

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE ROBERT D. "BOB" MILLER at  
Chairperson

1:37 am/p.m. on FEBRUARY 27, 1989 in room 521-S of the Capitol.

All members were present except:

Representatives Williams, Johnson, and Baker were excused  
Representatives Patrick and Sawyer were absent

Committee staff present:

Mike Heim, Legislative Research Dept.  
Theresa Kiernan, Revisor of Statutes' Office  
Connie Smith, Committee Secretary

Conferees appearing before the committee:

Representative Charlton  
E. A. Mosher, League of Kansas Municipalities  
Bev Bradley, Kansas Association of Counties  
Representative Sprague

Chairman Miller called for hearings on the following House Bills:

HB 2476 - Act concerning cities and counties; requiring an audit  
of certain grant or loan money.

Representative Charlton presented the bill by reading testimony from Paul  
Howard, a concerned citizen from Lawrence. (Attach. I)

Representative Charlton stated that she would be favorable to suggested  
amendments.

Discussion followed.

Chairman Miller turned the Committee's attention to HB 2438.

HB 2438 - Act concerning certain cities; relating to the governing body  
thereof.

Representative Sprague read written testimony from Mr. William J. Goering,  
Clerk/Administrator for the city of McPherson. (Attach. II) Mr. Sprague  
asked the Committee to consider changing the requirement to allow a city  
attorney to pass on the sufficiency of a bond as opposed to going through  
a district court judge.

Discussion followed.

E. A. Mosher presented suggested amendments proposed by the League of  
Kansas Municipalities for the Committee to consider. (Attach. III)

No discussion.

Vice-Chairperson Brown closed hearings on HB 2438.

Vice-Chairperson Brown resumed hearings on HB 2476.

E. A. Mosher testified as an opponent to HB 2476. (Attach. IV)

Discussion followed.

Bev Bradley stated her testimony follows the same line as Mr. Mosher's.  
(Attach. V)

Discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S, Statehouse, at 1:37 a./m./p.m. on FEBRUARY 27, 1989

Vice-Chairperson Brown closed hearings on HB 2476.

Vice-Chairperson Brown called for hearings on HB 2475.

HB 2475 - Act concerning cities; relating to the recovery of certain costs incurred thereby.

Representative Graeber testified that the bill would require a city to give notice to a person buying property that there are assessments outstanding.

Discussion followed.

Chairman Miller recognized Ernie Mosher. Mr. Mosher stated that the provisions of the bill would cover a gap time period before being certified by the county clerk.

Hearing closed on HB 2475.

A motion was made by Representative Graeber and seconded by Representative Lane to approve the minutes of Feb. 21, 22, and 23. The motion carried.

Meeting adjourned at 2:18 p.m.



Statement to House Local Government Committee  
House Bill 2476  
Paul Howard, 1641 Illinois, Lawrence, KS. 66044  
February 27, 1989

Mr. Chairman, members of the committee, my name is Paul Howard, and I reside at 1641 Illinois Street, Lawrence, Kansas. I appreciate the opportunity to appear today. Last year I served briefly as Treasurer of Taxpayers for Accountable Spending, a group of Lawrence businessmen and taxpayers concerned about the transfer of nearly \$250,000 a year to the Lawrence Chamber of Commerce without an adequate accounting or oversight by elected officials. I appear today as a private citizen, farmer and taxpayer in support of House Bill 2476, which requires groups receiving tax funds to file annual reports which comply with generally-accepted accounting principles.

Most people would think that groups receiving tax funds would routinely submit accountings and that such reports would comply with generally-accepted accounting principles, but my experience in Lawrence exactly shows the opposite is true. In the case of Douglas County's grants to the Chamber of Commerce Economic Development Marketing Program, no audit whatsoever is submitted. In the case of the City of Lawrence, reports submitted by the Chamber of Commerce for tax monies spent by the Lawrence Convention and Tourism Bureau often fail to meet normal accounting standards.

I first became interested in the payments last year when I saw a \$12,500 payment to the Lawrence Chamber of Commerce listed in the

PH  
2-27-89  
ATTACH. I

Paul Howard/2

County's expenditures in the local newspaper. When I visited the Douglas County Courthouse and asked what the \$12,500 had been spent on, no one could give me an answer. It turned out the money was half of a \$25,000 payment to the Chamber's Economic Development Marketing Program. Although updates on marketing programs and "prospect activity" are submitted to Douglas County twice a year, there's no audit whatsoever given to the county--or the public--for this grant of ad valorem taxes, which has grown to \$50,000 this year.

The County's payments to the Chamber of Commerce led me to the City of Lawrence which gives the Chamber approximately \$200,000 in transient guest tax revenues for the Lawrence Convention and Tourism Bureau, plus an additional \$30,000 in property taxes for the Economic Development Marketing Program. Although City officials repeatedly stated that reports for the spending were on file at City Hall, it took a number of trips to City Hall and several letters to the City Manager over a period of months to obtain most of them. (I am still missing the full report for 1986 and wrote the City Manager nearly a month ago.) What I found was very disquieting.

Attached you will find cover sheets from Lawrence Chamber of Commerce reports on the Convention and Tourism Bureau for 1984 and 1985. I would like to read what the accountants had to say. I quote:

Paul Howard/3

"However, we did become aware of certain departures from generally accepted accounting principles that are described in the following paragraphs."

The accountants go on to state, and I quote: "Management has elected to omit substantially all of the disclosures...required by generally accepted accounting principles... Accordingly, these financial statements are not designed for those who are not informed about such matters."

By that, I presume the accountants mean members of the City Commission and, certainly, the taxpaying public.

Mr. Chairman, members of the committee, I think most people would agree that this kind of report simply isn't good enough where public tax monies are involved.

