

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at _____
Chairperson

9:05 a.m./p.m. on March 21, 1990 in room 423-S of the Capitol.

All members were present except: Representative Solbach

Committee staff present: Raney Gilliland, Legislative Research
Jill Wolters, Revisor of Statutes Office
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Larry Woodson, Director, Division of
Inspections, Kansas State Board of
Agriculture
Bob Gunja, City of Kansas City, Kansas
Don Weick, City of Topeka

Chairman Roenbaugh opened hearings on SB 632 - annual inspection of weights and measures.

Larry Woodson, Department of Agriculture, testified in support of SB 632. He stated the intent of this bill is to allow local weights and measures officials to test the device to assure accuracy and to verify that repairs or adjustments performed by private scale companies were performed accurately by qualified technicians. While there may be some competition between the cities and the scale companies for the testing responsibility, there is no competition on the repair side of the issue, except that healthy competition between the private service companies. (Attachment I). Mr. Woodson also furnished the committee with copies of a "balloon" showing the amendments requested. (Attachment I-a). A question and answer period followed the testimony.

Bob Gunja, City of Kansas City, Kansas, testified in support of SB 632. He stated Kansas Statutes 83-304 & 83-404 presently require the owner of both large and small capacity scales and retail motor fuel dispensing devices (gas pumps) to have these devices tested yearly by a licensed and registered scale or pump company. What we are proposing is a change to these statutes which would effect the cities of Kansas City, Kansas and Topeka, as this is a service already provided by these two jurisdictions. (Attachment II). Mr. Gunja furnished the committee with written testimony from Thad Lawrence, District Manager, Balls Food. (Attachment III). Questions and answers followed his testimony.

Don Weick, Weights and Measures, City of Topeka, testified in support of SB 632. He stated because of the dual fees, they would like to see the Kansas City proposal adopted.

Chairman Roenbaugh closed hearings on SB 632 and asked for wishes of the committee.

Representative Reinhardt moved to adopt the "balloon" offered.
Representative Eckert seconded the motion. The motion passed.

Representative Hamm moved to pass as amended SB 632 favorably.
Representative Reinhardt seconded the motion. The motion passed.

The committee minutes of March 13, 14 and 15 were approved by Chairman Roenbaugh with no objections from the committee.

The Chairman announced there would be a committee meeting tomorrow. The meeting adjourned at 9:42 a.m.

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.

HOUSE AGRICULTURE AND SMALL BUSINESS COMMITTEE

March 21, 1990

Madame Chairperson, members of the House Agriculture and Small Business Committee, my name is Larry D. Woodson, Director of the Division of Inspections, Kansas State Board of Agriculture, and I am here to offer testimony on Senate Bill 632 as amended.

In 1984, the Kansas State Board of Agriculture started exploring the concepts of privatization as a result of shrinking revenues. Our challenge was to reduce expenditures without sacrificing the integrity of our weights and measures program. The specific issue at that time was the need to reduce our large scale program from three vehicles to two.

We embarked upon a privatized program in which large scales would be required to be tested by licensed private scale companies on an annual basis with oversight by the Kansas State Board of Agriculture. This placed more of the responsibility for the accuracy of the device upon the device owner and not upon the Board of Agriculture. It also assured at minimum, the annual testing and servicing of all scales by the licensed scale companies. This permitted the agency to provide oversight of both the weighing and measuring devices and the service companies.

Based on the acceptance and the positive results of privatization, annual testing is also required on LP-Gas meters, small capacity scales, refined fuel meters (bulk delivery vehicles), meters at terminals or pipelines, and gas pumps.

As one can expect, high volume devices are often tested several times a year by the device owners as the devices are used for sales and purchasing. It is simply good insurance.

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Service companies who perform the testing and servicing are required to provide information on the devices to the Division of Inspections, pay a \$50 licensing fee, have their test equipment certified annually, as well as having their technicians certified annually which requires them to pass a written test.

Through our privatized weights and measures program, we believe we are maintaining accountability at a significant savings to the taxpayer.

Few programs are perfect and we must recognize that the annual testing of devices has placed a hardship on a few owners of small devices that are used on a limited basis.

The weights and measures program has benefitted from the cooperation and participation of Topeka and Kansas City in the testing of devices used for commercial purposes in those metropolitan areas. Their weights and measures officials regularly participate with our inspectors in training programs provided by the National Institute of Standards and Technology (formerly the Bureau of Standards).

We recognize that we do not have the resources to provide the same level of testing and oversight as is being provided by the two respective programs.

Prior to privatization, or the mandating of annual inspections by licensed private scale companies by certified technicians, the annual testing of scales and other measuring devices such as meters used in taxi cabs, car washes, parking meters, etc. were performed by city weights and measures inspectors. The decision to have city programs was made at the local government level. It was advantageous to those consumers and to the state as the programs complimented and enhanced the state weights and measures laws.

When the state furthered its participation into the privatization concept, the responsibility for device accuracy was transferred to the device

owner with the work being performed by the private scale company with oversight from the state. In making these changes, we put the testing and repair into the hands of private scale companies and put them into competition with the cities in the testing area - not in the repair area.

The intent of this bill is to allow local weights and measures officials to test the device to assure accuracy and to verify that repairs or adjustments performed by private scale companies were performed accurately by qualified technicians. While there may be some competition between the cities and the scale companies for the testing responsibility, there is no competition on the repair side of the issue, except that healthy competition between the private service companies.

