

Approved Feb. 11, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION

The meeting was called to order by Sen. Fred A. Kerr at  
Chairperson

11:00 a.m./~~p.m.~~ on February 10, 1988n room 519-S. of the Capitol.

All members were present except:

Committee staff present:

Tom SEvern, Research  
Chris Courtwright, Research  
Don Hayward, Revisor's Office  
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Senator Hoferer  
Keith Farrar, Board of Tax Appeals  
Jim Davidson, Board of Tax Appeals  
Nancy Perry, United Way  
Roger Franzke, Sr. Vice Pres., Bank IV  
John Butler, Coach at YMCA  
Dr. Bernard Joyce  
Velma Paris, Shawnee Co. Comm.  
Vic Miller  
John Torbert, Assoc. of Counties

**SENATE BILL 491**

Chairman Kerr called the meeting to order and said the agenda for the day was a hearing on S.B. 491, which deals with back taxes for the Topeka YMCA.

Sen. Hoferer testified in support of the bill. (Att. 1) She stated that "the issue of the property tax status of the YMCA was brought to the Board of Tax Appeals by the Shawnee County Appraiser, who discovered that the main Y facility in downtown had never been granted an exemption, while reviewing property in Shawnee County in anticipation of reappraisal. It seems that, when the Y purchased the downtown property from the County, the property was already off the tax rolls because it had been the site of the old County Courthouse. At that time the County Appraiser did not put the property on the tax rolls and told the Y that it wouldn't be necessary to apply for an exemption. This was obviously at a time when business operated in a little more leisurely fashion at the courthouse.

In subsequent years the Y acquired three additional properties, including the Y facility in North Topeka. The Y applied to the Board of Tax Appeals for exemptions for each of these properties and each application was granted. So the YMCA never received a property tax bill on any of it's property until this issue erupted in 1986. During all these years the YMCA operated thinking that it was exempt from property taxes. She stated that the YMCA of Topeka has had its tax exempt status revoked by the State Board of Tax Appeals after being exempt for over 100 years. Not only has the YMCA been put back on the tax rolls, but has been billed for back taxes due for years 1978 through 1985. She said that S.B. 491 would forgive the back taxes while the Y attempts to clarify that it is exempt under the general exemption statute KSA 79-201. She stated that the back tax bill that faces the YMCA in Topeka is approximately \$500,000. She said that if they are forced to pay the back taxes, they will be put out of business.

Keith Farrar testified. (Att. 2) He stated that the YMCA was placed on the tax rolls because of the "use" of the property. The "use", and not ownership is what grants or denies exemptions of property tax. He stated that there were problems with not having accurate figures as to the use of the property for the first hearing. He stated tha the BOTTA has authority to use flexibility in judgment and penalty cases, but they cannot pick and choose which entities they wish to exempt. He introduced Mr. Jim Davidson, Attorney for BOTTA.

Jim Davidson testified. He gave examples of cases in point. (Att. 3) He stated that he felt there are policies that need to be understood with the bill as it is worded now. He felt it would not:

1. Exempt from 1986 forward.
2. Exempt other health facilities.
3. Exempt other YMCA properties.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION,

room 519-S, Statehouse, at 11:00 a.m./~~pm~~ on Feb. 10, 198.

He stated that if the bill passed, he felt other entities would challenge the constitutionality of it. He said he thinks the bill may be unconstitutional. He felt the bill might need some amendments in order for it to accomplish exactly what is intended.

Nancy Perry testified in support of the bill. (Att. 1) She emphasized many benefits of the Topeka YMCA, and said that her organization, the United Way, funds 9% or \$100,000 to the youth programs annually. She urged passage of the bill.

Roger Franzke testified in support of S.B. 491. He stated that there were numerous programs that were especially for indigent children, and they were free of charge. He feared for the welfare of the hundreds of children that benefit from these various programs if they were to be discontinued.

John Butler testified in support of S.B. 491. (Att. 1) He stated that he especially wanted to represent the children that regularly use the YMCA facilities. He said he had been a volunteer coach for five years and had seen the positive impact that the various programs had on many children. He also feared for the children's welfare if these programs were discontinued.

Dr. Bernard Joyce testified in support of S.B. 491. (Att. 1) He stated that as a physician, he has emphasized the exercise and rehabilitation programs at the YMCA for over 30 years to his patients. He said that he would hate to see a \$500,000 back tax bill close the doors on all of the activities that are now offered by the YMCA.

Velma Paris testified in support of the bill. She said that she didn't feel that because of a "glitch" in consistency of performance by county staff several years ago that the YMCA should now be placed in such a precarious position. She felt that surely something could be done to rectify this unfortunate situation.

Vic Miller testified in support of the bill. He said that he felt there were no "culprits" in this situation, and that the BOTA was trying to do their job as well as the YMCA was trying to enjoy tax exemption as they previously had. He urged support of the bill.

John Torbert testified. (Att. 4) He said that perhaps the bill would need to be "expanded" to better fit the needs. He also said that granting of exemptions might be different if approached from the point of view that the net result is higher taxes for many and a tax benefit for very few.

Chairman Kerr explained the agenda for the rest of the week.

Senator Allen made a motion to adopt the minutes of the Feb. 9 meeting. Senator Karr seconded. Motion carried.

Meeting adjourned.



ASSESSMENT AND TAXATION

OBSERVERS  
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/10/88	KEITH FARRAR	Topeka	BOTA
2/10/88	CONRAD MILLER, JR	KCKs.	BOTA
2/10/88	David Cunningham	@ Topeka	BOTA
2/10/88	Rich McKee	Topeka	Kansas L'instat
2-10-88	Richard Schulte	"	YMCA
2-10-88	Mark S. Roupe	Topeka	YMCA
2-10-88	BILL PERDUE	TOPEKA	KS. COMMUNITY SERVICES AGENCY
2-10-88	Velma Paris	Topeka	Self
2-10-88	Rene Weisber	Topeka	Disc Society
2-10-88	Vic Miller	Topeka	Self
2-10-88	Gene Turner	Topeka	YMCA
2-10-88	Tom Pokra	Topeka	YMCA
2-10-88	Tom Torbet	"	KAC
2-10-88	Frank, Mc Grath	Topeka	YMCA
2-10-88	Herald WCN	TOPEKA	YMCA
2-10-88	Dorinda E Bare	"	"
2/10/88	Ray Vernon	Topeka	YMCA
2/10/88	Keith V. Bossler	Topeka	YMCA
"	GERHARD METZ	TOPEKA	KCCF
"	Richard Funk	"	KASB
"	Bryce K. Valley	"	YMCA
"	James M. Brien III	"	YMCA
"	James Salsman	"	YMCA
"	Bruce Lukas	"	KALPECA
"	Carl Steip/Rob Anley	Topeka	KTKA-TV
"	Robert J O'Connor	WICHITA	Self
"	Dennis Rogers	TOPEKA	YMCA
"	J. R. PRATT	"	YMCA
"	KEN DANIEL	TOPEKA	YMCA



