

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m. ~~p.m.~~ on February 1, 1987 in room 531-N of the Capitol.

All members were present except:

Committee staff present:

Mike Heim, Legislative Research
Emalene Correll, Legislative Research
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Ernie Mosher, League of Kansas Municipalities
Jim Kaup, League of Kansas Municipalities
Cathy Holdeman, City of Wichita
Chip Wheelen, Kansas Psychiatric Society

The meeting began with the continued hearing for opponents to SB 17 dealing with group homes for the mentally ill. Ernie Mosher, League of Kansas Municipalities, made a few brief comments concerning the bill and introduced Jim Kaup, general council for the League, to give testimony in opposition to the bill. (See Attachment I). Sen. Steineger asked Mr. Kaup for his position on group homes for juvenile delinquents. Mr. Kaup said it is the same as the position on this bill; it infringes on local rule and could be a danger to the community. Sen. Gaines asked Mr. Kaup's position on community corrections programs, and Mr. Kaup said this is a land decision and should be made by local officials.

Sen. Gaines commented that the federal government wants people put in family type situations also. He agreed that this creates a problem with local government and that there is a question of possible danger to the community, although he does not feel there would be any danger.

A discussion followed concerning the definition of "mentally ill" which staff noted is in Article 25, Chapter 59. Staff asked Mr. Kaup if lines 32-39 of the bill (essentially existing law) was meant to imply that groups could be mixed in one home. The licensing act treats each of these facilities as a separate facility. Mr. Kaup said he is suggesting that it be made clear that a permit is issued with the knowledge of how the home will be populated. Staff noted that in the past concern had been expressed that when the unit was no longer used as a group home, the local government would not have control over how it is used. Mr. Kaup said a conditional use permit would allow cities to have control over whatever concerns them, such as public safety. The Chairman asked Yo Bestgen, Kansas Association of Rehabilitation Facilities, if it is specific to population in the licensure. She said it is not always clear that there is a primary disability, many have more than one.

Cathy Holdeman, representing the City of Wichita, was next to testify. (See Attachment II).

Chip Wheelen, Kansas Psychiatric Society, distributed copies of a suggested amendment to SB 17 to the committee. (See Attachment III). He said this language would allow municipalities a little more authority in response to concerns about eroding the principals of home rule. (See Attachment III).

Sen. Allen questioned if the amendment wasn't open ended. Mr. Wheelen said there are no guarantees as had been expressed in earlier testimony, but the vast majority of mentally ill are not dangerous to others, and careful evaluation is given before placing persons in group homes. With this, the hearing on SB 17 was concluded.

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,
room 531-N, Statehouse, at 9:00 a.m. ~~xxx~~ on February 1, 1989.

The Chairman told the committee that he had received a letter addressed to the committee regarding this bill, and members could read it if they wish. (See Attachment IV).

The Chairman announced that SB 17 and SB 54 will be discussed on Friday when the committee will meet upon adjournment. He also asked that if anyone has suggested amendments, they should plan to have them drafted by then.

The minutes of January 31 were approved.

The meeting was adjourned.

Date: February 1, 1989

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Deb Frederick	WU Social Work student	3917 NW Topeka
Carla Worthington	WU Social Work student	3825 NW Kansas
Debbie Bird	" " "	3618 Sward Topeka
Michelle Benson	" " "	1617 Clay Topeka
Amy R. Tamari	W.U. Social Work student	2608 Clay Topeka
Vicki Fund	W.U. Social Work Student	2532 Duncan Dr. Topeka
William Stevenson	W.U. Social Work student	604 Ohio Holton, KS
Rosemary Kidney	WU Social Work student	3021 Randolph
Jurgene Langdon	" " " "	1107 W. 26 th St
Jeanette R. Banahan	WU Social Work student	440 SE Winfield - #7
Mike Orford	KALFA - DAR	Topeka
Ray Petty	Topeka FL Resource Center	Topeka
Chip Wheelon	Ks Psychiatric Soc.	Topeka
Jim Kaup	League of Ks Munic.	Topeka
Catherine Holdeman	City of Wichita	Wichita
Chris Rollins	SPS	
Jo Bestgen	KARF	Topeka
Ken Baker	Retirees v. Assoc.	Topeka
Jacquie Oaker	HPOA	Topeka
Audrea McArthur	K.U. Law School	Topeka
Ryk Shultz	MHRS/SRS	Topeka
M. Hawver	Capital Journal	"

