

Approved March 2, 1988

Date

MINUTES OF THE Senate COMMITTEE ON Local Government

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

9:10 a.m./~~p.m.~~ February 25, 1988 in room 531-N of the Capitol.

All members were present except:

Committee staff present:

Mike Heim, Emalene Correll, Theresa Kiernan and
Lila McClaflin

Conferees appearing before the committee:

Representative Ken Francisco
Bob Wing, President, Local 64 of the International Assn of Fire
Fighters
James A. Todd, Kansas State Fire Fighters Assn.
Wayne Maichels, Kansas AFL-CIO
Dennis Phillips, Treasurer, Topeka, Fire Fighters Assn.
Jim Kaup, The League of Kansas Municipalities
Dennis Shockley, City Council, Kansas City, KS.
Hal Walker, City Attorney, Kansas City, Ks.
Representative Michael Peterson

The Chairman presented an amendment to S.B. 558 (Attachment I).
He stated the auctioneers, motor car dealers assn. and department of
revenue have all given their approval to this amendment.

Senator Allen moved to adopt the amendment. The motion was seconded
by Senator Langworthy. The motion carried.

Senator Ehrlich moved to pass S.B. 558 as amended. Senator Langworthy
seconded the motion. The motion carried.

Senator Montgomery will carry the bill.

The Chairman opened the hearings on H.B. 2172 - relating to residency
requirements for employees of cities, counties and school districts.
This bill was carried over from the 1987 session, hearings were held
on March 19, 1988. The Chairman called on Representative Ken Francisco,
sponsor of the bill.

Representative Francisco stated residency requirements are a statewide
problem, just because a new council decides they want to make residency
a requirement, a person should not have to lose their job. He asked
the committee to support the bill.

In answer to a question, he stated some cities do not have the grand-
father clause in their residency requirements, that is why the retroactive
clause was added, in the House Committee last year.

Bob Wing, President of Local 64, of the International Fire Fighters
presented written testimony expressing the opinion that the residency
laws imposed by the city of Kansas City, Ks. are unfair (Attachment II).
He further stated, it is not their intent to provide any discharged employee
with legal recourse.

Mr. Wing distributed a letter from Joseph E. Steineger Jr., Mayor
of Kansas City, Ks. Mr. Steineger stated in his letter he supports county-
wide residency for municipal employees (Attachment III).

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government

room 531-N Statehouse, at 9:10 a.m./~~p.m.~~ on February 25, 1988

Terry Kloppenberger, Wichita fire fighter, called their support.

James A. Todd, Kansas State Fire Fighters Assn., stated they support the bill.

Wayne Maichel, Kansas AFL-CIO, expressed support for H.B. 2172.

Representative Michael Peterson, Kansas City, Ks. stated the fireman want equal treatment. He recommended the bill be passed.

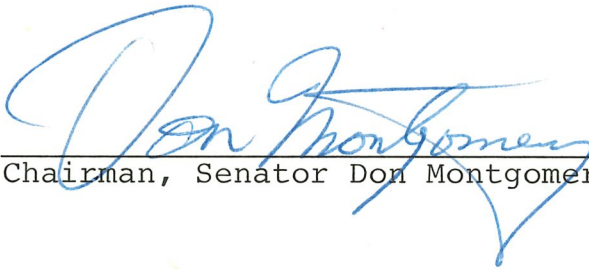
Dennis Phillips, Treasurer, Topeka Fire Fighters, expressed support for H.B. 2172.

Jim Kaup, The Kansas League of Municipalities, presented written testimony opposing H.B. 2172 (Attachment IV). They believe the bill represents an unnecessary intrusion by state government into local affairs. It is inconsistent with the constitutional Home Rule Amendment.

Dennis Shockley, representing the City Council of Kansas City, Ks., gave a historical review of the residency requirements in that city. He stated the requirements have changed very little since the early 50's, there is just stricter enforcement now (Attachment V).

Hal Walker, City Attorney, Kansas City, Ks., presented written testimony addressing H.B. 2172. He highlighted a number of specific concerns, and he strongly recommended that the bill not be allowed to become legislation (Attachment VI).

The Chairman stated the hearings would have to continue at a later date to be announced. The next meeting will be at 9:00 a.m., March 1, 1988. The EMS legislation will be heard at that time. The meeting adjourned at 10:03.


