

MINUTES OF THE Senate COMMITTEE ON Local Government

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

9:04 a.m./~~p.m.~~ on March 29, 1988 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Theresa Kiernan, Emalene Correll and Lila McClafllin

Conferees appearing before the committee:

John R. Wine, Assistant Secretary of State
John Peterson, Kansas Cemetery Association
Jim Snyder, Funeral Directors Association
Larry McElwain, Lawrence, President of the Funeral Directors Association
Carol Heil, Kaw Valley Arts Council, Wyandotte County
Representative Ken Grotewiel
Rich Kowalewski, Commissioner, State Corporation Commission
Kathryn Dysart, Wichita Public Schools
David Corliss, League of Kansas Municipalities
Greg Ferris, Councilmember, City of Wichita
Rich Becker, Mayor, City of Lenexa
Dennis Schockley, City of Kansas City, Ks.
Lyle Dersher, City Manager, Ottawa, Ks.

The Chairman opened the hearing on H.B. 3043 relating to the audit of cemetery corporations and other entities offering prearranged funeral agreements; concerning payment and disposition of the expenses thereof; establishing the cemetery and funeral audit fee fund in the state treasury. The Chairman called on John Wine, Assistant Secretary of State.

Mr. Wine stated this bill solves a problem that they face funding these audits, he encouraged the committee to act favorably on the bill (Attachment I).

John Peterson, representing the cemetery associations, suggested several amendments, a balloon of those amendments was distributed and are attached to these minutes (Attachment II). They would support the bill with these amendments added.

Jim Snyder, representing the funeral directors, supported the bill as it was passed by the House. He opposed the \$500 cap (Attachment III).

Larry McElwain, president of the funeral director's association and owner of a funeral home in Lawrence, opposed the \$500 cap. In answer to a question, he stated, for the large funeral homes with many pre-arranged funeral accounts, it could be very difficult to complete an audit with a \$500 per diem cap.

John Wine stated they disagreed with the \$500 per diem cap.

Several members of the committee expressed disagreement with the \$500 per diem cap.

John Peterson suggested some language such as "or unless the Secretary of State determines the records are a mess and more time would be needed to perform the audit".

The Chairman opened the hearing on H.B. 2768 concerning Wyandotte County; relating to a levy for an arts program. He called on Carol Heil to testify.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N Statehouse, at 9:04 a.m./~~p.m.~~ on March 29, 1988.

Carol Heil representing the Kaw Valley Arts Council in Wyandotte County presented written testimony supporting H.B. 2768. This legislation is localized to effect only their art council (Attachment IV).

The Chairman opened the hearing on H.B. 2981 concerning municipalities, relating to franchise fees, he called on Representative Grotewiel.

Representative Grotewiel testified in support of H.B. 2981. His testimony states without legislative direction as to the rules of the game cities will be tempted to substantially raise their franchise fees (Attachment V).

Rich Kowalewski, State Corporation Commission, testified in support of the bill, he recommended the committee consider a 5% cap on fees.

Kathryn Dysart, Wichita Public Schools, spoke in opposition to H.B. 2981. She asked that H.B. 2981 be amended to exempt public school districts from the payment of utility franchise taxes (Attachment VI).

David Corliss, Research Attorney, League of Kansas Municipalities, said they are strongly opposed to H.B. 2981, as an encroachment upon the constitutional home rule powers of cities (Attachment VII).

Greg Ferris, Councilmember, City of Wichita, appeared in opposition to H.B. 2981 (Attachment VIII).

Rich Becker, Mayor City of Lenexa, opposed H.B. 2981, they believe it is in conflict with the constitutional home rule authority and they oppose Section 6, subsections B, C & D, on page 4 of the bill (Attachment IX).


Dennis Schockley spoke in opposition to H.B. 2981, he submitted a summary of the testimony giving before the K.C.C., on this issue. Their city council is concern about maintaining a competitive environment to lure economic development, if this type of legislation is passed (Attachment X).

Lyle Dresher, City Manager, Ottawa, opposed H.B. 2981.

The hearing was closed.

Senator Mulich moved H.B. 2768, because it is non controversial in nature, be passed and put on the consent calendar. Senator Daniels seconded the motion. Motion carried.

The next meeting will be March 30, 1988. The Chairman adjourned the meeting at 10:00 a.m.


Chairman, Senator Don Montgomery

Date: March 29, 1930

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Alan E. Sims	City of Overland Park	Overland Park
Gen Entwistle	State Rep	Wichita
Carl Heil	Kan Valley Arts Council	Lawrence City, Ks.
John D. Bryant	Wichita Public Schools	Wichita
Rich Kowalewski	KCC	Topeka
John Wine	Sec. of St.	Topeka
Dave Bradburn	KCC	Topeka
Samuel Swain	Ks. Comm. Reporter	Dodge City
Jim Snyder	KFDA	Topeka
Sam K. McElwain	KFDA	Lawrence, Ks.
Rich BECKER	Mayor/City of Lenexa	LENEXA, Ks.
Art Davis	City of Lenexa	Lenexa, Ks.
Dave Corliss	Lg of Municipalities	Topeka
Randy Barleson	Empire Electric	(Olembu)
Harry Reese	Kan. Telecomm. Assn.	Topeka
Frank Carr, Jr.	KCC	Topeka
Tom Taylor	KPL Gas Service	Topeka
Jim Coker	KCC	Topeka
Bennie Hedges	inter-Sen Daniels	Lawrence
Rich Bready	KPL Gas Service	Topeka
Jim Richards	W.G. & E. TUE ELECTRIC Co	NEWTON
Jerry Conrad	KG&E	Topeka

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

SENATE LOCAL GOVERNMENT COMMITTEE

House Bill No. 3043

March 29, 1988

The office of the Secretary of State encourages this committee to recommend favorably HB 3043. This bill would enable our office to collect and deposit into a fee fund the costs of conducting audits of cemeteries and funeral homes.

