

Approved May 8, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

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

12:08 a/m/p.m. on APRIL 30, 19 90 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present:

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

Conferees appearing before the committee:

Senator Mike Johnston
Senator Don Montgomery
Representative Dale Sprague
Alan Alderson representing Kansas Treasurers' Assn.
Linda K. Paul, President of the Kansas Register of Deeds' Assn.
Betty McBride, Cherokee County Treasurer
Patsy McDonald, representing the Kansas County Clerks' Assn.
Harris Terry, Sheriff of McPherson County
Marion Cox, Wabaunsee County Sheriff
Joe McClure, Wabaunsee County Commissioner
Gerry Ray, Johnson County
Willie Martin, Sedgwick County
Tony Wedel, Chairman of the Board of McPherson County Commissioner
Dean Bacon, Commissioner from McPherson

Chairman Miller called for hearings on SB 800.

SB 800 - Act concerning municipalities; relating to the consolidation of operations, procedures and functions thereof.

Mike Heim, staff, gave a brief overview of SB 800. Chairman Miller offered the committee suggested new language that would strike out the substantial duties of an elective office. (Attachment I) Discussion followed.

Chairman Miller recognized Senator Johnston, who stated that this matter was brought to his attention last week. The Treasurers' Association asked that a bill be introduced dealing with the elimination of county offices. He understands that there has been a series of questions raised about the definition of substantial duties. It appears that the actions taken in McPherson County are boiler plating and usurp the present law. His only concern is that these offices not be discarded until after the people have spoken via the ballot. He will leave the question of amendments to the committee's wisdom.

Chairman Miller recognized Senator Montgomery who stated the bill was introduced by the Senate Ways & Means Committee. Senator Montgomery felt that it was not possible to have a hearing prior to the adjournment of the session. For expediency he felt the matter should go directly to the Senate floor. Senator Montgomery said that in regard to the actions taken by the County Commissioners in McPherson County, it appears that the present law has been bypassed and the voice of the people will not be heard until after the fact. Discussion followed.

Chairman Miller asked staff for their opinion on what effect setting the salary of the treasurer to \$1 would have on the office itself.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

room 526-S Statehouse, at 12:08 a.m./p.m. on APRIL 30, 1990

Staff stated that legally the salary could be lowered, but it would have the effect of eliminating the office.

Discussion followed.

Chairman Miller recognized Representative Sprague who stated it is quite obvious that a hearing was needed. Representative Sprague stated that every member of their county government was here today and asked that they be recognized. Representative Sprague stated that their situation is unique in that their treasurer resigned about a month and a half ago. Representative Sprague stated that many of the questions from the committee relates back to the Attorney General's opinion, 88-5.

Chairman Miller recognized Alan Alderson representing the Treasurers' Association, who testified in support of SB 800. Mr. Alderson stated two reasons for needing the bill. 1) Office of county treasurer in McPherson county has been vacant since April 1; and 2) the statute for filling a vacancy mandates the replacement election shall be held at the next general election if the vacancy occurs by May 1st of the second year of the term. The term in office shall be only for the remainder of the term of the previous office holder. Mr. Alderson urged the committee to adopt SB 800. Discussion followed.

Chairman Miller recognized Linda Paul, McPherson County Register of Deeds, who testified as a proponent on SB 800 and submitted written testimony. (Attachment II)

Chairman Miller recognized Betty McBride, Cherokee County Treasurer, who testified in support of SB 800 and submitted written testimony. (Attachment III)

Chairman Miller recognized Patsy McDonald, Shawnee County Clerk, who testified in support of SB 800. (Attachment IV)

Chairman Miller recognized Harris Terry, Sheriff of McPherson County, who testified in support of SB 800. (Attachment V)

Marion Cox, Wabaunsee County Sheriff, supported the testimony that was heard from other officials. (No attachment)

Chairman Miller recognized Joe McClure, Wabaunsee County Commissioner, who feels comfortable with the contents of SB 800 as written and asked the committee to support it. (No attachment)

Discussion followed.

Chairman Miller recognized Gerry Ray, Johnson County, who testified as an opponent on SB 800. Ms Ray submitted written testimony. (Attachment VI)

Willie Martin, Sedgwick County, testified as an opponent on SB 800. (No attachment) The county commissioners feel that the bill is a major policy change.

Chairman Miller recognized Tony Wedel, Chairman of the McPherson County Commissioners, who testified as an opponent on SB 800. (Attachment VII)

Chairman Miller recognized Dean Bacon, McPherson County Commissioner, who testified as an opponent to SB 800. (No attachment)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room ~~526-S~~ Statehouse, at 12:08 a.m./p.m. on APRIL 30, 1990

Chairman Miller recognized John B. Klenda, McPherson County Counselor, who testified as an opponent to SB 800 and submitted written testimony. (Attachment VIII)

Discussion followed.

Chairman Miller asked if there are any further questions from the committee of the opponents.

Chairman Miller called the committee's attention to news articles from "The Sun Newspapers" submitted by Bill O'Brien, County Treasurer from Johnson County. (Attachment IX)

Hearings closed on SB 800.

Chairman Miller asked the committee for discussion and possible action.