As I said earlier, I'm a farmer, not an accountant. So I don't know exactly what the accountants mean, but I think it's pretty clear they're not comfortable with how the Chamber is accounting for transient guest tax funds--about \$200,000 a year in this case. And even though I'm not an accountant, I have a neighbor who is. In fact, he's a professor of accounting in the Business School at KU. When I showed him the two reports, he volunteered to give me his professional opinion. His unflattering view of the reports is attached. If I thought the sloppy accounting was strictly a

Paul Howard/4

Lawrence problem, I wouldn't be here today. Unfortunately, it appears the accounting requirements used in Lawrence are identical to those used elsewhere. Attached is a 3-page letter from the Chairman of the Lawrence Chamber of Commerce, Mr. Bob Georgeson, responding to questions concerning how the Lawrence Chamber accounts for the \$250,000 in public money it receives each year. In regard to both the Convention and Tourism Bureau and the Economic Development Marketing Program, Bob makes the following statement: "A check with the Chambers of Commerce in Manhattan, Hutchinson and Salina indicated their reporting requirements were identical to Lawrence's." If this is true, one can only wonder if reports in Manhattan, Hutchinson and Salina include the same omissions and departures from generally accepted accounting principles uncovered in Lawrence.

Bob makes another statement which strongly supports passage of House Bill 2476. In his letter, he assures us "that the Chamber is in complete compliance with the accounting requirements of the City (of Lawrence) and (Douglas) County on these contracts." If this is true, the Legislature obviously needs to upgrade the accounting requirements for cities and counties distributing tax funds to local Chambers of Commerce. Where public money is involved, it's simply not good enough for a city to silently accept reports clearly failing to meet generally accepted accounting principles. Or, in a county's case, not to require any audit at all. Based on the attitudes I encountered in the Lawrence City

Paul Howard/5

Hall and Douglas County Courthouse, it's not likely local official will adopt a business-like approach without guidance from the Legislature. In my opinion, House Bill 2476 is exactly what we need to get local officials off dead center.

I don't know how much money is involved statewide. Transient guest collections range upwards of \$5 million a year, and I assume spending on economic development marketing programs is in the millions, too. According to the Chamber letter, for example, the economic development total for Manhattan, Hutchison and Salina was \$490,000 last year.

Before closing, I want to compliment this committee for introducing House Bill 2476. I urge its favorable consideration. I also have a question concerning the bill. In it's current form, it only applies to "grants and loans." Perhaps it should be amended to clearly cover transient guest tax revenues, too. You also might want to consider making the bill only apply above a certain dollar amount, say \$25,000, so small groups receiving small amounts would be exempt.

Mr. Chairman, members of the committee, thank you for your time and attention. I would be happy to try to answer any questions you might have.



MICHAEL K. LEIB, CHARTERED  
CERTIFIED PUBLIC ACCOUNTANTS  
706 MASSACHUSETTS-SUITE 206  
LAWRENCE, KANSAS 66044

May 17, 1984

Lawrence Convention & Visitors Bureau  
831 Vermont Street  
Lawrence, Kansas 66044

The accompanying balance sheet of Lawrence Convention & Visitors Bureau as of March 31, 1984, and the related statement of income and retained earnings for the twelve months then ended have been compiled by us.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. However, we did become aware of certain departures from generally accepted accounting principles that are described in the following paragraphs.

Management has elected to omit substantially all of the disclosures (and the statement of changes in financial position) required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position, results of operations, and changes in financial position. Accordingly, these financial statements are not designed for those who are not informed about such matters.

*Madine Button CPA*

BARRAND, EAGAN & COMPANY  
CERTIFIED PUBLIC ACCOUNTANTS  
NEW HAMPSHIRE AT NINTH  
LAWRENCE, KANSAS 66044

April 15, 1985

Lawrence Convention & Visitors Bureau  
P.O. BOX 581  
Lawrence, Kansas 66044

The accompanying balance sheet of Lawrence Convention & Visitors Bureau as of March 31, 1985, and the related statement of income and retained earnings for the twelve months then ended have been compiled by us.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. However, we did become aware of certain departures from generally accepted accounting principles that are described in the following paragraphs.

Management has elected to omit substantially all of the disclosures (and the statement of changes in financial position) required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position, results of operations, and changes in financial position. Accordingly, these financial statements are not designed for those who are not informed about such matters.

1642 Indiana  
Lawrence, KS 66044  
(913) 841-1068  
February 24, 1989

Mr. Paul Howard  
1641 Illinois  
Lawrence, KS 66044

Dear Paul:

What follows is my reaction to the April 15, 1985, letter that Barrand, Eagan & Company, Certified Public Accountants (hereafter BE&C), gave to Lawrence Convention & Visitors Bureau (hereafter LC&VB). As background, I'm a CPA (though not currently in practice) and Arthur Young Distinguished Professor of Accounting Emeritus at The University of Kansas.

What BE&C says boils down to something very simple: LC&VB failed to prepare meaningful financial statements. See in particular the first sentence of BE&C's final paragraph *Management has elected to omit substantially all of the disclosures (and the statement of changes in financial position) required by generally accepted accounting principles.* Freely translated, this says the following:

When we CPAs audit a set of financial statements, we review certain basic documents, such as balance sheet, income statement, and statement of changes in financial position (nowadays, a statement of cash flows). We expect each of these documents to provide certain minimum information. LC&VB didn't prepare a statement of changes in financial position at all, and its balance sheet and income statement didn't satisfy these minimum information standards for audited financial statements.

Therefore, BE&C refused to express any opinion at all of LC&VB's financial statements. For instance, BE&C's letter says nothing to suggest that LC&VB's financial statements were meaningful.

I don't want to criticize BE&C, but over the years there has been a debate within the auditing profession over whether it's proper for CPAs to issue any letter *whatever* under the kinds of circumstances that BE&C describe. Some people, including myself, believe that when CPAs issue such a letter under their name, it encourages readers to believe in the integrity of the accompanying financial statements -- even when, as here, BE&C has indicated that there is no reason for such a belief.

Sincerely,



Arthur L. Thomas



August 17, 1988

Dear Chamber Member:

Recently there has been considerable media coverage about the contracts the Chamber has with the City of Lawrence to operate the Lawrence Convention & Visitors Bureau and with the City of Lawrence and Douglas County to administer the economic development marketing program for Lawrence and Douglas County.

