Approved March 2, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

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

1:35 ~~a.m.~~/p.m. on FEBRUARY 22, 1990 in room 521-S of the Capitol.

All members were present except:

Representative Gomez, excused
Representative Brown, excused
Representative Turnbaugh, excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Katha Hurt
Dick Jepsen, Chairman of the Riley Co. Board of Commissioners
Brenda Bell, Attorney at Law, Manhattan, Ks., representing Valley Wood residents
David Teeter, resident of Valley Wood subdivision
Julie Luoma, Valley Wood resident
Scott Hess, Attorney with KCC was available to answer questions

Chairman Miller appointed a subcommittee for HB 2969 (concerning taxation; relating to the foreclosure and sale of property). They are Representative Jim Russell as chairman; Representative Robert Krehbiel and Representative Michael Tom Sawyer as members.

Chairman Miller called for hearing on HB 2968.

HB 2968 - Concerning counties; relating to certain bonds excluded in computing bonded indebtedness.

Chairman Miller recognized Representative Katha Hurt.

Representative Hurt stated that HB 2968 is a request from Riley county to increase the bonded indebtedness in order to construct a new law enforcement facility. She stated the current facility is inadequate in size and configuration and no longer meets the needs of either the community or the prisoners. (Attachment I)

Representative Hurt recognized Dick Jepsen, Chairman of the Riley Co. Board of Commissioners, who submitted written testimony and stated they have hired consultants to do a study on jail needs. (Attachment II) Discussion followed.

The Chairman closed the hearings on HB 2968.

Chairman Miller called for a hearing on HB 2964.

HB 2964 - Act concerning certain utilities subject to the jurisdiction of the corporation commission.

Chairman Miller recognized Representative Hurt who requested this bill. Representative Hurt gave a historical background of why she had asked for this legislation.

Mike Heim, staff, gave a brief summary of HB 2964.

Representative Hurt stated that she had received a letter addressed to Chairman Miller from Anne Burke Miller, Attorney from Manhattan, supporting the passage of HB 2964 and the Chairman will be receiving others. (Attachment III)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S Statehouse, at 1:35 a.m./p.m. on FEBRUARY 22, 1990.

Chairman Miller recognized Brenda Bell, Attorney at Law, Manhattan, Kansas on behalf of the Valley Wood residents. Ms. Bell suggested one revision in HB 2964 on line 29 by putting a period at the end of water and starting a new sentence to state that the term "public utility" may be defined to mean privately owned sewer company at the discretion of KCC. (Attachment IV) Discussion followed.

Chairman Miller recognized David Teeter, a six year resident of Valley Wood, who provided a Memorandum and the problems of living in the subdivision. (Attachment V)

Chairman Miller recognized Julie Luoma, a Valley Wood resident, who submitted written testimony. (Attachment VI)

Scott Hess, attorney with the KCC, was available to answer questions. Discussion followed.

Chairman Miller closed the hearing on HB 2964.

Meeting was adjourned.

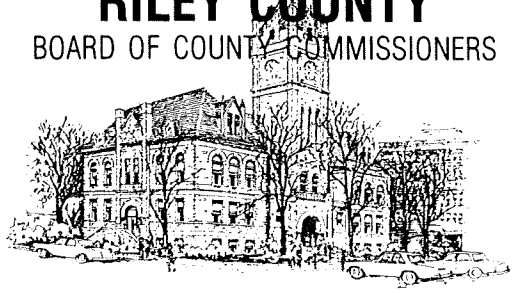
HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE Feb 22, 1990

NAME	ADDRESS	REPRESENTING
Alfred Stephan	manhattan	Co. Commissioners
Wm Scott Hesse	Topeka	KCC
Randy R. Debenham	"	KCC
Barbara Bee	Manhattan	Constituency
David Tarter	Manhattan	SELF
Julie Luoma	Manhattan	Self
Frank Caro	Topeka	KCC
Steven K. Hess	Roeland Park	Self
Jim Ludwig	Topeka	KPL

COMMISSIONERS
WILTON B. THOMAS
JOHN SJO
RICHARD L. JEPSEN

RILEY COUNTY
BOARD OF COUNTY COMMISSIONERS



Riley County Office Building
110 Courthouse Plaza
Manhattan, Kansas 66502
(913) 537-0700