Chairman, Senator Don Montgomery

Date: February 25, 1988

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
John Koepke	KASB	Topeka
Joe Gless	K-NEA	Topeka
Jim Loman	Federal Order of Police	Topeka
Tom Wadley	FOP	KCK
Joe Thibodeau	Ks State FF	Lawrence
James A. Todd	KS77A	Wichita
Wayne Marchel	K. AF-CTO	Topeka
Dennis Shockley	CITY OF KCK	CITY OF KCK
Hal Walker	City of K.C. KS	City of K.C. KS
Clay Kemp	League of Municipalities	Topeka
Mike Quinn	Club 64 KCKFD	KCK
Dixie Quinn	Club 64 KCKFD	KCK
Pat Young	I.A.F.F. Local #64	K.C. KS.
Charles M. Wright	I.A.F.F. #64	K.C. KS.
Mary K. Romero	I.A.F.F. #64	K.C. KS.
Robert W. Rocha	I.A.F.F. #64	K.C. KS.
Carrie Gray	I.A.F.F. #64	Topeka
Janie Madrak	I.A.F.F. #64 KCKFD	KCK
Ronald Wells	I.A.F.F. #64 KCKFD	KC, KS
Dan Blair	I.A.F.F. KCKFD	KCK
Robert Nowak	KCKFPA	KCK
Dary Cyle	I.A.F.F. #83	Topeka

(OVER)

Dennis Phillips IAFF local 83 Topeka

Bob Wang I.A.I. local 44 K.C.K.s

Mike Peterson House KCK

AMENDMENT TO SENATE BILL 558

K.S.A. 8-2401(a)(4)(iii)

(iv) or auctioneers conducting auctions for those defined in (i), (ii) or (iii); ~~or who are engaged primarily in the business of conducting auctions of isolated and occasional sales of tangible, personal property for others and are not engaged primarily in the business of auctioning or selling vehicles;~~ or (v) auctioneers who while engaged in conducting an auction of tangible personal property for others, offer for sale: (1) vehicles which have been used primarily in a farm or business operation by the owner offering the vehicle for sale including all vehicles which qualified for a farm vehicle tag at the time of sale except vehicles owned by a business engaged primarily in the business of leasing or renting passenger cars; or (2) vehicles which meet the statutory definition of an antique vehicle; or (3) vehicles belonging to no more than four principals or households per auction. All sales of vehicles exempted pursuant to this subsection (v) shall be registered in Kansas prior to the sale.

*The auctioneers, motor car dealers assn,
and Dept of Revenue have given their
approval to this amendment.*

Don



International Association of Fire Fighters Local 64

KANSAS CITY, KANSAS



February 24, 1988

TO: All Wyandotte County Legislators

My name is Robert Wing, and I am the President of Local 64 of the International Association of Fire Fighters. I am here tonight to ask your help in resolving a problem that has been discussed from time to time for the past four years.

It is the opinion of the Fire Fighters Local that the residency law imposed by the City of Kansas City, Kansas is unfair in that it does not take in what we consider to be our Service Area. We feel the more fair approach to this problem would be to expand the residency requirement to the borders of Wyandotte County.

This is not based upon emotion or any controversy that you might have heard about, but upon what we feel is sound reasoning. I would like to explain some of the reasons why we feel that we should not be treated differently than any of the other governmental units in Wyandotte County.

We have always considered the County of Wyandotte to be our Service Area. As you all know, we have Mutual Aid contracts with all of the other municipalities in Wyandotte County. It is true that we have Mutual Aid contracts with Northern Johnson County and Kansas City, Missouri, but we have other ties with the municipalities in Wyandotte County.

We receive all the calls for fire assistance in Bonner Springs, and we dispatch all fire assistance in that city. This is pursuant to a resolution adopted by the City of Kansas City, Kansas, Number 35244, which was adopted December 16, 1982. These services are paid for by the City of Bonner Springs to the City of Kansas City, Kansas. We further dispatch all medical service to the City of Bonner Springs.

At this time, we also have an agreement with the County of Wyandotte, which was entered into in January of 1985, wherein we assist in protection of the unincorporated areas of Wyandotte County and also dispatch ambulance service to these areas and the City of Edwardsville.

(Attachment II) Local Go 2/25/88

In addition to the above service, we have at least ten current employees of the Kansas City, Kansas Fire Department who live in Bonner Springs and Edwardsville and who have on occasion rendered valuable service to the Volunteer Fire Departments in these two municipalities when an emergency came about and they were at home, off duty. This means there would be a positive benefit to the entire county, insofar as fire protection is concerned, if the residency requirement was expanded to include all of Wyandotte County. As you well know, the territorial size of Wyandotte County is small, and the ability of our fire fighters to get to their assigned stations would be relatively small, in comparison to other counties, in case of any catastrophies.

Therefore, it is really a simple matter to define the Service Area of the Kansas City, Kansas Fire Department as the entire County of Wyandotte, in that services are provided by our department to each and every part of the county. Further, we already have individuals who live in all parts of the county, and we only think it fair that all members of the Kansas City, Kansas Fire Department have this same right.