As Chairman of the Chamber, I want to assure you that the Chamber is in complete compliance with the accounting requirements of the City and the County on these contracts. Furthermore, the Chamber Board of Directors is highly conscientious about its fiduciary responsibility and is frugal in its efforts to provide the highest quality service for the least possible cost.

The Chamber has been, and will continue to be, a strong voice for economic growth and the completion of projects like the East Hills Business Park and the South Lawrence Trafficway. We also look forward to competing for and hosting more events like the AAU Jr. Olympics.

There are those who would attempt to discredit our integrity and thus weaken our voice in support of economic growth, job creation and a broadened tax base. That is why we felt it was important that you, as Chamber members, be fully aware of the details of these contracts with the City and the County.

The facts are enclosed. If you have any questions, please do not hesitate to call me (865-0230) or Gary Toebben (843-4411).

Sincerely,

A handwritten signature in cursive script that reads "Bob Georgeson".

Robert K. Georgeson, Chairman  
Board of Directors

**THE FACTS  
LAWRENCE CONVENTION AND VISITORS BUREAU**

The City of Lawrence contracts with the Lawrence Chamber of Commerce to operate the Lawrence Convention and Visitors Bureau (CVB). The CVB is financed by a 4% transient guest tax that the city levies on motels and hotels. Last year \$196,300 was collected from this tax.

In 1979 the Kansas Legislature authorized Cities and Counties to levy a transient guest tax to promote tourism and conventions (K.S.A. 12-1696) Cities were given the option of setting up a new department or contracting with an existing entity engaged in similar activities. In 1980, the Lawrence City Commission voted to levy a transient guest tax and signed a contract with the Lawrence Chamber of Commerce to organize and operate a Convention and Visitors Bureau.

In Kansas, most cities contract with their local Chamber of Commerce to operate the Convention and Visitors Bureau. A check with the Chambers of Commerce in Manhattan, Hutchinson and Salina indicated that their reporting requirements were identical to Lawrence's. The contracts between those three Chambers and their cities to operate their CVB's total \$200,000, \$180,000 and \$180,000 respectively.

The Lawrence Convention and Visitors Bureau is a division of the Lawrence Chamber of Commerce, but its income and expenses are accounted for separately. The CVB has a ten member advisory committee that is appointed by the Lawrence City Commission and meets monthly. The CVB's budget is submitted to the Lawrence City Commission each year and an audit is prepared for the City at the end of the Chamber fiscal year (March 31). Monthly financial reports are provided to the City, the CVB Advisory Board and the Chamber Board of Directors.

The purpose of the CVB is to promote Lawrence as the host site for conventions, events like the AAU Jr. Olympics and motion picture filming. The CVB also targets vacationing families and area residents for shorter visits. The CVB has a full time staff of three people and frequently enlists the help of volunteers like the Chamber's Senior Council. During the past year the CVB worked with more than 250 groups that brought 60,000 people to town.

**THE FACTS  
ECONOMIC DEVELOPMENT MARKETING PROGRAM**

The City of Lawrence and Douglas County contract with the Lawrence Chamber of Commerce to provide economic development services. During 1987, the City's contract was for \$30,000 and the County's was for \$25,000. This year both contracts are for \$30,000. The funding for these contracts comes from the general fund of each entity.

Kansas Statutes (K.S.A. 19-4103) authorize the expenditure of City and County monies for programs related to economic development. As in the case of the convention and visitors bureau, cities and counties have the choice of creating a new department or contracting with an existing entity engaged in similar activities. The City and County began contracting with the Chamber for economic development marketing and promotion in 1984.

In Kansas, most cities and counties contract with their local Chamber of Commerce to implement an economic development marketing program. A check with the Chambers of Commerce in Manhattan, Hutchinson and Salina indicated that their reporting requirements were identical to Lawrence's. The Economic Development contracts between these three Chambers and the cities and counties they represent total \$95,000, \$315,000 and \$80,000 respectively.

The budget for the City/County/Chamber Economic Development Marketing Program (EDMP) is \$100,000 per year. The funding from the City and the County supplements the \$40,000 which the Chamber earmarks for this program. The budget for the EDMP is submitted to the Lawrence City Commission each year and an audit is prepared for the City at the end of the Chamber fiscal year (March 31). Updates on marketing programs and prospect activity are submitted twice a year to the City and the County. A monthly financial report and prospect report are provided to the Chamber Board of Directors.

The function of the Economic Development Marketing program is to promote Lawrence as a site for new business, startup companies and expanding, existing firms. The EDMP has a full time staff of one person and frequently enlists the help of volunteers who are members of the Chamber's Economic Development Committee. During the past four years, hundreds of prospects have been contacted as part of the program and five firms employing nearly 900 people have been successfully recruited. In addition, the EDMP staff has assisted many local firms with expansion projects.

Confidential Data (Four or Fewer Filers) are Marked "\*\*\*\*"