January 18, 1990

Representative Katha Hurt
State Capitol, Room 281-W
Topeka, KS 66612

1. RILEY COUNTY IS UNIQUE IN THAT IT HAS ESTABLISHED A COUNTY LAW ENFORCEMENT AGENCY PURSUANT TO KSA-19-4424. THIS AGENCY WAS ESTABLISHED IN 1974 AND AT THAT TIME A BUILDING TO HOUSE THE AGENCY WAS ERECTED NEAR THE EXISTING RILEY COUNTY JAIL. THE BUILDING TO HOUSE THE AGENCY WAS DESIGNED TO BE UTILIZED AS A GARAGE WHEN THE BUILDING BECAME TOO SMALL FOR AN OPERATIONAL HEADQUARTERS. THE JAIL WAS ERECTED IN 1935 WITH SOME REMODELING DONE IN 1974. BOTH BUILDINGS THAT HOUSE THE LAW ENFORCEMENT AGENCY AND THE JAIL HAVE BECOME INADEQUATE TO ENABLE THE AGENCY AND COUNTY TO CARRY OUT THE STATUTORY DUTIES IMPOSED. THE AGENCY HAS CHANGED SUBSTANTIALLY IN THE FIRST 15 YEARS OF ITS EXISTENCE, BOTH IN TERMS OF SIZE OF FORCE AND METHOD OF ACCOMPLISHING ITS DUTIES. NEW LEGAL CONCEPTS CONCERNING THE RIGHTS OF THOSE ACCUSED AND PRISONERS PLACE BOTH THE AGENCY AND COUNTY AT RISK BECAUSE OF THE SIZE AND DESIGN OF THE EXISTING JAIL. SUBSTANTIAL COST TO THE TAXPAYERS OF RILEY COUNTY IS BEING INCURRED BECAUSE OF THE NECESSITY OF HOUSING FEMALE INMATES AND JUVENILE DETAINEES OUTSIDE OF RILEY COUNTY.

RILEY COUNTY HAS THE STATUTORY RESPONSIBILITY TO PROVIDE QUARTERS AND FACILITIES FOR THE AGENCY PURSUANT TO KSA 19-4437. RILEY COUNTY HAS THE STATUTORY RESPONSIBILITY TO PROVIDE A COUNTY JAIL PURSUANT TO KSA 19-1901.

KSA 1989 SUPP. 10-306 LIMITS THE BONDED INDEBTEDNESS OF ALL KANSAS COUNTIES, WITH THE EXCEPTION OF WYANDOTTE COUNTY, TO 3% OF THE ASSESSED VALUE OF ALL TANGIBLE TAXABLE PROPERTY WITHIN THE COUNTY UNLESS SPECIFICALLY EXEMPTED FROM THE LIMITATION BY OTHER STATUTE. NO STATUTE APPEARS TO EXEMPT BONDS ISSUED BY RILEY COUNTY FOR THE PURPOSE OF BUILDING A JAIL AND FACILITY FOR THE RILEY COUNTY LAW ENFORCEMENT AGENCY FROM THE LIMITATION IMPOSED.

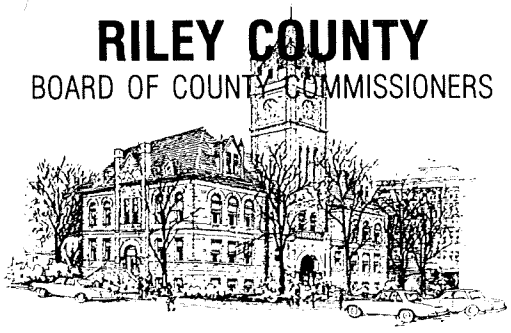
4. THE CURRENT ASSESSED VALUATION OF ALL TAXABLE TANGIBLE PROPERTY LOCATED WITHIN RILEY COUNTY IS $196,007,698 WHICH WOULD PLACE A LIMITATION ON BONDED INDEBTEDNESS OF RILEY COUNTY OF $5,880,230. RILEY COUNTY PRESENTLY HAS NON-EXEMPT BONDS ISSUED IN THE AMOUNT OF $900,000, LEAVING THE ABILITY TO ISSUE FUTURE NON-EXEMPT BONDS IN AN AMOUNT NOT TO EXCEED $4,980,230.