I have examined the residency requirements of other governmental units in Wyandotte County, and find that we have, as a department, the strictest residency requirement available. The Kansas City, Kansas Community College has no residency requirement whatsoever for its employees, whether they be teachers or in the support services for the college. School District 500, which is wholly contained within Kansas City, Kansas, has no residency requirement whatsoever for any of its employees. The BPU, which is wholly owned and operated by the City of Kansas City, Kansas, has a county wide residency law, and further has many individuals who live outside the county, who were grandfathered in when the county residency law as adopted. It is even true that some employees of the City of Kansas City, Kansas, through the Board of Public Utilities, live outside of the State of Kansas.

I have also examined the residency requirements of the Turner School District, the Bonner Springs School District, and the Piper School District, and find that they have no requirement which mandates that their employees live within the limits of the school district.

Given the fact that our primary Service Area is the entire County of Wyandotte, and also given the fact that some of our fire fighters do, in fact, live in Bonner Springs and Edwardsville, and also given the fact that other local units of government in Wyandotte County do not have restrictive residency requirements, we feel it only fair that we be given the same benefits. We only ask that the city, or state, allow the Kansas City, Kansas Fire Department to live within the boundaries of Wyandotte County.

Members of the Wyandotte County Delegation
February 24, 1988
Page Three

We also acknowledge the fact that this is a purely local issue and we would hope that the City of Kansas City, Kansas would revise their residency requirement. We do, in fact, intend to ask them to do so, and because the legislative session has begun, we feel it is necessary to alert our elected representatives as to what our wishes are concerning residency. We would sincerely hope that it might be possible for the Legislative Delegation of Wyandotte County to confer with the city of Kansas City, Kansas, and resolve this problem.

Also, as a part of our legislative requests, we would like to thank the Delegation for its work on behalf of our retired fire fighters, and request that they continue to provide the type of support for the retired fire fighters as they have in the past. We sincerely appreciate the increase each year that you have given our retirees, and also the fact that they are now entitled to a thirteenth check. However, there is one area in which we would request attention, and that is the older retirees who are living on a very small income. These folks greatly appreciate any increase they get each year, but some of them are living on less than \$200.00 per month. If it is possible, we would request that a minimum of \$500.00 per month be established so that these older retirees can somehow catch up with the cost of living.

Again, I thank you very much for the opportunity to speak to you, and would also say that if there is anything we can do for any of you in the future, please let us know.

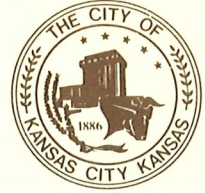
Thank you very much.

ROBERT WING, President
Local 64, I.A.F.F.



City of Kansas City, Kansas

Joseph E. Steineger Jr., Mayor



Executive Chamber
One Civic Center Plaza

Kansas City, Kansas 66101
Phone (913) 573-5010

February 24, 1988

The Honorable Donald L. Montgomery
State Senator
Chairman
Senate Committee on Local Government
State House
Topeka, Kansas 66612

Re: House Bill 2172; Residency of
Municipal Employees

Dear Senator Montgomery:

As a candidate for Mayor, I supported county-wide residency for municipal employees. As Mayor and a member of the City Council, I continue to support that position. The City Council of Kansas City, Kansas, overwhelmingly remains opposed to any legislation which affects the right of the local governing body to determine this issue within the confines of their deliberations.

After review of House Bill 2172, I must conclude that while I maintain my personal support for county-wide residency, I cannot support retroactive application of this legislation to those municipalities that in reliance upon Court rulings lawfully enacted residency requirements. The potential for legal and financial consequences is not in the best interest of the municipality and would serve no beneficial purpose at the present time. You may trust that I will continue to support the prospective application of such legislation to future requirements placed upon employees of this City.

Very truly yours,

Joseph E. Steineger, Jr.
Mayor

JES:djj

(Attachment III) Local
Go 2/25/88



League of Kansas Municipalities

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

TO: Chairman Don Montgomery and Members,
Senate Committee on Local Government
FROM: Jim Kaup, General Counsel
RE: **HB 2172; Prohibiting Residency Requirements for Municipal Employees**
DATE: February 25, 1988

I. INTRODUCTION.

HB 2172 would prohibit any municipality (cities, counties and school districts) from imposing residency requirements as a condition of employment for current municipal employees. Lines 21:28 provide that residency requirements adopted prior to July 1, 1988 would exempt all employees on the payroll at the time the requirement was adopted. Lines 28:35 provide that residency requirements adopted after July 1, 1988 would exempt all current employees as well.