Representative Patrick made a motion to amend SB 800 by striking section (c) and add a new section (c). (Attachment X) Motion seconded by Representative Williams. Discussion followed.

Staff stated that Representative Patrick should add elective office. Representative Patrick agreed and second agreed. Discussion followed.

Staff suggested giving the Revisor some general discretion to cleanup the language on the amendment. Representative Patrick agreed. Motion carried.

Representative Patrick moved to pass SB 800 as amended; seconded by Representative Johnson.

Representative Lane made a substitute motion to ask that SB 800 be recommended for an Interim study; seconded by Representative Russell. Discussion followed. The motion failed. 7 yeas and 10 nays

Representative Williams moved to table SB 800; seconded by Representative Bowden. Motion carried.

Meeting adjourned at 2:08 p.m.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE April 30, 1990

NAME

ADDRESS

REPRESENTING

| NAME | ADDRESS | REPRESENTING |
|-----------------|---------------------|----------------------------|
| Sue Neustifter | Lawrence | Register of Deeds |
| Nancy Kemper | Lawrence | County Treasurer |
| Carol Bickford | Holton | Register of Deeds |
| Nancy Prawl | Hiawatha, Brown Co. | Register of Deeds |
| Shelma Lane | Hiawatha, Br. Co. | Co. Treas. |
| Shirley J. Tate | Leavenworth | Co. Treasurer |
| Linda Finchem | Marshallville | Marshall Co. Reg. of Deeds |
| Don Jones | Wellington | County Treasurer |
| MIKE BILLINGER | HAYS | COUNTY TREASURER |
| Kevin Jones | Minneapolis | County Treasurer |
| Gary Watson | Wakarusa | County Treasurer |
| Lynn Scanlon | Wapakola | County Treasurer |
| Pat McDonald | Shawnee - Topeka | County Club |
| Jon Sherr | " " | Register of Deeds |
| DONNA SHELITE | PRATT COUNTY | Co. TREASURER |
| NANCY WEEKS | SUBLETTE, KS. | HASKELL CO. TREAS. |
| Betty McBride | Columbus, ks. | Cherokee Co. Treas. |
| Linda K. Paul | McPherson Co. | County Reg. of Deeds |
| Ann E. O'Brien | Johnson County | County Treasurer |
| Jim Reper | Larney County | County Treasurer |
| Joe McClure | Wabaunsee Co. | Commissioner |
| Marion L. Cox | Wabaunsee Co. | Sheriff |
| Larry Terry | McPherson Co. | Sheriff |

Dy.
Attach. I
4-30-90

1 expiration of the term of such office. Any such proposed consolidation
 2 which eliminates any such elective office shall not be voted on by
 3 the governing body of the political or taxing subdivision until a special
 4 public hearing is held within the political or taxing subdivision.
 5 Notice of such special hearing shall be published in a newspaper of
 6 general circulation in the political or taxing subdivision once each
 7 week for two consecutive weeks prior to the hearing. The first pub-
 8 lication shall not be less than 21 days prior to such hearing. Any
 9 elected officer whose office would be eliminated in such consolidation
 10 and any other interested party shall be given an opportunity to
 11 appear and offer testimony at any of such hearings.

12 (c) For the purposes of this act, the term "eliminated" shall
 13 include the transfer or removal, ~~in any manner, of the substantial~~
 14 ~~duties of an elective office, whether or not the office itself remains~~
 15 ~~intact. The transfer of any of the statutorily assigned duties of an~~
 16 ~~elective office occurring with a significant reduction in the salary~~
 17 ~~or other compensation of an elected official shall be deemed to be~~
 18 ~~evidence of an elimination of an office requiring an election pursuant~~
 19 ~~to subsection (b).~~

.This

20 Sec. 2. K.S.A. 1989 Supp. 12-3903 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after
22 its publication in the Kansas register.

WHETHER OR NOT THE OFFICE
ITSELF REMAINS INTACT.

SENATE BILL #800

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: APRIL 30, 1990

ROOM 526, 12:00P.M.

HOUSE LOCAL GOVERNMENT COMMITTEE

Mr. Chairman, Ladies and Gentlemen of the Committee:

My name is Linda K. Paul, I have been the McPherson County Register of Deeds since January, 1985 and I am currently the President of the Kansas Register of Deeds Association.

The changes proposed by Senate Bill 800, amending K.S.A. 12-3903 provide an appropriate order to the reorganization act. The results would be the protection of the voters, political party's right and the elected offices. Many of the McPherson County voters are angry and outraged at the changes the County Commissioners have made in their Treasurer's office. It has been very difficult for the Republican committee to find someone willing to take the job for \$1.00 and not knowing what duties will be required of him or her. I do not believe this is the intent of the creators of this amendment had in mind.

The Register of Deeds office has been staffed with three people, including myself, for some years. Due to decrease in staff by one person it takes approximately one and a half months to get a document back to the sender, where it used to take three working days and we are very behind in all phases of office work. Several times I have requested the commission for additional staff and been refused. On one of those occasions I was told by one of the commissioners that if I didn't get reorganized and get the work done, then some of my duties would be taken away. In my opinion this reorganization act is being abused by the commissioners. This amendment would possibly curtail this problem and put in the appropriate hands the decision of the elected office, which should be the voters.

