Approved 2-13-90
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs.

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:05 a.m./~~p.m.~~ on February 7, 1990 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Emalene Correll, Legislative Research
Mary Galligan, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:
Fred Hope, Leavenworth County Assessor
Bob Gunja, Kansas City, Kansas, Weights and Measures
Jim Conant, Department of Revenue
Rev. Richard Taylor, Kansans for Life at its Best
Fred Hope, Leavenworth County Assessor, discussed two proposals regarding classification of property and the appeals process for possible introduction as committee bills. (Attachments 1 and 2)

A motion was made by Senator Morris and seconded by Senator Vicricksen that the proposals be introduced. The motion carried.

Bob Gunja, Kansas City, Kansas, Weights and Measures, was introduced by Senator Strick. Mr. Gunja discussed a proposed committee bill concerning weights and measures (Attachment 3) and gave other background information. (Attachments 4 and 5)

A motion was made by Senator Morris and seconded by Senator Vidricksen to introduce the proposal. The motion carried.

The minutes of the February 6, 1990, meeting were approved.

Hearing on: SB 516 - Repeal of various alcoholic beverage statutes

Jim Conant, Department of Revenue, ABC Division, discussed the statutes that would be affected by SB 516. He explaned why each is no longer effective. (Attachment 6)

The staff was directed to review each of these repealers.

Hearing on: SB 517 - Alcoholic liquor; retailers' renewals, salesperson's permits, notice of event of caterers and temporary permit holders

Jim Conant, ABC, presented testimony explaining the Department's reasons for requesting each of the amendments. (Attachment 7) He further stated that a 10-day notice was being requested to help in scheduling agents.

Rev. Richard Taylor, Kansans for Life at its Best, said that it was agreed when liquor by the drink was instituted that we would not push our most abused drug. The 30% minimum food sales requirement was a way of saying that a person may have a drink or so with a meal, rather than trying to push the drug.

It is the ABC's interpretation that the 30% rule would apply to one with a caterer's license, but not to one with a temporary permit.

The hearings will continue on Tuesday, February 13, 1990.

The meeting was adjourned at 12:00 noon.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: 2-7-90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Robert Gunja	701 No. 7th St. Room 612 Kansas City, Kansas 66101	KCK Weights & Measures
Brenda Kincaid	701 N. 7th St. Rm. 612 Kansas City, KS. 66101	KCK Weights & Measures
Linton Bartlett	Kansas City, KS	City of Kansas City
Richard Taylor	Topeka	Life at Best
Helen Stephens	✓	KPOA
[illegible]	Topeka	Washburn U.
[illegible]	Holton	Washburn Univ.
[illegible]	Topeka	Budget Division
Tom Burgess	Topeka	Sunflower Racing
Donald Zerbe	Topeka	
David L. Roesch	RR1 Box 152 Reserve, KS. 66434	Washburn Univ.
Rebecca Rice	Topeka	KRIDA
Jack Duncan	Topeka KS	KWSWA
Neal Whitaker	Topeka	KBWA
Jim Conant	Top.	ABC
Bernie Norwood	Top	ABC
Ken Bahr	Topeka	[illegible]
Jim Yonally	Overland Park	TRAK-East

THE HEARING AND APPEALS PROCESS

PROPOSAL V

I. *SUMMARY*. This proposal contains primarily clean-up amendments dealing with the hearing and appeals process. The proposal would accomplish the following results; (1) Eliminate time conflicts existing between current statutes; (2) Eliminate the present two step formal appeal process on the local level by making the orders of the hearing officers and/or panels the final order of the county and appealable directly to the state board of tax appeals; and (3) Make changes made by hearing officers or panels or county boards of equalization reviewable by the state board of tax appeals instead of the director of property valuation. (Bill Draft Attached)

II. *BACKGROUND*. The hearing and appeals process was substantially amended by the 1988 Legislature to accommodate the large increase in appeals anticipated as a result of the implementation of statewide reappraisal. This proposal is designed to eliminate some of the problems observed in the hearing and appeals process during its first year of operation (1989).

III. *FISCAL IMPACT*. None.

Senate F&SA
2-7-90
Att. 1

1990 LEGISLATIVE PROPOSAL
THE HEARING AND APPEALS PROCESS

AN ACT relating to property taxation; concerning the hearing and appeals process.

