

Approved February 24, 1988
Date

MINUTES OF THE Senate COMMITTEE ON Local Government

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

9:13 a.m./~~p.m.~~ on February 18, 1988 in room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Senator James Francisco, 26th District
David Bayouth, Sedgwick County Commissioner

Hearings were held on S.B.591, which concerns counties; relating to zoning. The Chairman called on Senator Francisco, who had requested the bill be introduced.

Senator Francisco stated he is the Chairman of the Sedgwick County delegation. Mr. David Bayouth had requested the introduction of this legislation. He presented a article from the Wichita Eagle and Beacon, giving the background on why Mr. Bayouth had requested the bill (Attachment I)

He further stated he had contacted the other four county commissioners from Sedgwick County and none of them had responded in a negative matter. He asked that the bill be passed out favorably.

Senator Francisco requested that the committee have a bill drafted that would change the law to require only a 4/5 vote concerning property tax relief before the Board of Tax Appeals.

The consensus of the committee was to accepted the request and staff was instructed to draft the bill.

Senator Francisco then introduced David Bayouth, Sedgwick County Commissioner.

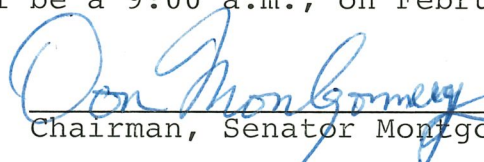
Mr. Bayouth presented a memo addressed to him, from Marvin S. Krout, Director of Planning Wichita-Sedgwick County Metropolitan Area Planning Department. Mr. Krout stated "you have my full support for S.B. 591" (Attachment II).

The Vice-Chairperson assumed the chair in the absence of the Chairman.

Mr. Bayouth responded to questions on why he had requested this proposal. He stated he did not believe in anything being unanimous other than a jury, that's how strongly he felt about it.

Staff briefed the committee on a supreme court decision handed down last summer, the courts upheld the unanimous vote decision was constitutional, the legislature can require a unanimous vote.

There being no further discussion, the meeting adjourned at 9:38 a.m., the next meeting will be a 9:00 a.m., on February 23.


Chairman, Senator Montgomery

Two are denied tax relief

Bayouth refuses to vote as protest

By Lauretta McMillen
Staff Writer

Launching a one-man crusade against laws requiring a 5-0 vote of the Sedgwick County Commission, Commissioner Dave Bayouth abstained Wednesday from two votes — effectively denying at least one man nearly \$1,000 in tax relief that he would have otherwise been awarded.

Bayouth is protesting two separate state laws that require the unanimous vote of all commissioners on protested zoning cases and tax appeal cases, two of which were being voted on Wednesday. The laws were created, state and county officials said, to require a strong voice of the commission in dealing with contro-

versial topics.

If Bayouth continues to abstain, the county effectively will be unable to recommend any tax relief and will be unable to approve zoning changes that have drawn significant protests from affected landowners.

Bayouth has argued that the laws are designed for three-member boards and should not apply to this commission, which expanded a year ago to five members.

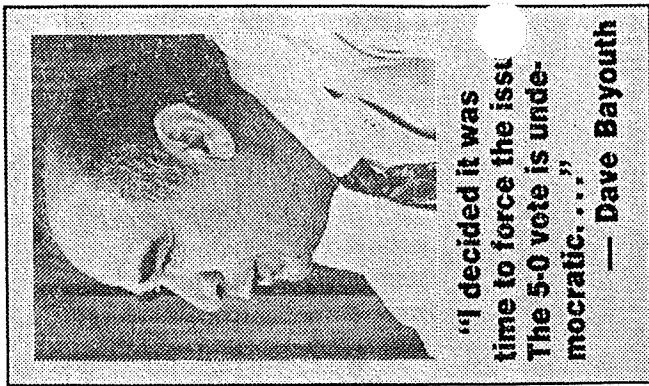
"I decided it was time to force the issue," Bayouth said after the meeting. "The 5-0 vote is undemocratic, it's ridiculous, and I have a real problem with it. Until someone shows me a better way to

bring this to a head, I'm going to abstain."

In the cases Wednesday, two taxpayers had petitioned the state Board of Tax Appeals over errors in taxes assessed against them in the past. The board granted both of them three years of tax relief, the maximum allowed.