For many years our office has had the authority to audit approximately 70 cemeteries to make sure that they have properly funded their permanent maintenance funds. Five years ago we were given authority to audit the merchandise trust accounts of the cemeteries choosing to sell items pre-need. Last year we were authorized to audit almost 300 funeral homes who make pre-need arrangements.

This bill solves a problem that we face funding these audits. It would require each business to pay the actual cost of its audit and place the money in a fee fund. We would then use the fee fund, rather than general revenue funds, to pay the expenses of the audit. We need this bill to be able to perform audits and provide consumers the protection the statute anticipates.

A draft of this bill was presented to representatives of both the cemetery and funeral home associations prior to requesting introduction. Several changes were requested and in a spirit of compromise we agreed to place a ceiling of \$100 per day on our charges.

Although this compromise means that we will not be able to hire a professional CPA firm to conduct a large audit, we know that if we later learn that we need a CPA audit, we can come back to the Legislature.

With no objection from either industry at the scheduled House committee hearing, this bill passed the House with 123 votes.

We encourage this committee to act favorably on this bill.

John R. Wine, Jr.
Assistant Secretary of State

(Attachment I) Local Go 3/²⁹~~30~~/88

HOUSE BILL No. 3043

By Committee on Local Government

2-24

*John Peterson
Amendments*

ATL

0017 AN ACT relating to the audit of cemetery corporations and other
0018 entities offering prearranged funeral agreements; concerning
0019 payment and disposition of the expenses thereof; establishing
0020 the cemetery and funeral audit fee fund in the state treasury;
0021 amending K.S.A. 17-1312a and K.S.A. 1987 Supp. 16-310 and
0022 16-325 and repealing the existing sections.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 New Section 1. (a) There is hereby created in the state
0025 treasury the cemetery and funeral audit fee fund.

0026 (b) The secretary of state shall remit to the state treasurer at
0027 least monthly all fees received by the secretary of state for
0028 auditing any person, association, partnership, firm or corporation
0029 pursuant to K.S.A. 1987 Supp. 16-310 and 16-325 and K.S.A.
0030 17-1312a, and amendments thereto. Upon receipt of any such
0031 remittance, the state treasurer shall deposit the entire amount in
0032 the state treasury and credit the amount to the cemetery and
0033 funeral audit fee fund.

0034 (c) All expenditures from the cemetery and funeral audit fee
0035 fund shall be made in accordance with appropriation acts upon
0036 warrants of the director of accounts and reports issued pursuant
0037 to vouchers approved by the secretary of state or a person or
0038 persons designated by the secretary of state.

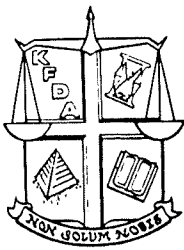
0039 New Sec. 2. Whenever the secretary of state audits any per-
0040 son, association, partnership, firm or corporation pursuant to
0041 K.S.A. 1987 Supp. 16-310 or 16-325 or K.S.A. 17-1312a, and
0042 amendments thereto, such person, association, partnership, firm
0043 or corporation shall pay the expenses thereof, which shall be
0044 assessed against it by the secretary of state on a per diem basis in
0045 an amount not to exceed \$100 per diem.

0046 The secretary of state shall determine the expenses of any

for days or parts thereof related to a field audit

Such per diem charges shall not exceed a total of \$500.00 in any one calander year unless the Secretary of State finds substantial or material deviations from the requirements of the applicable statute.

(Attachment II) Local Go 3/29/88



THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904

TOPEKA, KANSAS 66601

PHONE 913-232-7789

AFFILIATED WITH N. F. D. A.

OFFICERS

President

ROBERT SWAIM
Dodge City

March 30, 1988

President Elect

BILL YORGENSEN
Manhattan

First Vice President

LARRY KOONS
Goodland

Second Vice President

STEVE RYAN
Salina

Senator Don Montgomery, Chairman
Senate Local Government Committee
Statehouse
Topeka, KS 66612

Corporate Secretary

PHIL PHILLIPS
Ulysses

Executive Director

JIM SNYDER
Topeka

Dear Don:

Thank you and your committee for hearing testimony on Senate Bill 3043. I wish to apologize, however, as we believed this bill had been agreed to by all parties previous to its filing.

BOARD OF DIRECTORS

ROBERT SWAIM
Dodge City

BILL YORGENSEN
Manhattan

LARRY KOONS
Goodland

STEVE RYAN
Salina

PHIL PHILLIPS
Ulysses

LARRY McELWAIN
Lawrence

REN NEWCOMER
Topeka

SHIRLEY BROWN
Gardner

BARRY BEDENE
Arma

JACK CANNON
Newton

KEN FISCHER
Belleville

LARRY ENFIELD
Norton

JERRY LARRISON
Pratt

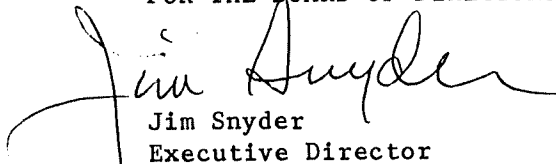
We support the bill strenuously, but oppose any amendments to it. It appears strange to us that the same people who had such "concern" the past two years that the funeral trusts had no auditing provisions are the SAME people now wishing to 'hamstring' the government agency they were so proud to have overlooking their programs. People supporting this point of view--either elected or otherwise--surely cannot claim Public Service to the consumer.