In summary, we believe that Senate Bill 632 as amended accomplishes the following:

1. The proposed language allows the cities the option to test devices.
2. It allows the cities to provide the service utilizing local revenue and manpower; thus, subsidizing the state weights and measures program.
3. It permits the cities to administer the program with or without user fees.
4. It provides additional oversight for consumer protection while reducing the direct cost to business owners.
5. Maintains the principal of privatization for the state.

I conclude our testimony and will stand for questions.

SENATE BILL No. 632

By Committee on Federal and State Affairs

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AN ACT concerning weights and measures; relating to annual inspections; amending K.S.A. 83-302, 83-304 and 83-305, 83-310, 83-402, 83-404, 83-405 and 83-409 and repealing the existing sections.

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

Section 1. K.S.A. 83-304 is hereby amended to read as follows: 83-304. (a) The owner or operator of a scale which is used for the commercial weighing of commodities shall have the scale tested and inspected at least annually for accuracy. ~~Except in any city or county which has a department of public inspection of weights and measures which annually inspects such scales,~~ The test shall be conducted by either a registered technical representative employed by a licensed scale testing and service company or by an authorized representative of any city or county which has established a department of public inspection of weights and measures pursuant to K.S.A. 83-210, and amendments thereto, which inspects such scales in accordance with rules and regulations adopted by the state sealer. The test weights used by the scale testing and service company shall have been approved and sealed by the state sealer pursuant to K.S.A. 1987 Supp. 83-214, and amendments thereto, within the 12 calendar months preceding the date of the test. ~~The Except at the option of the city or county which has an established department of public inspection of weights and measures,~~ annual tests and inspections of each scale shall be at the expense of the owner or operator of the scale. ~~In any city or county which has a department of public inspection which annually inspects such scales, the test shall may be conducted by an authorized representative of the city or county weights and measures department.~~ Farmers or ranchers who own and operate scales used in private treaty transactions are exempt from the annual testing requirements.

(b) A scale testing and service company or the city or county department of public inspection of weights and measures which conducts tests pursuant to this section shall, at the time of testing and

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or by the state sealer or an authorized representative thereof subject to the provisions of section 9 of this act.

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or representative of the state sealer

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1 inspection, promptly furnish to the owner or operator of the scale
2 a report showing the results of the tests and inspection. Within five
3 calendar days thereafter, the scale testing and service company or
4 the city or county department of public inspection of weights and
5 measures shall furnish a copy of such report to the state sealer.

6 (c) Subject to the provisions of K.S.A. 1987 Supp. 83-215, and
7 amendments thereto, the owner and operator of a scale which is
8 found to be inaccurate at the time of testing shall withdraw im-
9 mediately the scale from further use until the necessary corrections,
10 adjustments or repairs are made and the scale is determined to be
11 accurate by a scale testing and service company or the city or county
12 weights and measures department of public inspection
13 of weights and measures. Scales which have been repaired or
14 serviced shall meet the tolerances and specifications adopted by the
15 state sealer by rule and regulation. The scale testing and service
16 company or the city or county department of public inspection of
17 weights and measures shall notify the state sealer of any scales which
18 are found not to comply with such tolerances and specifications. A
19 copy of the report prepared by the scale testing and service company
20 or city or county department of public inspection of weights and
21 measures, showing the results of the scale test and the work done
22 to correct any deficiencies shall be filed with the state sealer by the
23 owner or operator of the scale within 15 days after the test and
24 inspection has been completed.

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or the representative of the state sealer

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or the representative of the state sealer

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or the representative of the state sealer

25 Sec. 2. K.S.A. 83-404 is hereby amended to read as follows: 83-
26 404. (a) The owner or operator of a dispensing device which is used
27 for commercial purposes shall have such device tested and inspected
28 at least annually for accuracy. *Except in any city or county which*
29 *has a department of public inspection of weights and measures*
30 *which annually inspects such dispensing devices, the* The test
31 shall be conducted by either a testing service or by an authorized
32 representative of any city or county which has established a de-
33 partment of public inspection of weights and measures pursuant to
34 K.S.A. 83-210, and amendments thereto, which inspects such dis-
35 pensing devices in accordance with rules and regulations adopted by
36 the state sealer. The test weights and measures used by the testing
37 service shall have been approved and sealed by the state sealer
38 pursuant to K.S.A. 83-214, and amendments thereto, within the 12
39 calendar months preceding the date of the test. *The* Except at the
40 option of the city or county which has an established department
41 of public inspection of weights and measures annual tests and in-
42 spections shall be at the expense of the owner or operator. *In any*
43 city or county which has a department of public inspection of weights

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or by the state sealer or an authorized representative thereof
subject to the provisions of section ___ of this act.

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1 and measures which annually inspects such dispensing devices, the
2 tests shall may be conducted by an authorized representative of such
3 city or county weights and measures department. Farmers or ranch-
4 ers who own and operate a dispensing device used in private treaty
5 transactions are exempt from the annual testing requirements.

6 (b) A testing service or the city or county department of public
7 inspection of weights and measures, which conducts tests pursuant
8 to this section, at the time of testing and inspection, shall promptly
9 furnish to the owner or operator a report showing the results of the
10 tests and inspection. Within five calendar days thereafter, the testing
11 service or the city or county department of public inspection of
12 weights and measures shall furnish a copy of such report to the state
13 sealer.