Fiscal Year: October through July Distributions		CY 3		CY 4		CY 1		CY 2	
Calendar Year: April through January Distributions		FY 1		FY 2		FY 3		FY 4	
Rate	City	FY 87	CY 87	FY 88	10/9/87	1/14/88	4/19/88	7/13/88	
3%	Abilene	\$27,092.93	\$29,874.47	\$35,659.14	\$10,772.19	\$8,096.04	\$9,815.81	\$6,975.10	
4%	Arkansas City	\$43,715.24	\$55,633.88	\$45,139.13	\$10,507.51	\$15,551.71	\$8,828.37	\$10,251.54	
2%	Belleville	****	****	****	****	****	****	****	
2%	Colby	\$21,380.20	\$29,990.51	\$29,081.38	\$10,188.57	\$9,131.56	\$4,606.45	\$5,154.80	
2%	Dodge City	\$78,912.29	\$76,278.71	\$68,079.07	\$18,180.55	\$22,908.42	\$11,224.70	\$15,765.40	
2%	El Dorado	\$17,209.98	\$21,756.94	\$24,745.12	\$9,631.56	\$5,078.35	\$4,641.38	\$5,393.83	
2%	Emporia	\$64,758.62	\$61,717.12	\$60,713.20	\$13,142.93	\$18,005.84	\$13,497.60	\$16,066.83	
2%	Eureka	****	****	****	****	****	****	****	
3%	Fort Scott	\$25,649.60	\$21,355.47	\$25,671.16	\$4,606.04	\$6,533.43	\$5,541.42	\$8,990.27	
2%	Great Bend	\$50,175.67	\$49,812.70	\$46,039.56	\$10,217.11	\$14,103.92	\$9,149.43	\$12,569.10	
2%	Greensburg	****	****	****	****	****	****	****	
2%	Hays	\$101,257.58	\$102,860.56	\$95,078.88	\$26,746.83	\$33,356.20	\$13,599.68	\$21,376.17	
2%	Hiawatha	****	****	****	****	****	****	****	
4%	Hutchinson	\$0.00	\$10,885.25	\$70,427.54	\$0.00	\$10,885.25	\$23,143.42	\$36,398.87	
2%	Kansas City	\$111,033.21	\$118,937.97	\$117,054.01	\$30,964.92	\$35,659.62	\$20,891.57	\$29,537.90	
1%	Larned	****	****	****	****	****	****	****	
4%	Lawrence	\$186,218.89	\$200,334.17	\$194,030.09	\$52,690.88	\$56,716.68	\$40,146.00	\$44,476.53	
4%	Leavenworth	\$36,274.76	\$40,136.52	\$49,929.47	\$12,004.57	\$11,215.97	\$11,000.91	\$15,708.02	
4%	Lenexa	\$300,007.51	\$302,175.58	\$305,873.20	\$70,830.30	\$85,861.10	\$66,529.71	\$82,652.09	
2%	Liberal	\$67,348.05	\$65,017.18	\$64,576.75	\$16,046.89	\$17,352.28	\$13,676.57	\$17,501.01	
2%	Lindsborg	****	****	****	****	****	****	****	
3%	Manhattan	\$162,788.07	\$195,445.02	\$206,452.05	\$45,003.22	\$55,585.18	\$49,368.86	\$56,494.79	
2%	Marysville	****	****	****	****	****	****	****	
2%	McPherson	\$29,188.92	\$29,883.25	\$29,591.40	\$7,073.17	\$8,410.29	\$6,182.09	\$7,925.85	
3%	Newton	\$28,118.19	\$33,880.56	\$37,171.70	\$7,849.90	\$11,530.36	\$9,147.90	\$8,643.54	
2%	Norton	****	****	****	****	****	****	****	
1%	Oakley	\$6,976.92	\$6,721.40	\$6,787.43	\$2,277.49	\$1,933.59	\$1,054.27	\$1,522.08	
2%	Oberlin	****	****	****	****	****	****	****	
4%	Olathe	\$53,197.83	\$77,999.49	\$106,281.06	\$21,943.68	\$33,073.73	\$23,196.21	\$28,067.44	
2%	Osawatomie	****	****	****	****	****	****	****	
2%	Overland Park	\$573,440.16	\$564,998.33	\$601,729.49	\$133,373.08	\$146,057.49	\$140,393.60	\$181,905.32	
5%	Park City	****	****	****	****	****	****	****	
2%	Pratt	\$19,336.40	\$19,819.15	\$21,840.67	\$5,681.21	\$5,571.74	\$3,360.79	\$7,226.93	
4%	S. Hutchinson	****	****	****	****	****	****	****	
3%	Salina	\$152,620.75	\$171,963.63	\$11,424.50	\$41,966.35	\$62,769.27	\$26,464.90	\$7,852.84	
5%	Topeka	\$391,359.10	\$589,123.65	\$631,253.54	\$159,515.67	\$164,053.52	\$147,847.72	\$159,836.63	
1%	WaKeeney	\$5,385.71	\$5,217.69	\$5,219.47	\$2,269.44	\$1,252.46	\$749.44	\$948.13	
2%	Wellington	****	****	****	****	****	****	****	
5%	Wichita	\$1,839,450.46	\$1,895,698.23	\$1,966,070.04	\$461,895.22	\$538,976.49	\$450,409.86	\$514,788.47	
	Total Cities	\$4,453,819.08	\$4,842,256.35	\$5,139,707.98	\$1,202,802.85	\$1,399,910.19	\$1,141,113.37	\$1,395,881.57	
	98% Cities	\$4,364,742.70	\$4,745,411.22	\$5,036,913.82	1,178,746.79	1,371,911.99	1,118,291.10	\$1,367,963.94	