Five days is not even time for an auditor to verify accounts in financial institutions...in fact, anyone with experience with auditors knows that small accounts, in good condition, take more time than that...and many of our funeral accounts as well as cemetery funds total in the millions of dollars. If there is some concern and an audit is determined by the Secretary of State, this proposed lid is certainly an injustice to the consumer.

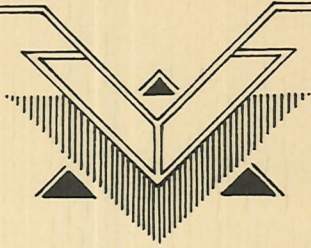
We do support the bill and hope you will report it favorably without amendments.

Thank you.

FOR THE BOARD OF DIRECTORS AND MEMBERSHIP:


Jim Snyder
Executive Director

(Attachment III) Local Go 3/29/88



Kaw Valley Arts Council



P.O. BOX 12324
KANSAS CITY, KANSAS 66112
913/299-0264



KAW VALLEY ARTS COUNCIL
BOARD OF DIRECTORS

John Alvey	Chris Kuzila
Toni Becker	Joe McDowell
Leon Brady	Renee Markl-Gurney
Cathy Breidenthal	Conrad Miller, Jr.
Ken Brown	Norma Miller
Marti Chinn	Joyce Nichols
Dave Cochran	Deborah Pitcher
Jo Denton	Susan Rohrer
Bill Epperheimer	Marilyn Russell
Richard Fields	Ruth Smith
Harriet Goff	Holly Schenk
Lance Hall	Dave Voysey
Mary Lynn Holbrook	Thomas Wands
Rosemary Kelly	

TESTIMONY in favor of HOUSE BILL #2768

Kaw Valley Arts Council is a county based arts agency that serves Wyandotte County. In order for the Kaw Valley Arts Council to continue its present level of arts programming for Wyandotte County, our agency is asking the State Legislature to consider supporting enabling legislation for the arts in only Wyandotte County through the property valuation mill levy. Our request would be for one-third of a mill to support our present and future programs and administration of those programs. The one-third mill would raise approximately \$130,000. The average cost per person would be 76¢ (170,000 population).

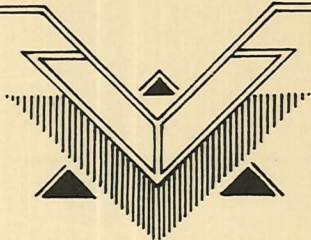
Kansas ranks 50th among the states and territories in arts funding at the state level. Our present funding from the state and city governments will be decreasing for our agency. These funding decreases will result in a \$75,000 loss in our operating and programming budget alone. Also, on-going funding in the private sector is difficult to secure. Unfortunately, most of these funds are a "one time shot" for special programs. This especially is a problem in raising funds for such on-going programs as Festival International. Therefore, a more consistent form of funding is needed at the local government level to continue our programs.

Presently, Kaw Valley Arts Council has an operating and programming budget of \$99,288. In addition to this budget, the Arts Council has sponsored a major cross-cultural festival, Festival International, for the past two years which has attracted tourist dollars to our county and state and has a budget of approximately \$111,800 excluding permanent staff. These two budgets total \$211,091. Dollars to support these budgets are derived from earned and unearned income in the areas of memberships, federal and state grants, private foundations, trust, local governments, fees, gate receipts and special funding projects.

Although we will continue to seek private funding, we would anticipate needing the full one-third mill every other year for Festival International. At present, we plan to sponsor Festival International every year, but on a scaled down format for one year. The next year (1989) will be the "regional" event, as in the past two years. The amount needed from the mill request on a scaled down year will vary depending on our programming. Also, we anticipate setting an amount aside each year to re-grant to other art related agencies in Wyandotte County.

89
Local Go 3/30/88
(Attachment #1)

AM



Although research through the National Conference of State Legislators and the National Association of Local Arts Agencies has not shown mill levy support for the arts, local government support is common in the form of hotel/motel taxes, percent for the arts and lotteries, as well as direct funding (budget line item). Most of these are sales tax based. Realizing the already burdensome sales tax and previous history of using the mill levy for special events as the Wyandotte County Fair, we feel the mill levy is a funding source we would like you to consider for our agency.

I know you understand the importance of the arts to a community(s) in relationship to its quality of life, but economic development is a factor as well. As our agency continues to grow and establish itself as the recognized arts organization in our community, its impact on economic development efforts becomes increasingly significant.

You have been supportive of arts funding at the state level. I hope you will consider enabling legislation for the arts in Wyandotte County.



TOPEKA

HOUSE OF
REPRESENTATIVES

KEN GROTEWIEL
REPRESENTATIVE, NINETY-SECOND DISTRICT
1425 W. MURDOCK
WICHITA, KANSAS 67203-3178
(316) 265-2704

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
FEDERAL AND STATE AFFAIRS
TAXATION
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT

March 29, 1988

TO: SENATE LOCAL GOVERNMENT COMMITTEE
FROM: REP. KEN GROTEWIEL
RE: HB 2981

WHY FRANCHISE FEES IN THE FIRST PLACE?

Cities are given the right in Kansas to grant a franchise to a utility and collect a fee in return for the use of streets and right of way by that utility in KSA 12-2001 (b)(5). That fee is paid by your constituents and is included in their utility bills.

These fees have been historically low and were never considered a major source of revenue for cities until the 1970's when energy prices began to escalate dramatically. Because most fees are collected as a percentage of the entire utility bill, revenues to the cities went up as quickly as energy costs. It soon became a painless stream of revenue.

At that point, the Corporation Commission became concerned about the effect of franchise fees on utility bills and began to more closely scrutinize new agreements between cities and utility companies before they became final. This allowed the Commission to deal with franchise fee agreements before they became a point of contention in a rate case.