5. EXTENSIVE PRELIMINARY PLANS AND SPECIFICATIONS PREPARED BY ARCHITECTS WHO SPECIALIZE IN JAIL AND LAW ENFORCEMENT FACILITIES PROJECT COSTS FOR THE UNDERTAKING FROM 6 TO 8 MILLION DOLLARS. THIS AMOUNT IS SUBSTANTIALLY IN EXCESS OF THE LIMITATION. OTHER THAN THE ISSUANCE OF GENERAL OBLIGATION BONDS, NO FEASIBLE METHOD OF FINANCING THE PROJECT EXISTS.

2-22-90
Attach. I

COMMISSIONERS
WILTON B. THOMAS
JOHN SJO
RICHARD L. JEPSEN

RILEY COUNTY
BOARD OF COUNTY COMMISSIONERS



Riley County Office Building
110 Courthouse Plaza
Manhattan, Kansas 66502
(913) 537-0700

February 1, 1990

Representative Katha Hurt
Room 281 West
State Capitol
Topeka, Ks. 66612

Dear Representative Hurt:

This is to keep you up-dated on our law enforcement facility problem. We assume you are "carrying the ball" on this, but are sending the carbon copies so that all who might become involved are in touch.

2. Over-crowding is the problem which most easily captures public attention, in this case. However, two other problems are also very serious. We cannot classify those confined adequately - that is, divide into groups such as young first offenders; serious repeat - offenders; aggressive "bully" types; timid types, etc. Configuration of the confinement areas render it extremely difficult to supervise those confined adequately. The more serious this over-crowding, of course the more serious the other factors become. The fact this facility is heated by what was originally a coal furnace, underlines how old and out-dated the facility really is.

3. With regard to the number confined; the limit is supposed to be 23. During the weekend of January 19-20, a total of 40 were confined - 38 at one time - and some in and out. But 40 different people were confined at one time or another, over that period, 5 were female and in the facility at Junction City. But we did have 33 confined in Manhattan at one time - which is 10 over the limit.

4. During the weekend of January 26, 27 & 28, we had 33 confined at one time - again with the 5 in Junction City and 28 in Manhattan. We were very fortunate that of those arrested during that period (19!) none had to be kept in confinement. Winter months have typically been low population months, with August usually the peak.

TESTIMONY OF THE HONORABLE RICHARD L. JEPSEN, CHAIRMAN, BOARD OF COMMISSIONERS OF RILEY COUNTY, KANSAS, BEFORE THE HOUSE COMMITTEE ON LOCAL GOVERNMENT CONCERNING HOUSE BILL NO. 2968

Mr. Chairman, members of the Committee:

My name is Dick Jepsen. I am chairman of the Board of Commissioners of Riley County appearing here in support of House Bill No. 2968. This Bill would authorize Riley County to issue general obligation bonds for the purpose of financing and construction or remodeling of a combination law enforcement facility and jail, without including the bonds in computing the total bonded indebtedness for purposes of limitation. I wish to make it clear at the outset that it is not the intention of the Board of Commissioners to issue nor will this legislation enable the issuance of any such bonds without a vote of the taxpayers of Riley County.

To provide you with some background concerning the problem, I would offer the following:

In 1972 enabling legislation was adopted which allowed Riley County to submit the question to Riley County voters of whether to establish a countywide law enforcement agency. The proposition was submitted to Riley County voters in 1972 and adopted. The agency was established in 1974 and has continued with a great degree of success since that time. It is the only county law enforcement agency operating in Kansas. At the time of the establishment of the countywide law enforcement agency the office of the sheriff was housed

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Attach. II

in our current jail which was built in 1935. In 1974 a building to house the consolidated agency was erected near the existing Riley County Jail. That building was designated to be utilized as a garage for the law enforcement agency when the building became too small for an operational headquarters. At the time the agency was established, there was some remodeling of the county jail since it was no longer to be used as a headquarters or offices for the sheriff.

After the remodeling of the county jail in 1974, at which time an inmate population between 40 and 50 inmates was normal and acceptable, the state adopted certain standards applicable to local jails. After the adoption of the standards, the maximum number of adult inmates for the Riley County Jail was reduced to 21. The population history within the past year regularly averages in excess of 30 inmates with not uncommon increases to between 35 and 40 inmates on weekends.