LK
Attach II
4-30-90

The Kansas Register of Deeds Association, a large majority of the McPherson County voters and myself urge you to vote yes on Senate Bill 800. Thank you for your time.

To: Members of Local Government Committee
From: Betty McBride, Cherokee County Treasurer
Re: Senate Bill #800

Mr. Chairman, members of the Committee, I am Betty McBride, Cherokee County Treasurer appearing today on behalf of the Kansas County Treasurer's Association. We wish to express our appreciation to this committee for the opportunity to appear in support of Senate Bill #800.

Mr. Chairman, members of the committee, the elected officials of Kansas asked to have Senate Bill #800 introduced because we are concerned that the election process for local officials is in jeopardy. As you can see by the attached article, the duties, responsibilities and salary of a local elected county official have been abolished. Although the office has not been eliminated by a vote of the people as prescribed by law, it has been stripped of ALL statutory responsibilities and remains in title only.

Senate Bill #800 if passed, would prevent governing bodies from transferring the duties and responsibilities of an elected office (such as Sheriff, County Treasurer, County Clerk, Register of Deeds), until such time as an election by the people was held giving the electorate the opportunity to vote on abolishing the office. The reason for the proposed legislation is that one county in Kansas has already transferred all the duties and responsibilities to a county financial administrator and reduced the salary of the elected official to \$1.00 per year, therefore insulting the integrity of the voters by asking them to retain an office at the November election when in fact all duties and functions have already been transferred to another agency. We want to prevent this process from becoming a common occurrence.

It is our assumption that it was not the intent of the legislature when KSA 12-3903 was passed that it would allow some governing bodies to abolish the position of elected officials, therefore removing the rights of the electorate to elect the people they want to represent them.

At a time when Countries are fighting for freedom and the right to vote, it seems undemocratic that we would allow the elimination of the election process.

We feel that Senate Bill #800 would define the term "eliminated" in paragraph "C" of the bill. We construe the word substantial to mean "considerable in amount", or "fairly large in amount", or "extent", or "degree".

We would appreciate your consideration and urge your support and vote for favorable passage of Senate Bill #800.

Respectfully submitted,

Betty M. McBride
Cherokee County Treasurer

LS
Attach III
4-30-90

3-9-90

Johnston announces resignation from post

By CHRISTY POTTER
Staff Writer

McPherson County Treasurer Jerilyn Johnston officially announced her resignation at the county commission meeting Thursday evening. Her resignation will be effective April 1.

Mrs. Johnston said she has accepted a position on the staff of Gov. Mike Hayden.

She served as county chairman for the Hayden for Governor campaign in 1986.

She said she is pleased to have this opportunity to further her professional and personal goals.

"I would like to say that I have very much enjoyed the two and a half years that I have served as treasurer for McPherson County. I began at a time when the county was making some very progressive decisions and I have been pleased and challenged to be a part of the move to make this organization more responsive, more accountable and more cost effective," Mrs. Johnston said.

She said she appreciates the support she has received from the county commissioners and will miss the camaraderie and collaboration she has

JERILYN
JOHNSTON



experienced with many of her colleagues.

"I especially want to thank my staff, the supervisors Alma Price and Kathy Engweiller who were willing and able to assume so much responsibility, and Fay Beattie, Gerry Vance, Bonnie McMurray, Carlene Zweigle and Beverly Donham for their good work, their flexibility, their loyalty and their willingness to use their abilities to ensure that our office was productive and harmonious," Mrs. Johnston said.

She closed by thanking the commissioners for the opportunity and privilege of serving as treasurer for McPherson County.

3-30-90

County transfers treasurer's duties

By CHRISTY POTTER
Staff Writer

Today is Jerilyn Johnston's last day on the job as McPherson County Treasurer, and at Thursday evening's commission meeting, the commissioners passed two resolutions to transfer the duties from the treasurer's office to the financial manager's office. The transfer will take effect April 2.

The first resolution, approved by Ed Rolfs, director of the Kansas Department of Revenue, approved the transfer of functions of the Motor Vehicle Department and Motor Vehicle Tax Distribution, abatement and refund duties and preparation and disbursement of tax distribution checks from the treasurer to the office of the financial manager.

The second resolution resolved to transfer to the financial manager office all functions dealing with the collection of taxes including but not limited to the collection of personal, real estate, intangible and inheritance tax; all functions in the area of delinquent taxes, including but not limited to personal property tax and real estate tax; all functions dealing with protest procedures; all functions dealing with the issuance and registration of no fund warrants; all functions dealing

with any publications required by statute; and all functions related to the preparation of statutorily required reports and estimates to governmental entities.

Commission Chairman Tony Wedel said if the public votes in November to keep the treasurer's office open, it will be up to the discretion of the commissioners which duties will be put back in the treasurer's office.

However, the functions dealing with the Motor Vehicle Department, abatements and refunds, and the preparation and disbursement of tax distribution checks will remain permanently in the financial manager's office.