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or the representative of the state sealer

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or the representative of the state sealer

14 (c) Subject to the provisions of K.S.A. 83-215, and amendments
15 thereto, the owner and operator of a dispensing device which is
16 found to be inaccurate at the time of testing shall withdraw im-
17 mediately the device from further use until the necessary corrections,
18 adjustments or repairs are made and the device is determined to
19 be accurate by a testing service or the city or county weights and
20 measures department. The devices which have been repaired or
21 serviced shall meet the tolerances and specifications adopted by the
22 state sealer by rule and regulation. The testing service or the city
23 or county shall notify the state sealer of any devices which are found
24 not to comply with such tolerances and specifications. A copy of the
25 report prepared by the testing service or the city or county weights
26 and measures department, showing the results of the test and the
27 work done to correct any deficiencies shall be filed with the state
28 sealer by the owner or operator of the device within 15 days after
29 the test and inspection have been completed.

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or the representative of the state sealer

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or the representative of the state sealer

30 Sec. 3. K.S.A. 83-302 is hereby amended to read as follows: 83-
31 302. (a) Each person, other than an authorized representative of a
32 city or county department of public inspection of weights and meas-
33 ures established pursuant to K.S.A. 83-210, and amendments thereto,
34 desiring to operate and perform testing and other services as a scale
35 testing and service company in Kansas shall apply to the state sealer
36 for a scale testing and service company license, on a form to be
37 supplied by the state sealer, and shall obtain such license from the
38 state sealer before operating and performing testing or other services
39 as a scale testing and service company. Each scale testing and service
40 company shall obtain a license for each place of business maintained
41 in Kansas and shall pay a license application fee of \$50 and thereafter
42 an annual license renewal application fee of \$50 for each place of
43 business. Each scale testing and service company license shall expire

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an authorized representative of the state sealer or

1 on June 30 following issuance and shall not be transferable.

2 (b) If any scale testing and service company maintains any out-
3 of-state places of business which the company operates in serving
4 Kansas patrons, the applicant seeking to obtain or renew a license
5 under this section shall list in the application such places of business
6 and the firm names under which the company operates at each such
7 place of business. If any out-of-state place of business is established
8 by a scale testing and service company after being licensed under
9 this section, the licensee shall supply such information to the state
10 sealer before any work is performed in Kansas from such out-of-
11 state location. Each nonresident scale testing and service company
12 shall designate a resident agent upon whom service of notice or
13 process may be made to enforce the provisions of K.S.A. 1987 Supp-
14 83-301 to 83-311, inclusive, and amendments thereto or any liabilities
15 arising from operations thereunder. Each nonresident scale testing
16 and service company which maintains no established place of business
17 in Kansas shall obtain a license under this section for each out-of-
18 state place of business and shall list on the application the firm name
19 or names for each place of business from which the scale testing
20 and service company intends to operate.

21 (c) Each scale testing and service company shall have each of
22 their technical representatives registered annually by the state sealer.
23 The technical representative shall be required to pass a reasonable
24 examination prescribed by the state sealer before being registered.
25 Each scale testing and service company shall have at least one reg-
26 istered technical representative in its employ at each licensed place
27 of business. For any scale testing and service company not subject
28 to the provisions of this subsection (c) prior to the effective date of
29 this act, the provisions of this subsection (c) shall become applicable
30 to such scale testing and service company on and after September
31 1, 1988.

32 (d) No scale testing and service company license may be issued
33 or renewed under this section until the applicant's weights have been
34 tested for accuracy and sealed by the state sealer. The state sealer
35 is authorized to accept a certification of the accuracy of the appli-
36 cant's weights or measures issued by the national bureau of standards
37 or by a weights and measures laboratory certified by the national
38 bureau of standards in lieu of a test by the state sealer, if such
39 certificate shows that the weights or measures have been tested within
40 the 12 calendar months next preceding the license application.

41 (e) The state sealer shall remit all moneys received under this
42 section to the state treasurer at least monthly. Upon receipt of any
43 such remittance, the state treasurer shall deposit the entire amount

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1 thereof in the state treasury and the same shall be credited to the
2 weights and measures fee fund.

3 Sec. 4. K.S.A. 83-305 is hereby amended to read as follows: 83-
4 305. When the state sealer has been notified by a licensed scale
5 testing and service company, or by a city or county department of
6 public inspection of weights and measures established pursuant to
7 K.S.A. 83-210, and amendments thereto, that a scale does not comply
8 with tolerances and specifications adopted by the state sealer, by
9 rule and regulation, then the state sealer may test the scale for
10 accuracy after repairs have been made.

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, by an authorized representative of the state sealer

11 Sec. 5. K.S.A. 83-310 is hereby amended to read as follows: 83-
12 310. It is unlawful for any person, other than the state sealer or,
13 the state sealer's authorized representative or an authorized rep-
14 resentative of a city or county department of public inspection of
15 weights and measures established pursuant to K.S.A. 83-210, and
16 amendments thereto, to: (a) Operate or perform services as a scale
17 testing and service company without having a valid scale testing and
18 service company license; or

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an authorized representative of the state sealer or

19 (b) adjust, calibrate or repair any scale other than at the person's
20 residence or at the person's established place of business without
21 having a valid scale testing and service company license.

22 Sec. 6. K.S.A. 83-402 is hereby amended to read as follows: 83-
23 402. (a) Each person, other than an authorized representative of a
24 city or county department of public inspection of weights and meas-
25 ures established pursuant to K.S.A. 83-210, and amendments thereto,
26 desiring to operate and perform testing and other services as a testing
27 service in Kansas shall apply to the state sealer for a testing service
28 license, on a form to be supplied by the state sealer, and shall obtain
29 such license from the state sealer before operating and performing
30 testing or other services as a testing service. Each testing service
31 shall obtain a license for each place of business maintained in Kansas
32 and shall pay a license application fee of \$50 and thereafter an
33 annual license renewal application fee of \$50 for each place of busi-
34 ness. Each testing service license shall expire on June 30 following
35 issuance and shall not be transferable.