Any relief predating the three years would require unanimous recommendation by the County Commission. The appeals board interprets unanimous to mean 5-0 in Sedgwick County, said Keith Farrar, chairman of the board. Therefore, Bayouth's abstention effectively de-

● BAYOUTH, 4B, Col. 5



"I decided it was time to force the issue. The 5-0 vote is undemocratic...."
— Dave Bayouth

Bayouth protests law on zoning, tax votes

● BAYOUTH, from 1B

nies any further relief. The other commissioners voted to grant the relief, and Bayouth said after the meeting that he would have voted to grant the relief if he had not been protesting the state law.

Commission Chairman Mark Schroeder strongly disagreed with Bayouth's decision before and after the meeting Wednesday.

"I understand that Mr. Bayouth is trying to make a point, but I don't think this is the way to do it," Schroeder said. "I think that since the 5-0 vote, according to county counsel, is not unconstitutional and it is the law, we've got to abide by it.

"I don't think we should be putting our problems with the Legislature and its laws off on a private citizen."

Orvill Werner was seeking \$951 in refunds of taxes overpaid from 1978 through 1984 because his trailer home had been incorrectly assessed as a house. He said Wednesday afternoon that he couldn't understand why Bayouth would want to deny him his refund, for any reason.

"I think that's kind of a dirty deal," Werner said. "I should have some more coming to me."

The other case involved Gerald Kampling and his former company, Star-Brite Maintenance. Kampling had sold the company in 1979, but had continued to be taxed for it. County and state officials could not immediately determine the amount Kampling was seeking in relief, and Kampling could not be reached for comment.

Bayouth said he was fully aware that abstaining from the votes

would deny the tax relief. County Counselor Bob Arnold repeated that fact to the commission before the votes and explained that the only further action these two men could take would be to go to court and sue for relief.

"I'm certainly not wanting to create a hardship for this individual, but I don't know any better way to bring it to a head ...," Bayouth said. "When one person can control this county, it's time to take a second look, and that is my argument."

Schroeder replied: "Mr. Bayouth, you are now controlling the county with your one vote."

Bayouth said that was correct, and added later that he had to do that in order to set an example.

Commissioner Tom Scott supported Bayouth, saying, "If you don't stand up for what you believe in, you're not serving the people who elected you."

Commissioner Bud Hentzen said he hoped someone would challenge the law requiring the 5-0 vote to help solve the issue. Commissioner Billy McCray added that although he understood Bayouth's point, he was concerned about his method of presenting it.

Bayouth recently had a bill introduced in the Kansas Senate that would change the law to require only a four-fifths vote for approval of protested zoning changes, but it would not change the tax appeals requirement. Hearings on the bill before the Local Government Committee begin today.

"I don't believe in anything unanimous other than a jury," Bayouth said. "That's how strongly I feel about it. That's not the democratic process, and I won't buy off on it."

(ATTACHMENT I) Local Go 2/18/1988

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

February 17, 1988

TO: Commissioner David Bayouth
Sedgwick County Board of Commissioners

FROM: Marvin S. Krout, Director of Planning



SUBJECT: Senate Bill No. 591

You have my full support for SB591, which would replace the unanimous vote requirement for County Commissions to override protest petitions on zoning amendments with a four-fifths requirement.

The amendment would make the state statutes governing county zoning procedures consistent with the statutes governing city zoning procedures. KSA 12-708 sets a four-fifths requirement for city commissions to override protest petitions. I believe that at the time the county statutes were drafted, all county commissions were only three members in size, and so a four-fifths requirement was in effect a requirement for a unanimous vote. Now that the Sedgwick County Commission has been expanded to five members, it is appropriate to amend the law, for five member commissions.

I believe that the purpose of the extra burden to override protest petitions and to give extra weight to the property owners most directly affected by a zoning change, and that is proper. However, to require any more than a supermajority of four-fifths seems unreasonable and is inconsistent with the statute governing cities. From time to time, a land use may be proposed that is very unpopular with the neighboring property owners, no matter how appropriate the site or how well planned to mitigate any detrimental impacts. The land use may serve a very important public function, such as a solid waste resource recovery facility, or it may be a major new industry attracted as a part of local economic development efforts.

It is extremely difficult to achieve a unanimous vote on such controversial cases, because the opponents can place strong political pressure on the official elected to represent the interests of "their" district and vote against the change, even though that may be at the expense of the interests of the county citizenry as a whole. I know of no other state that statutorily mandates such a difficult voting requirement to override a protest petition.

Lastly, I would point out that this amendment would have no effect on all those county commissions that chose to keep their three-member composition; four-fifths of three will continue to remain a unanimous vote.

Let me know if you would like any additional assistance with this proposed amendment.

(ATTACHMENT II) Local Go 2/18/88

MSK:blw