The League opposes HB 2172 as a matter of principle, in that it amounts to a significant and unnecessary State encroachment upon the authority of local governments by legislating on a matter of local concern. HB 2172 is directly at odds with the League's 1987-1988 Convention-adopted "Statement of Municipal Policy" which provides: "The governing bodies of cities should have full authority to establish comprehensive personnel programs, including authority to determine hours of work, compensation, overtime, leave policy, residency requirements, fringe benefits, promotion, firing and all other terms, conditions and qualifications of city employment." Accordingly, the League asks this Committee to report the bill adversely.

II. HOME RULE.

While there are a number of practical problems with HB 2172 (discussed below), the League's primary objection to the bill is the fact that it is contrary to the above-stated principle of local decision-making on matters of local concern. It should be noted that if there are in fact problems in communities in this state arising from municipal employee residency requirements, the proper recourse for those citizens who oppose residency requirements is to act to change the local law or regulation. From our standpoint, handling such issues locally is a much more desirable course of action than running to the state legislature seeking a state-mandated prohibition against any municipality imposing any residency requirement upon any municipal employees.

(Attachment IV) Local Go 2/25/88

President: Carl Dean Holmes, Mayor, Plains • Vice Presidents: Douglas S. Wright, Mayor, Topeka • Past Presidents: John L. Carder, Mayor, Iola • Directors: Nancy R. Denning, Commissioner, Manhattan • Ed Eilert, Mayor, Overland Park • Irene B. French, Mayor, Merriam • Frances J. Garcia, Commissioner, Hutchinson • Robert G. Knight, Mayor, Wichita • Paula McCreight, Mayor, Ness City • Jay P. Newton, Jr., City Manager, Newton • Richard U. Nienstedt, City Manager, Stockton • David E. Retter, City Attorney, Concordia • Judy M. Sargent, City Manager, Russell • Joseph E. Steineger, Mayor, Kansas City • Arthur E. Treece, Mayor, Coffeyville • Executive Director: E.A. Mosher

A IV

III. MUNICIPAL EMPLOYEE RESIDENCY REQUIREMENTS.

Residency requirements fall generally into two categories, durational and continuous.

- A. **Durational residency requirements** provide that before a person may be hired he or she must have been a resident of the area for a certain period of time. Durational residency requirements are frequently struck down by the courts as violative of Equal Protection and/or the constitutionally-protected right to travel. Durational requirements are judged by the "strict scrutiny" equal protection constitutional standard, and such a requirement will be upheld only if there is a compelling governmental interest which justifies the requirement. Shapiro v. Thompson, 394 U.S. 618 (1969). The League is not aware of any durational residency requirements at the municipal level in Kansas, except for elected officials.
- B. **Continuous residency requirements** require that an employee maintain his or her residence in the appropriate area while employed by the governmental entity. The U.S. Supreme Court has upheld a continuous residency requirement as recently as 1976. McCarthy v. Philadelphia Civil Service Commissioner, 425 U.S. 645. The U.S. Supreme Court found no constitutional right to be employed by a city while the employee is living elsewhere. Cases handed down since the McCarthy decision indicate that a continuous residency requirement is to be judged by the more relaxed "minimum scrutiny" equal protection constitutional standard--that there be a rational relationship between the end sought to be accomplished and the means used to achieve that end--that is, the restriction must have a rational basis and be reasonably related to the goals which it intends to accomplish. The Kansas Supreme Court, in the 1978 case of Lines v. City of Topeka, 223 Kan. 772, upheld a continuous residency requirement and thereby adopted the "minimum scrutiny" analysis.

Some of the goals or reasons for residency requirements which have been recognized by the courts as a legitimate basis for imposing a continuous residency requirement are as follows:

- (1) Enhancement of the quality of employee performance by greater personal knowledge of the city's conditions and by a feeling of greater personal stake in the city's progress.
- (2) Reducing absenteeism and tardiness among municipal employees.
- (3) Ready availability of trained personnel in emergency situations (this is particularly important in the instances of firefighters, law enforcement officers and emergency medical personnel).
- (4) General economic benefits flowing from local expenditure of employee salaries.
- (5) An incentive to halt or reverse the flight from central cities.

The 1978 Kansas Supreme Court case referred to above concerned a Topeka residency requirement that only applied to specified managerial employees (city attorney, city clerk, city treasurer, public works director, fire chief and police chief).

The Kansas Supreme Court held that if the "emergency availability" and "salary expenditure" criteria (items 3 and 4 above) were all that the City of Topeka was relying upon as the basis for the residency ordinance, the city's failure to extend the requirement to all municipal employees might deny equal protection to those falling under the requirement, since the goals would cover all employees, not just those affected. However, the court felt that the city "was justified in requiring major officeholders to have a commitment and involvement with the city, its taxpayers and its activities in order to hold such an office." 233 Kan. 779.