Rate	County	FY 87	CY 87	FY 88	FY1 10/9/87	FY2 1/14/88	FY3 4/19/88	7/13/88
2%	Cherokee Co.	****	****	****	****	****	****	****
2%	Crawford Co	\$10,076.92	\$25,591.88	\$28,958.41	\$8,070.99	\$7,443.97	\$5,607.02	\$7,836.43
2%	Finney Co.	\$68,361.59	\$73,406.84	\$70,618.77	\$21,714.61	\$18,603.73	\$9,945.27	\$20,355.16
2%	Franklin Co.	\$19,782.23	\$19,975.20	\$20,652.95	\$5,016.33	\$5,240.39	\$4,483.68	\$5,912.55
3%	Geary Co.	\$71,067.56	\$72,405.42	\$72,105.65	\$21,034.20	\$21,015.80	\$11,982.66	\$18,072.99
2%	Labette Co.	\$0.00	\$6,443.07	\$12,717.96	\$2,158.24	\$4,284.83	\$2,423.17	\$3,851.72
2%	Lyon Co.	****	****	****	****	****	****	****
2%	Marshall Co.	****	****	****	****	****	****	****
2%	Montgomery Co.	\$43,774.79	\$44,865.15	\$52,041.38	\$13,075.13	\$12,195.56	\$10,624.09	\$16,146.60
2%	Morris Co.	****	****	****	****	****	****	****
2%	Phillips Co.	****	****	****	****	****	****	****
2%	Reno Co.	****	****	****	****	****	****	****
2%	Russell Co.	\$12,737.76	\$12,508.14	\$13,353.29	\$3,816.69	\$4,251.15	\$1,652.96	\$3,632.49
5%	Sedgwick Co.	****	****	****	****	****	****	****
2%	Sherman Co.	\$36,436.84	\$38,875.77	\$41,124.69	\$14,789.15	\$11,212.82	\$5,199.74	\$9,932.98
2%	Wilson Co.	****	****	****	****	****	****	****
2%	Woodson Co.	****	****	****	****	****	****	****
	Total Counties	\$433,140.01	\$465,911.24	\$412,048.95	\$129,838.96	\$125,736.84	\$60,777.04	\$95,696.11
	98% Counties	\$424,477.21	\$456,593.02	\$403,807.97	127,242.18	123,222.10	59,561.50	\$93,782.19
	Grand Total	\$4,886,959.09	\$5,308,167.59	\$5,551,756.93	\$1,332,641.81	\$1,525,647.03	\$1,201,890.41	\$1,491,577.68
	98% Total	\$4,789,219.91	\$5,202,004.24	\$5,440,721.79	\$1,305,988.97	\$1,495,134.09	\$1,177,852.60	\$1,461,746.13

1-12

February 27, 1989

Rep. Robert D. "Bob" Miller, Chairman  
House Local Government Committee  
Topeka, Kan. 66612

Re: H.B. 2476

Dear Chairman Miller:

I am very sorry that weather delayed my appearance before the Local Government Committee today, and I appreciate Rep. Charlton's assistance in presenting my testimony to the committee.

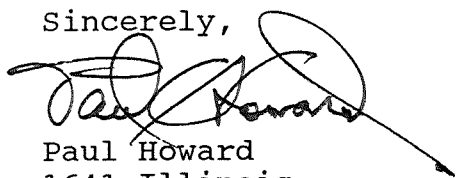
I have reviewed the testimony of both the Kansas Association of Counties and the League of Kansas Municipalities. I'm happy that my friend Bev Bradley agrees that it is appropriate to require the audits contemplated by H.B. 2476.

In his testimony, Mr. Mosher raises many questions about the bill. However, he doesn't address the central question, accountability for tax funds. Nowhere does he state whether or not the League believes audits should "comply with generally accepted-accounting principles."

I would hope that the Committee can ascertain his answer, and the League's position, on this fundamental question.

Please make this letter a part of the record on H.B. 2476. and distribute it to committee members. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Howard", with a long, sweeping underline that extends to the right.

Paul Howard  
1641 Illinois  
Lawrence, Kansas 66044



Clerk/Administrat 5300

City Attorney - 241-0554

Public Works Director -241-2573

Fire Chief - 241-0542

City Inspector - 241-4041

Chief of Police - 241-2500

Sanitarian - 241-6066

Park Superintendent - 241-8540

Cemetery Sexton - 241-1891

# CITY OF McPHERSON • McPherson, Kansas 67460-1008

"An Equal Opportunity Employer"  
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Com. of Finance & Revenue — Tony Fiedler

Com. of Street & Utilities — Robert L. Harder

January 13, 1989

Mr. Jim Kaup, Attorney  
League of Kansas Municipalities  
112 West Seventh Street  
Topeka, Kansas 66603


Dear Jim:

Enclosed is a copy of a letter I sent to State Representative Dale Sprague regarding a clean-up amendment of a section of the Kansas Statutes Annotated.

Mr. Sprague will probably contact the League regarding its position on the bill. If you can find no problem with it I would appreciate your support. If there is a problem with the bill please let me know.

Thank you very much for all the good work you do on behalf of Kansas cities.

Yours truly,

  
William J. Goering  
Clerk/Administrator

WJG/fa



TREE CITY USA  
2-27-89  
ATTACH. #

# CITY OF McPHERSON • McPherson, Kansas 67460-1008

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Park Superintendent - 241-8540  
Cemetery Sexton - 241-1891

January 12, 1989

The Honorable Mr. Dale Sprague  
State Representative, 73rd District  
State Capitol Building  
Topeka, Kansas 66612

Dear Dale:


From time to time in the course of performing my duties as a city employee, I find certain provisions in Kansas law which have no evident benefit either to the general public or to the governing body.

K.S.A. 14-1304 is such a section. It requires the mayor and commissioner's bonds to be approved by the district court judge in and for the county which contains the city. At some point in the dim dark past there may have been some reasonable explanation for this requirement. Currently there are other qualified legal minds who could fulfill this approval function. Would you consider introducing a clean-up amendment to the section? I would suggest that the city attorney might approve the bond, which could then be accepted by the governing body. Perhaps either the district court judge or the city attorney could serve as approvers. The Revisor's Office probably can supply the proper wording.

This change would eliminate an inconvenience for the administrative office and would do nothing to harm the public trust.

This is probably a consent agenda item, but if any discussion on the matter is needed I would be glad to correspond with your colleagues either by phone or in writing to answer any questions. Thank you for your consideration.

Yours truly,

  
William J. Goering  
Clerk/Administrator

WJG/fa



TREE CITY USA

2-27-89  
ATTACH. III

HOUSE BILL No. 2438

By Committee on Local Government

2-17

15  
16 AN ACT concerning certain cities; relating to the governing body  
17 thereof; amending K.S.A. 14-1304 and repealing the existing  
18 section.