(Attachment V) Local Go 3/²⁹~~30~~/88

A.V.

WHY THE NEED TO ACT NOW?

The Commission in an order dated March 18, 1988 narrowed significantly what constitutes "review" of franchise agreements by the Commission. With this decision, I fear that without legislative direction as to the rules of the game that cities will be tempted to substantially raise their franchise fees. It is also possible they could begin to impose discriminatory rates that would unfairly favor business consumers over residential consumers.

WHAT DOES THIS BILL DO?

As introduced this bill set a limit of 2% on how much discriminatory rates can vary between classes of consumers. The purpose of this is to insure some conformity between classes of customers. In addition, it keeps communities from gutting this revenue source in bidding wars with other communities to see who can offer the lowest franchise fee to a prospective business.

The House Committee added a 4% cap on franchise rates. However, it also added an amendment which allows any present agreement to be renewed if the terms of the agreement are not changed in any way.

WHAT IS IMPORTANT TO REMEMBER AS YOU MAKE YOUR DECISION?

As various views are expressed about this bill today, I ask you to ask yourself two questions.

1) Do you want to protect your constituents from excessively discriminatory rates?

2) What is the best way to give your home community flexibility in this area and still provide some guidance?

I hope that these questions are best answered by what is contained in the bill at the moment: a limitation of 2% on the difference between various customer classes and a 4% cap on franchise fee rates. Like most problems we are asked to resolve, this problem is not a simple one. However, today I offer to you a solution that is relatively simple. Yet, it is one I believe balances all the interests you will hear in this room today. I ask for your support.

WICHITA PUBLIC SCHOOLS
Unified School District No. 259
ADMINISTRATION BUILDING
428 South Broadway
WICHITA, KS 67202

Kathryn Dysart
Intergovernmental and
Community Affairs
316-833-4135

To: Members of the Senate Local Government Committee
From: Kathryn Dysart, Wichita Public Schools
Date: March 29, 1988
Re: House Bill 2981

Mister Chairman and members of the Committee,

The bill before you (HB 2981) seeks to limit the disparity of assessment against classes of customers upon which a city may impose a utility franchise fee. We contend that there is one class of customer -- public school districts -- against which no fee should be imposed.

It is our contention that a franchise fee which is paid by a consumer passed through a utility company to a city is a *de facto* tax. It is, we assert, a sales tax on the purchase of electrical, gas, or telephone service.

KSA 79-3606 (c) is the statutory provision which grants a sales tax exemption to school districts. It exempts such taxation on:

all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes.

Additionally, KSA 12-189 (a) and KSA 12-190 extend the reach of this provision to all countywide and city retailers' sales taxes.

... such tax shall be identical in its application, **and exemptions therefrom,** [emphasis added] to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable.

It is clear that framers of the Constitution of the State of Kansas - and authors of subsequent amendments - did not intend to have public school districts taxed since they exempted school districts from state levied property taxes. Not to do so would, in fact, have created a system of double taxation.

(Attachment VI) Local Go 3/²⁹~~30~~/88

VI

Schools districts levying taxes upon citizens so that they may in turn pay other units of government which also levy taxes against the same citizens doesn't make any sense. Levying taxes against school districts which in turn come to the State and request state general fund revenues so the districts may pay their tax bills to the cities is even sillier. Moreover, as all students of good government know, every entity through which such taxes must pass incurs administrative costs which increase the expense to the ultimate payor - the people of the state.

We ask that you amend House Bill 2981 to exempt public school districts from the payment of utility franchise taxes. I have included for your reference a list of the franchise taxes paid by the Wichita Public Schools and two other school districts which I contacted. The fiscal notes to the districts are noted. This move would be, of course, revenue neutral to the state. It carries the ultimate advantage of allowing existing education funds to be used for their intended purpose: educating the children of Kansas.

Franchise Fees paid by Three School Districts in 1986-87

Service Purchased	Percentage charged	Tax paid
Wichita Public Schools, USD 259		
Electric	5%	\$166,846.
Gas - fuel	5%	57,607.
Telephone	5%	32,703.
<hr/>		
Fiscal year total		\$257,157.
Lawrence Public Schools, USD 497		
Electric	3%	\$ 10,806.
Gas - fuel	5%	11,166.
Telephone	3%	1,181.
<hr/>		
Fiscal year total		\$ 23,153.
Dodge City Public Schools, USD 443 (estimated)		
Electric	5%	\$ 9,500.
Gas - fuel	5%	5,200.
Telephone	6%	1,000.
<hr/>		
Fiscal year total		\$ 15,700.



League of Kansas Municipalities

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

TO: Senate Committee on Local Government
FROM: David L. Corliss
DATE: March 29, 1988
RE: **HB 2981—Restricting City-Utility Franchise Authority**

I. INTRODUCTION

The League of Kansas Municipalities is strongly opposed to HB 2981 as an encroachment upon the constitutional home rule powers of cities and as poor public policy placing arbitrary limits on the value of public right-of-way and significantly limiting an important economic development tool available to cities to attract job-creating industries and businesses. At the 1987 League of Kansas Municipalities Annual Convention the following Statement of Municipal Policy was adopted by the voting delegates:

"Utility Franchises. The amount of utility franchise or compensation fees or charges levied by cities on private utilities operating within the city, including the allocation of charges to different classes of users, should be a matter of home rule and local determination and should not be restricted either by state law or by action of the Kansas Corporation Commission. Any exemptions from utility franchise fee and charges should be determined locally."

The League opposes HB 2981 because it would impose a 4% of gross receipts cap on city utility franchises, prohibit a rate differential of more than 2% among classes of consumers, and reduce from 20% to 5% the number voter requirements for a petition for a referendum on a proposed franchise. The bill also would grant the Kansas Corporation Commission (KCC) authority to determine whether franchise agreements comply with the new laws.