ASSESSMENT AND TAXATION

OBSERVERS  
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/10/88	Craig Warburg	Topeka	YMCA
2/10/88	Bruce Upelak	Lakin	Hearney Co + Careley Co Appraisers
2/10/88	Mark Fox	Maude	Maude Co App
2/10/88	Jim Byers	Topeka	S. I. F.
2/10/88	Richard D. Rogers	Topeka	YMCA
2/10/88	Kristine G. McGee	Topeka	YMCA
"	Donald A. ...	"	Hartley + ...
2/10/88	Ralph Wood	Topeka	YMCA
2/10/88	John Butler	Topeka	YMCA
2/10/88	Alan April	Topeka	YMCA
"	D. Brundage	"	"
2/10/88	RICHARD A. CRAWFORD	"	YMCA
2-10-88	ANITA SUFFLEBEAN	"	UNITED Way
2-10-88	Nancy J. Perry	"	United Way
2-10-88	George ...	"	YMCA
2-10-88	...	"	"
2/10/88	Joan Trautle	"	"
2/10/88	Celeste Wroblewski	Chgo	YMCA
	M. Hawco	Topeka	City Journal



YMCA BACK TAXES

SENATE BILL NO. 491

A & T

2/10/88

Att. 1

## TESTIMONY

- 1) The Honorable Jeanne Hoferer  
Kansas State Senate
  
- 2) Nancy Perry, President & Chief Professional Officer  
United Way of Greater Topeka
  
- 3) Roger Franzke, Senior Vice President  
Bank IV Topeka
  
- 4) John Butler, Coach of the Year (Youth Sports)  
YMCA of Topeka, Inc.
  
- 5) Dr. Bernard Joyce  
Retired Orthopedic Surgeon
  
- 6) The Honorable Velma Paris  
Shawnee County Commissioner



JEANNE HOFERER  
 SENATOR, EIGHTEENTH DISTRICT  
 SHAWNEE COUNTY  
 1916 S.W. OAKLEY  
 TOPEKA, KANSAS 66604-3255



TOPEKA

COMMITTEE ASSIGNMENTS  
 CHAIRPERSON: CONFIRMATIONS  
 V-CHAIRPERSON: JUDICIARY  
 MEMBER: FEDERAL AND STATE AFFAIRS  
 TRANSPORTATION AND UTILITIES  
 ELECTIONS  
 GOVERNMENTAL ORGANIZATION

## SENATE CHAMBER

## SENATE ASSESSMENT AND TAXATION COMMITTEE

February 10, 1988

Thank you, Mr. Chairman and Members of the Committee.

By now it is well known around the legislature that the YMCA of Topeka has had it's tax exempt status revoked by the State Board of Tax Appeals. Not only was the Y put back on the tax rolls for the current year, which was 1986, but it also received a bill for back taxes due for the years 1978 through 1985. SB-491 would simply forgive the back taxes while the Y attempts to clarify that it is exempt under the general exemption statute KSA 79-201.

I would like to give you a little background on how the YMCA in Topeka came to be in this predicament. The issue of the property tax status of the YMCA was brought to the Board of Tax Appeals by the Shawnee County Appraiser, who discovered that the main Y facility in downtown had never been granted an exemption, while reviewing property in Shawnee County in anticipation of reappraisal. It seems that, when the Y purchased the downtown property from the County, the property was already off the tax rolls because it had been the site of the old County Courthouse. At that time the County Appraiser did not put the property on the tax rolls and told the Y that it wouldn't be necessary to apply for an exemption. This was obviously at a time when business operated in a little more leisurely fashion at the courthouse.

In subsequent years the Y acquired three additional properties, including the Y facility in North Topeka. The Y applied to the Board of Tax Appeals for exemptions for each of these properties and each application was granted. So the YMCA never received a property tax bill on any of it's property until this issue erupted in 1986. During all these years the YMCA operated thinking that it was exempt from property taxes.

The Y appealed the action of the Shawnee County Appraiser to the State Board of Tax Appeals. In an order from the Board dated May 4, 1987, the Board ruled that the Y should not be tax exempt because it did not satisfy the exclusive use requirement,

however the Board declined to assess the back taxes. The order stated that, "Just as the Board is convinced that the current use is not entitled to exemption, we are unable to determine whether or when the use changed from prior years. We therefore conclude that our decision to place the Y's property on the tax rolls should commence with the 1986 tax year."

The YMCA asked for a rehearing on this order and after the rehearing was granted the Board issued an order dated September 9, 1987, which upheld it's original denial of exemption, but also assessed back taxes back to 1978. That order contained such scholarly arguments as, and I quote, "The Y is no more educational than a doctor's office; no more charitable than the average merchant; no more religious than a clearing in the woods."

The back tax bill that faces the YMCA in Topeka is approximately \$500,000. SB-491 is a very straightforward bill that has one and only one purpose. It forgives those back taxes for the years 1978 through 1985. It will simply allow the YMCA of Topeka to keep the doors open. It is only a partial solution to their problem, but it forgives the onerous back taxes, while the Y proceeds to clarify in KSA 79-201 what many of us already think is there.

Originally when I spoke to Senator Kerr about the Y bills, he expressed his concern that any retroactive bill we would request might create the opportunity for some unknown entity to apply for relief from back taxes. So, we made this bill as specific and upfront as we could. This bill has no hidden agenda.

Mr. Chairman and Members of the Committee. The YMCA has been in operation in Topeka for 107 years. Five previous Boards of Tax Appeals have said it was exempt from property taxes. The bottom line is that if this back tax bill is allowed to stand, the YMCA will not be able to keep it's doors open. As one of hundreds of Topekans who volunteer their time to support YMCA programs, I ask your support for SB-491.



TESTIMONY  
BEFORE THE  
SENATE ASSESSMENT AND TAXATION COMMITTEE

SENATE BILL 491

FEBRUARY 10, 1988

PRESENTED BY:

NANCY J. PERRY, PRESIDENT & CHIEF PROFESSIONAL OFFICER

UNITED WAY OF GREATER TOPEKA  
5100 S.W. 10TH STREET  
TOPEKA, KANSAS 66604  
(913) 273-4804

Good morning Mr. Chairman and honorable members of the Senate Assessment and Taxation Committee. My name is Nancy J. Perry, I am President and Chief Professional Officer of the United Way of Greater Topeka.