Cont'd



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: E. A. Mosher, Executive Director
RE: SB 17 -- Group Homes for the Mentally Ill
DATE: February 1, 1989

- I. **League Position on SB 17.** While the League of Kansas Municipalities has taken no formal position on SB 17, it will not surprise this Committee to hear that we view it as an encroachment upon the Home Rule principle of local self-government. We further suggest that it is a bill that purports, without evidence, to provide a "solution" to an undefined "problem."

Most members of this Committee will recall the stress and strain which ultimately gave rise to HB 2073 in the 1988 Session. For several years the League fought against HB 2073 -- a law which invalidated local zoning laws that did not specifically provide for group homes for the physically handicapped, mentally retarded and other developmentally disabled persons as permitted uses in areas zoned for single-family residences. The League's opposition to HB 2073 was consistent with our longstanding commitment to oppose legislation that interferes with matters of local affairs and government. It had nothing whatsoever to do with the merits of an articulated state policy to deinstitutionalize the mentally ill and mentally retarded, and to promote community residential services.

Most members of this Committee will also recall that the League moved from "opposition" to "no position" on HB 2073 last session after certain accommodations were agreed to -- one of which was removing the mentally ill from the scope of that bill.

The League's opposition to HB 2073 in 1987 and 1988, like our opposition to SB 17 today, is based upon our steadfast belief that the governing of public affairs should be as close to the people as possible. The Legislature should respect the need for locally-elected officials to retain the means to solve local problems in ways most appropriate to local needs and conditions. Rather than remove local authority to act, as SB 17 does, the Legislature should encourage and promote the exercise of authority and assumption of responsibility by locally-elected, locally-responsible governing bodies. We believe it vital that both the law and spirit of home rule be preserved and strengthened and that attempts to diminish this prerogative of local self-determination be vigorously resisted.

- II. **Municipal Land Use Authority.** Land use is, unquestionably, a matter of local affairs and government. Zoning is one of the most commonly-employed means of regulating the use of property for purposes of promoting the public health, safety and welfare.

2-1-89
Senate Local Gov't
Attachment I

Zoning regulations which protect and promote the residential character of a single-family neighborhood -- by excluding all other uses of property other than single-family residential -- are generally upheld as being within the scope of a local unit's police power to promote the general welfare. Obviously non-residential uses may be excluded from such areas, as well as alternative residential uses that might negatively impact either property values or the overall quality of the residential living environment. A great many courts have examined the rationale for single-family zoning. Among those decisions we note a 1924 Massachusetts case where the court said it may be "reasonable" to assume "that the health and general physical and mental welfare of society would be promoted by each family dwelling in a house by itself." Use of the police power to protect the happiness, comfort and general well-being of residents in single-family neighborhoods generally has been held to be an important and legitimate public purpose for either excluding or regulating land uses deemed incompatible with the family character of such areas.

Some courts view protection of the residential and family character of neighborhoods of detached homes as the foremost purpose for zoning. A California court as early as 1925 held:

We think it may be safely and sensibly said that justification for residential zoning may, in the last analysis, be rested upon the protection of the civic and social values of the American home. The establishment of such districts is for the general welfare because it tends to promote and perpetuate the American home. It is axiomatic that the welfare, and indeed the very existence, of a nation depends upon the character and caliber of its citizenry. The home and its intrinsic influences are the very foundation of good citizenship and any factor contributing to the establishment of homes and the fostering of home life doubtless tends to the enhancement, not only of community life, but of the life of the nation as a whole.