II. LEAGUE ARGUMENTS AGAINST HB 2981

A. Locally-elected City Governing Bodies are the Proper Bodies for Determining the Amount and Allocation of Utility Franchise Taxes.

Under the Kansas Constitutional Home Rule Amendment, Article 12, Section 5, the cities of Kansas were granted broad powers by the people of Kansas to enact laws on matters of local affairs and government. The Home Rule Amendment recognizes the fact that problems and issues of an essentially local nature are best and most efficiently dealt with by locally-elected officials. It is difficult to find a matter of greater local concern than the use of publicly-owned sidewalks, streets and alleys by private utilities. City officials are responsible for the construction and maintenance of the city rights-of-way that utilities use for the delivery and transmission of electric, gas and telephone services to city residents. Under present law, citizens determine through the local democratic process how much utility users should pay in franchise compensation. It is in keeping with the clear intent of the Kansas Constitution and sound public policy to continue to have locally-elected city officials determine the proper compensation for the utility's use of the public rights-of-way.

If proponents of HB 2981 believe state-imposed limits on Franchise Compensation differentials and Franchise rates are in the utility consumer's best interest, this committee should note that city residents are already protected against unreasonable franchise taxes by K.S.A. 12-2001. That statute provides for a protest petition and election on franchise ordinances that the public may think burdensome or unfair. The city residents are also protected by the electoral process under which they elect city officials who must negotiate franchise rates in a manner acceptable to the voters to whom they are directly accountable. Those voters, it should be noted, are also the utility ratepayers who will be paying the franchise tax. Additionally, city residents may also bring legal challenges to the reasonableness of franchise ordinances.

Perhaps the best statement favoring local determination of franchise taxes was provided by KCC Chairman Henley in his concurring opinion to the Commission order of March 18. In that order the KCC found that franchise taxes are not adversely affecting utility rates and that the KCC would not assert jurisdiction over franchise agreements:

"I am also offended by the suggestion that no one is speaking for the taxpayers in this process. To suggest that elected city officials do not look after the interests of their constituents is naive and ignores the basic premises of representative government."

Henley, State Corporation Commission Order Docket No. 134,095-U. March 18, 1988. Concurring Opinion p. 1.

B. The Evidence Gathered During the Recent KCC Investigation of Franchise Agreements Clearly Demonstrates that Cities have Responsibly Performed their Utility Franchise Duties.

On March 18, 1988, the KCC issued an order in which it found that it did not have jurisdiction over city-utility franchise agreements. The order culminated an intensive review by the KCC of the law and practice regarding franchise agreements. The evidence gathered during the KCC hearings and investigation have immediate relevancy to HB 2981 and should be helpful to the Committee in its consideration of HB 2981.

1. Franchise Revenues have been shown to be less than the Public Costs Related to Utility Use of Public Right-of-Way.

During the KCC recent investigation of utility franchise practices the evidence demonstrated that city franchise tax revenues can be less than the actual cost to cities of the utilities' use of public right-of-way. The City of Kansas City presented evidence that the cost to the city in 1986 of granting gas utility company franchises was \$3,804,168. These costs include street, alley, and right-of-way maintenance costs, acquisition costs, and indirect and administrative overhead costs. This cost figure did not include the opportunity cost lost by the city from not directly selling easements to the utility for the use of public right-of-way. The amount the city--with a 5% tax on domestic use and 2% for industrial use--was projected to receive in 1987 gas franchise tax was \$1,855,968 or less than half of what the total tax would be if it was set at a rate to recover 100% of the city costs of providing the public right-of-way to the utility. This evidence--the only thorough research done in comparing actual city costs with franchise revenues--demonstrates what many city officials have argued for years: cities are receiving less in franchise tax compensation than the actual cost to the public of utility use of public right-of-way.

See KCC Transcript Volume 1, 134,095-U, 87-KPLG-100 FA Kansas City-KPL Gas pages 64-146. See also Brief of City of Kansas City, supra docket, page 13.

2. Franchise Taxes are not Adversely Affecting Utility Rates.

In the recent KCC investigation of franchise agreements the evidence demonstrated that franchise taxes--even at a level of five percent of gross receipts--are not adversely affecting utility rates:

"...the Commission finds that franchise fees/taxes are not adversely affecting rates. During the technical hearings, staff witness acknowledged he could not identify any franchise fee/tax which was adversely affecting rates. Assuming that the Commission had jurisdiction, the threshold which would trigger assertion of that jurisdiction has not been met."

Kowalewski, State Corporation Commission Order Docket No. 134,095-U. March 18, 1988. Majority Opinion p. 19.

The Commission also found "that there have been no instances shown where financial hardships (to utility consumers) have occurred due to franchise fee/taxes." Id. at 20.

3. A Cap on Franchise Taxes--as a Preventive Measure Against Future Energy Cost Increases--is not Justified.

Notwithstanding the fact that there is no current problem with the level of any franchise taxes, the KCC recommended in its recent order that the Legislature consider a 5% cap on franchise taxes. (The Commission did not recommend a cap on tax differentials, although it did recommend that a "rational basis" exists to justify a differential.) The argument that a franchise tax cap is justified as a preventive measure flies in the face of an 80 year track record in which the cities of this state have responsibly performed their utility franchise duties and not sought excessive franchise compensation. Cities and utilities can always and at any time re-negotiate a different franchise tax rate--as energy prices and other public concerns dictate. As KCC Chairman Henley noted, city officials are looking after the interests of their ratepaying constituents--a fact that will hold true for the future as well. Elected city officials--like other elected officials--are sensitive to the tax burden on their constituents and will continue to respond accordingly. Without evidence of a current problem, the Legislature should show faith in Home Rule and confidence in their local officials and allow them to respond to this important matter as their constituents demand.