IV. ADDITIONAL PROBLEMS WITH HB 2172, AS DRAFTED.

While the League believes that the policy issue of local control over matters of local concern should be adequate to defeat HB 2172, there are additional, practical, problems with the wording of the bill. A few of those problems are set out below:

- (1) While HB 2172 may have been intended to prevent a municipality from requiring a current, nonresident employee to obtain residency as a condition of continued employment, it effectively prohibits residency requirements for any current employee. In other words, a municipality could not stop any employee, who was on the payroll at the time the residency requirement was adopted, from moving outside the municipality after the residency requirement is adopted.
- (2) Municipalities would not be allowed to require employees hired before the adoption of a residency requirement to live in the municipality, but could require residency of employees hired after adoption of the requirement. What such a state-mandated rule creates is a two-tiered system within each municipal government with employees who are working side-by-side being subjected to different rules and regulations concerning their residency.
- (3) Does the term "persons employed" (lines 26 and 33) cover all categories of persons in an employment relationship with a municipality? If so, this would include not only to part-time and full time employees, but may also apply to contractors and agents for the municipality.
- (4) The passage of HB 2172 could raise questions as to implicit amendments to statutes such as K.S.A. 15-209 which mandate that appointive officers be residents of the city at the time of their appointment and during their tenure of office. The question of who is an "employee" and who is an "officer" is one that has been at the crux of a number of state and federal court decisions--with the answer often turning upon the specific facts of a given employer-employee relationship.
- (5) A difficult question is also raised by the term "residency" in HB 2171. In the absence of local law that establishes what constitutes "residency," the rules of statutory construction found at K.S.A. Supp. 77-201 will be applicable. K.S.A. Supp. 77-201 (23) states that the term "residence" shall be construed to mean "the place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be deemed the person's residence." In the Lines case referred to above, the Kansas Supreme Court noted that "although the terms domicile and

residence may have different legal meanings, residence is defined in the statute as substantially the equivalent of domicile--the adoption of a place of habitation with the intent to return thereto." Neither residence nor domicile has one fixed definition, although residence is a looser term, and basically means having a fixed place of abode in a particular area and requiring mere physical presence. Domicile basically means a residence which is intended to be permanent rather than temporary--the place where a person is not intimately connected. It is a question of fact and the intent of the person may be shown from a number of factors.

- (6) The bill may cause a special problem for municipalities which have employee bargaining units. Labor law commentators have written that a residency requirement is the subject of mandatory collective bargaining: "...when its enforcement will or could result in termination or other adverse treatment of any incumbent bargaining unit employee. This is so because the action prompted by the rule's enforcement would adversely effect the job security of a bargaining unit of an employee." (29 Labor Law Journal 353 (1978)). What this means, in effect, is that the subject of residency may be an already-negotiated point in the bargaining process between a municipality's management and its employee bargaining units. The opportunity for such a negotiated settlement would be essentially wiped out by passage of HB 2172.

V. SUMMARY.

The League's primary opposition to HB 2172 does not concern any of the above-cited practical problems with the bill as drafted. Rather, we oppose HB 2172 on the basic issue of who should make these personnel-related decisions. We believe the bill represents a significant and unnecessary intrusion by state government into local affairs. It is inconsistent with the constitutional Home Rule Amendment and preempts locally-elected governing bodies from making decisions which are local in nature. In addition to the principle of Home Rule, this Committee should note that there are a number of court cases, both in Kansas and across the country, which recognize the legality of residency requirements, and that those same courts have identified a number of public purposes which are benefitted by the existence of residency requirements.

We respectfully request this Committee to vote against passage of HB 2172.

HISTORICAL REVIEW OF RESIDENCY REQUIREMENT
IN KANSAS CITY, KANSAS

The July 21, 1983, enactment by the City Council of Kansas City, Kansas, of Ordinance No. 64504 (attached) requiring all employees of the City to be bona fide residents represents a continuation of previous ordinances affecting employees of said governmental unit. As a condition of employment, residency within the City has been required for certain classes of employees under civil service rules and regulations since 1950. As to all other employees the residency requirement has officially existed since enactment 1969 of Ordinance No. 47589 codified at Section 2-33.1 of the Code of Ordinances (attached). The refinement of these two ordinances to comport with existing law as determined by the United States Supreme Court in various decisions resulted in the 1983 enactment. This latest enactment only represents a continuation of prior express policy.

On January 4, 1950, the former City Commission of Kansas City, Kansas, enacted and created a Civil Service Commission with application basically to firefighters and police officers. Section 9 of the original act provided in 1950 that all applicants for covered positions within the fire or police departments were required to have been residents of Kansas City, Kansas, for three years prior the date of the competitive examination. Subsequent amendments to that ordinance reduced the number of years to two years preceding the date of the examination. At the time the present City Council enacted the 1983 version the ordinance itself did not alter the requirements imposed upon firefighters and police officers. In numerous subsequent amendments to the 1950 Rules and Regulations, the residency requirement has specifically remained unchanged. All covered employees were required to maintain a bona fide residence within Kansas City, Kansas, during all times while employed. Although both firefighters and police officers were staunch in their opposition to the 1983 ordinance, the fact remains undisputed that such requirement had always existed for them to maintain their employment positions.