The Topeka YMCA is a member agency of the United Way of Greater Topeka, and has had a long standing relationship with the United Way.

I have been asked to speak on behalf of the Topeka Y and Senate Bill 491, and I thank you for allowing me the opportunity to express our concern over this issue.

First, I would like to emphasize the benefits the Topeka YMCA offers to our community, through it's many community service programs. Programs that are well-respected, and well-organized. Programs that benefit a broad range of individuals, providing them with opportunities they would not have access to otherwise. The after school programs for youth, summer day camp experiences, child-parent programs, youth athletics and therapeutic exercise programs are examples of programs which would be sorely missed if the Topeka Y were forced to close its doors.

More specifically, the youth scholarship program at the Topeka Y allows indigent youth the opportunity to participate in all youth activities offered at the Y. Where would these youth be after school



and during the summer if they were not afforded this opportunity for constructive and character building activities. The youth athletics and activity programs provide youth the opportunity to participate in these worthwhile services, and the Y facilities provide a place for youth to go for education value oriented, safe, fun and wholesome activities. These are programs and indeed opportunities which this community should not take for granted.

The \$500,000 back-tax bill would force the YMCA to close its doors, and end these programs that are so worthwhile. Without the low cost, or no cost, many individuals - both youth and adult, would suffer. We are all tragically aware of the consequences of unsupervised and unstructured excess time for our youth and the havoc it can bring to families.

The Topeka YMCA is already operating at a substantial deficit, and has very limited financial reserves. The Y's total operating budget is close to \$1.5 million dollars, which 9% comes from United Way funding. The United Way strongly supports the programs and activities offered by the Y, as evidenced by the over \$100,000 allocated to the agency each year for the past several years. It is our belief the YMCA cannot pay the back-tax liability, and remain in operation at the level they currently are. Meaning, they could not offer the many youth and adult programs they currently do at little or no cost.

Secondly, taking the public interest into consideration, the many thousands of dollars for legal fees, resulting from an extended legal battle regarding this issue, not to mention the time element involved, would be better spent on the Y's programs. These dollars, and hours could be used by the Y to support and further it's current community service programs, and in turn be a greater benefit to our community.

The Topeka YMCA has been tax-exempt for a century, a long-standing and well-established tax exemption. This exemption has been repeatedly confirmed by the Board of Tax Appeals until recently.

The YMCA has an outstanding reputation, and provides so many services for the benefit of our community, it would be sad to see this positive organization dissolved.

In conclusion, I would again like to offer you my thanks, for allowing me to express these concerns, and reiterate our faith in the YMCA as an organization that puts Christian principles into practice through programs that build healthy body, mind, and spirit for all. An investment in the Topeka YMCA is an investment in our community, and the residents of our community.

Thank you.

TESTIMONY BEFORE THE

SENATE ASSESSMENT AND TAXATION COMMITTEE

SENATE BILL NO. 491

FEBRUARY 10, 1988

PRESENTED BY:

ROGER FRANZKE, SENIOR VICE PRESIDENT, BANK IV TOPEKA



Mr. Chairman and Honorable Members of the Senate Taxation Committee, I want to thank you for the opportunity to testify today on behalf of the more than 36,000 men, women and children that are served by the Topeka YMCA. My name is Roger Franzke, I am Senior Vice President of Bank IV Topeka and am the current Chairman of the volunteer Board of Directors for the Topeka YMCA.

My professional responsibilities include, in addition to marketing and business development for the bank, evaluating and developing recommendations for bank support for a variety of community service organizations based on community needs and benefit. The YMCA has long been a recipient of our corporate support for youth scholarships, as well as subsidizing our employees to help make YMCA programs and services affordable to them also.

In the early 1940's, my first pair of swimming trunks, promised by my Mom, came as a result of swimming badges earned at the "Y" . . . my sons had the same experience . . . without the same incentive, however.

I joined the Board several years ago because it has been a major force in my upbringing, my family development, my personal and professional involvement. I believe it is a major force for shaping character and youth, just as it has been for my family and me.

The bill we are here to discuss today, Senate Bill # 491, is not about property taxes, it is about people. For 108 years, the Topeka YMCA has been recognized by the County, State and U.S. Government as a tax-exempt organization because for 108 years, the Topeka "Y" has been meeting important community needs through a diversity of programs offered for youth as well as adults.

Our youth programs serve kids of all incomes, races, religions and abilities. In fact, if you walk into the "Y" on a Saturday morning, it's almost impossible not to run into the hundreds of kids and families using the facility. Let me give you an example of some of our programs:

- Discovery Club picks up children everyday from one of five schools in low income areas - Hudson, Lowman Hill, Lafayette, Quincy and Sumner - and brings them to the YMCA for activities such as basketball, soccer, volleyball, arts and crafts and so forth. This program serves approximately 30 kids per day at absolutely no charge.

- Utilizing gyms and recreational areas throughout Topeka, not just the facilities here, the YMCA youth sports programs include basketball, gymnastics, baseball, soccer and football - all designed to teach the basics of each sport, while emphasizing character building. These programs had total registrations of approximately 4,000 in 1987. Volunteers from the community donate their time as coaches because they believe so strongly in this program.

- Our Summer Day Camp provides structured educational activities, as well as sports related activities to children for 10 weeks during the summer. This program totals approximately 2,700 camper days for youth per year.

- Our Youth Progressive Swim Classes teach fundamental swimming skills and water safety. This program serves approximately 1,400 participants per year in various levels of swimming skills.

- In addition we have teen nights and junior high challenge nights to provide wholesome fun and fellowship for teens and pre-teens, who these days have few alternatives for recreation. For the same reasons, we open a youth lobby everyday after school for kids ages 7 to 15. These kids, most of whom are from low income neighborhoods, come everyday. They are supervised by a youth director. This year we will install a library with books, computers and tapes for them to use.

It is not easy to make all this happen. It takes the support of our whole community, more than 700 volunteers and thousands of dollars of contributions from other sources to subsidize these youth programs that will never pay their own way.

Of course, the Topeka YMCA also provides important programs for families and adults:

- Our Parent/child programs include "Y" Indian Guides whose purpose is to build strong family ties between fathers and sons and fathers and daughters. We also have parent-tot swim classes. These programs serve approximately 300 families in the community.

- Health and fitness has always been an integral part of our historical purpose to help people develop in spirit, mind and body. The YMCA pioneered fitness more than 100 years ago when no one thought of making a profit from it. This is not to say that we were first, but to emphasize our continued service and financial stability. These classes serve about 2,500 participants annually. Our mission drives us to offer these programs in good times and bad.

- We sponsor church and independent sports leagues - everything from volleyball to softball. Programs that serve approximately 5,800 individuals in the community, representing 42 volleyball teams and 2,100 individual softball participants.