The commissioners voted to establish the salary of the county treasurer at one dollar per year until the voting in November.

Financial Manager Rick Witte said he doesn't think the reorganization will cause much of a difference for the personnel in his office.

He said the offices in the courthouse have recently switched to a more efficient computer system, so he doesn't foresee any problems in taking over the duties transferred to him.

3-2

April 30, 1990

TO: Representative R. D. Miller, Chairman
and Local Government Committee

FROM: The Kansas County Clerks Association

RE: Senate Bill 800

The people of the State of Kansas have elected the County Clerk, County Treasurer, Register of Deeds and Sheriff. Thus it seems that the people who have elected these officials should be the ones to remove them.

This is the intent of the law, however it appears this can be "skirted" because Commissioners set the salary of elected officials and can put the salary at next to nothing -- thereby "getting around the law".

One purpose of electing officials is so they may be very responsive and helpful to the public. Also, they must perform their duties according to State law or they can be recalled or voted out of office.

Perhaps not every elected official does a "super-perfect" job, some may do a poor job, from local elected township officials to the Senators, but if that is the case, they can be voted out of office! Most elected officials are considerate, responsible, honest, underpaid and good at their jobs. For the most part, County Commissioners would do a good job appointing persons to fill these positions, but some would or could use that power for political patronage, thus creating a beauracracy.

One does not really take the "Politics" out of the office by appointing the Clerk, Treasurer, Register of Deeds and Sheriff.

We urge you to vote for Senate Bill 800. Thank you for your consideration.

Having them around to grab

While the fate of the Free World doesn't hang in the balance, a proposal to eliminate elected positions in Johnson County does defy voter preference.

The League of Women Voters of Johnson County has recommended the offices of county clerk, register of deeds and county treasurer be changed from elected to appointive.

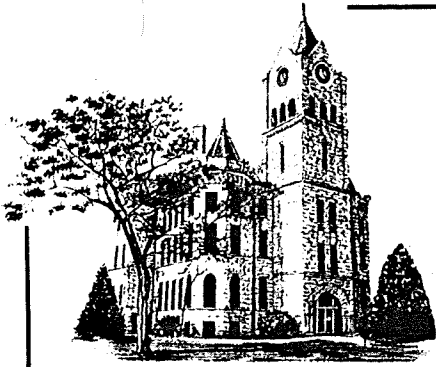
County Treasurer William O'Brien says that the recommendation is "floating against a worldwide tide," and that "people all over the world are fighting, leaving their homes, even dying because they want to elect their government."

Before the League of Women Voters is branded un-American, it should be said the departure of these three offices from the ranks of the elected leaves plenty of choices for voters, and plenty of ballot accountability.

Still, people do like the idea of being able to yank officials by voting them in and out. Sadly, voter turnout is often low and not a lot of attention is paid to jobs like clerk or register of deeds, unless something goes wrong.

It is like that rarely used tool kept in the bowels of the garage. You don't know when you are going to want it, but, by God, it better be there when you do.

We should continue to elect the county clerk, treasurer and register of deeds. A comfort zone for citizens is worth the regular march to the polls.



McPherson County, Kansas

April 30, 1990

TESTIMONY BEFORE THE COMMITTEE ON LOCAL GOVERNMENT

McPherson County Sheriff Harris Terry

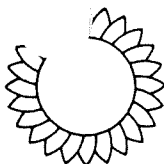
The issue of SB 800 is not an issue of Democrats vs Republicans. It is not an issue of county elective officials vs County Commissioners. It is not an issue of efficient government vs ineffecient government. The issue of SB 800 is the inherent right of voters of this state to self-determination on the form of government they want in their respective counties.

KSA 12-3903 sets out some of the guidelines on how local government can be changed if the voters choose to do so. SB 800 does no more then aid in the guidelines that should and need to be followed before any change takes place.

The elimation of an elective office holder and/or the change of statutory duties of an elective office should be determined by the voters of the county, not the Board of County Commissioners.

Therefore, I respectfully request your support of the passage of SB 800.

HG
Attack V
4-30-90



Johnson County
Kansas

APRIL 30, 1990

HOUSE LOCAL GOVERNMENT COMMITTEE

HEARING ON SENATE BILL 800

TESTIMONY FOR THE JOHNSON COUNTY BOARD OF COMMISSIONERS

Mr. Chairman, members of the committee The Johnson County Commissioners would liked to have been here today to speak to you on Senate Bill 800. However, this is a one of their regular meeting days and they felt it was necessary to fulfill their commitment to conduct the business of the County. The Commission views SB 800 as an extremely important issue and is opposed to the diminishing effect it has on the home rule authority of counties. You are urged to vote against this bill.

On behalf of our Commission, we would like to thank the committee for holding a hearing at this late hour in the Session. The bill was introduced on April 27 and passed out of the Senate on April 28 without the benefit of a public hearing. Senate Bill 800 is not a clarification of an existing statute, it is a major policy change that should not be adopted in the final hours of the veto session without an opportunity to thoroughly examine all of the ramifications.