III. Identification of the "Problem" SB 17 Seeks to Address. It seems commonplace for the League to be in the position of having to defend the status quo. We point out to the Committee that it has been offered no hard facts and figures to support changing the status quo. You have not been shown either that (1) the State has experienced difficulties in establishing group homes for the mentally ill in residential neighborhoods (i.e. that a "problem" does exist) or (2) that the invalidation of local zoning laws serves a legitimate public interest (i.e. that SB 17 will help to "solve" that "problem"). The League believes it is significant that nothing it has seen in the record relating to SB 17 indicates that the location of a group home for the mentally ill has been prevented due to local zoning laws.

The League reviewed the "Preliminary Recommendations" (dated November 28, 1988) of the Governor's Task Force on Mental Health Reform, the Legislative Post Audit report "Improving the System for Providing Mental Health Programs and Services in Kansas" which was presented to the 1988 Interim Committee that recommended SB 17, as well as testimony presented on January 31 to this Committee by proponents of SB 17. Not once has any reference been made to any case where a proposal for a group home for the mentally ill was turned down by a local unit of government because of zoning regulations. Rather, it appears to the League that Legislative Post Audit and the Governor's Task Force simply noted (1) that some other

2-1-89
S L G
I-2

states have laws similar to SB 17; (2) that many zoning regulations do not specifically allow for group homes in single-family zoned areas, then put (1) and (2) together and concluded, in the words of Post Audit, that Kansas law should be amended "to prevent restrictive zoning and similar exclusionary practices against group homes for those with mental illness."

We resent the innuendos. Where have cities or counties refused to rezone property or to issue special use permits so as to allow group homes in single-family neighborhoods? In sum, where and what is the "problem" and how is passage of SB 17 going to work towards its "solution"?

IV. League Proposed Amendments. If SB 17 is approved by this Committee, we note the following specific problems with the bill:

- (1) Based upon testimony presented to this Committee on January 31, it appears that SB 17, as written, would permit a judge to involuntarily commit a mentally ill person directly into a group home without that person first being placed into a state mental institution for treatment and evaluation pertaining to that person's possible danger to the public. The League asks this Committee to better identify the potential public safety concerns this raises, and whether SB 17 should be amended to minimize those concerns.
- (2) By statutory definition, persons adjudicated as mentally ill represent a danger to themselves or others. In recognition of this, the League asks that SB 17 be amended to require the Secretary of SRS to notify local law enforcement agencies whenever it places into any group home -- whether located in a single-family zoned neighborhood or elsewhere -- a mentally ill person with a history of violence against persons.
- (3) As worded, SB 17 would appear to allow mentally ill persons to be placed in a group home (in a single-family zoned neighborhood) that was issued a special or conditional use group home permit by a city or county even though that permit was drafted, debated and issued with the express understanding that the group home would not be occupied by persons adjudicated as mentally ill. It seems unfair to effectively retroactively change the law with respect to the occupancy of group homes. SB 17 should be amended to expressly require that a group home permit for the mentally ill must be obtained before any mentally ill person could be placed in a group home that was issued a permit under the authority of K.S.A. 1988 Supp. 12-736 (HB 2073).
- (4) Finally, the League recommends that SB 17 be amended to incorporate the existing statutory definition of "mentally ill" (Supp. 59-2902(h)): any person who: (1) is suffering from a severe mental disorder to the extent that such person is in need of treatment; (2) lacks capacity to make an informed decision concerning treatment; and (3) is likely to cause harm to self or others.