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

Section 1. K.S.A. 79-1409 is amended as follows: 79-1409. The state board of tax appeals shall constitute a state board of equalization, and shall equalize the valuation and assessment of property throughout the state; and shall have power to equalize the assessment of all property in this state between persons, firms or corporations of the same assessment district, between cities and townships of the same county, and between the different counties of the state, and the property assessed by the director of property valuation in the first instance. And any person aggrieved by the action of {**a hearing officer or panel or**} the county board of equalization may, with forty-five (45) days after the decision of said {**hearing officer or panel or**} board, appeal to the state board of equalization for a determination of such grievance.

It shall be the duty of the state board of equalization to meet in its office, or such other place within any county of the state as the board shall deem advisable, to perform the work of equalization as hereinbefore provided. Such board may meet at any time on and after January 15 of each year as it may deem necessary and shall meet from the 11th day of July, or the next following business day if such date shall fall on a day other than a regular business day, until the 25th day of August as the business of the board shall require. Whenever the valuation of any taxing district, whether it be a county, township, city, school district, or otherwise, is changed by the state board of equalization, the officers of such taxing district who have authority to levy taxes are required to use the valuation so fixed by the state board as a basis for making their levies for all purposes. In case a change is made in such valuation, said board of tax appeals shall certify the equalized values to the director of property valuation who shall forthwith certify the same to the county clerks of the several counties of state or to the counties affected by such equalization; and the said county clerks shall carry the real estate and tangible personal property on the tax rolls of their respective counties at the valuations so certified, and shall use such valuation as the basis of all tax levies: Provided, however, That any certification received by a

county clerk after August 25 may be handled as an abatement, refund, or added tax as the certification warrants.

The director of property valuation shall apportion the amount of tax for state purposes as required by law to be raised in the state among the several counties therein, in proportion to the valuation of the taxable property therein for the year as equalized by the state board of equalization.

Section 2. K.S.A. 79-1448 is hereby amended to read as follows: 79-1448. Any taxpayer may complain or appeal to the county appraiser from the classification or ~~appraisal~~ **{valuation}** of the taxpayer's **{real}** property by giving notification of such dissatisfaction to the county appraiser within 21 days of the mailing of the valuation notice. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question. The county appraiser may extend the time in which the taxpayer may informally appeal from the classification or ~~appraisal~~ **{valuation}** of the taxpayer's **{real}** property for just and adequate reasons. In no event shall an informal meeting regarding real property be scheduled to take place after ~~May 1, 1989,~~ and ~~April 1 of all years~~ ~~thereafter~~ **{the last business day of April}**, nor shall a final determination be given by the appraiser after ~~May 15, 1989,~~ and ~~April 15 of all years thereafter~~ {5}. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer or panel appointed pursuant to 79-1602, and amendments thereto, or, only in cases where no hearing officer or panel has been appointed, to the county board of equalization in the same manner appeals are made to such board under K.S.A. 79-1606, and amendments thereto, and such hearing officer, panel or board, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided for in K.S.A. 79-1602 *et seq.* and amendments thereto. ~~Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the county board of equalization in the same manner appeals are made to such board under K.S.A. 79-1606, and amendments thereto. Each step in the county's established informal and formal appeal process must be completed before the taxpayer may appeal to the next level except as provided in K.S.A. 79-1609, and amendments thereto.~~ **{An informal meeting with the county appraiser or the appraiser's designee is a condition precedent to a formal appeal by the taxpayer to a hearing officer or panel or the county board of equalization from the classification or valuation of real property.}**

Section 3: K.S.A. 79-1460 is amended to read as follows: 79-1460. (a) The county appraiser shall notify

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each taxpayer in the county annually on or before April 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of any change in the classification or {and} appraised valuation of the taxpayer's property, except that in the year in which valuations for real property established pursuant to the program of statewide reappraisal are first applied as a basis for the levy of taxes, such notice in the case of real property shall be mailed on or before March 1. For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk. Except for the year in which valuations for real property established pursuant to the program of statewide reappraisal are first applied as a basis for the levy of taxes, {S}uch notice shall specify separately both the previous and current appraised and assessed values for the land and buildings situated on such lands. In the year following the year in which valuations for tangible property established under the program of statewide reappraisal are applied as a basis for the levy of taxes, and in each year thereafter, such notice {and} shall include the most recent county sales ratio for the particular subclass of property to which the notice relates, except that no such ratio shall be disclosed on any such notices set in any year when the total assessed valuation of the county is increased or decreased due to reappraisal of all of the property within the county. Such notice shall also contain a statement of the taxpayer's right to appeal and the procedure to be followed in making such appeal. Failure to receive such notice shall in no way invalidate the classification or appraised valuation as changed.