- For senior citizens, the "Y" also has water fitness which is designed to increase muscle tone and cardiovascular endurance using the medium of water. A program called Comeback Squad, which is a joint effort between the YMCA and Stormont-Vail Regional Medical Center, reaches out to educate cardiac patients in the values of rehabilitative exercise. These programs are currently serving over 100 people in our community.

As you can see, the YMCA serves everyone in the community. No one is denied participation or membership at the YMCA due to inability to pay. Our Scholarship Program for youth and adults includes free memberships and programs for anyone. Last year 1,466 individuals participated free in YMCA programs and the "Y" provided free memberships to 649 people, who otherwise would not have been able to use the facilities. We follow SRS guidelines, using their low energy assistance program's income scale to determine eligibility or amount of subsidy. We communicate directly with community leaders such as ministers and school principals, outlining our scholarship policy and asking for their referrals to the program.



We finance our scholarships, our youth programs for so many hundreds of youngsters and our senior activities through income generated from our health and fitness programs and through contributions from individuals and the United Way.

Mr. Chairman, I simply don't see how the YMCA will be able to provide any of those programs or services if we are required to pay back property taxes. The magnitude of this \$500,000 back tax bill is a dark cloud hanging over the Topeka "Y". The fact is, if we have to pay these back property taxes, we will be forced to close our doors altogether. We are already operating at a deficit, and we have very limited financial reserves.

No one profits from the "Y". It is run by a volunteer board, none of whom make a cent for doing so. All revenue, whether from memberships or from program fees, is applied exclusively to either the YMCA's cost of services or to charitable scholarship subsidies of programs or membership fees, especially for the disadvantaged youth. From 1984 through 1987, the YMCA has been operating at a loss. There is simply no way the "Y" could pay the back tax liability and remain in operation.

What this means, of course, is that I will have to find a new place to work my tired muscles. And that will be easy. There are other places in Topeka to exercise. But, there are people like Fritz Henderson. He will need to find a suitable place to exercise his muscles as a defense against the deteriorating effect of multiple sclerosis. Little girls like Ashley Henderson will have to look long and hard before they can find a swimming instructor like Pam Ritchey who spent extra time with Ashley just to help her overcome a fear of water. Single parents like Nancy Poliquin won't be able to take advantage of the generous scholarships that have enabled Poliquin's five children to come to the "Y" everyday after school. Boys like Richard Randall will have to find a new baseball coach like John Butler, who stresses selfworth and cooperation, rather than competition. In short, 36,000 Topekans would be left without a vital community center whose overriding Christian mission is to help people develop a feeling of self-worth and sense of community.

Your support of Senate Bill #491 will offer us a solution to this problem a solution that is clearly in the public interest. We believe that we are entitled to win and that we can ultimately win in court. But, the YMCA has spent thousands of dollars that could otherwise support important YMCA community service programs.

And because of the special circumstances of the "Y", granting back-tax relief will not create a precedent for other taxpayers. The Topeka YMCA has been tax-exempt for century, and in recent years, its exemption was repeatedly confirmed by the Board of Tax Appeals. There has never been an attempt to defraud the County on the part of the YMCA. The YMCA has been property tax exempt since 1880 with documented exemptions as late as 1981. During that time, it was apparent that Shawnee County and the YMCA thought the property was tax exempt, as exemption was never questioned.

At the first hearing before the Board of Tax Appeals in January 1987, County Appraiser Gary Smith's testimony acknowledged that the YMCA had a reasonable basis to believe the Downtown Branch property was exempted by George Schnellbacher, the former County Appraiser, and that Mr. Schnellbacher had granted a "de facto" kind of exemption to the YMCA. The YMCA relied on this historic position in good faith all these years. It never occurred to us that we did not have an exemption.

Given these facts, making the YMCA pay back taxes is fundamentally unfair. Few other organizations in Kansas can point to such a long-standing well-established tax exemption. Thus, few other organizations can make so strong an argument against back tax liability.

Mr. Chairman, on behalf of the thousands of Topekans who are served by the "Y", on behalf of the YMCA's more than 700 volunteers who are your friends and neighbors, on behalf of all the families who reach down into their pockets and reach out in their lives to make it possible for others to participate in the YMCA too, we urge your support of Senate Bill No. 491. Thank you.

## THE VALUE OF THE YMCA YOUTH SPORTS PROGRAM

My name is John Butler and I am employed by Washington National Insurance Company. I have had the pleasure of coaching for the YMCA Youth Sports Program for the past five years. The greatest honor in my life was receiving the 1986 Coach of the Year Award from the YMCA. I feel that my experience with this program, my belief in what it stands for, and my understanding of how it works makes me qualified to discuss its merits.

Many children are born with natural athletic abilities; however, far more are not. For these children the choosing up of teams for playground sports can be a traumatic experience.

No one has to tell the last few kids that are chosen, that they have little athletic ability, they know it. Not only do they know it, but their self image is partially shaped by the peer pressure experienced in this episode.

A program was needed that would allow everyone to feel equal, that would remove the pressure to excell, and yet would provide the setting where excellence comes without pressure and positive attitudes replace low self esteem. The YMCA responded to this need with the development of the Youth Sports Program.

As coach for the YMCA Youth Sports Program, I get to watch kids develop athletic skills. Many children have been lead to believe that these skills are either present or they are not; it is my job to show them that the skills can be learned and that participation can be enjoyable.

The teaching of positive attitudes is one of the most important functions of the YMCA youth sports program. For a child to feel good about himself, someone, somewhere, sometime must feel good about him first. Even children from good homes, who have positive self attitudes can benefit from further reinforcement of these attitudes by the coach and fellow team members.

I have had several children who have changed so dramatically that their parents have used phrases like 'miracle' and 'complete turn around' to describe it. For these children the YMCA has provided a service that cannot ever be repaid, nor can its value be calculated. Although these types of cases are not common, their occurrence does make me aware of the tremendous amount of good that has come from the program.

The importance of athletic competition in our culture is evident in the monuments that we erect to sports heroes and the salaries which they can command. Throughout time and throughout the world there is evidence of mans need to compete in sporting events. From the throwing of rocks to the tossing of the pole, from the gladiators to football, man displays this urge to compete.

In today's society, sports heroes are well rewarded and the less skilled become salesmen. Unfortunately this has trickled down into our children's worlds. I had a non-YMCA baseball coach tell me that it was a shame, but a child's future in baseball in Topeka was already determined by the time the child was seven! What a terrible thing to be a failure at seven!

It is this type of pressure that, no doubt, caused the creation of the YMCA Youth Sports Program. The YMCA has taken this need to compete and civilized it.