V. Clarification of State Policy. The League also urges this Committee to identify precisely what state objective is being furthered by legislation such as SB 17 and the 1988 legislation on group homes for the mentally retarded (HB 2073), and to clarify when that state objective can be expected to prevail, in the future, over locally-enacted laws. In short, is mental health the common thread between SB 17 and

HB 2073, or is it a desire to remove persons from state institutions? Notwithstanding the damage bills such as SB 17 do to Home Rule, the League understands that subjects do exist where statewide interests should prevail over local interests. If this Committee believes that, on balance, SB 17 furthers the state's objective of ensuring placement for the mentally ill and mentally retarded in areas zoned for single family residences and that residential placement is a critical component of those persons' treatment program, then the League accepts that decision. However, if SB 17 represents something broader -- if its true objective is to ensure that local laws will not impede the state's efforts to empty out its institutions, then SB 17 needs re-examination. We do not take lightly the state's invalidation of laws passed by locally-elected officials in response to local needs and conditions. We submit to you that such state preemption should occur only where clear evidence exists that only by eliminating local laws can legitimate state objectives be accomplished.

Although we do not believe that the argument for single-family neighborhood placement for the mentally ill has been specifically made before this Committee, we concede there may be the basis for such an argument. We do not, however, find such a basis for the forced introduction into single-family neighborhoods of group homes for persons now housed in correctional facilities.

The League asks this Committee to place into the record some indication of the precedential worth of SB 17. We know SB 17 is contrary to Home rule -- regardless of its merit. Our position on the bill is dependent upon how much it erodes Home Rule -- does it represent the end of the road regarding state invalidation of local zoning laws, or is it just another step along a path towards state domination of land use?

2-1-89
SLG
I-4

January 30, 1989

Mr. Don Montgomery, Chairman
Local Government Committee
State Capitol Building
Topeka, KS 66122

Dear Mr. Chairman:

I am sending this letter in regard to Senate Bill 17, which would include the mentally ill in the current state statute that preempts local zoning authority in the location of group homes for the mentally retarded and developmentally disabled. I am sympathetic with the purpose of this amendment in preventing arbitrary discrimination against the mentally ill, and I agree that many mentally ill persons would benefit from a residential group home setting. However, I should think that the City of Wichita would be opposed to this proposed amendment for the following reasons:

1. Mentally ill persons are more likely to be potentially harmful to others than the groups now covered in the group home statute. As I understand it, the state statutorily defines mentally ill as "likely to cause harm to himself or others." My concern is that the state of knowledge in the mental health field is still evolving, and practitioners often conflict with each other on diagnosis and treatment. The possibility of a potentially violent individual being placed in a group home is very real. I am also concerned that state agency officials facing budgetary limitations may be forced to release mentally ill patients to group homes that should really be in an institutional setting. Many of the mentally ill are on powerful drugs that must be very carefully prescribed and monitored for the ill person to function properly. I think local communities are justified with a concern that the behavior of mentally ill persons is less predictable than that of the mentally retarded and developmentally disabled. The types of illness and the quality of supervisory care are valid areas of inquiry for local governments considering placement of the mentally ill in residential neighborhoods, in order to provide for the safety and welfare of the surrounding residents. Finally, I am concerned that this further encroachment of local zoning authority will encourage future amendments to preempt local

2-1-89
Senate Local Gov't
Attachment II

Mr. Don Montgomery
Page 2

regulation concerning the location of halfway houses for other specialized groups such as alcoholics, drug addicts, and released criminals.

2. There is no lack of suitable locations in our city where a group home for the mentally ill can be cited "as of right", and there has been no demonstration, or even accusation, of discrimination in the City's local zoning practice. Group homes, the definition of which does not exclude the mentally ill, are permitted in the City's "B" Multiple Family District as of right. I would estimate that there are roughly 5,000 acres of land within the City Limits in this classification. Group homes are also permitted as of right in the City's office and commercial classifications, which usually are adjacent to residential neighborhoods. The City's zoning ordinance also permits the location of a group home in any other residential district on a case-by-case basis by the City's Board of Zoning Appeals as a "use exception." Going back through the Board's record since 1983, we recorded 24 applications filed for use exceptions, only one of which was denied. That denial was related entirely to the fact that the location being requested lacked sidewalk facilities and was too distant from the nearest bus route, and therefore was inappropriate for this particular facility, whose clients were expected to use public transportation on a regular basis.