In the past few days the bill has been explained in a variety of ways, but in essence it removes the ability of the County Commission to make organizational changes necessary for the efficient operation of county government. The proponents contend that the bill requires such changes to be "substantial" and is not meant to include the transfer or removal of minor duties or even a limited number of the major ones. Several attorneys have advised that there is no specific definition for "substantial" and in this case it could be applied to any duty or function.

In Johnson County the Commissioners have no apparent problems with the other elected officials and have made a concerted effort over the years to involve them in the overall management of the county operation. Some examples are the inclusion of the elected offices in the development of the Strategic Plan and the Capital Improvement Plan; the enhancement of the computer equipment to upgrade their offices; and bringing their compensation under the County's executive salary plan.

LS
Altark IV
4-30-90

Johnson County has a budget of \$138 million dollars, with close to 1,700 full time employees located in about 200 installations across the county. Millions of tax dollars are collected for both the county and other local units and millions of tax dollars are invested, managed and expended. It is a multi-million dollar operation that requires knowledge and training to insure the public is well served and the taxes they pay are appropriately managed. There are no plans nor has there been any attempts in the past to eliminate an elected office in our County without a referendum. However, due to the administrative nature of these offices and the need to coordinate them with the entire operation, it is imperative for the Commissioners to have the ability to make organizational adjustments when necessary.

There are existing laws that provide procedures requiring public notification, public hearings and voter approval to eliminate an elected office. We believe these procedures provide the necessary safeguards that have worked well in the State of Kansas for many years. Out of 105 counties there is one potential for a problem, this does not justify taking action to change the time tested process.

Once more it must be emphasized that Senate Bill 800 is a major policy change. Your help is needed to retain the ability of the County Commissioners to act as the governing body responsible for the effective function of the overall county government. You are again urged to vote against the bill.



McPHERSON COUNTY

TESTIMONY BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE
BY
TONY WEDEL, CHAIRMAN
ON BEHALF OF THE BOARD OF MCPHERSON COUNTY COMMISSIONERS
APRIL 30, 1990

I appreciate this opportunity to delineate the concerns of the Board of McPherson County Commissioners regarding SB800, which relates to the consolidation of County operations. First, McPherson County believes that the Board of County Commissioners has the responsibility and duty of overseeing County operations and determining what is the most efficient and cost effective ways of performing County functions. If the Board through it's research determines that the consolidation of County operations is the most efficient and effective method of providing County services they should have the right to do so.

McPherson County has gone through two reorganizations since 1987. In 1987, the County established the position of Financial Manager by reorganizing both the County Clerk and County Treasurer Office's. As a result of the reorganization, the amount the County spends on salaries for the offices of Treasurer, Clerk, Motor Vehicle Licensing, Election, Data Processing, and Financial Manager, has decreased from \$334,504 in 1986, to \$296,079 in 1989, a decrease of 11.5% in salaries. The number of staff for these offices has been reduced from 19 full time employees and 4 part time employees in 1986 to 16 full time employees and 1 part time employees in 1989.

The County has achieved some other notable accomplishment since the first reorganization.

During 1989, the financial manager through his investments of County funds, brought in an additional \$23,000 in interest to the County's General Fund above the 91 day T-bill rate that is suggested by the State Treasurer.

The County for the first time in 1989, was awarded by the Government Finance Officer's Association, a Certificate of Achievement for Excellence in Financial Reporting. To our knowledge, there are only three other counties in the State to receive this prestigious award.

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Attach III
4-30-90

MCPHERSON COUNTY COMMISSIONERS

McPherson County
Courthouse

John C. Magnuson
District 1

Dean R. Bacon
District 2

Tony Wedel
District 3

P.O. Box 676
Phone No. 316-241-8149

The cost savings to McPherson County taxpayers by our recent reorganization of the County Treasurer's Office, we estimate to be approximately \$20,000 per year in salary and fringe benefits, plus an additional savings of \$1,200 to \$1,500 per year in the expenses, such as dues, subscriptions, bonds, etc. The County does not anticipate the need to add any additional staff.

Through the reorganization of the Treasurer's Office, the County has been able to bring professional experienced leadership to the Treasurer's Office. The office is now under the supervision of Rick Witte, the County's financial manager. Mr. Witte has a degree in accounting and a strong governmental/accounting background.

McPherson County believes that since the financial and accounting aspects of County government are so closely tied together it is more cost effective and efficient to have them under one administrative department head, which is accomplished under our recent reorganization.

McPherson County believes additional cost saving measures are possible through the consolidation of other County operations providing the Board has the available tools it needs to work with. In this time of increasing concern over tax increases and government spending the Board of McPherson County Commissioners believes it would be a mistake to hamstring local government units in their efforts to reduce spending while at the same time provide a more professional, cost effective and efficient government for the local taxpayer.

The Governor and Legislature this session has been stressing the need for local units of government to hold down their spending, i.e., the iron clad tax lid. We in McPherson County, thru the consolidation of operations, are making every effort to operate in a more efficient and cost effective manner, while at the same time, providing the same services for our taxpayers.