To the children, the YMCA Youth Sports Program is a place where being part of the team is more important than winning. They realize that since no score is kept, every game ends in a 0-0 tie.

To the children, the YMCA provides a place where wanting to play guarantees equal playing time. Let's face it, the only way to develop skills is to use them.

To the children, the YMCA is something to identify with. The 'T' shirt given to them becomes a badge of belonging. When I go to school to have lunch with my kids, I notice that many of the other kids there have the YMCA shirt on and they seem to group together. They are proud to wear the shirt, and proud to be part of this wholesome, positive organization.

To the children, the YMCA is a place where all are champions if they play fair and have fun. It doesn't matter how many fly balls that a child drops, or how many flags he misses, or how many goals that he allows; if he displays good sportsmanship and does his best, he's a champion.

The YMCA Youth Sports Program is the only place in our society where sportsmanship, enjoyment, and positive attitude are the only yardsticks used to measure success.

I hate to think where the world would be without this dynamic program. The effects would not be evident overnight. At first only the poor and the mediocre would suffer with no available organized sports. With no sporting team to identify with, perhaps they would turn to gangs for acceptance and identity. Maybe the same pride now shown in a brightly colored 'T' shirt would be shown in a black leather jacket. How many would it take? How many good children gone bad, because they've had no positive influence in their lives, before we realize the value of the YMCA Youth Sports Program? If we wait until a child is placed in a juvenile detention center to teach him positive values and reform him, it's too late and we have lost. But if we reach him when he is young and impressionable and help him aim himself in the right direction, he might not ever have to be placed in detention.

In closing I would like for you to be aware of three things: First, Topeka needs the YMCA and the numerous services that they offer. Second, the YMCA is already operating under a tight budget, attempting to provide an ever wider range of programs. Third and finally, if the YMCA is required to pay the \$500,000 in back taxes, they will be

forced to shut their doors, extinguishing a beacon of hope in  
a often hopeless world.

John T. Butler II  
1986 Coach of the Year



TESTIMONY BEFORE THE  
SENATE ASSESSMENT & TAXATION COMMITTEE

SENATE BILL NO. 491

FEBRUARY 10, 1988

PRESENTED BY:

DR. BERNARD JOYCE

To me, the City of Topeka, without the YMCA would be unthinkable, based on my involvement with this organization in the 1920's and my early childhood as a recipient of a scholarship type membership, and presently as a paying member.

Being from a low income family, this gift provided me the privilege of enjoying a year around swimming activity and basketball league program.

On my return to Topeka in the 1950's, my practice as an Orthopedic Surgeon was too demanding to participate in all of the worthwhile activities the YMCA provided.

Having appreciated these youthful activities of the YMCA afforded by a scholarship, I did not hesitate to donate a reasonable amount of money for the much needed present structure.

The pool facilities available the entire year to the 140 member Topeka Swim Association is a vast improvement in contrast to when I was a swimmer of the 1930's six member Topeka Swim Club at the old Gage park pool with a limited summer time activity.

In addition to all of the youth programs provided both indoors, as well as outdoors with their camp facilities, the adults are well provided for through physical fitness activities.

Since I am a physician, I cannot emphasize too much the modalities available

to rehabilitation programs. In addition to the various types of physical fitness apparatuses, there is a running track, and more importantly, a regulation swimming pool.

We should not lose sight that a pool provides adequate space for rehabilitation as a group for selected exercises in classes for various programs such as post cardiac conditions, either surgical or medical, injuries and arthritis.

Water exercises are important for allowing activities of the joints, that otherwise could not be tolerated.

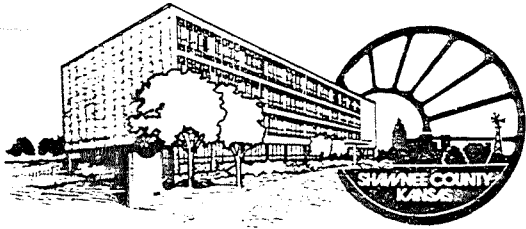
Thus, I speak with authority, since I have emphasized all of these programs with my patients over the past 30 some years.

Since my retirement the past six years, I have been enrolled in a Senior Citizens water exercise class that is not only beneficial, but with the association of the other members and pleasant competent instructor, the drudgery of exercising has been eliminated.

In conclusion, I would hate to see a \$500,000 back-tax bill close the doors on all of the activities presently afforded to those who can or cannot pay for a membership.

I am sure what the YMCA organization offers to this community is more important to continuation into the future than dollars and cents.

I don't believe anyone of us would like to hear it said. "You don't have a YMCA - you must be kidding".



# Shawnee County Board of Commissioners

Rm. 205, Courthouse Topeka, Kansas 66603-3970  
(913) 291-4040

Winifred Kingman, 1st district  
Velma Paris, 2nd district  
Eric K. Rucker, 3rd district

## M E M O R A N D U M

DATE: February 10, 1988

TO: Members of the Senate Taxation Committee

FROM: Velma Paris, Shawnee County Commissioner *Velma Paris*

RE: YMCA "Back Taxes" Issues/SB No. 491

Thank you for the opportunity to speak with you a few moments regarding the issue you are now considering: whether or not the "back taxes due" from the YMCA of Topeka should be nullified.

I am speaking to you, as I did before the House Committee on Taxation, wearing three "hats." First, as a community volunteer, personally familiar with the vital network of human service agencies and their contribution to the quality of life in our greater Topeka area; second, as a county commissioner, aware of the need for tax revenue sufficient to perform the necessary tasks of local government; and third, as a taxpayer, concerned that the taxes I pay be wisely and effectively used.

The YMCA has for years played a prominent role in the network of human service agencies in our community. It has, in many ways, including through its own scholarship programs for low-income young people and its involvement in a variety of opportunities for families

of every income level, contributed to the vitality and effectiveness of this network.

I do not believe that, because of a "glitch" in consistency of performance by county staff several years ago, the YMCA should now be placed in a precarious position which, if enforced to the "letter of the statute, " would surely result in the loss to our community of the services of this important human service agency.

It seems appropriate to me that the Legislature should specifically rectify this unfortunate and, I believe, shortsighted ruling by the Board of Tax Appeals, and I hope that your Committee will enthusiastically recommend such action.

VP/mc



THE STATE OF KANSAS



BOARD OF TAX APPEALS

Docking State Office Building, 10th Floor  
Topeka, Kansas 66612-1582  
AC-913 296-2388

Keith Farrar, Chairman

Robert C. Henry, Member  
Fred L. Weaver, Member  
Victor M. Elliott, Member  
Conrad Miller, Jr., Member

MEMORANDUM

DATE: February 10, 1988  
FROM: Keith Farrar, Chairman  
State Board of Tax Appeals  
TO: Senator Fred Kerr, Chairman  
Senate Assessment/Taxation Committee  
RE: Senate Bill 491

Mr. Chairman, and members of the committee, I appreciate the opportunity to make a short statement on the record pertaining to proposed Senate Bill 491.