As residency pertains to other city employees, Ordinance No. 47589, codified as Section 2-33.1, was enacted on January 9, 1969, and required that all employees be bonafide residents at the time of their appointment except for certain expert employees deemed necessary by the City Commission. Until the 1983 update, the language of this ordinance was neither changed nor challenged.

The question may arise as to the historical analysis of enforcement. Each of these ordinances imposed specific requirements upon the employees affected. No accurate records exist as to the extent either of these ordinances were enforced against those classes of employees affected. An analysis of the enforcement would vary depending upon the department. While some departments were lax in maintaining rigid enforcement of this ordinance, others refused to employ persons who did not meet the requirement. Thus, prospective employees were required to move to Kansas City, Kansas, in order to obtain the employment. The records of the Kansas City, Kansas, Civil Service Commission do not reflect actions taken against firefighters or police officers who were not in compliance with the rule. At the time of their employment, the very nature of the civil services rules necessitated that the applicant be a resident of Kansas City, Kansas, to be eligible. However, these same employees then without consent or authorization removed their residence from the City after being employed. The supervisory personnel of the fire and police department took varying action depending upon the administration in office. Thus, fire and police personnel affected by the 1983 passage of the current residency ordinance had in fact changed their residence after acquiring employment despite their awareness at the outset that their employment required continuing residency.

In summary, an analysis of the current residency ordinance reveals that it merely clarifies the language of pre-existing ordinances into compliance with interpretations of similar laws by the Kansas Supreme Court and the United States Supreme Court. This ordinance imposed no additional requirement upon City employees that did not in fact exist prior to the date of its enactment. In fact, the only difference between the earlier versions and the present requirement of residency is that the policy of the governing body appears to that strict enforcement will be a priority.

ORDINANCE NO. 64504

AN ORDINANCE relating to the establishment of residency requirements for employees of the City of Kansas City, Kansas; requiring employees of the City of Kansas City, Kansas to establish permanent residence within boundaries established by the governing body of the City of Kansas City, Kansas; providing for employees presently residing outside the established boundaries; providing for newly hired employees; and providing for penalties for violation of the provisions of this ordinance; repealing original Section 2-33.1 of said Code; and repealing original Section 9(3) of the Civil Service Rules and Regulations, Appendix B to the Code of Ordinances, City of Kansas City, Kansas.

WHEREAS, the City Council desires to promote an interest in, and a loyalty to, the City of Kansas City, Kansas, among all of its employees; and

WHEREAS, the City Council deems it necessary to establish certain boundaries within which employees of the City of Kansas City, Kansas, must establish permanent residence in order to promote said interest and loyalty, improve relationship of city citizens and city employees, enhance the quality of employees' performance by greater personal knowledge of the city's condition and by a feeling of greater personal stake in the city's progress, diminish absenteeism and tardiness, promote ready availability of trained manpower in emergency situations, help general economic conditions by local spending of employees' salaries, help reverse the population decline of the City, and help abate decline of city tax base.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KANSAS CITY, KANSAS:

Section 1. All employees of the City of Kansas City, Kansas, shall establish and maintain their permanent residence within the corporate limits of Kansas City, Kansas, throughout the period of city employment.

Section 2. Those employees who have legally established a permanent residence in Wyandotte County outside the corporate limits of Kansas City, Kansas, under Section 9(3) of the Civil Service Rules and Regulations, Appendix B of the Code of Ordinances,

Kansas City, Kansas, and who are currently maintaining such permanent residence in the county outside the city, shall be exempt from the provisions of this ordinance. Provided, however, that if at any time any such employee changes his or her place of permanent residence, such employee's exemption shall cease and the employee shall be required to establish and maintain permanent residency in Kansas City, Kansas.

Section 3. Employees of the City of Kansas City, Kansas, excepting those who are exempt under Section 2 of this ordinance, who do not now have a permanent residence in the corporate limits of Kansas City, Kansas, have fifteen (15) months from the effective date of this ordinance in which to establish such a permanent residence.

Section 4. Employees who are not already permanent residents of the City of Kansas City, Kansas, at the inception of their employment shall have a period of four (4) months after such employment begins within which to establish said permanent residence, after the end of which four (4) month period their exemption from the requirement of this ordinance shall terminate.