In summary, I feel that there is real justification for distinguishing between mental illness and other disabilities, that local control over the location and operation of group homes for the mentally ill should be maintained, that our current regulations offer many suitable locations for this use, and that these regulations are not intended and have not resulted in arbitrary discrimination.

Thank you for your consideration,

Marvin S. Krout
Director of Planning

MSK:jcm

2-1-89
S LG.
II-2

of a person, ~~other than mental illness~~, which:

- (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (B) is manifested before the person attains age 22;
- (C) is likely to continue indefinitely;
- (D) results in substantial function limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living and (vii) economic self-sufficiency; and
- (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

(c) Except as hereinafter provided, no municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation which prohibits the location of a group home in such zone or area in violation of this act is invalid. Notwithstanding the provisions of this act, group homes may be required to procure a special or conditional use group home permit and shall be subject to all other regulations applicable to other property located in the zone or area that are imposed by any municipality through its building regulatory codes, subdivision regulations, special or conditional use group home permit regulations or other nondiscriminatory regulations. For the purpose of preserving the single family residential character of the area, the governing body of the municipality may require the physical structure of the group home to be generally compatible with other physical structures in the surrounding neighborhood. In order to avoid excessive concentration of group homes, from and after the effective date of this act, no such group home may be located within 1,000 feet of another such group home in areas zoned exclusively for single family dwellings, unless the governing body of the municipality approves a closer location by a majority vote thereof. A special or conditional use group home permit shall be issued upon a determination by the governing body of the municipality that the establishment of the group home is in com-

81	pliance with the provisions of this section.
82	Sec. 2. K.S.A. 1988 Supp. 12-736 is hereby repealed.
83	Sec. 3. This act shall take effect and be in force from and after
84	its publication in the statute book.
85	

(d) Municipalities may require that as a condition of a special use permit, that occupants of group homes for mentally ill persons be determined by a person whose licensure provides for the diagnosis of mental illness to be not likely to cause harm to self or others if placed in a group home for the mentally ill.

2-1-89
 Senate Local Gov't
 Attachment III

Lawrence, KS 66046
Jan 30, 1989

Chair. Montgomery, Vice Chair Allen
and
Senate Local Gov't Committee
State Capitol
Topeka, KS.

re - Zoning for Persons with Mental Illness
Senate Bill #17

Dear Committee Members All:

We need very badly small, family-type group half-way homes to integrate our mentally ill back into our communities, gradually. A large institution has been proven, for so many, a tragic solution -- but to return these adults to their community with no jobs, no housing, no living arrangement that offers counseling as needed, assistance with medication and the daily chores of living, as needed, is likewise to abandon these people. We need neighborhood environments that will give them some semblance of belonging -- and welcome in the community, with support available in a home environment, a half-way house, with a round-the-clock counsellor available if we are to salvage these potentially productive

-2-
Senate Local Gov't Comm. (cont'd.) - Hilda Enoch Lawrence, KS. Jan. 30, 1989

citizens. We cannot leave them homeless and hopeless in our communities. Most are not ready for totally independent living with its terror of isolation, loneliness, abandonment. -- Our community mental health center does not offer 24-hr. support for our chronically mentally ill. -- Our families from whence they came are already frazzled with worry & despair and cannot offer the objective, professional support and counseling that their grown children need. To return, as adults, to their childhood (a failing setting is to condemn them, at the start, to dependence and dismal self-esteem.

I speak as the mother of such a young man who, for 2 yrs. wandered the streets, and as a local support group of Concerned Citizens and Returned Mental Patients, our "Project Acceptance" here in Lawrence where we have strove for 3 yrs. now, unsuccessfully to provide adequate housing -- a half-way family home, for our mentally ill members, with built-in professional counseling. By eliminating zoning barriers you begin to make our intention a reality thank you for your concern, & I

Senate Local Gov't
2-1-89
Attachment II