(b) Prior to January 1, 1989, the county appraiser shall notify each owner of improved real estate upon forms devised and provided by the director of property valuation of the criteria upon which the valuation of such property was obtained, except that the director may waive the provisions of this sentence in any case where a county appraiser has substantially complied therewith or in any other case deemed necessary/

Section 4: K.S.A. 79-1466 is amended to read as follows: 79-1466. Commencing on January 1 of each year, the county appraiser shall transmit the taxable real property appraisals and the exempt real property appraisals to the county clerk continually upon the completion thereof.

Upon the completion of transmission of such appraisals to the county clerk, on or before the last business day of March {April} of each year, the county appraiser shall deliver a document certifying that such appraisals constitute the complete appraisal rolls for real property.

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The taxable real property appraisal roll shall consist of all property records which in aggregate list all taxable land and improvements located within the county.

The exempt real property appraisal roll shall consist of all property records which in aggregate list all exempt land and improvements located within the county.

Section 5: K.S.A. 79-1467 is amended to read as follows: K.S.A. 79-1467. Commencing on January 1 of each year, the county appraiser shall transmit the taxable personal property appraisals to the county clerk continually upon the completion thereof. Upon completion of transmission of such appraisals to the county clerk, on or before the last business day of April each year, the county appraiser shall deliver a document certifying that such appraisals constitute the complete appraisal rolls for personal property except for personal property which may be subject to investigation and valuation pursuant to law or personal property which may have escaped appraisal in any year, in which cases the appraiser shall transmit to the clerk, upon completion, the appraisals of such property and the clerk shall add the same to the taxable personal property roll at such time.

The taxable personal property roll shall consist of all personal property forms tendered by taxpayers to the county appraiser; personal property forms completed by the appraiser in cases described in K.S.A. 79-1422, and amendments thereto; and cases involving escaped appraisal in any year and any other records prepared by the county appraiser for the listing and appraisal of taxable personal property located within the county.

The exempt personal property roll shall include all personal property that is exempt from ad valorem taxation except those specific types of property set forth in K.S.A. 79-201c and 79-201j and amendments to such sections. The exempt personal property roll shall consist of all exempt personal property forms tendered by taxpayers to the county appraiser and other records prepared by the county appraiser for the listing and appraisal of exempt personal property within the county.

Section 6. K.S.A. 79-1470 is amended to read as follows: K.S.A. 79-1470. In any year during the month of April for real property and the month of May for personal property {**on or before the last business day in May**}, the county appraiser may request the hearing officer or panel or the county board of equalization to order a change in the classification or the appraised valuation of property on the certified appraisal rolls. Any such request shall be made to the hearing officer or panel, if any, otherwise to the county board of equalization. The county appraiser

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shall utilize the appraised value appeal form when making such requests.

Section 7. K.S.A. 79-1481 is amended to read as follows: 79-1481. No hearing officer or panel or county board of equalization shall issue an order applicable uniformly to all property in any class in any area or areas of the county, which order changes the assessment of such class of property in such area or areas, without the approval of the state board of tax appeals. Whenever any hearing officer or panel or county board of equalization proposes to issue any such order, it shall make written application to the state board of tax appeals for a hearing on such matter if such change constitutes the final decision of the county. The state board of tax appeals shall set a time and place for a hearing thereon within five days of receipt of such application. The time set for hearing such matter shall in no event be more than 30 days following the date of receipt of such application. The state board of tax appeals shall notify the hearing officer or panel or county board of equalization, the county or district appraiser and the director of property valuation, of the time and place set for hearing. The director of property valuation shall be made a party to such hearing. The state board of tax appeals shall make its determination upon such matter within 10 days of the conclusion of the hearing thereon and notify the county board and director of property valuation by mail of its determination within five days after the date such determination is made.