Section 5. For purposes of this ordinance, "permanent residence" means "domicile," that is, a residence which is intended to be permanent rather than temporary, and which is the place where a city employee is most intimately connected. Tests for determining permanent residence include an employee's driver's license address, auto registration address, voter's registration address, addresses of bank accounts and credit cards, and the phone number and address at which an off-duty employee can be routinely reached at 3:00 a.m. in case of an emergency.

Section 6. For purposes of this ordinance, "employee" shall mean any person employed by the City of Kansas City, Kansas, under the jurisdiction of the City Administrator or the Mayor.

Section 7. Any employee violating any of the provisions of this ordinance shall be subject to discharge from employment with the City of Kansas City, Kansas.

Section 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of

the remaining portions hereof.

Section 9. That original Section 2-33.1 of the Code of Ordinances, City of Kansas City, Kansas, be and the same is hereby repealed . . .

Section 10. That original Section 9(3) of the Civil Service Rules and Regulations, Appendix B to the Code of Ordinances, City of Kansas City, Kansas, be and the same is hereby repealed . . .

Section 11. This ordinance shall be in full force and take effect from and after its passage, approval and publication in The Kansan.

Passed by the City Council of the City of Kansas City, Kansas, this 21st day of July, 1983.

APPROVED:

/s/ John E. Reardon - Mayor

Attest:

/s/ David T. Isabell
City Clerk.

Section 2-33.1 of the Code of Ordinances, City of Kansas
City, Kansas:

Sec. 2-33.1. Appointive officers to be
residents of city; exception.

No person, including urban renewal and public housing authority employees, shall be eligible to any appointive office unless he or she shall be a bona fide resident of the city prior to his or her appointment, except that the city may hire non-resident expert employees when deemed necessary by the board of commissioners.

Section 9(3) of the Civil Services Rules and Regulations,
Appendix B of the Code of Ordinances, City of Kansas City, Kansas:

Sec. 9. Applicants.

(3) Other requirements. Applicant, except applicants for the position of patrolman or firefighter, must be a citizen of the United States and a bona fide resident of the City of Kansas City, Kansas, for two years next preceding the examination; applicants for position of patrolman or firefighter must be citizens of the United States and a bona fide resident of Wyandotte County, Kansas; all applicants shall be able to read and write the English language; provided, that each applicant for a position in the civil service of the City of Kansas City, Kansas, shall furnish and attach to his application a certified copy of his birth certificate; provided further, that the commission may allow experts who are non-residents of Kansas City, Kansas, or Wyandotte County, Kansas, to apply when the Board of City Commissioners of the City of Kansas City, Kansas, deems it necessary; provided further, that each applicant who is appointed to a position in the civil service shall maintain a bona fide residence and actual domicile within the limits of Wyandotte County, Kansas, so long as he is an employee of said city.



LEGAL DEPARTMENT of KANSAS CITY, KANSAS

Ninth Floor - Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101
Phone (913) 573-5060

City Attorney
Harold T. Walker

Deputy City Attorney
N. Cason Boudreau

M E M O R A N D U M

TO: The Honorable Donald L. Montgomery
Chairman
Senate Committee on Local Government

FROM: Harold T. Walker *H.T.W.*
City Attorney
Kansas City, Kansas

DATE: February 24, 1988

SUBJECT: House Bill 2172

Assistants:
Kathryn Pruessner Peters
Jody Boeding
J. Dexter Burdette
Maurice J. Ryan
Renée Markl Gurney
Mary Ann Neath
R. Wayne Lampson

REMARKS

In preface to any specific comments on House Bill 2172, I would like to reiterate comments that may have been made by those in opposition to this legislation. In reference to Kansas City, Kansas, this City has had a continuous residency requirement dating to 1950 under the rules of the Civil Service Commission and the general ordinances on administration imposed upon all City employees. Any alleged failure of enforcement of that requirement does not mitigate the responsibility of the employee to comply. The City Council of Kansas City, Kansas, enacted a comprehensive residency requirement that restated the preexisting requirements, granted a grace period of fifteen months to those persons who were in violation of the existing law, and "grandfathered" public safety employees (police and fire) who were in compliance with the Civil Service Rules and Regulations which authorized a residence within the county but outside the city limits. The present ordinance in Kansas City, Kansas, did not impose a punishment or hardship upon any employee who had complied with the law prior to that date.

The history of litigation on the subject of residency has been extensive. Without reiterating that chronology, such laws have universally been affirmed as to the validity of these requirements. Courts have consistently determined that a legitimate nexus exists between the requirement of

(Attachment VI) Local Go 2/25/88

municipal residency and promotion of the interests of the City. Proponents of this bill will cite geographical discrepancies to suggest that requirement of residency does not really promote proximity of employment. Inescapable from this consideration is the reality that municipal residency requires that those who derive from the public contribute to the public. While residency requirements in an urbanized area do not limit the ability of the employee to making essential expenditures within one community, the reality of everyday life would suggest that a person spend substantial sums of money in close proximity to his residence. The derivative benefit to a municipality is clear.