This is before the legislature because of a decision by the Board of Tax Appeals. In this case, the county placed the YMCA on the tax rolls since most of the property did not have an exemption. The Board of Tax Appeals reviewed the evidence presented by the YMCA as to the use of the property, remember it is the use and not ownership of property that grants or denies exemptions of property tax, and ruled that there was not an exempt use of the property for tax year 1986, since most of the evidence presented pertained to that year, a majority of the Board gave the YMCA the benefit of the doubt as to the use of the property before 1986. The Board pointed out in the first order, problems with not having accurate figures as to use of the property. The YMCA requested a rehearing which was granted by the Board, and a few days before the scheduled rehearing, the attorney representing the YMCA in a formal request to the Board stated their was no reason to have a rehearing and the YMCA would stand on the original record before the Board, he also indicated the YMCA had been operating in the same manner for many years.

The Board had no longer any doubt about the use of

the property in previous years and ruled to tax the YMCA for all years in question.

The Board of Tax Appeals sees many cases that if the Board had the authority to grant equity would result in different decisions. The Board of Tax Appeals has authority in penalty cases to use some flexibility in judgment of how much the penalty should be.

In property tax cases the Board has to decide which side of the line the evidence presented by the taxpayer and the county fall, and interpret what the statutes and the courts say certain words and phrases mean, such as exclusive use, etc.

The taxpayer or the county, as the case may be, must take the Board's decision to the courts for relief that the Board of Tax Appeals does not have authority to grant.

I am supportive of the intent of the bill, however, I feel it is the duty of the Board to point out a potential problem for the YMCA that could occur because of the constitutional separation of power, questions that might be raised with the passage of Senate Bill 491

Jim Davidson, one of the Board of Tax Appeal attorneys will explain our concerns over potential constitutional problems.

Thank you.

## State ex rel. Tomasic v. City of Kansas City

66 Kan. at 593. Such statutory exemptions may be broader than the constitutional ones. *State, ex rel., v. Board of Regents*, 167 Kan. at 595-96, *Alpha Tau Omega v. Douglas County Comm'rs.*, 136 Kan. 675, 684, 18 P.2d 573 (1933). "Within the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the public welfare." *Gunkle v. Killingsworth*, 118 Kan. at 157. Accord, *State, ex rel., v. Board of Regents*, 167 Kan. at 596." (Emphasis added.)

It is not contended that the IRB property will be "used exclusively" for one of the constitutionally enumerated exemptions. Therefore, the exemption, if valid, must meet the criteria for statutory exemptions.

In ruling on the constitutionality of statutory exemptions, this court has generally considered four key elements: (1) whether the exemption furthers the public welfare, *State, ex rel., v. Board of Regents*, 167 Kan. 587, 207 P.2d 373 (1949); (2) whether the exemption provides a substantial, peculiar benefit, *Alpha Tau Omega v. Douglas County Comm'rs.*, 136 Kan. 675, 18 P.2d 573 (1933); (3) whether the exemption provides for large accumulations of tax-exempt property; and (4) whether the exemption is an improper or preferential classification of property, *State, ex rel., v. Board of Regents*, 167 Kan. 587.

As a general rule of constitutional law, courts have been reluctant to rule on public policy matters since these involve legislative deliberation and judgment. This court stated in *Gunkle v. Killingsworth*, 118 Kan. 154, 157, 233 Pac. 803 (1925), "[w]ithin the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the public welfare." Therefore, in determining whether K.S.A. 79-201a *Second* was designed to promote the public welfare, we must follow a policy of judicial restraint unless we find the judgment of the legislature was "entirely devoid of a rational basis." *State, ex rel., v. Board of Regents*, 167 Kan. at 596.

The purpose of the Economic Development Revenue Bond Act is stated in K.S.A. 12-1740 as follows:

"It is the purpose of this act to promote, stimulate and develop the general welfare and economic prosperity of the state of Kansas through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and of recreational development in the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business, industry and health development; and to promote the economic stability of the state by providing

From such denial of relief plaintiff invokes judicial redress in this proceeding. The state tax commission justifies its refusal to order plaintiff's property stricken from the tax roll in view of the statute of 1931 (R. S. 1933 Supp. 17-1314), which reads:

"All lands held and owned by cemetery corporations or associations shall be subject to assessment and taxation: *Provided*, That where lands are held or owned by municipal corporations for cemetery purposes, such lands shall be exempt from taxation: *And provided further*, Where such lands are divided or platted in burial lots and the same have been sold to a person for burial purposes, such lot or lots shall be exempt from assessment and taxation, and also shall not be subject to attachment or execution."

As the ruling of the commission clearly develops the legal question of present concern, we quote therefrom:

"This commission finds that this property is not used exclusively for religious, benevolent or charitable purposes, although it is claimed that as a matter of fact up to this time, these cemetery associations have reaped no real profit from them. It is the theory of our constitution and our statutory laws that all property in Kansas (except that specifically exempted by the constitution), shall be assessed and taxed at its true value in money. This commission is not willing to find that the interest which private purchasers of lots for burial purposes have in these cemeteries, is such an interest in the land whose ownership remains in the cemetery companies, as will cause such lands to be exempted. This private ownership of these lots seems to have no bearing on the question of the assessment and taxation of the ground not so sold and still owned by these cemeteries.

"This commission concludes that this property is subject to assessment and taxation, and that it should not be stricken from the tax rolls of Shawnee county, Kansas, and that the assessment made by the assessing officers of said county is approved and sustained, and it is so ordered.

"The Mount Calvary Cemetery is owned by the Catholic church. The title to this property is in the bishop of the diocese in which this property is located. It constitutes a portion of the church. It is dedicated by a religious ceremony, as church property. No one who does not die in the Catholic faith may be buried in this cemetery. It is as much a part of the church as the church buildings itself, and is used by the Catholics exclusively for religious purposes, according to the doctrines of their faith. Therefore, this commission is of the opinion that the cemetery is used exclusively for religious purposes, and that the same is not subject to assessment and taxation, and that it should be stricken from the tax rolls of Shawnee county, Kansas, and it is so ordered."

It might be unfair to the commission to construe its ruling to mean that it is by virtue of a religious ceremony that a cemetery property becomes devoted to religious purposes so as to render it exempt from taxation, while the omission of such a ceremony leaves

the cemetery amenable to the burdens of taxation. Indeed, such a ruling would not add one picayune to the public treasury, since religious ceremonies could readily be arranged and speedily conducted in behalf of all other cemeteries which the statute of 1931 seeks to reach for purposes of taxation.