The ~~director of property valuation~~ {**state board of tax appeals**} shall require written justification from the hearing officer or panel or the county board of equalization when such officer, panel or board issues an order modifying the valuation of individual tracts of real property if such change constitutes the final decision of the county. The justification shall be conveyed on forms prescribed by the ~~director~~, {**state board of tax appeals**} notifying the ~~director~~ {**state board of tax appeals**} of such actions of the hearing officer or panel or the county board of equalization and conveyed by certified mail, return receipt requested, or personally delivered to the ~~director of property valuation~~ {**secretary of the state board of tax appeals**} or ~~his~~ {**the secretary's**} designee. The ~~director~~ {**state board of tax appeals**} shall with 30 days after receipt of such justification review such justification to determine compliance with K.S.A. 79-503a, and amendments thereto, except that, the ~~director~~ {**state board of tax appeals**} may extend such time in intervals of 30 days not to exceed two such extensions, for just cause shown. If the ~~director~~ {**state board of tax appeals**} finds such hearing officer's or panel's or the county board's actions are not in compliance with K.S.A. 79-503a, and amendments

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thereto, the *district court* {**state board of tax appeals**} shall order reinstatement of the appraiser's valuation. Any party aggrieved by the *district court's* {**state board of tax appeals'**} order may within 30 days *appeal such order to the* {**request a de novo hearing before the state board of tax appeals**}.

Section 8: K.S.A. 79-1602 is amended to read as follows: 79-1602. The hearing officer or panel or the county board of equalization, or a majority of the members thereof, may on and after January 15 of each year, meet at any time deemed necessary. All such meetings shall be held in a suitable place in the county. Such hearing officer or panel or the board shall on the first business day in *April* {**May**} of each year meet for the purpose of inquiring into the valuation of property and shall review the appraisal rolls of the county as to accuracy, completeness and uniformity of appraisal, and shall make such changes in the appraisal of property as shall be necessary in order to secure uniform and equal application to all property.

In all cases where it shall become necessary to increase the appraised value of specific tracts or individual items of real or personal property, except where the appraised value of a class or classes of property in any area or areas of the county is raised by a general order of the state board of tax appeals applicable to all property in such class or classes for the purpose of equalization, the county clerk shall, at least 10 days prior to hearing, mail or cause to be mailed a notice to the person to be affected thereby at such person's post-office address as shown by the assessment rolls, stating in substance that it is proposed to increase the assessment of such specific tracts or individual items of such person's real or personal property, and fixing the time and place when a hearing thereon will be had.

The hearing officer or panel or the board, only in cases where no hearing officer or panel has been appointed, shall hear and determine any appeal made by any taxpayer as to the valuation of any property in the county which may be made to the hearing officer or panel or the board by the owner of such property or such owner's agent or attorney, and shall perform the duties prescribed in this section. *All determinations made by a hearing officer or panel may be appealed to the county board of equalization.* The session of the hearing officer or panel or the board held for the purpose of considering the valuation of property shall commence not later than the first business day in April and shall remain in session until *May 15, or the next business day, except that a county board of equalization shall remain in session until* the last business day in May. During such time the hearing officer

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or panel or the board may adjourn from time to time as may be necessary, and at the expiration of the last business day in May, the {**hearing officer or panel or county**} board {**of equalization**} shall adjourn until June 5, when it {**the hearing officer or panel or county board of equalization**} shall again reconvene for the purpose of hearing appeals from persons who have been notified by the county clerk of pending changes in the valuation of their property as provided above and appeals from determinations made by a hearing officer of panel, but such adjourned session shall not continue for more than 10 days, after which the {**hearing officer or panel or county**} board {**of equalization**} shall adjourn sine die, which adjournment must be take on or before June 15, or the next business day and the {**hearing officer or panel or county**} board {**of equalization**} shall have no authority to be in session thereafter {**unless ordered to reconvene by the director of property valuation**}. After such final adjournment the {**hearing officer or panel or the county**} board {**of equalization**} shall not change the appraised or assessed valuation of the property of any person, except for the correction of clerical errors as authorized by law, or reduce the aggregate amount of the appraised or assessed valuation of the taxable property of the county.

The hearing officer or panel or the board shall provide for sufficient evening and Saturday meetings during the sessions hereinbefore prescribed for the performance of its duties as shall be necessary to hear all parties making requests for such evening or Saturday meetings.