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

20 Section 1. K.S.A. 14-1304 is hereby amended to read as follows:

21 14-1304. ~~The mayor and each of said the commissioners shall,~~ (a)  
22 entering upon the duties of ~~his or her~~ office, shall give a good and  
23 sufficient surety bond, to be executed by a ~~responsible~~ bonding \*  
24 company authorized to do business in Kansas, payable to and for  
25 the use and benefit of any such city, in the sum of ~~five thousand~~ — not less than  
26 ~~dollars~~ \$5,000, conditioned for the faithful discharge of ~~his or her~~  
27 duties, and that ~~he or she~~ such officer will save the city harmless  
28 from all loss caused by neglect of duty or malfeasance in office, or  
29 for the willful expenditure or misappropriation of any moneys, prop-  
30 erty or securities of such city in violation of law, ~~and said bond,~~  
31 ~~Before being accepted, such bond shall be approved by the district~~ \*  
32 ~~judge in and for the county wherein such city is situated city~~ \*  
33 ~~attorney.~~

34 The cost of such surety bonds shall be borne by such city: *Pro-*  
35 *vided, That* (b) In any city of the second class where the mayor or  
36 one of the commissioners is the custodian of any money or negotiable  
37 securities belonging to such city as the part of any trust fund, or  
38 other fund of the city, amounting to more than ~~five thousand dol-~~  
39 ~~lars~~ \$5,000, ~~that~~ such custodian of such money or securities shall  
40 furnish a surety bond as herein provided in a sum equal to the total  
41 amount of such money and securities in ~~his or her hands~~ such  
42 *person's possession* as such custodian. The cost of such bond ~~to~~ shall  
43 be borne by the city.

(c) The provision of this act shall not apply if the mayor or commissioners are included within a blanket or other surety bond covering other officers and employees of the city, in an amount not less than required by subsection (a) or (b).

13-1805. Bond of mayor and commis-  
sioners. The mayor and each of said com-  
missioners shall, before entering upon the  
duties of his or her office, give a good and  
sufficient surety bond, to be executed by a  
bonding company authorized to do business  
in Kansas, payable to and for the use and  
benefit of any such city. In cities under  
thirty thousand inhabitants, in the sum of  
five thousand dollars, in all other cities to  
which this act applies, in the sum of ten  
thousand dollars, conditioned for the faith-  
ful discharge of his or her duties, and that he  
or she will save such city harmless from all  
loss caused by neglect of duty or misfea-  
sance in office, or for the willful expenditure  
of any moneys of such city in violation of  
law; and said bond, before being accepted,  
shall be approved by the district judge in  
and for the county wherein such city is situ-  
ated. The cost of such surety bond shall be  
borne by such city.

15-1404. Bond of mayor and commis-  
sioners. The mayor and each of said com-  
missioners shall, before entering upon the  
duties of the office, give a good and suffi-  
cient surety bond, to be executed by a  
bonding company authorized to do business  
in Kansas, payable to and for the use and  
benefit of any such city, in the sum of two  
thousand dollars, conditioned for the faith-  
ful discharge of his or her duties, and that he  
or she will save such city harmless from all  
loss caused by such person's neglect of duty,  
or misfeasance in office, or for the willful  
expenditure of any moneys of such city in  
violation of law, and said bond, before being  
accepted, shall be approved by the district  
judge in and for the county wherein such  
city is situated. The cost of such surety  
bonds shall be borne by such city.



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

*An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565*

TO: House Committee on Local Government  
FROM: E.A. Mosher, Executive Director  
RE: HB 2476--Audit of Municipal Grants or Loans  
DATE: February 27, 1989

The League has a number of questions about the application of HB 2476. While we have no major objections to the apparent policy objective of the bill, we need to oppose it until it is more definitive, and practical and reasonable in its application.

Following are some examples of our concerns.

We assume the use of the word "money" in line 19 means all public funds deposited in the city or county treasury. If this is the intent, then it would include "pass-through moneys", such as federal CDBG moneys administered by the state and used for various purposes, including loans to private businesses as well as grants to individuals for housing rehabilitation purposes.

We are not certain as to the definition of "private entity" in line 20. We assume it includes every kind of agency there is, except a governmental agency. With this definition, all non-profit organizations and agencies would be covered, including local social service agencies.

We assume a reduction in city service charges or utility bills for the elderly poor is not a "grant", but a similar grant affecting a private utility bill would be a grant.

Presumably, the annual audit requirement would be for each 12 months that a loan is outstanding. Some clarifying language may be necessary where a grant is involved. For example, grants have been made to private businesses by Kansas cities for business relocation or job expansion purposes. The question arises whether only a single annual audit is necessary when a single grant is made, but the public benefits are expected for several years to come.

It would seem reasonable to establish some minimum level of a loan or grant before an audit is required. If a city or county makes a grant to a social service agency for a specified public purpose, it would be unreasonable to require that agency to perform an audit when the cost eats up most of the grant.

In some instances, it is possible for a city or county to obtain an audit of a loan or grant within the regular annual audit. This practice should not be prohibited by the bill.

Finally, we would suggest that if a bill like HB 2476 is enacted, some declaration of legislative purpose is needed. An audit of financial transactions is really not meaningful without a performance audit to determine whether the public purpose of the loan or grant was achieved. Without some written agreement specifying the public purpose or service purchased by the city or county, through the grant or loan, we suggest an audit of financial transactions is not very meaningful.

2-27-89  
ATTACH  
TE.

*President: Douglas S. Wright, Mayor, Topeka \* Vice President: Irene B. French, Mayor, Merriam \* Past President: Carl Dean Holmes, Mayor, Plains  
\* Directors: Margo Boulanger, Mayor, Sedan \* Nancy R. Denning, Commissioner, Manhattan \* Ed Eilert, Mayor, Overland Park \* Greg Ferris, Councilmember, Wichita \* Frances J. Garcia, Commissioner, Hutchinson \* William J. Goering, City Clerk/Administrator, McPherson \* Jesse Jackson, Commissioner, Chanute \* Richard U. Nienstedt, City Manager, Concordia \* David E. Retter, City Attorney, Concordia \* Judy M. Sargent, City Manager, Russell \* Joseph E. Steineger, Mayor, Kansas City \* Bonnie Talley, Commissioner, Garden City \* Executive Director: E.A. Mosher*

# Handling Grants of Local Public Funds

## Guidelines to Secure the Public Purpose

By E.A. Mosher, Executive Director, and James M. Kaup,  
General Counsel, League of Kansas Municipalities

The local chamber of commerce requests \$10,000 from the city to help promote economic development. The Red Cross chapter has some financial problems, and requests \$5,000 from the county. A historic preservation group, a local non-profit corporation, wants a contribution to help save a local landmark building. A garden club, which does a lot of volunteer beautification work throughout the community, wants some help, at least to pay for the plants and flowers. The board of education requests some city financial assistance to support a drug abuse education program for young people. A volunteer, not-for-profit corporation established to help battered women needs at least \$100 a month to help pay the rent. A community development corporation says they have raised \$75,000, and another \$25,000 would permit them to build a spec building for a potential industry. May a public agency give public moneys to such entities, for these kind of purposes?