It is not the religious ceremony or any other ceremony which exempts property from taxation, but the nature of its use. From the foundation of the state, burial grounds have been exempted from taxation: Statutes of Kansas Territory, 1855, chapter 137, article 7, section 2, provides:

"The following subjects are exempted from taxation: . . . Eighth, cemeteries and graveyards set apart and used for that purpose only." (p. 658.)

In Compiled Laws of Kansas, 1862, chapter 23, a simple provision is enacted for the voluntary incorporation of cemetery associations, which may hold land not exceeding 320 acres, and section 5 of this statute provides:

"All the ground held by such association for burial purposes, while so held, shall be exempt from public taxation."

In the General Statutes of 1868, chapter 107, article 2, section 3, it is provided that: "All lands used exclusively as public graveyards" shall be exempt from taxation.

Similar exemptions can be found in later compilations of our general statutes, down to the revision of 1923, where, in R. S. 79-201, among other exemptions from taxation there is included, "All lands used exclusively as graveyards."

The underlying philosophy on which exemption from taxation is justified is that a public use is served thereby. (*Washburn College v. Comm'rs of Shawnee Co.*, 8 Kan. 344, 349.) Provision for the decent interment of the dead and for the seemly and dignified maintenance of property set apart for its accomplishment is a public purpose. And the status of the title to property devoted to such public purpose—whether it be vested in an individual, in a church dignitary, or in a corporation chartered for that purpose—is of no importance. In *Washburn College v. Comm'rs of Shawnee Co.*, supra, where the question was whether a quarter section of the land owned by the college was exempt from taxation, this court held that it was use and not ownership which controlled its liability to taxation. Mr. Justice Brewer said:

"If the framers of the constitution had intended to exempt all property



belonging to literary and charitable institutions from taxation, the language employed would have been very different. They would have used the simple, ordinary language for expressing such intention. The fact that they ignored 'ownership,' and made 'use' the test of exemption, shows clearly that they recognized the essential distinction between the two, and established the latter rather than the former as the basis of exemption." (p.349.)

Again, in *Masonic Home v. Sedgwick County*, 81 Kan. 859, 106 Pac. 1082, where the county sought to tax fifteen acres of land owned by the Masonic Grand Lodge and used by that organization as a home for aged Masons and their families, with the usual chapel, hospital and school annexes incident thereto, it was held that the property was exempt from taxation because of the *uses* to which it was devoted, and the matter of *ownership* was not a test of its liability to taxation. It has been held that the legislature can extend the exemptions prescribed by the constitution, so long as "the legislative power is not used in a way to introduce a system of taxation substantially different from that contemplated by the constitution." (*State, ex rel., v. Joslin et al.*, 116 Kan. 615, 616, 617, 227 Pac. 543.) It will scarcely be denied that the act of 1931 which would make *ownership* and not *use* the determinant of liability or nonliability to taxation is a radical departure from the theory of exemptions of cemetery lands from taxation contemplated by our constitution and statutes for three quarters of a century down to 1931. If in the wisdom of the legislature the financial needs of the state and its subdivisions have at length become so pressing that property set apart as graveyards must be taxed, probably its considered determination of that policy will control, whatever practical difficulties may be encountered in enforcing its ukase. (*Dunlap v. Union Lodge*, 129 Kan. 287, 295, 282 Pac. 715.) But it will have to tax all privately owned cemeteries alike; and it will not be possible within the limits of our constitution nor that of the United States to enact a valid statute which shall tax the plaintiff's cemetery because its ownership is vested in a corporation while exempting a neighboring cemetery because the fee title thereto is vested in the bishop of the diocese. Thus in *Quaker City Cab Co. v. Penna.*, 277 U. S. 389, 72 L. Ed. 927, the supreme court had under review an act of the legislature which imposed a millage tax on the receipts of incorporated companies engaged in transporting passengers and their luggage in Pennsylvania. Individuals and partnerships engaged in the same line of business were not subjected to this tax. The court said:

taxation, the language have used the simple fact that they ignored now clearly that they had established the latter (349.)

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*Co. v. Penna.*, 277 nder review an act on the receipts of assengers and their ersonships engaged in his tax. The court

"In effect section 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed while those of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification to be consistent with the equal protection clause must be based on a real and substantial difference having reasonable relation to the subject of the legislation. *Power Co. v. Saunders*, supra. No decision of this court gives support to such a classification. In no view can it be held to have more than an arbitrary basis. As construed and applied by the state court in this case, the section violates the equal protection clause of the 14th amendment. (Citations.) The tax cannot be sustained." (p. 402.)

In 2 Cooley on Taxation, 4th ed., 1373, 1374, it is said:

"An exemption . . . ought to be made on some ground of public policy, such as might justify . . . a donation of the public funds on some general rule of which all who come within it may have the benefit; or such as, at least, makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made. (Citing *Hamilton v. Wilson*, 61 Kan. 511, 59 Pac. 1009, 48 L. R. A. 238.)

"It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation."

Plaintiff lays stress upon the fact that the net income of plaintiff is devoted to educational, religious and charitable purposes—to Washburn College and to the Young Men's and Young Women's Christian Associations of Topeka. Possibly such uses would render the net income exempt, but that feature is not a controlling one in this case. In *St. Mary's College v. Crowl*, 10 Kan. 442, the action was to enjoin the collection of taxes on land owned by the college and used for purposes of farming and pasture. It was held that the property was subject to taxation. Mr. Justice Valentine said:

"For the purposes of this case it may also be conceded that if the property were used exclusively for teaching the Indians agriculture, and for raising food for them and the professors, and the necessary stock kept on the farm, it would still be exempt. But when it is used to raise food for stock not necessary to be kept on the farm; and to raise produce to sell, no further concessions in favor of its exemption can be made. Such use goes at least one step beyond where concessions can be made in favor of its exemption. It is solely the use of the property which determines whether the property is exempt or not. (*Washburn College v. Shawnee Co.*, 8 Kan. 344.) It makes no difference who owns the

property, nor who uses it. . . . If a farm be used for the purpose of raising produce to sell and get money to carry on a school, it will not be exempt. . . . The constitution does not exempt a farm used to raise produce to sell to other persons to obtain means whereby to purchase articles of food and clothing to feed and clothe the students, professors and missionaries connected with a school. And therefore, as the latter use, above mentioned, is not covered by the constitution, the plaintiff's farm cannot be held to be exempt; for all property, in order to be exempt, must be devoted exclusively to the use covered by the constitution." (pp. 449, 450.)