36 (b) If any testing service maintains any out-of-state places of
37 business which the testing service operates in serving Kansas patrons,
38 the applicant seeking to obtain or renew a license under this section
39 shall list in the application such places of business and the firm
40 names under which the testing service operates at each such place
41 of business. If any out-of-state place of business is established by a
42 testing service after being licensed under this section, the licensee
43 shall supply such information to the state sealer before any work is

1 performed in Kansas from such out-of-state location. Each nonres-
2 ident testing service shall designate a resident agent upon whom
3 service of notice or process may be made to enforce the provisions
4 of K.S.A. 1987 Supp. 83-401 to 83-410, inclusive, and amendments
5 thereto, or any liabilities arising from operations thereunder. Each
6 nonresident testing service which maintains no established place of
7 business in Kansas shall obtain a license under this section for each
8 out-of-state place of business and shall list on the application the
9 firm name or names for each place of business from which the testing
10 service intends to operate.

11 (c) Each testing service shall have each of their technical rep-
12 resentatives registered annually by the state sealer. The technical
13 representative shall be required to pass a reasonable examination
14 prescribed by the state sealer before being registered. Each testing
15 service shall have at least one registered technical representative in
16 its employ at each licensed place of business. For any testing service
17 not subject to the provisions of this subsection (c) prior to the
18 effective date of this act, the provisions of this subsection (c) shall
19 become applicable to such testing service on and after September 1,
20 1988.

21 (d) No testing service license may be issued or renewed under
22 this section until the applicant's weights and measures have been
23 tested for accuracy and sealed by the state sealer. The state sealer
24 is authorized to accept a certification of the accuracy of the appli-
25 cant's weights or measures issued by the national bureau of stand-
26 ards, by a weights and measures laboratory certified by the national
27 bureau of standards, or by the appropriate certifying agency of
28 another state in lieu of a test by the state sealer, if such certificate
29 shows that the weights or measures have been tested within the 12
30 calendar months next preceding the license application.

31 (e) The state sealer shall remit all moneys received under this
32 section to the state treasurer at least monthly. Upon receipt of any
33 such remittance, the state treasurer shall deposit the entire amount
34 thereof in the state treasury and the same shall be credited to the
35 weights and measures fee fund.

36 Sec. 7. K.S.A. 83-405 is hereby amended to read as follows: 83-
37 405. When the state sealer is notified by a licensed testing service
38 or by a city or county department of public inspection of weights
39 and measures established pursuant to K.S.A. 83-210, and amend-
40 ments thereto, that a dispensing device does not comply with tol-
41 erances and specifications adopted by the state sealer, by rule and
42 regulation, the state sealer may test for accuracy after repairs have
43 been made.

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company, an authorized representative of the state sealer

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Sec. 8. *K.S.A. 83-409 is hereby amended to read as follows: 83-409. It is unlawful for any person, other than the state sealer, the state sealer's authorized representative or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, to: (1) Operate or perform services as a testing service without having a valid license under K.S.A. 83-401 to 83-410, inclusive, and amendments thereto; or*

(2) adjust, calibrate or repair a dispensing device, without having a valid license under K.S.A. 83-401 to 83-410, inclusive, and amendments thereto.

Sec. 3 9. *K.S.A. 83-302, 83-304 and, 83-305, 83-310, 83-402, 83-404, 83-405 and 83-409 are hereby repealed.*

Sec. 4 10. *This act shall take effect and be in force from and after its publication in the statute book.*

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DEPARTMENT OF FINANCE

Municipal Office Building
One Civic Plaza
Kansas City, Kansas 66101
Phone (913) 573-5080



Weights and Measures Division

February 20, 1990

Kansas Statutes 83-304 & 83-404 presently require the owner of both large and small capacity scales and retail motor fuel dispensing devices (gas pumps) to have these devices tested yearly by a licensed and registered scale or pump company. What we are proposing is a change to these statutes which would effect the cities of Kansas City, Kansas and Topeka, as this is a service already provided by these two jurisdictions. I would like to offer a little background to this proposal.

When this law first went into effect in 1985, it only encompassed large capacity (over 5000 lb.) scales. In 1988, the law was amended to include small capacity scales, and in 1989, gasoline pumps. As these laws were being revised, the State Office of Weights and Measures began to change their procedures and are now only randomly testing the weighing and measuring devices in their jurisdiction. This program, called "privatization", has virtually put the inspection of weighing and measuring devices into the hands of the people who service these devices, or in some cases, the device owners.

At the National Conference of Weights and Measures in July, 1989, Ray Kammer, Acting Director of the National Institute of Standards and Technology addressed this same issue in his keynote speech. He emphasized that privatization was an extremely poor idea as it "puts the fox in charge of the chicken coop" and can allow for some unethical business practices. I have provided you copies of an excerpt of this speech by Mr. Kammer, and also additional information from Al Tholen, Chief of the Office of Weights and Measures National Institute of Standards and Technology. Mr. Tholen explains the National Institutes negative position on "privatization".

The last aspect to consider is the expense to the scale and pump owners. Two scale companies in the Kansas City area stated that they would charge around \$35.00 for a "trip charge" and approximately \$35.00 per hour with a one hour minimum. This \$70.00 or more could create a burden on the smaller "mom and pop" type of business within the city.