The answer to this question, given its precise wording, is *no* — a governmental unit cannot simply give away its public funds, no matter how pressing the need, how notable the purpose or how benevolent the recipient.

But rephrasing the question may give you a different answer. For example, may a public agency provide public moneys to a community service agency to secure a public purpose? The answer is yes. Even if the payment is to a private, for-profit company, the answer is yes — if it will achieve a lawful public purpose.

### The Public Purpose Doctrine

Fundamental to the answer to these kinds of questions faced by local officials is the public purpose doctrine — governments exist for public purposes; public funds may be spent only for public purposes.

To quote McQuillin, the authoritative writing on municipal law, a municipal cor-

poration is a public institution created to promote public as distinguished from private objects. All of its powers and offices constitute a public trust and any power conferred must be exercised for the public good. (See 2 E. McQuillin, *The Law of Municipal Corporations*, Section 10.31 (3rd Ed).)

The public purpose rule of common law is basic to a system of responsible, representative government. It will not be found in explicit terms in the Kansas statutes, nor in the Kansas Constitution. It is a rule of law so inherent that its enumeration in statute is superfluous. The public purpose doctrine has been cited in innumerable court cases throughout the country, but usually is used in an attempt to define its application to a specific fact situation, not to reestablish the basic principle. But more about this later.

### What Are Public Funds?

If public funds may be used only for public purpose, the first question may be what are public funds? The answer is simple — public funds are those moneys in the hands of a public or governmental agency.

Contrary to the belief of some people, the source of the money is not relevant. Some local officials tend to think that there are different kinds of public moneys that may be handled differently, with different standards. For example, federal General Revenue Sharing (GRS) moneys were treated by some governing bodies as if it were somehow different than property tax money; it was "given" (allocated) to social service agencies in a manner as if it were not public funds, and occasionally for purposes which would not be allowed by the governing body if the money were from the general fund. Similarly, some federal Community Development Block Grant (CDBG) moneys have been allocated as if the public agency was not spending its own funds.

As another example, special tax levies for economic development have sometimes been spent for purposes which could be considered more private than public.

The essential point to remember is that public funds are public funds, whether they come from property taxes, sales taxes, utility charges, federal grants, state aid, or any other source.

The governing body charged with the management of public funds has the same level of stewardship responsibility, regardless of where the money comes from. And the public purpose doctrine applies to any expenditure of public funds.

### What Is a Public Purpose?

This is the big but short question, which comes with a very long answer if fully explored. A short and admittedly rough answer is that a public purpose is what the courts say it is, and the courts are at least influenced by what an elected governing body finds and declares it to be.

The problem with the public purpose doctrine is that it is often difficult to distinguish between what is a public versus private purpose or benefit. A portion of 64 C.J.S. *Municipal Corporations*, Section 1835, which follows, is often cited to illustrate the distinction:

"There is no universal test for distinguishing between a purpose which is public or municipal and, therefore, a proper object of municipal expenditure and one which is private, and, therefore, an improper object to which to devote public money. Each case must be decided in the light of the existing conditions, with respect to the objects sought to be accomplished, the degree and manner in which that object affects the public welfare, and the nature and character of the thing to be done, but the court will give weight to a legislative determination of what is a municipal purpose as well as widespread opinion and general practice

regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions. Where an appropriation of public funds is primarily for public purposes, it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit. On the other hand, if the result is chiefly that of private benefit, an incidental or even ostensible public purpose will not save its constitutionality.

"The lack of precision regarding what constitutes a public purpose is further illustrated in the following brief excerpt from 15 E. McQuillin, *The Law of Municipal Corporations*, Section 39.19 (3rd Ed.):

"What is a public municipal purpose is not susceptible of precise definition, since it changes to meet new developments and conditions of the times. Indeed, it has been recognized that "public purpose" should be broadly construed to comport with the changing conditions of modern life. While the question of what is and what is not a public purpose is initially a legislative responsibility to determine, in its final analysis, it is for the courts to answer. Nevertheless, the courts pay great deference to the initial legislative determination that a particular project serves a public purpose and will presume that municipal officials are properly performing their duties when they make such decisions. Each case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare."

The purpose of this article is not to give the legal history of what has been defined as a public purpose, to predict what the courts may today accept as a public purpose, or to predict what may become accepted as a lawful public purpose tomorrow.

However, these guidelines can be offered for local officials to consider when faced with questions on the propriety of the use of moneys:

— Is the proposed purpose commonly accepted as a public purpose by other governmental units?

— Does the general public generally consider it to be an appropriate use of public funds? (Note: While this certainly is not definitive, it is, after all, the public's money.)

— Can the results of the expenditure be identified, and is the governing body willing to characterize those results as public benefits?

### Statutes vs. Home Rule

Prior to home rule in Kansas (constitu-

tional for cities in 1961, statutory for counties in 1971), requests from the private sector for grants or contributions of public moneys were not so common as in recent years. There have never been many Kansas laws authorizing this practice, and, prior to home rule, this absence of statutory authorization was presumed to be an absence of legal power. This was due to the pre-home rule adage that legislative silence equated to the inability to take action. By contrast, under home rule, cities and counties have the power to make gifts and grants—for public purposes, subject to limitations that might be enacted by the state legislature.