C. The Use of Differential Franchise Tax Classes is Justified on Economic Grounds and Establishing Classifications of Franchise Taxpayers is a Proper Exercise of City Power to Provide for the General Welfare.

According to League records, only a small minority of Kansas cities presently have franchise tax rates that differ by class of customer. The following is a non-exhaustive description of some city practices.

Several cities with gas franchise agreements with Gas Service Company have a 5% tax rate on gas for domestic purposes and a 1% tax rate on gas for industrial purposes (e.g. Holton, Leawood, Merriam, Minneapolis, South Hutchinson, Osborne and Roeland Park). The City of Goodland has a gas franchise agreement with Peoples Natural Gas providing for a 5% tax rate on residential service and a 2% on all other service. The City of Baxter Springs has a 5% tax rate, excluding churches, with a cap of \$25 tax per month per customer's bill. The City of Shawnee is reducing its electric and gas franchise taxes so that in 1989 residential customers will pay no tax and non-residential customers will pay 2%.

This diversity does not represent conflict or chaos, but instead represents the fact that locally-elected officials have chosen to meet their different local needs in different ways: some emphasizing economic development, some emphasizing the reduced public right-of-way used in servicing industry, and others subsidizing residential customers. Despite this infrequent use of differential rates, the ability to offer a lower franchise tax rate to commercial and industrial users has been used as an important economic incentive to large energy consumers, such as the General Motors Fairfax plant in Kansas City and the Ark City Packing in Arkansas City--to provide two prominent examples.

The differential franchise tax rate is also justified by the fact that large bulk energy users typically use proportionately less of the city's right-of-way to receive electricity and gas from utilities than do residential consumers. This fact was documented in testimony prepared by General Motors at the KCC hearings on utility franchise agreement practices last October. Because large industrial consumers usually require less public right-of way to provide gas in proportion to their large use when compared to the typical residential customer, there is unrefuted empirical evidence that taxing industrial and domestic consumers the same can unfairly burden large industrial users. Providing a different franchise tax classification recognizes this economy of scale which favors large industrial users.

See Testimony of Dennis Kies, Regulatory Consultant to Midwest Gas Users Association; and Thomas Knoblock, Public Utility Regulation Consultant with Drazen-Brubaker & Associates on behalf of General Motors Corporation. KCC Transcript, supra docket, pages 169-190 and pages 191-217, respectively.

III. CONCLUSION AND COMMENTS

A. The League strongly opposes HB 2981 as an unjustified and undesirable attack upon Home Rule that is premised upon the misperception that franchise authority has been abused--the League urges this Committee to take action against the bill.

B. Practical Problems and Drafting Errors with HB 2981.

If it is the desire of the Committee to favorably report HB 2981, it is strongly urged that Committee members see the attached sheet for a discussion of some of the major problems with the current provisions in HB 2981 that have been identified by the League..

0122 ~~66-101, and amendments thereto.~~

0123 (6) (A) In establishing adequate compensation under para-
0124 graph (5) no new or renegotiated agreement for any grant, right,
0125 privilege or franchise shall provide for a charge at a rate to a
0126 member of one class of customers which is in excess of the
0127 equivalent of two percentage points greater than the charge
0128 made to any member of any other class of customers. If any
0129 customer or class of customers is exempt from the payment of any
0130 such charge, no charge made to any other customer shall exceed
0131 an amount equal to 2% of the gross receipts derived from the
0132 services provided to such customer.

0133 (B) The state corporation commission shall have authority,
0134 upon complaint or on its motion, to determine whether compen-
0135 sation or consideration meets the requirements of this subdivi-
0136 sion.

0137 (C) In establishing adequate compensation hereunder, no
0138 charge or fee under any new or renegotiated agreement for any
0139 grant, right, privilege or franchise which would fix terms dif-
0140 ferent than those contained in the prior or renegotiated agree-
0141 ment shall exceed 4% of gross receipts derived from the service
0142 permitted under the agreement.

0143 (D) The provisions of this subdivision apply to initial fran-
0144 chise negotiations and to franchise agreements that have expired
0145 and if a renewed franchise agreement contains the same terms,
0146 conditions, and franchise tax amounts, then the percentage re-
0147 strictions in this subdivision do not apply.

0148 (6) (7) No such right, privilege or franchise shall be granted
0149 until the ordinance granting the same has been read in full at
0150 three regular meetings of the governing body. Immediately after
0151 the final passage, the ordinance shall be published in the official
0152 city paper once a week for two consecutive weeks. Such ordi-
0153 nance shall not take effect and be in force until after the expira-
0154 tion of 60 days from the date of its final passage. If, pending the
0155 passage of any such ordinance or during the time between its
0156 final passage and the expiration of 60 days before such ordinance
0157 takes effect, ~~20%~~ [5%] of the qualified voters of such city voting
0158 for mayor, or in case no mayor is elected then the commissioner

[Sec. (A) If a customer is made statutorily exempt or declared exempt under the federal doctrine of sovereign tax immunity, is the franchise tax capped at 2%? Some cities have exempted non-profit organizations from their franchise tax (e.g., churches, schools, etc.). The current wording of HB 2981 would limit the franchise taxes those cities can seek to 2%--thereby placing a strong disincentive on such exemptions.

[Sec. (B) Does Sec. B apply to Sec. C or only to Sec. A? Does the grant of KCC authority include: The ability to determine what is "adequate" compensation, the ability to nullify agreements that do not meet the new caps, or the ability to change terms in franchise agreements that do not comply with the new caps?