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The gasoline pump inspection is another area that the expense to the device owners can be great. A pump company in Hutchinson told me earlier this month that they will be charging \$15.00 per pump to merely inspect and test it. At a large station with 20 or more pumps, the bill to inspect the devices would be \$300.00 or more, depending on if any pumps needed to be calibrated.

What some weighing and measuring device owners have been doing however, is to license themselves as a scale or pump company. They do this by paying the \$50.00 licensing fee and having an employee or employees pass the state test, investing in the necessary test equipment and testing the devices themselves. Most of the time this will probably work out, but I am concerned about the possibility of fraud. Suppose the device owner never puts certified weights on the scale, or never put one drop of gasoline into his 5 gallon test measure, yet he sends a report of these devices being tested to the state and shows they are all in compliance with the specific tolerance for that particular device. I have also heard reports that right here in Topeka, a certain scale company has gone into businesses and said that since they own or use a certain brand scale, this scale company was required to check it since they were an authorized dealer for this brand of scale. This was done even after the scale owner had paid to have the scales tested by the City of Topeka and another scale company. The possibilities of this type of fraud are endless.

Our proposal for the statute change is that the law have an exemption for any cities within the State of Kansas that have a Weights and Measures Department. The only two cities that this would affect are Kansas City, Kansas and Topeka. My rationale for this idea is that since we are performing 100 percent testing of these devices yearly, not just random testing, this test should suffice as a yearly inspection. However, if we do find a device out of tolerance, we would reject it and require the necessary repairs before this device would be considered as having met its yearly inspection requirement.

Our inspectors have been trained in the inspection of these devices through the implementation of a National Training Program with the National Conference of Weights and Measures. I can also state that I believe our inspections are more thorough than those of a scale company whose main goal is profit.



DEPARTMENT OF FINANCE

Municipal Office Building
One Civic Plaza
Kansas City, Kansas 66101
Phone (913) 573-5080



Weights and Measures Division

**EXCERPT FROM KEYNOTE
SPEECH BY RAYMOND KAMMER,
ACTING DIRECTOR OF THE NATIONAL
INSTITUTE OF STANDARDS TECHNOLOGY,
GIVEN TO THE NATIONAL CONFERENCE
ON WEIGHTS AND MEASURES IN SEATTLE, WASHINGTON,
JULY 18, 1989**

Concerning the maintenance of "third party objectivity," my advice here to the State weights and measures officials is to consider defending, perhaps even aggressively, the regulatory mission that is associated with your offices. There has been a trend in some States to have weights and measures inspections done by private sector firms. A conflict-of-interest problem arises when these same firms vend repair services for scales and other measuring devices that are broken. In such a situation, it is difficult to maintain third party objectivity. If your State is considering private sector involvement in weights and measures regulation and you do not think it is an appropriate thing, NIST will be happy to provide you or your political leaders with advice.

A second aspect of third party objectivity is to make sure that the standards that we adopt are enforceable in the field. The Conference, I believe, has violated this precept because it has adopted a temperature range for testing scales that goes from about -10 C to about 40 C. At the present time, only three States can test over that range. I suggest to you that it is hard to command respect for standards that most people cannot implement.

Bichelmeyer Meats

a Corporation

704-714 CHEYENNE AVE.

KANSAS CITY, KANSAS 66105

342-5945

Feb. 15, 1990

Mr. Robert Munja
Kansas City Kansas
Weights & Measures

Dear Mr. Munja,

Please be advised that we are opposed to the state plan of mandatory testing of our scales by an independent company to be paid for by our company. Last year we spent \$315.00 to have them done on 7 meat counter scales, 2 dial scales, & 1 mini beam scale. The city weights & measures department does the exact same thing at no additional cost. I feel that having just had our property taxes triple, - from \$2900.00 to \$9000.00 a year,

Bichelmeyer Meats

a Corporation

704-714 CHEYENNE AVE.

KANSAS CITY, KANSAS 66105

342-5945

a service such as testing the scales & approving them should be included in those taxes.

Being a small business, and having been in business for over 40 years, we feel the passage of every new law and resulting expense putting us to the limit as to being able to remain competitive and serving our customers as we have in the past. Our representation need to be made aware of the fact that this is just one more of those regulations. Soon they are going to regulate and tax us out of business.

Sincerely,
Jim Bichelmeyer

Balls PRICE CHOPPER

"TO WHOM IT MAY CONCERN"

As required by the State of Kansas Law, starting in 1989 we employed a scale company to test and certify our scales. This was previously done by our local Weights and Measures Department.

I realize that the intent of this requirement is to protect the consumer, the tax paying citizen of Kansas, by assuring that they pay for the correct weight of their products purchased. We, the grocery retailer, share in that responsibility and I assure you we do not take that responsibility lightly. however, we do not feel it is in the best interest of that same consumer to put us, the retailer, in a position of having to pay more than once for the same service.

Let me clarify:

Local Weights and Measures Departments provide us with that same service paid for through the enormous tax dollars we pay.

And why shouldn't we receive that service from our tax dollars, when in one of our stores alone, our real estate taxes increased in 1989 by over \$53,000 from \$28,742 in 1988 to \$82,000 in 1989.

Why shouldn't we receive that service for that tax dollar, when having this done by a private scale company cost us \$44.00 per hour and a minimum of \$25.00 trip charge. The irony of it is that we still must respond to the Weights and Measures findings regardless of the scale company's certification, and we are still paying that tax.

We, the Retailer, believe that the local Weights and Measures Department are checking our scales with the interest of the tax paying citizen in mind and no other influence. But, we have a concern that the private scale company may at times be tempted to check our scales with sales and profits in mind, which will not be in the best interest of our customer, the citizen of Kansas, and that will also not be in the best interest of our business.