April 30, 1990

Testimony Before the
House Local Government Committee
on Senate Bill 800

Presented by John B. Klenda, McPherson County Counselor

In 1974 the Kansas legislature enacted the Governmental Organization Act. The purpose of the Act as set forth in K.S.A. 12-3901, is to authorize and permit governing bodies to consolidate operations, procedures and functions of its offices when they find that such consolidation may be more efficiently and effectively exercised or provided by a single office or agency.

McPherson County is in the process of electing its third County Treasurer within the last four years. The County Commissioners, relying on the Governmental Organization Act transferred several duties to the Financial Manager's Office. However, these duties were only transferred after obtaining the necessary authority from the Department of Revenue as required by K.S.A. 12-3906. Further, the transfer did not involve the hiring of any additional staff, and resulted in a decrease of county expenditures.

Pursuant to K.S.A. 12-3903, the governing body of McPherson County will be holding a public hearing for the purpose of gathering public opinion on the question of whether to eliminate the county treasurer's position. After this hearing is held, the Commissioners will then decide if the position should be eliminated. If they decide the office should be eliminated, then pursuant to K.S.A. 12-3903, the question will then be subject to the approval of a majority vote of the general public.

It would appear the spirit and purpose of the Act is to consolidate operations and functions where tax dollars can be saved. To adopt Senate Bill 800 would have the effect of defeating the original purpose and intent of the Act.

By
Attain VIII
4-30-90



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 19, 1988

ATTORNEY GENERAL OPINION NO. 88- 5

Mr. Gary L. Flory
McPherson County Counselor
P.O. Box 1103
McPherson, Kansas 67460

Re: Cities and Municipalities -- Governmental
Organization -- Consolidation of Operations,
Procedures and Functions by a Political and Taxing
Subdivision or by Two or More Subdivisions;
Procedure; Elimination of Elective Office

Synopsis: Subject to compliance with mandated procedures
which include electorate approval, the governmental
organization act permits the elimination of an
elected office and the assumption of its duties by
one or more offices or agencies. The elimination
of the office and the assumption of its functions
and duties by other entities must further
efficiency or avoid duplication and must not be a
sham elimination of an elected office done to avoid
civil service or tenure requirements. When the
county commission possesses authority to create and
appoint a county office, the consolidation statutes
permit duties of an eliminated elected office to be
transferred to that appointive office. K.S.A.
12-3906 may, however, allow other state agencies
affected by the consolidation to place independent
requirements on such delegations.

Pursuant to K.S.A. 25-314, an appointed term of
office extends only until the date the office is
abolished. Consolidation statutes do not allow
premature divestment of the term of office of a
person elected to that position. The election

statutes contain the authority and procedures allowing an elected term to be interrupted. Cited herein: K.S.A. 12-3901; 12-3903; 12-3905; 12-3906; 12-3907; 19-101a; 19-501; 25-312; 25-314.

Dear Mr. Flory:

As McPherson County Counselor, you inquire as to the procedures and legalities involved when implementing the governmental organization act, K.S.A. 12-3901 et seq. Specifically you inquire whether that act authorizes the consolidation of all of the functions of one office with some of the functions of a new second office, the new office being appointed by the county commission, if the elimination of the elective office from which all functions were transferred is approved by a majority of the county electors. Secondly, you ask whether, under a proper consolidation plan, an elective office can be eliminated under K.S.A. 12-3903 prior to the end of the elected term.

For purposes of clarity, we will address the issues thus raised in the following order: (1) Does K.S.A. 12-3901 et seq. permit the elimination of an elected county office; (2) if such an office is eliminated, what can be done with the duties of that office; (3) may the county commissioners create an office by appointment and allow that appointive office to perform some or all of the duties of an abolished elected office; (4) if an elected office is abolished pursuant to this act, when does the term of the officer expire.

The power that creates may also eliminate. See Aikman v. Edwards, 55 Kan. 751 (1895); State v. Kansas City, 50 Kan. 508 (1893); Attorney General Opinions No. 83-129, 82-78, 81-246, 80-98, 80-138, 80-144, 78-269, 75-453, 74-141. Article 9, § 2 of the Kansas Constitution states that "[T]he legislature shall provide for such county and township officers as may be necessary." K.S.A. 19-501 mandates the election of a county treasurer. Thus, the office of county treasurer is a statutory office, created by the state legislature. The legislature therefore possesses the authority to abolish this statutorily created office. It has delegated this authority to some extent in K.S.A. 12-3901 et seq.

K.S.A. 12-3903 provides for "the elimination of an elective office by consolidation under the provisions of this act. . . ." While this language creates a potential conflict with K.S.A. 19-501, statutes are presumed to have been passed

with full knowledge of all existing statutes on the same subject and repeal by implication is not favored unless the repugnancy between the two is so irreconcilable that the two cannot both be given force and effect. Elliot v. Luchanane, 1 Kan. 126 (1862); City of Kansas City v. Griffen, 233 Kan. 685 (1983); Matter of Suesz' Estate, 228 Kan. 275 (1980). Reading K.S.A. 12-3903 and 19-501 together and giving each force and effect, it can be seen that the election of a county treasurer is mandated by K.S.A. 19-501 unless that office has been eliminated pursuant to K.S.A. 12-3901 et. seq. Thus, provided all necessary procedures are followed, an elected office such as county treasurer may be eliminated under K.S.A. 12-3901 et seq.