[Sec. (C) and Sec. (D) "GRANDFATHER CLAUSE PROBLEM" By wording the grandfather clause to only allow franchise agreements which retain the exact terms of previous agreements to retain similar compensation, HB 2981 severely limits the ability of cities and utilities to update important provisions of franchise agreements. For example, franchise agreements contain important provisions safeguarding the city from any liability that may result from utility conduct or negligence on city property or right-of-way. HB 2981 will prevent a city from seeking to update such an important franchise agreement provision (to reflect new laws or court decisions) unless it also wants to lose franchise tax compensation--an obviously dangerous and costly dilemma.

[Sec. (D) Lines 143:144's reference to initial franchise "negotiations" is non-sensical. Is it the intent of the bill to place a cap on discussions of franchise taxes during negotiations, or to cap the tax in the final agreement? The inclusion of "franchise agreements that have expired" at line 144 is confusing surplus language given the remainder of the paragraph.

In discussing the potential ramifications of HB 2981 with city officials, two city attorneys have voiced the concern that a citizen would have a legitimate constitutional challenge under the Equal Protection Clause of the U.S. Constitution to the arbitrary caps which apply non-uniformly across a multi-utility service area. The argument would be that there is no rational basis for the differing tax levels under two franchise agreements--one grandfathered at a certain level, the other not.



CITY COUNCIL OFFICE
CITY HALL — FIRST FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4331

March 29, 1988

The Honorable Don Montgomery, Chairman
Senate Local Government Committee
State Capitol Building
Topeka, Kansas 66612

Re: House Bill 2981
Franchise Act

Ladies and Gentlemen:

The City of Wichita appears in opposition to HB 2981. This bill would result in increased property taxes, is an interference with city home rule powers, and is an impediment to economic development initiatives. Further, there has been no showing of any necessity for amending the current laws.

Franchises have traditionally been used by Kansas cities as the way to allow utilities and others to use the public rights-of-way. The franchise agreements provide compensation for such use, but the agreements are also a means for regulating and controlling the activities of the utilities in the streets. This bill now proposes to confine cities in both the compensation they receive and in the degree of control over rights-of-way. The bill would also shift more of a city's budget to property taxes, which comes from a smaller base than do franchise fees.

Fiscal Impact

The potential fiscal impact of the proposed bill is serious. Most of the City of Wichita franchises are currently 5% of gross receipts. Franchise fees are projected to provide \$18 million in revenue for the 1988 budget (\$1.2 million of that is from cable TV not affected by this bill). This is equivalent to about 17.5 mills or half of the current annual mill levy (34.639). The bill proposes a 4% cap on franchise fees. This would equate to a loss of revenue of approximately \$3.8 million per year--the equivalent of 3.5 mills in additional property tax which would need to be recovered or a proportional cut in services.

(Attachment VII) Local Go 3/²⁹~~30~~/88

Although many of our franchises are long term and would not be immediately affected by this bill, there is immediate concern. One of our franchises comes up for renewal this year. A forced 20% reduction in compensation would be significant. All of the franchises, of course, ultimately expire and the City is facing potential loss of substantial revenue in the future.

Although the bill contains a "grandfather" provision, that is of little comfort. It requires renewal under "the same terms, conditions, and franchise tax amounts." Franchises are long term--both utilities and the cities desire to make changes to the provisions when they come up for renewal. The City of Wichita, for example, is concerned about street and curb cuts and the costs associated with capital improvement projects. We hope to be able to negotiate some new provisions into our franchises when they come up for renewal. The bill would effectively prevent this, as well as any changes the utility might need.

We also oppose the 2% differential limitation between classes of consumers as proposed in HB 2981. While this does not affect any current Wichita franchise rate, it has been used in the past. The differential might be used as an economic development incentive or to make adjustments for certain bulk users. Even if never used again, however, we want to preserve the right to use this device in the future if it is found to be in the best interest of the City and its consumers.

Home Rule

The franchise powers are currently exercised by local elected officials, representing the interests of the local electorate. They are the ones who deal with the complaints and concerns of utilities and the public on a daily basis. One cannot get much more "local" than the use of streets, alleys, and sidewalks. It is the local elected representatives who are in a position to best know the circumstances and needs of the community as to revenue, use of rights-of-way, economic development, and local regulation of utilities. This is consistent with the philosophy of local governance set forth in the constitutional provision on Home Rule.

Ultimately, of course, the citizens of the municipality have the final voice on a franchise ordinance through their right of petition and popular vote as set forth in the current Franchise Act. This should be a forceful answer to the concerns that may underlie the proposal in HB 2981.

The Hon. Don Montgomery
Senate Local Government Committee
March 29, 1988
Page 3

The City adopts the statements of the League of Municipalities relative to home rule and deference to elected city officials.

Adquate Compensation

What is "adequate compensation" to a municipality for the use of its streets and rights-of-way? While that is a hard figure to calculate, we suggest that any study would show that the compensation now received by Wichita and other cities is reasonable.

It is expensive to acquire and maintain the infrastructure to support the utilities. The City has more than a thousand miles of streets, not counting alleys, drainage easements, etc., many of them containing utility lines and pipes. Cost factors would include the rights-of-way acquisition, amortized past and future purchases, extra work in planning capital improvement programs to allow for placement or relocation of utilities, curb and street cuts made by utilities, maintenance of the rights-of-way, and administrative costs of all of the above. When a value is placed on these items, it is suggested that the utilities would much prefer to use the public rights-of-way rather than acquire and maintain their own easements.