Maybe, someone will be kind enough to explain because we have not yet been able to understand why the State wants to increase our operational expenses by forcing us to pay a scale company for what our tax dollars are already paying our Weights and Measures Department to provide.

Finally, I ask the questions:

Who gains from this requirement, and who loses?

Of course the private scale company gains.

Does the consumer, that taxpaying citizen gain? NO.

Does the State gain? I don't think so, but I do know that we, the Retailer loses because we cannot continue to absorb unnecessary increases in our operational expenses without passing it on through retailers. Ultimately, the consumer, the taxpaying citizen will lose and in that case, all of us will lose.

All we ask is to reconsider in areas where there are local Weights and Measures Departments and allow that department to continue to certify our scales within the tax dollar we already pay.

Thad Lawrence
District Manager/Retail Operations



February 1, 1990

Mr. Robert P. Gunja
Standards Administrator
Department of Finance
Kansas City, Kansas

Dear Mr. Gunja:

The authority for regulation of weights and measures is clearly spelled out in the Uniform Weights and Measures Law. Such regulatory authority rests with the "Director" of weights and measures.

Referring to the Uniform Law, consider the following points:

- Section 11. "There shall be a State Division of Weights and Measures".
- Section 12. All weights and measures "powers and duties" reside in the "Director" of the State Division of Weights and Measures.
- Section 13. "Special Police Powers" are reserved for the Director who is "hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of this Act".
- Section 14. "Any weights and measures official appointed for a county or city shall have the duties and powers enumerated in this Act".

Interpretation. In the development of the Uniform Law, the role of the Director is cast in the same legal context as that of police officers. All responsibilities and powers of the Director derive from the Law and can only be delegated to weights and measures officials hired by a state or local jurisdiction for the purposes defined in the Law. There is no provision in the Law to delegate the police and regulatory responsibilities and/or powers to the employee of a private sector organization.

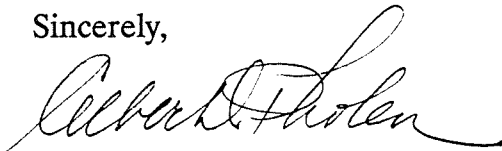
The National Conference on Weights and Measures (NCWM) and the National Institute of Standards and Technology (NIST) (formerly the National Bureau of Standards) have held to the policy that weights and measures programs, being regulatory by law, and including police powers, can only be enforced by state or local government officials.

Further, the NCWM and the NIST hold the opinion that the weights and measures official is the unbiased "third party" who regulates equitably, protecting both the consumer and the merchant. Such even-handedness is not possible if the private sector is put in the role of a weights and measures official.

The "fox watching the chicken coop" principle applies in the latter situation. Governmental bodies have historically viewed this responsibility as a basic function of government; the Uniform Weights and Measures Law precludes assigning self-policing authority to the private sector. The principle of "third party objectivity" can be seriously jeopardized when the powers of the Weights and Measures Director are appropriated to the private sector.

Employment of the private sector for the performance of governmental regulatory functions is not appropriate and, at best, is evidence of the abdication of the responsibility of the government that takes this course for "policing" the conduct of commerce in its jurisdiction.

Sincerely,



Albert D. Tholen
Chief
Office of Weights and Measures



February 28, 1990

Mr. Robert P. Gunja
Standards Administrator
Department of Finance
Kansas City, Kansas

Dear Mr. Gunja:

I am writing to you again to comment on the policy that places regulatory responsibilities in the hands of the private sector. Referencing my letter to you of February 1, 1990 (attached), I wish to add a few observations.

Since commerce among men first evolved, two basic ingredients provided the basis for making that commerce possible: money and standards. In looking at our history in this regard, I am highlighting some of the language from the U.S. Department of Commerce, National Bureau of Standards Special Publication 447, March 1976, "Weights and Measures of the United States, A Brief History".

The significance of money and commercial standards was recognized by the founders of the United States when, in the Articles of Confederation in 1781, the following was written, "The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States - fixing the standard of weights and measures throughout the United States - ..." This power was transferred to Congress by the Constitution of the United States, effective 1789, in article 1, section 8, which reads "The Congress shall have power . . . To coin Money, regulate the Value thereof, and of foreign Coin, **and fix the Standard of Weights and Measures**".

In January, 1905, the Director of the National Bureau of Standards invited each State to send a representative to Washington to meet in the cause of uniformity of regulation of weights and measures in all of the States. During that meeting, the NBS policy regarding regulation by the States was enunciated as follows by Mr. L. A. Fisher, Head of the Section on Weights and Measures (my predecessor) who said:

"First. The State should create a separate and distinct office for this (regulation of weights and measures) work, the person in charge to be known as the State sealer, who should be appointed by and be responsible to the Governor.

Second. The office of sealers in the cities and towns should be placed in the civil-service list and a suitable examination required, with a view to obtaining persons who are entirely competent for the work.

Third. That no fees whatever should be charged for the inspection and sealing of weights and measures, the local officer being remunerated by a salary consistent with the work required, to be paid from the city or town treasury.

The work performed by this officer is in the nature of a protection to all inhabitants, and the cost of maintenance should be paid from the public fund."

These basic principles were true in 1905, and are even more so today. The regulatory responsibilities of government are clearly to remain in the domain of **the government**. The National Conference on Weights and Measures has held this opinion since its founding 85 years ago, and the National Bureau of Standards (now the National Institute of Standards of Technology) has supported that position throughout that period. As I stated in my February 1, 1990 letter, "The fox watching the chicken coop principle applies - -". This observation can not be emphasized enough. There is the distinct potential (even guarantee) of conflicts of interest if regulation is performed and/or paid for by regulated businesses.