Penalty measures adopted by the Kansas Legislature have impacted greatly upon the agency and Riley County because of substantially increased numbers of criminal and traffic offenders that are being required by state law to actually serve time in jail. By far the greatest number of those involve individuals convicted of DUI where even the first conviction requires mandatory jail sentencing. Second or third offense convictions for driving on a suspended license also require mandatory jail sentences. Recently the Legislature, in an apparent attempt to relieve some of the pressure on the state penal

system, directed that sentences for certain felonies be served at the county jail for minimum period of 90 days. Under new state and federal regulations, juveniles may not now be housed in the same building as adult offenders. The natural growth of the community coupled with the required jail sentences dictated by the state, have caused the buildings that house the law enforcement agency and the jail to become inadequate to permit the agency and Riley County to carry out the statutory duties imposed. The agency has changed substantially in the first 15 years of its existence, both in terms of number of personnel and also in the methods used in accomplishing their duties. Programs that were not anticipated at the inception of the agency such as extensive law enforcement computerization and the responsibility of the countywide "911" Emergency Communication Service have required substantial space within the facility. Presently there is insufficient space to provide privacy for investigators, suspects and victims during the investigative process. New legal concepts concerning the right of those accused and prisoners place both the agency and County at risk because of the size and design of the existing jail. Substantial cost to the taxpayers of Riley County is being incurred because of the necessity of housing female inmates and juvenile detainees outside of Riley County.

In the assessment report concerning the jail and law enforcement center prepared by Abend Singleton & Associates of Kansas City and Voorhis Associates of Lafayette, Colorado, both specialists

in penal needs and design, the following conclusion concerning the jail is stated:

> "The existing Riley County Jail can be characterized in the following ways:
>
> (a) It lacks sufficient housing space for its current inmate population - particularly when modern correctional standards and associated square footage requirements are considered.
>
> (b) It lacks the required program and support spaces required by correctional standards.
>
> (c) It is old and wearing out. Maintenance and replacement of equipment as well are becoming more and more expensive."

Riley County has the statutory responsibility to provide quarters and facilities for the agency pursuant to K.S.A. 19-4437. Riley County also has the statutory responsibility to provide a county jail pursuant to K.S.A. 19-1901.

K.S.A. 1989 Supp. 10-306 limits the bonded indebtedness of all Kansas counties, with the exception of Wyandotte County which has a 30% limitation, to 3% of the assessed value of all tangible taxable property within the county unless specifically exempted from the limitation by other statutes. No statute appears to exempt bonds issued by Riley County for the purpose of building a jail and

facility for the Riley County law enforcement agency from the limitations imposed.

The current assessed valuation of all taxable, tangible property located in Riley County is $196,007,698.00, which would place a limitation of bonded indebtedness of Riley County of $5,880,230.00. Riley County has been extremely conservative in the issuance of non-exempt bonds, having bonds issued at the present time in the amount of only $900,000.00. This leaves the county with the ability to issue future non-exempt bonds in an amount not to exceed $4,980,230.00.

It appears that Riley County will be required to make a substantial expenditure in addition to the law enforcement facility in the immediate future. The state has licensed and designated the location of the county operated solid waste disposal landfill for many years. The Kansas Department of Health and Environment has ordered Riley County to close the landfill by July of 1991. Closure costs plus a new site and the expenses in connection with the new site are anticipated to be several million dollars.

Extensive preliminary plans and specifications prepared by Abend Singleton and Voorhis Associates project that costs for the law enforcement facility will be between $6 and $8 million dollars. This amount is substantially in excess of the limitation.