Applying the well-established rules of law suggested above, it must be held that the act of 1931 (R. S. 1933 Supp. 17-1314) which seeks to subject plaintiff's public cemetery to taxation on the ground of the corporate ownership of the fee title to the property violates those provisions of the state and federal constitutions which guarantee to all persons, corporate and individual, within the jurisdiction of the state the equal protection of the law, and which forbid unjust discrimination among individuals and corporations in respect to taxation of their properties.

There is, however, a minor matter involved in this proceeding which must be noted separately. At this time, only ninety acres of the lands granted by Whiting and wife to plaintiff are actually in use as a public cemetery. The remaining seventy acres are held in trust for future requirements. At present the seventy acres constitutes a meadow for the growing and harvesting of prairie hay. Under the St. Mary's College case just cited, the seventy acres is liable to taxation.

The decision of this court is that ninety acres of the quarter section is exempt from taxation and that the taxing officers of the state and county should govern their official action accordingly.

Judgment is for plaintiff.



See *State, ex rel., v. Bennett*, 219 Kan. 285, 547 P.2d 786 (1976).

As previously pointed out, the Kansas Constitution gives to the district and appellate courts jurisdiction to hear appeals, such as may be provided by law. The legislature, under the constitutional provisions previously cited, has been given the power to grant, limit and withdraw the appellate jurisdiction to be exercised by the courts. *State v. Sims*, 184 Kan. 587, 588, 337 P.2d 704 (1959). See also 16 Am. Jur. 2d, Constitutional Law § 331, p. 868.

Procedure has been defined as the mechanics by which a legal right is enforced, as distinguished from the law which gives or defines the legal right, and which, by means of the proceeding, the court is to administer the legal right. *Jones v. Garrett*, 192 Kan. at 114. There is no violation of the doctrine of separation of powers when the legislature merely changes procedural methods.

*Wyandotte County Comm'rs v. General Securities Corp.*, 157 Kan. 64, 138 P.2d 479 (1943), provides a typical example of a violation of the separation of powers doctrine. There the power which the legislature attempted to exercise was a judicial power—the interpretation of an existing statute. Under the facts of that case the legislature attempted by legislative act to direct the judiciary in the interpretation of an existing statute. The court stated:

“The determination of the true state and meaning of the existing law is not a legislative function, but is a judicial function . . . and the legislature cannot declare what the law was in the past.” 157 Kan. at 76.

In the present case the legislature did not attempt to tell the courts what the law was; it did not attempt to force any different decision as to the ultimate rights of the parties with reference to the tax refund. The legislature merely opened the door to the courtroom and then stood back to await whatever decision on the merits might be forthcoming.

In *United States v. Sioux Nation of Indians*, 448 U.S. 371, 65 L.Ed.2d 844, 100 S.Ct. 2716 (1980), the United States Supreme Court goes far in upholding a federal statute which had the effect of requiring a court to hear a case involving Indian rights, after the case had been dismissed on the grounds of res judicata. The court found that Congress in no way attempted to dictate the outcome of the Court of Claims' review of the case on the merits. The Court of Claims was completely free to reaffirm its 1942 judgment previously reached some years before.

for tax purposes based solely upon ownership unlawfully discriminates against one citizen in favor of another and therefore is a denial of equal protection of the law. In *Associated Rly. Equipment Owners v. Wilson*, 167 Kan. 608, 208 P.2d 604, we stated that the equal protection clause of the federal constitution and state constitutional provisions pertaining to equality and uniformity of taxation are substantially similar and that, in general, what violates one will contravene the other and vice versa. In 1887 it was held in *M. & M. Rly. Co. v. Champlin, Treas.*, 37 Kan. 682, 16 Pac. 222, that a distinction made in the taxation of property in a township belonging to residents and nonresidents was unconstitutional and void and in violation of Article 11, Section 1, of the Kansas Constitution.

The terms "equality" and "uniformity" were explained in *Wheeler v. Weightman*, 96 Kan. 50, 149 Pac. 977, where the court stated as follows:

" . . . The essentials are that each man in city, county, and state is interested in maintaining the state and local governments. The protection which they afford and the duty to maintain them are reciprocal. The burden of supporting them should be borne equally by all, and this equality consists in each contributing in proportion to the amount of his property. To this end all property in the state must be listed and valued for the purpose of taxation, the rate of assessment and taxation to be uniform and equal throughout the jurisdiction levying the tax. The imposition of taxes upon selected classes of property to the exclusion of others, and the exemption of selected classes to the exclusion of others, constitute invidious discriminations which destroy uniformity. . . ." (p. 58.)

In *Voran v. Wright*, 129 Kan. 1, 281 Pac. 938, opinion on rehearing 129 Kan. 601, 284 Pac. 807, it is declared that the classification permitted by Section 1, of Article 11, of the Kansas Constitution applies to operation and not to owners thereof. At page 606 of the opinion on rehearing it is stated:

" . . . A classification as to owners is not now permissible. The only classification authorized or tolerated by this constitutional provision is that of property, and it makes no difference by whom it may be owned, whether by individual, merchant, manufacturer, banking institution or other corporation. . . ." (pp. 606, 607.)

The rule of uniformity may be violated as effectively by arbitrary exemptions from taxation as by arbitrary impositions. In *Mount Hope Cemetery Co. v. Pleasant*, 139 Kan. 417, 32 P.2d 500, this court had before it a factual situation and a statute quite similar to that presented in this case. In that action the Mount Hope Cemetery Co. brought an original proceeding in mandamus in the su-



Testimony

To - Members, Senate Assessment & Taxation Committee

From - John T. Torbert, Executive Director  
Kansas Association of Counties

Subject - SB 491

The platform for the Kansas Association of Counties, adopted by vote of our county officer membership in November, contains the following statement;

"We support the preservation of the property tax base for local governments and legislation that would "sunset" or require legislative action every five years to renew all existing statutory exemptions. We strongly oppose further erosion of the property tax base by the granting of additional constitutional or statutory exemptions or the elimination of other revenue sources for local governments and the passage of legislation without the opportunity for public input at committee hearings."

We recognize that legitimate arguments can be made for many existing and potential exemptions. We also recognize that the granting of exemptions is an appropriate exercise of state legislative authority. However, we seek recognition of the impact these decisions have on the local tax base. The fact of the matter is that granting an exemption, no matter how legitimate or politically popular, simply means that taxes, for those who pay them, go up. Exemptions do not lower property tax assessments. They do mean that the assessments are spread to fewer and fewer taxpayers.

Please be mindful of the fact that in many ways, the property tax system is like a balloon. If you squeeze the air out of one area, another area puffs out. Actions cause equal reactions, in ways that might not be intended or desired. The decisions to grant exemptions might be different if approached from the point of view that the net result is higher taxes for many and a tax benefit for a very few.