A State, turning its responsibilities for regulation of weights and measures over to others can expect, in time, to face the potential negatives which can include, but will not be limited to, claims made by the individual businesses of: unfair and increasingly higher fees; having to submit to payment for unnecessary repairs; harassment for private gain; pressures to purchase unneeded or unwanted services, supplies, and/or equipment. In spite of all of the best intentions, regulation performed by private bodies will lead to problems and unwanted headlines in the local newspapers and on the local TV. We have a modern day example of inadequate regulation: the Savings and Loan situation.

There have been cases of inadequate regulation of weights and measures and its consequences. Just talk with Mr. Sam Hindsman, Director of the Arkansas Bureau of Standards, for a recap of problems in his state before corrective action was taken. Talk with Mr. Ray Helmick, Director of the Department of Weights and Measures in Arizona for the near tragic recent history of regulatory irresponsibility in his State. In the latter case, I was asked to appear before a committee of the Arizona State Legislature in support of reforms. Please note that in neither of these cases did the States go so far as to transfer inspection responsibilities to the private sector. In fact, I am not aware of any other State that has taken the steps of Kansas in transferring inspection services to the private sector. I am already hearing "rumblings" in Kansas.

It is my sincerest hope that the leaders of the State of Kansas will reverse this policy and fund the weights and measures program out of the general funds so that the regulation responsibilities are returned to the State officials. This is the "right and just" thing to do.

Sincerely,



Albert D. Tholen
Chief
Office of Weights and Measures

Attachment: as noted

cc: Mr. DeVerne Phillips, KS
Mr. Fred Gerk, NM, Chairman,
National Conference on Weights and Measures
Mr. Raymond Helmick, AZ
Mr. Sam Hindsman, AR

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WORLD

Honoring Our Past While Preparing For Our Future

W, Trego County, Kansas — Official County and City Paper

Thursday, January 25, 1990 — 111th Year — No. 48

The Great WaKeeney Peanut War

Kathleen Fabrizius

Abeth Cunningham was true distinction, as she baby of the New Decade Year of 1990.

born at the Trego County Memorial Hospital on Jan. 8 p.m. and weighed 7.5 pounds, was 20 inches long. She is the daughter of proud William and Mary Cunningham.

Parents are Dean and Rose Bill and Norma Cunningham. Grandmother was Molly all of WaKeeney.

Baby received many gifts. From Crossroads EHU pre-wrapped with a gift certificate to Sears. The Hospital gave the baby a tote bag, rattle, bib and other items.



than they did in 1988

Majority members then Department of Administration took sample of city and county, Trego county was counties chosen.

It is out smelling like a gun said. "We were well within limits of the state law." The two counties and three slight infractions and proven to be mathematically there was no intent to tax lid. Those were Trego, Graham County, Wagoner, city of Marion of Little River.

By Kathleen Fabrizius

"The Great Peanut War" is on in WaKeeney, Kansas, and on one side is Jim Cleland, owner of Cleland Drug Store and the opposing force is

guys left," he said. "I just say enough is enough. Back off of us, please. Give us some breathing space. Let us survive."

Other scales in WaKeeney were also checked and some business owners have stopped using their

Wagoner's Foot Of



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more information
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By Kathleen Fabrzius
"The Great Peanut War" is on in
WaKeeney, Kansas, and on one side
is Jim Cleland, owner of Cleland
Drug Store and the opposing force is
the Kansas State Board of Agricul-
ture's section of weights and mea-
sures.

According to an article in the
Salina Journal the fighting started in
the drugstore when a state inspector
threatened to shut down the peanut
scale that has been used in his
family's business for decades.

Cleland said inspectors from the
weights and measures have checked
the scale annually for more than 30
years to make sure that it was
accurate. The scale weighs up to 16
ounces of peanuts.

However, 15 months ago respon-
sibility for the accuracy of scales was
shifted from the state to scale
owners. For those who have scales
that weigh more than 5,000 pounds
of merchandise the change came in
1985, said DeVern H. Phillips, state
sealer.

According to the article Phillips
said the cost of an inspection by a
licensed company can be anywhere
from \$25 to \$300 depending upon
how far the scale-testing company
has to drive. Cleland estimated his
cost will be between \$35 and \$50.

Cleland said he sells approximat-
ely \$100 worth of peanuts a year and
he probably consumes most of them
himself.

The scale has been tagged with a
"rejection of device" label and in 30
days the inspector will be back to
make sure Cleland has had the scale
tested.

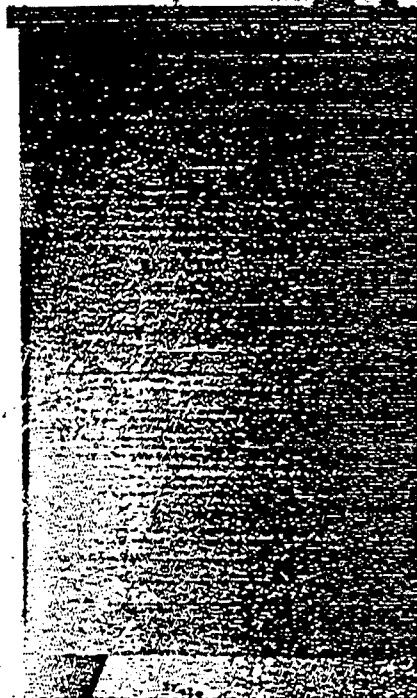
Cleland says he has no intention of
having the scale checked. "How bad
can the public be at risk with a
peanut scale?"