The second issue concerns the assumption of duties previously performed by the eliminated office.

In a general sense, consolidation means "to unite or unify into one mass or body. . . ." Blacks Law Dictionary 279 (5th ed. 1979). Consolidation merges two into one and involves the surrender of power. State v. Richardson, 174 Kan. 283 (1953); 3 McQuillin, Dissolution and Reorganization § 8.21 (3rd ed. 1982); Attorney General Opinion No. 83-129. However, consolidation by unification or merger may refer to the transference of singular powers, procedures, or functions and not necessarily to the merger of two or more entire offices or agencies. K.S.A. 12-3901 states that the purpose of the consolidation act is to permit "consolidation of operations, procedures and functions of offices and agencies of such subdivisions which may be more efficiently and effectively exercised or provided by a single office or agency." (Emphasis added). K.S.A. 12-3903 permits consolidation of "any or all of the operations or functions performed or carried on by such offices or agencies." (Emphasis added). Pursuant to consolidation, K.S.A. 12-3906 and 12-3907 allow responsibilities to be shifted by performance, agreement or resolution. The aforementioned statutes appear to contemplate consolidation of either individual functions or, alternatively, the entire office.

Some language contained in the act indicates that only one entity survives the consolidation. However, nothing in the consolidation act absolutely mandates that every function of an eliminated office must henceforth be performed by a sole surviving office or agency. We believe that the singular language contained in the act refers to each surviving individual function, procedure or duty. Our position is supported by the practicalities involved in carrying out the

intent of the act. Reorganization laws are ordinarily liberally construed for promotion of legislative policy, 3 McQuillin § 8.22, and the legislative history of this act indicates that its purpose is to insure the ability of local governments to further effect economies, improve efficiency and avoid duplication. See K.S.A. 12-3901. These goals may not always be best served by one office assuming all of the duties of an eliminated office. If that were the procedure mandated by the consolidation act, in some instances it could result in a more inefficient government due to the inability of the surviving office to perform twice the duties. Further, a contrary conclusion would seem to promote consolidation plans which merely replace an elective office with an appointive office, a situation other jurisdictions have disallowed. (See case law cited under the third issue.) If the consolidation promotes efficiency or avoids duplication and is carried out pursuant to procedures mandated by K.S.A. 12-3901 et seq., we see no impediment to allowing the duties of an eliminated office to be assumed by more than one office or agency.

The third issue is whether the county commissioners may appoint a new office to succeed to some or all of the duties of an eliminated elective office.

K.S.A. 12-3901 et seq. refers to the surviving "office or agency", indicating an alternative. Local governments and authorities have long had the authority to create public agencies and hire employees in furtherance of administering county business. Controlling authority must be consulted to ascertain whether a particular county position may be created by appointment and, if so, by whom the appointment may be made. 20 C.J.S. Counties §82 (1940). If the county commission possesses the authority to create and appoint persons to a county agency, the consolidation act allows duties to be shifted to that appointed agency. Nothing in K.S.A. 12-3901 et seq. dictates that duties of an eliminated elected official must be performed by another elected official.

This interpretation is not without exception, however. Consolidation cases from other jurisdictions question consolidation that eliminates an elected office and replaces it with an appointive office to avoid civil service or tenure requirements. See Shawnee v. Hewett, 130 P. 546 (1913); Miller v. State ex rel. Peek, 29 So.2d 411, (Ala. 1947); Phoenix v. Powers, 113 P.2d 353 (Ariz. 1941); Rextrew v. Huntington Park, 128 P.2d 23 (Cal. 1942);

Somerville v. District Ct., 57 NE 2d 1 (Mass. 1944);
State ex rel. Thein v. Milwaukee, 281 NW 653 (Wis.
1938). These and other cases frown on an elected office being
eliminated merely to be replaced by an appointive office which
exactly duplicates the eliminated office. The purpose of the
elimination then appears to be avoidance of tenure and civil
service requirements and not the promotion of efficiency. A
consolidation in which a newly created single entity assumes
every function or duty of the eliminated office could give
rise to suspicions that such an improper purpose exists.
Further, pursuant to K.S.A. 12-3906 other governmental
agencies must be consulted if consolidation affects those
agencies. Thus, other agencies may independently place
requirements upon the performance of certain duties. (See
Attorney General Opinion No. 74-141).

The final issue raised concerns the timing of consolidation
and its effect upon an elected term.

K.S.A. 19-101a seventh makes all counties subject to all
legislative acts concerning elections. K.S.A. 25-301 et
seq. establishes terms of office. K.S.A. 25-314 provides:

"Any of said officers that may be elected
or appointed to fill vacancies may qualify
and enter upon the duties of their office
immediately thereafter, and when elected
they may hold the same during the
unexpired term for which they were
elected, and until their successors are
elected and qualified; but if appointed,
unless otherwise provided by law, they
shall hold the same only until their
successors are elected and qualified.
Appointment to fill a vacancy in an office
which is to be abolished shall extend
until the date of such abolition, and only
until such date. (Emphasis added).