Other than the issuance of general obligation bonds, or the method provided in Senate Bill 657, which would authorize a vote for

an additional sales tax to finance the project, it is the belief of the Board of Commissioners that no feasible method of financing the project exists. Existing law provides that bonds issued for the purpose of financing the construction or remodeling of a jail or law enforcement center facility, which are payable from the proceeds of a county wide retailers sales tax are exempt from the 3% limitation. Riley County has a countywide retailers sales tax which was adopted in February, 1983, in the amount of 1/2 of 1%. The revenue from the countywide sales tax has traditionally been utilized to reduce ad valorem tax requirements for the county general fund. For example in 1989, the countywide sales tax generated $706,000.00 and was for the most part utilized in the county general fund. In 1989 the sales tax was approximately 30% of the receipts of the county general fund. Any reduction in sales tax receipts for the county general fund would simply have to be made up by the only other source available, property taxes. While general obligation bonds would be retired by a levy against taxable, tangible property within the county, it is strongly felt by the Board of Commissioners that the voters of Riley County can make a much more intelligent decision if they are able to determine with some precision the amount of taxes that will be levied against their property for the purpose of retiring the general obligation bonds necessary to construct this specific facility. If sales tax revenues were used to finance the bonds, the impact upon individual taxpayers could not be pre-determined.

We sincerely appreciate the opportunity to present these facts to you and request your favorable consideration and action on House Bill 2968.

EVERETT, SEATON AND MILLER
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DONN J. EVERETT
RICHARD H. SEATON
ANNE BURKE MILLER

BRENDA BELL

TELEPHONE
(913) 776-4788

February 20, 1990

House Local Government Committee
R.D. Miller, Chairman
Room 183 West
Statehouse
Topeka, Kansas 66612

RE: HB 2964

Dear Chairman Miller:

The purpose of this letter is to extend my support for the passage of HB 2964.

As you know, the KCC has never exercised jurisdiction over privately owned sewer utilities. Without some sort of regulation, serious abuses of monopoly power by the owner of such a utility can occur. It is disconcerting that these consumers have virtually no redress for abuses or disputes arising from such non-regulated utilities. It is my understanding that Brenda Bell, a member of our firm, will testify and explain the nature of this problem to your committee in greater detail. I am available to assist with your questions or concerns.

Thank you for your consideration.

Yours very truly,

Anne Burke Miller
Attorney at Law

ABM/db

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2-22-90
Attach III

FEB 2

EVERETT, SEATON AND MILLER
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DONN J. EVERETT
RICHARD H. SEATON
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BRENDA BELL

TELEPHONE
(913) 776-4788

February 22, 1990

The Honorable R. D. Miller
Chairman
Kansas House of Representatives
Local Government Committee
Capitol
Topeka, Kansas 66612

Dear Mr. Miller:

Let me add my voice to those in support of House Bill No. 2964, a bill merely expanding the clear jurisdication to the Kansas Corporation Commission over a problem that has been difficult for the homeowners in the Riley County area. I would hope the committee would look favorably upon this bill in that it would avoid any further loopholes which developers could escape and who would in turn penalize the landowners.

Respectfully submitted,

Yours very truly,

Donn J. Everett
Attorney at Law

DJE:dmh

2-22-90
Attach #1
3-2

M E M O R A N D U M

TO: House Local Government Committee

FROM: Brenda J. Bell, Attorney at Law, Everett, Seaton & Miller, 410 Humboldt, Manhattan, Kansas 66502

RE: HB 2964

DATE: February 22, 1990

The Kansas Corporation Commission has exercised jurisdiction, to set rates, for private and county owned water districts for a number of years. However, Kansas law does not allow the K.C.C. to regulate privately owned sewer districts. Usually water and sewer districts are integrated systems. This void in jurisdiction creates a situation where the sewer utility customer is subject to monopoly abuse and is without a remedy to redress grievances at either the county or state level.

In order to understand how abuse arises it is necessary to understand the relationship of county and state regulation of utilities. At the county level utility districts are formed. When the district is formed, regulation is in place either in the form of county or state regulation. However, a developer does not have to form a utility district and can choose to operate the utility for profit. If this occurs, the K.C.C. can set water rates, but the developer has total control over the sewer rates. The county will not regulate because the threshold requirement, for the county, is the formation of a utility district. Further, when a district is not formed before homes are sold, then formation of the district is very difficult.

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Attach. IV

In such a situation where a private individual owns and operates a utility, K.C.C. jurisdiction actually harms the customer. For example, if an owner is producing excessive profit on the water side of the system, the K.C.C. will curtail that profit. When an owner owns both water and sewer utilities then lost profits, and any other billing practices prohibited by the K.C.C., can simply be shifted to the sewer side of the system. K.C.C. regulation of an integrated, privately owned system is rendered meaningless by the lack of K.C.C. control over the entire system.