There appears to have been some concern expressed on the amount of franchise fees received by the City of Wichita. The total needs to be put into the context of the whole budget for the City of Wichita, which puts the amount in a different perspective. It is also interesting to note what the City pays for utility services. In 1987, for example, the City of Wichita paid over \$9.5 million dollars to the utilities. One should balance the \$11 million the City collects from KG&E with the \$8.7 million paid to KG&E for electrical service. As the City's franchise revenues have increased, so have its own utility costs and other expenditures. There has been no windfall as suggested in certain quarters. It is reasonable that municipalities have a tool at hand to avoid budget problems from inflation and energy costs.

In conclusion, the City of Wichita would like to state its strong opposition to HB 2981. The Committee is respectfully urged to reject any attempt to amend the Franchise Act which has served this state well for many years.

Very truly yours,

Greg Ferris
Council Member
City of Wichita

TESTIMONY IN OPPOSITION TO

HB 2981 (Am) (HCW)

March 29, 1988

SENATE LOCAL GOVERNMENT COMMITTEE

(Attachment ~~IX~~)
Local
Go 3/29/88

I am Rich Becker, Mayor of Lenexa and I appreciate the opportunity to testify before the Local Government Committee. Lenexa is a community with a population of over 31,000 residents (1987 estimate) and is one of the fastest growing cities in the Kansas City Metropolitan area.

We have several concerns with House Bill 2981 (Am) relating to franchise taxes on utilities. The City of Lenexa currently holds 5% franchise fee agreements with Union Gas Company, Kansas City Power and Light Company, Kansas Power and Light Gas Company, and Greeley Gas Company. The 5% of gross receipts are negotiated in lieu of City incurred maintenance of utility rights-of-way, street excavation and pavement cuts (directly related to increased maintenance costs), personnel costs due to responding to street and traffic light outages, and general wear and tear on streets due to utilities' heavy vehicle use. Obviously, in a growing city such as ours, we incur a multitude of unmeasurable costs due to utilities conducting everyday business.

Our specific opposition to this bill relates to Section 6, subsections B, C, and D on page 4. In respect to subsection B, we do not feel the KCC should have the authority to determine whether a local governmental contract

falls under State law, in respect to subsection C, we feel this is a violation of local government's constitutional home rule authority, and in respect to subsection D, this attempt at establishing a grandfather clause causes us great concern. When renewing franchise agreements, we continually revise and clarify terms and conditions when contracts are renegotiated. If this bill were taken word for word, Lenexa would be subject to KCC authority and possibly mandated to reduce our franchise fees. The reduction of Lenexa's franchise fee agreements to 4% would reduce general fund revenues approximately \$374,000 using 1987 calculations. This would necessitate an increased burden on local property taxes.

In conclusion, with ever increasing financial demands being placed on local governments, this bill further constrains our ability to finance ourselves. The Governing Body of Lenexa strongly opposes this bill as it conflicts with our traditional and constitutional home rule authority.

Thank you for allowing me to speak today.

SUMMARY OF TESTIMONY BEFORE THE KANSAS CORPORATION COMMISSION
KANSAS CITY KANSAS POSITION ON ECONOMIC DEVELOPMENT
CONSIDERATIONS IN FRANCHISE TAX SETTING
TESTIMONY OF DENNIS HAYS
Presented October 14, 1987

Dennis Hays, Deputy City Administrator, testified that the City Council gave directions in the franchise negotiations between the City and the gas companies. The City Council said that any franchise granted should achieve two primary purposes for the citizens of the community: (1) a good and reliable gas distribution system must be assured; and (2) the Kansas City, Kansas consumer should be able to purchase gas at a reasonable price given market conditions.

Mr. Hays testified that the Council had concern about maintaining a competitive environment to lure economic development prospects to the City, and wished to maintain competitive utility rates for industry. For approximately 40 years, until 1984, the City's franchise tax was 5% on domestic and 0% on industrial sales, compared with Kansas City, Missouri's rates of 9% and 10%. However, in this national economy, Mr. Hays testified, we must also compare our rates with other cities in the metropolitan area, and in the nation, so that the overall utility rate does not discourage a company from locating or remaining in the City. Kansas City, Kansas' economy is based in large part on industrial development, and in order to protect all our citizens, including residential citizens, we must maintain a strong industrial base.

Mr. Hays testified to the City's gradualism approach to the increase in industrial gas franchise fees. He said that the Council wished to increase industrial gas franchise fees above the 0% level which was maintained for several decades, and above the 1% level which was in place from 1984 to 1986, but did not wish to do so all at once. In order to maintain a competitive environment for economic development purposes and in order to minimize the impact on industry in any single year, an incremental approach of increasing industrial user gas franchise taxes over a 3-year period was determined prudent and reasonable by the Council.

The City has different franchise fees for industrial

versus domestic customers for several reasons. There is greater disruption at the streets and rights of ways in the distribution of residential product than that of supply industrial users. In fact, the industrial users testified to the KCC that the disruption percentage is closer to the 5%/1% differential that the City had in place from 1984 to 1986, than to the 5%/3% differential now in place. Also, the Council did not want to raise the industrial fee to such a level that economic development would be placed at a competitive disadvantage.

A number of industrial users appeared before the Council expressing concern over any increase in industrial franchise fees. Mr. Hays testified that some of the users presented specific data on the impact upon their operation and product of each percent of increase in the industrial fees.

There was evidence before the KCC by KCC staff witness Robert Elliott on the 2% differential between industrial and residential rates. He testified that staff's opinion had been that a 2% differential between domestic and industrial rates should not be exceeded to avoid the possibility of undue discrimination, but that this opinion was not a formal Commission policy. He further testified that the 2% differential had no analytical or financial basis. He further testified that the suggestion by the industrial customers that a cost based differential is approximately 5% residential /1% industrial, that the 2% differential should be re-examined.

SUMMARY OF TESTIMONY BEFORE THE KANSAS CORPORATION COMMISSION
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