. These concerns included certain powers and functions inadvertently deleted in the Bill. On April 5, 1984, the Attorney General's office stated that the Board of County Commissioners were free to use the home rule authority. As a result, the Johnson County Charter Resolution No. 18-84 became effective on August 20, 1984, and in

*Attachment 2*  
*3/1/88*

Memorandum - House Committee on Local Government  
Page Two  
March 1, 1988

our opinion, has served the County well in the last 3½ years, having created 140 districts since 1984.

Some of the disadvantages of HB No. 2974:

1. Would not allow for combining of all districts for capital items that would benefit the entire Johnson County Unified Wastewater Districts. This could also render inoperative an existing district called Combined District No. 1, which has constructed several projects.
2. Would not allow two or more sub-districts to be combined to form a main district. This is crucial to the fair sharing of costs of commonly used facilities.
3. A hearing and notice would be required for two or more lateral districts to form a joint district in order to reach an interceptor line.
4. A 100% petition, privately financed lateral district could be created only after a public hearing, with an average of 50 such districts per year, this would be a waste of time and money.
5. An assessment roll must be published with the assessment resolution. This could involve as many as 20,000 properties on the roll.

Some of the advantages:

1. Instead of a benefit district concept, Johnson County Unified Wastewater Districts' projects could be paid for by the county-at-large and paid from the general fund.
2. The Board of County Commissioners could determine that certain parcels of land be exempt from sewer payments. Under present law, only public roads, public cemeteries and public parks are exempt.

In our opinion, there are adequate safeguards in the present Charter and HB No. 2974 is not needed.

We appreciate this opportunity to testify before the House Committee Local Government.

*Angela L. Smith*

DLS:sd

cc: Board of County Commissioners  
E. H. Denton  
Don Jarrett  
Tim Carmody  
John Metzler  
Gerry Ray

# Kansas Association of Counties

*Serving Kansas Counties*

212 S.W. Seventh Street, Topeka, Kansas 66603

Phone (913) 233-2271

March 1, 1988

To: Representative Ivan Sand, Chairman  
Members House Local Government Committee

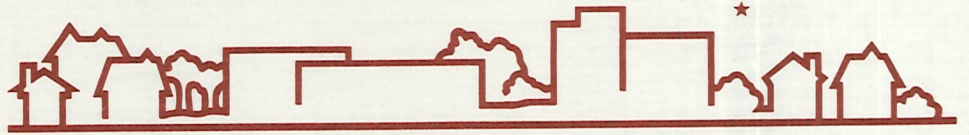
From: Bev Bradley, Legislative Coordinator  
Kansas Association of Counties

Re: HB 2974

Thank you Mr. Chairman. Ladies and gentlemen of the committee. The Kansas Association of Counties opposes HB 2974. The sewer district statutes are non uniform. This enables boards of commissioners to have discretion in governing their own county. By eliminating the possibility of exemption from KSA 19-27,170 etc. several possibilities are eliminated from the options currently enjoyed by the board of commissioners in making sewer district choices. County Commissioners are local people. They are elected representatives of their communities and should know growth patterns, development plans and special problems of their own county. A uniform statute to address all the needs of all the various counties would be nearly impossible to draft. The KAC believes in county home rule and therefore opposes HB 2974.

Thank you very much for your time and consideration.

*Attachment 3*  
*3/1/88*



March 1, 1988

LOCAL GOVERNMENT COMMITTEE  
HOUSE OF REPRESENTATIVES

PREPARED TESTIMONY

RE: HOUSE BILL NO. 2974

I am Roger Kroh, Director of the Lenexa Economic Development Council. I am here on behalf of the 40 members of that organization as well as the 600 business members of the Lenexa Chamber of Commerce.

We have some serious concerns about House Bill 2974 and urge you to not approve it.

Lenexa is part of the Johnson County Waste Water District. In 1970, it was a community of 5,000 residents and five industrial parks. Today, it has a population of 30,000 residents and 21 industrial parks which provide over 10,000 jobs and a great deal of revenue to the state of Kansas.

*attachment 4  
3/1/88*

To accommodate this growth with a safe sewer system, it was necessary for Johnson County to establish its own protocol for developing sewer districts. Otherwise, it would have had to slow or even refuse much of the growth that has provided so much in revenues to the entire state, or be faced with an abundance of septic systems and package treatment plants that are both unsafe and inefficient in an urban setting.

Johnson County's waste water regulations currently provide a more than adequate system of checks and balances for both the land developer and the resident. While the length of time required to establish sewer districts varies, Lenexa's most recent sewer district took three years to establish, and will require another two to three years to become operational. Within this district, we have one mixed-use office/rental development which must wait another two to three years for sewers before beginning construction on 800,000 square feet of space. In total, it will have taken five years from the conception of this district to completion of the sewers before businesses can begin construction. We see no reason to impose more cumbersome, time-consuming and costly regulations for establishing a sewer district when our current regulations already provide adequate protection.

Another concern with this bill is that it would require a public notice and public hearing to establish a sewer system on

property owned by one individual. Our 21 industrial parks and 80 plus residential subdivisions were built by single individuals or companies that owned the land on which sewers were to be constructed. It is these developers that paid the assessments until such time as lots were sold to buyers who would buy completely aware of the assessments. In these situations it seems unwarranted to go through a time-consuming public hearing process simply to notify the same landowner who has requested the sewers.

Consequently, we urge you to oppose this bill which slows economic development. In the Kansas City area, our Kansas laws which are both progressive and still provide an adequate set of checks and balances, are what has enabled the Kansas side of the state line to grow more rapidly than communities on the Missouri side. Competing against the lower taxes of Missouri, its our progressive laws that have been our advantage. We urge you not to slice away at one of these advantages.