Further, consider that the homeowners have no forum in which to redress grievances. The owner of a private utility can collect capitol costs for an indefinite period of time. Individuals are discouraged from registering complaints with the K.C.C. due to fear of punitive billing practices on the sewer side of the system.

K.C.C. jurisdiction over sewers should be discretionary jurisdiction. I suggest the bill state that the term "public utility" may be construed by the Commission to mean privately owned sewer companies. The K.C.C. is in the best position to discern when an owner is engaging in prohibited practices. Discretionary jurisdiction would allow the K.C.C. to assert jurisdiction only where it was needed and would not cause the K.C.C.'s jurisdiction to be expanded excessively.

The purpose of K.C.C. regulation is to protect the utility consumer from monopoly abuse and to create

a forum for effective redress of grievances. When an owner retains ownership of utilities, then this developer is a prime candidate for regulation over the entire utility system.

I am available for your questions and encourage you to contact me or the other members of our firm at your convenience. I thank you for your time.

M E M O R A N D U

TO: House Local Government Committee

FROM: David Teeter, 3311 Valleydale Drive, Manhattan, Kansas 66502

RE: HB 2964

DATE: February 22, 1990

I. Richard Hill is taking advantage of an essential service, knowing homeowners must buy this service.

   A. Ground will not accommodate septic tank--water table is too high.

   B. Construction of a new system would be very expensive for the homeowners.

II. Richard Hill has engaged in unfair and unreasonable business practices relating to the sewer system.

   A. Increased sewer rates after K.C.C. took jurisdiction over water system rates.

   B. Threats to cut off sewer service for failure to pay high rates.

III. Problems resulting from these unfair practices.

   A. Lawsuit established to cap sewer rate, only as long as the lawsuit continues.

   B. Difficulty in renting properties and lower property values.

   C. Difficulty in resale of properties and lower property values.

IV. Results from lack of Legislation.

   A. K.C.C. regulation of water rates is ineffective; the difference can be recovered in unregulated sewer rates when the two systems are combined within one subdivision and controlled by one owner.

   B. Unlimited sewer rate unless a civil suit remains intact.

   C. Opportunity for any developer to maintain lower rates for marketability purposes, concealing a material fact until properties are sold.

V. Legislation is an essential solution.

   A. K.C.C. is facilitated to establish fair rates and practices for an essential service.

   B. Hinders deceptive practices which may be used by developers when marketing real estate.

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2-22-90
Attach V

I am a homeowner residing in a Riley County Subdivision known as Valley Wood. There are 90 lots in the subdivision. I have owned my home there since 1983.

Since the KCC took jurisdiction over the water system in 1989, the homeowners in the subdivision have been subject to constant and serious abuses by the owner of the private sewer system. Our sewer and water is owned by a common owner and this owner is also the developer of the property. When the subdivision was developed, the owner choose not to form a utility district despite repeated demands by the county for him to do so while he still owned a majority of the lots. The developer kept non-formation of the district a secret while the homes in the subdivision were sold, and in fact, disguised the defect by calling himself the Valley Wood Improvement District.

Now the homeowners are in a catch 22; 1) We can attempt to form the district at our expense (this is very difficult because many homes are owned by absentee owners or have been abandoned).

2) We can continue under the present management by this developer. But, this management will be completely irregular. He has indicated to us that he intends to bill us for sewer services at the rate of $112.00 per month. I believe his rates are retaliatory in nature, and are an attempt to punish the homeowners for complaining to the KCC about abuses on the water side of the system, and the KCC regulation is causing him to lose profit on the water side.

3) We can request the legislature to regulate the sewer system to insure fair rates and that is our purpose here today. Please be advised that the county has informed us repeatedly that they intend to take no action until a benefit or improvement district petition has been submitted to them. We are virtually without a method to solve this problem.

Examples of the abuse practices are:

1) The developer informed people in the area he is an attorney when in fact he is not.

2) He will not disclose any information of what the rates are comprised of.

3) He has informed people he is regulated when he is not.

4) He constantly threats ligation and law suits to any home owner who complains about his billing practices.

5) He assess late charges when bills are not late.

6) He has informed a homeowner in the subdivision that he did not disclose non-formation of a utility district to homeowners when they purchased because it made the properties easier to market.

LY
2-22-90
Attach VI