Addressing this legislation with specific concerns, I would like to highlight a number of factors which bear consideration:

1. Statutory language.

Examination of House Bill 2172 leaves the reader with the impression that the bill contains retroactive provisions that reach back through time to render current employees, through an ex post facto declaration, to be exempt from residency. In the case of Kansas City, Kansas, fire-fighters and police officers would be able to take benefit of the pre-1983 Civil Services rules and regulations that authorized a residence within the county. Presumably, other employees hired prior to July 1, 1988, the effective date of House Bill 2172, would also be exempt from the restrictions on residency. If read in this manner, anyone employed by any municipality prior to July 1 of 1988 would be exempt from any residency requirement. A residency requirement imposed effective July 1, 1988, would then create two classes of employees. Employees employed prior to the effectiveness of House Bill 2172 could enjoy the ability to reside anywhere of their choosing. Employees retained after that date could be subjected to a residency requirement. Clearly, this would not serve the interest of the municipality, would promote confusion in administration and oversight, would treat persons similarly situated in a disparate manner, would treat persons of similar status in a disparate manner, and would only serve the interest of a minority of employees. Examined in light of the Kansas City, Kansas, experience, this legislation would not achieve any clearly defined objective other than to promote the self-interest of those persons determined to achieve that which prior to 1983

they were not authorized to do.

2. Litigation.

The practical effect of House Bill 2172 would be to declare those persons employed prior to the effective date of the City's current residency ordinance as "grandfathered" or exempt from those restrictions. In reliance upon Court action which upheld the validity of the City's requirement, Kansas City, Kansas, has undertaken to terminate those employees who refused to comply. One such person terminated under this was at the time the elected leader of the fire-fighters organization. At the time of enactment, not only did this individual, but also both Public Safety unions, filed litigation challenging the validity of this ordinance. The federal courts in the case of the Union and the state district court in the case of the individual disposed of their claims as invalid. To be anticipated as a result of this current legislation is the proliferation of new litigation. One could argue that this legislation tolls the statute of limitations authorizing persons who were validly terminated pursuant to a residency requirement to institute litigation for recovery of lost wages benefits, as well as damages to reputation and future employment. The language of the bill is sufficiently vague that as an attorney, I would certainly recommend that an aggrieved client pursue the possibility.

3. Financial.

The impact of this legislation upon financial resources of the City of Kansas City, Kansas, must be measured in terms of the reinstatement issue. No precise figure could be offered for potential recoveries for damage to reputation or other more esoteric considerations. One might speculate that a jury could conceivably award "substantial" damages to persons who established a claim to damage to reputation or humiliation. From a budgetary standpoint, the Budget Director for Kansas City, Kansas, has determined that reinstatement of all employees terminated or disciplined pursuant to the City's residency ordinance could cost the City approximately 750,000 excluding benefits.

4. Labor Contracts.

All labor contracts in the municipal sector are

negotiated in reference to certain "given" factors. Among those factors is the existing federal, state and local law. All current labor agreements entered into by the City of Kansas City, Kansas, have been done since enactment of the 1983 residency law. Previous to that, all such agreements were negotiated in reference to the previous residency requirements. Labor contracts frequently make reference to a general loyalty or fidelity to the laws of the City, state and nation. The voidance of City residency requirements' impact upon the good faith negotiations of these parties to collective bargaining agreement.

5. Home Rule.

The absence of a state law on the subject has authorized the local units of government to decide the appropriateness of such municipal regulations. This decision has usually been based upon the factors that exist in that particular situation. In this case, a unanimous City Council enacted the City's residency requirement. This support still remains nearly unanimous. The intervention of the State in this issue will deprive the municipality of some measure of control in relationship to its own municipal affairs. The intervention of the state may be argued to be appropriate when a problem of statewide dimension demands a solution. Neither is this problem statewide nor is a solution being demanded except by proponents bent upon achieving their objectives without reference to the desire of the affected community.

In summary, House Bill 2172 does not represent an appropriate response to the question of residency. Statewide intervention will result in compounding the problems faced by a municipality in addressing this issue. The current legislation specifically fails in its attempt to make clear the problem rather than "grandfather" or exempt employees, legislation on this subject, if any be necessary, should exempt municipalities that currently have in effect a residency requirement. Specifically, any legislation on residency should maintain the status quo in those cities, counties and school districts that have determined this to be in their best interests. People who have made that decision are the elected officials placed in office by majority of their constituents. The idea that a local but determined minority should dictate the policy determined best by the duly elected local officials is reprehensible.

I would strongly recommend that House Bill 2172 not be allowed to become legislation.

HTW:djj