The pharmacist says they have to
catch him first. "We figure they'll
send an undercover agent out so
we're going to be checking identifi-
cation and we're not going to be
selling to strangers anymore. It will
only be locals we will trust."

In the interview with the Salina
Journal Cleland also told of how

NOTICE

The Federal Land Bank outpost
normally scheduled for February 1
will be changed to Wednesday,
January 31 for just this one time. The
outpost is located in Shepherd and



before the inspector came in, he was
talking to a woman who could not
pay her pharmacy bill over \$10-a-
month payments. He suggested some
type of public assistance and the
woman explained that she would
have to sell her home and small
acreage to be eligible.

The main source of the conflict
centers around the fact that Cleland
thinks that people are more impor-
tant than peanut scales, and evident-
ly the state does not agree.

He and others are upset over
cutbacks by the Department of
Social and Rehabilitation Services in
its Aid To Families with Dependent
Children and other programs.

"I don't know how much money
we spend checking peanut scales,
but something is out of whack.
Something is really wrong," Cleland
said.

"Are we really spending our
money wisely on behalf of our
citizens? It's not that I want to do
away with any jobs. I just wonder
about priorities."

Cleland also said he wonders
about the effects of such regulations
on owners of small businesses.

"There aren't going to be any little

ted Nuts

guys left," he said. "I just say enough
is enough. Back off of us, please.
Give us some breathing space. Let us
survive."

Other scales in WaKeeney were
also checked and some business
owners have stopped using their
scales because of the cost of having
them checked. For instance, J&R
Gambles has ceased using their scale
to weigh nails, because they don't
sell enough nails to pay for checking
the scale, other scale owners in town
will have to bite the bullet and pay
for having it checked because their
business depends on it.

According to the Journal, Phillips
said he sympathizes with Cleland,
but his section has saved money by
the change in the law—and the law
was written with consumer protec-
tion in mind.

"If I were a device owner I would
probably feel the same way," he
said. "But we either had to get bigger
or we had to get smarter. We've
saved \$1 million a year in our
large-scale program (by the change
in the law). There are other states
that are looking favorably at what
Kansas has done."

Phillips said that state regulations
give a scale owner 30 days to have
the scale tested. If a check has not
been made by then, and inspector
can red tag the device and take it out
of service. The next step is the
seizure of action in court.

If found guilty the user of an
illegal scale can be fined as much as
\$500.

But Cleland says he is not backing
down. "If they come to take my scale
they will have to physically remove
me and my family and put us in jail."

It is very important that every one
have principals to believe in and Jim
Cleland is definitely a man of
principals and is willing to go to jail
to prove it!



KANSAS DAY TEA

Kansas Day Tea will be Sunday,
January 28, 1990 from 1 to 3 p.m. at
the Trego County Historical Society
Museum. Entertainment will be a
film on "The" and music sponsored

WED. MORNING MARKET

Wheat\$3.73 Milo\$3.50
Generic (Trego County).....95%

II-14

Balls PRICE CHOPPER

HOUSE OF REPRESENTATIVES

AGRICULTURE COMMITTEE

As required by the State of Kansas Law, starting in 1989 we employed a scale company to test and certify our scales. This was previously done by our local Weights and Measures Department.

I realize that the intent of this requirement is to protect the consumer, the tax paying citizen of Kansas, by assuring that they pay for the correct weight of their products purchased. We, the grocery retailer, share in that responsibility and I assure you we do not take that responsibility lightly. However, we do not feel it is in the best interest of that same consumer to put us, the retailer, in a position of having to pay more than once for the same service.

Let me clarify:

Our Local Weights and Measures Department provided us with that same service paid for through the enormous tax dollars we pay.

And I ask:

Why shouldn't we receive that service from our tax dollars, when in one of our stores alone, our Real Estate Taxes increased in 1989 by over \$53,000, from \$28,742 in 1988 to \$82,000 in 1989.

Why shouldn't we receive that service for that tax dollar, when having this done by a private scale company cost us \$44.00 per hour and a minimum of \$25.00 trip charge. The irony of it is that we still must respond to the Weights and Measures findings regardless of the scale company's certification, and we are still paying that tax.

We, the Retailer, believe that the local Weights and Measures Department are checking our scales with the interest of the tax paying citizen in mind and no other influence. But, we have a concern that the private scale company may at times be tempted to check our scales with sales and profits in mind, which will not be in the best interest of our customer, the citizen of Kansas, and that will also not be in the best interest of our business.

Maybe, someone will be kind enough to explain, because we have not yet been able to understand why the State wants to increase our operational expenses by forcing us to pay a scale company for what our tax dollars are already paying our Weights and Measures Department to provide.

Ac. SB

3-21-90
913-321-4223

Finally, I ask the questions:

Who gains from this requirement, and who loses?

Of course the private scale company gain.

But does the consumer, that tax paying citizen gain?

No.

Does the State gain?

I don't think so, but I do know that we, the Retailer will lose, because we cannot continue to absorb unnecessary increases in our operational expenses without passing it on through retails. Ultimately, the consumer, the tax paying citizen will lose and in that case, all of us will lose.

A Representative of the State Agriculture Department , Mr.Woodson has clearly stated that it would be of no cost to the State for local Departments to continue to provide this service, so, we ask you to give favorable consideration to preventing us that unnecessary cost where the local service is available.

Thad Lawrence
District Manager/Retail Operations