It might be noted that even the state legislature may not authorize the state or local units of government to use public funds for private purposes. A state legislative declaration that granting public moneys for a certain purpose is a use of money that will be of benefit to the public may help convince the courts of its lawfulness, in the same manner that a local governing body declaration may help. But the public purpose doctrine, created by the courts, is ultimately defined and applied by the courts, not by legislative bodies.

### Using a Conduit

May a municipality do indirectly that which it may not do directly? Put another way, may a city give money to a non-profit corporation to use for a purpose that may not be a public purpose?

Running public money through a conduit does not make something unlawful into something lawful since the test of public purpose depends on the final purpose for which it will be used. Nonetheless, some "insulation" may help. For example, it appears clear that a city may contract for securing economic development services with a local, non-profit corporation. If proper procedures are followed by the city, as discussed below, this corporation *may* be able to do some things that would be questionable if done directly by the city — like buy land and rent it to a new business at a low cost. The use of proper procedures, and some accountability as to the ultimate use of the money, seem essential. A conduit that is arms-length away so as to remove the public purpose question is probably one which destroys the accountability of public officials for the use of the public's moneys. There is a quandary: if you know the money may be used for a non-public purpose, you may be in trouble; if you don't know how the money will be spent, you're also in trouble.

### The Community Benefits Question

Implicit to the public purpose doctrine

is that the public which benefits is also the same public that raises the money, or at least controls its expenditure. For example, contracting for services by a non-profit agency when the services will actually be performed in another town is questionable. Some public benefits must accrue locally if local funds are used, and all public funds under the control of the governing body are local funds, regardless of their source.

### Grants to Other Governments

May one governmental unit simply give public funds to another government? The answer is no, when it is a "simply give" question. The public funds of one governmental unit must be used for the public purposes of that same governmental unit. But this does not mean there cannot be public service agreements. For example, a city could contribute money to the county to help support a service of benefit to the city, and vice versa. A city or county may provide money to a local school district for a public service, such as is done when the local share of the 10 percent drink tax money is used for drug and alcohol abuse education programs operated by the board of education.

As in the case of "contributions" to private or non-profit agencies, a service agreement, discussed below, should be used for public money exchanges between governmental units.

### Profit vs. Non-Profit Agencies

Some local officials seem to think that "giving" money to non-profit agencies is more proper than giving money to a for-profit business. This ignores the crucial question of whether the benefits are public purpose benefits. Who, or what, is the "actor" is of little or no relevance. The mere fact that the recipient is recognized by the U.S. Treasury as tax exempt, for example, does not mean the municipal grant will be used for a public purpose of that municipality.

The slow trend toward "privatization"—the performance of traditional public services by private business, often under contract with a city — clearly shows the legitimacy of using private parties to accomplish public purposes, although it does not create the public purpose in and of itself.

### Service Agreements

In broad terms, every expenditure of public funds requires some kind of a contract. The payment of an employee's salary results from a "contract" for personal services; the purchase of materials or supplies is the result of a contract. A contract is essentially an agreement where there

4-2

in exchange of something of value. Giving" public money to someone or some agency, without getting something in return, is where local units can get into trouble — *there is no contract*. Nor will calling it a "grant" or "contribution" help. When public funds are spent, there must be something of value received in return which will be of benefit to the public.

Local governments should not allocate public funds to other agencies for clearly non-governmental purposes without some kind of service agreement (contract). The agreement should be in writing, even if only as part of the motion or

resolution authorizing the expenditure. The detail of the description of the public service to be provided by the "grant" recipient will normally depend on the amount, but some description is necessary to explain why it is being done, and for what purpose.

And if there is any question as to the public purpose nature of the service to be purchased by the agreement, a legislative (governing body) finding and declaration of this purpose should be included. (Significant difficulty in defining that public purpose usually serves as an accurate indicator that it should not be done).

## Accountability

How does the municipality know the "grant" is actually being used for the purpose for which it was made? Local officials are held accountable for the care of public funds. This fiduciary duty is made more difficult when the funds are paid out before the service or commodity is provided. Most public expenditures, to an employee, contractor or vendor, are in the form of reimbursement for something received. Grants often assume a future delivery of service.

Given this, a periodic report from the recipient is advisable, and should be made a condition of the grant. How much was spent? For what purpose? What public benefits accrued to the (city) (county)? In some instances, the service agreement should also stipulate the right of the local unit to examine the financial records of the recipient.

## Some Policy Recommendations

The following is a nonexclusive listing of policy recommendations to use when considering grants or contributions:

- ✓ Use public funds only for public purposes — it is unlawful to do otherwise.
- ✓ If there is doubt that the proposed use of the money will meet the public purpose doctrine, check with your legal counsel. If doubt remains, either don't do it, or clearly define that purpose in writing, and document the expected benefits to the public that will flow from the expenditure.
- ✓ Consider and treat such allocations of public funds as a service contract — an agreement to perform a service.
- ✓ Make sure that the recipient understands that the public agency is buying a public service, not just giving public money away.
- ✓ Make sure that the proposed benefits are actually delivered, and that some, or all, of the benefits are local.
- ✓ Keep in mind that a "grant" to one group will probably result in a request for a "grant" to another group.



"Service to County Government"

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Topeka, Kansas 66603  
(913) 233-2271  
FAX (913) 233-4830

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**Executive Director**  
John T. Torbert

February 27, 1989

**TESTIMONY**

**TO:** Representative R. D. Miller, Chairman  
Members House Local Government Committee

**FROM:** Bev Bradley, Legislative Coordinator  
Kansas Association of Counties

**RE:** HB 2476 Requiring audit of certain grant or loan money

The Kansas Association of Counties is concerned with the broad scope of HB-2476. On the surface it seems appropriate to require such audits, but it is simply not practical to require audits for the very small amounts of money sometimes allotted. We would also request that if an audit is already required of the entity by the state or federal government that the requirement not be duplicated and therefore this not apply in those cases.

tsbhlgc

2-27-89  
Attach.  
V