An appointed official currently holds the position of
McPherson County Treasurer. By virtue of language contained
in K.S.A. 25-314, that appointed term extends only until the
date that the office is abolished. It is our opinion that
this is not the case when dealing with an elective term of
office. The consolidation act does not in and of itself cut
short the term of an elected officer. Such a divestment of an

elective term must occur pursuant to procedures set forth in the election statutes.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Theresa Marcel Nuckolls

Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bar

Elected officials dismiss proposal

By Rea Wilson
Sun correspondent

A proposal to eliminate three elected county offices is out of sync with world events, according to County Treasurer William O'Brien.

O'Brien, County Clerk Bev Baker and Register of Deeds Sara Ullmann firmly oppose a recommendation by the League of Women Voters of Johnson County to remove their offices from the ballot.

"They are floating against a worldwide tide," O'Brien said

of the proposal. "People all over the world are fighting, leaving their homes, even dying because they want to elect their government."

The organization had a "strong consensus" in favor of shortening the ballot and filling the jobs of clerk, treasurer and register of deeds with "qualified professionals" appointed by and subject to a county administrator.

The organization recommended keeping the sheriff and district attorney as elected of-

See League, Page 2

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League

From Page 1

ficers along with the Board of County Commissioners.

"They infer the district attorney and sheriff do not need to be qualified professionals," Ullmann said.

The logic of the position does not work, Ullmann said. On one hand, the League of Women Voters called for an independent auditor to bypass the administrator and report directly to the county commission, and on the other it wanted to remove three positions that already work directly with the commission.

"There is also the issue of concentration of power. You are better off in government if you can keep government spread out and not in a few hands," Ullmann said.

The organization's recommendation was one of several made to the county commission after a two-year local government study.

The recommendations followed the lines of a charter proposal for reorganizing the county that was defeated at the polls in 1976. Despite voter rejection, many elements of the

***'People all over the world
are fighting . . . even dying
because they want to elect
their government.'***

Bill O'Brien, county treasurer

charter plan have become part of the county structure.

County Commissioner Murray Nolte, who is expected to be chairman of the commission in 1990, was not eager to alter the status quo.

"I don't see any burning need to change," Nolte said.

Clerk Baker said she believed the existing arrangement was essential to the system of checks and balances for the

county.

"Elected officials are more responsive to the citizens because we deal with them every day," Baker said.

Electing these positions also provides an opportunity for change, Baker said.

"I think it's a great advantage to bring people in from the outside, especially from the private sector. They bring a fresh approach," Baker said.

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Having them around to grab

While the fate of the Free World doesn't hang in the balance, a proposal to eliminate elected positions in Johnson County does defy voter preference.

The League of Women Voters of Johnson County has recommended the offices of county clerk, register of deeds and county treasurer be changed from elected to appointive.

County Treasurer William O'Brien says that the recommendation is "floating against a worldwide tide," and that "people all over the world are fighting, leaving their homes, even dying because they want to elect their government."

Before the League of Women Voters is branded un-American, it should be said the departure of these three offices from the ranks of the elected leaves plenty of choices for voters, and plenty of ballot accountability.

Still, people do like the idea of being able to yank officials by voting them in and out. Sadly, voter turnout is often low and not a lot of attention is paid to jobs like clerk or register of deeds, unless something goes wrong.

It is like that rarely used tool kept in the bowels of the garage. You don't know when you are going to want it, but, by God, it better be there when you do.

We should continue to elect the county clerk, treasurer and register of deeds. A comfort zone for citizens is worth the regular march to the polls.

W. O. B. R. I. E. N.

1 expiration of the term of such office. Any such proposed consolidation
 2 which eliminates any such elective office shall not be voted on by
 3 the governing body of the political or taxing subdivision until a special
 4 public hearing is held within the political or taxing subdivision.
 5 Notice of such special hearing shall be published in a newspaper of
 6 general circulation in the political or taxing subdivision once each
 7 week for two consecutive weeks prior to the hearing. The first pub-
 8 lication shall not be less than 21 days prior to such hearing. Any
 9 elected officer whose office would be eliminated in such consolidation
 10 and any other interested party shall be given an opportunity to
 11 appear and offer testimony at any of such hearings.

12 (c) For the purposes of this act, the term "eliminated" shall
 13 include the transfer or removal, in any manner, of the substantial
 14 ~~duties of an elective office, whether or not the office itself remains~~
 15 ~~intact. The transfer of any of the statutorily assigned duties of an~~
 16 ~~elective office occurring with a significant reduction in the salary~~
 17 ~~or other compensation of an elected official shall be deemed to be~~
 18 ~~evidence of an elimination of an office requiring an election pursuant~~
 19 ~~to subsection (b).~~

20 Sec. 2. K.S.A. 1989 Supp. 12-3903 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after
 22 its publication in the Kansas register.

(C) For the purpose of this act, the term "eliminated" shall be defined as a reduction in salary or other compensation greater than the amount of any change in that salary or compensation as computed over the prior two fiscal years for the members of that governing body of that political subdivision.

(D) Nothing under this Bill shall be deemed to apply retroactively in nature.

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 Attach. I
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