In order to more efficiently and effectively hear and determine appeals by taxpayers which may result from changes in valuations of property the board of county commissioners may appoint hearing officers or panels to accomplish such purpose. {**The final determination of the hearing officer or panel shall be directly appealable to the state board of tax appeals pursuant to K.S.A. 79-1609, and amendments thereto.**} Any such officers or panels shall be persons who have attended a training program conducted by the director of property valuation or the director's designee. No person who has performed an appraisal of any real property the reappraised valuation of which is appealed shall be eligible to serve as a {**hearing officer or**} member of any such {**hearing**} panel with respect to a hearing on the appeal of such valuation of such property. The director of property valuation shall prescribe guidelines governing the composition and duties of such panels. No member of the county board of equalization shall be a hearing officer or serve as a member of a hearing panel but all such member shall be required to attend a training program conducted by the director of property valuation or the director's designee.

Section 9. K.S.A. 79-1606 is amended to read as follows: K.S.A. 79-1606. The hearing officers or panels or the county board of equalization in each county shall adopt, use and maintain the following records, the form and method of use of which shall be prescribed by the director of property valuation; (a) Appeal form, (b) hearing docket, and (c) record of cases, including the disposition thereof. The county clerk shall furnish appeal forms to any owner of property which has been appraised who desires to further appeal to the hearing officers or panels or the county board of equalization as the the classification, appraised valuation, assessment or assessment equalization of property by the county appraiser. Any such appeal in writing involving the classification, appraised valuation, assessment or assessment equalization of {**real or personal**} property must be filed with the county clerk ~~within 10 days of the date that a notice of change in value of final determination of the appraiser, hearing officer of panel of board of equalization was mailed to the taxpayer, except as provided in K.S.A. 79-1609, and amendments thereto~~ {**on or before May 15 of the year of assessment by the county appraiser**}.

Every appeal so filed shall be set for hearing by the hearing officers or panels or the county board of equalization which hearing must be held on or before ~~May 15, if heard by a hearing officer of panel, and~~ May 30, if heard by a county board of equalization. The county clerk shall notify each appellant and the county appraiser of the date for hearing of the taxpayer's appeal at least 10 days in advance of such hearing. Every such appeal shall be determined by order of the hearing officer or panel or the county board of equalization and such order shall be recorded in the minutes of such officer, panel or board on or before ~~May 15, if heard by a hearing officer of panel, and~~ May 30, ~~if heard by a county board of equalization~~. Such recorded orders and minutes shall be open to public inspection. Notice as to disposition of the appeal shall be mailed by the county clerk to the taxpayer and the county appraiser within five days after the determination.

Section 10: K.S.A. 79-1609 is amended to read as follows: K.S.A. 79-1609. Any person aggrieved by any order of {**the hearing officer or panel or**} the county board of equalization may appeal to the state board of tax appeals by filing a written notice of appeal, on forms approved by the state board of tax appeals and provided by {**the hearing officer or panel or**} the county board of equalization for such purpose, stating the grounds thereof and a description of any comparable property or properties and the assessment thereof upon which they rely as evidence of inequality of assessment of their property, if that be a ground of appeal, with the board of tax appeals and by filing a copy thereof

with the {county} clerk of the county board of equalization within 45 days after the date of the order from which the appeal is taken. {**The county clerk shall forward a copy of the written notice of appeal to the county appraiser within 5 days of the receipt thereof.**} A county appraiser may appeal to the state board of tax appeals from any order of the {**hearing officer or panel or the**} county board of equalization.

Section 11: K.S.A. 79-1610 is amended to read as follows: K.S.A. 79-1609. Notice of the decision of the hearing officer or panel or the board of equalization on any appeal shall be mailed to the taxpayer and the county appraiser within five days after the date of the making of the decision or the date of approval of the director of property valuation {**state board of tax appeals**}, whichever occurs later. Notice of all changes of classification or valuation of property, including the justification for such changes, shall, within five days, be mailed to the director of property valuation {**state board of tax appeals**} pursuant to K.S.A. 1987 Supp/ 79-1481, and amendments thereto/ if such changes constitute the final decision of the county. Any appeal duly perfected not heard by the {**hearing officer or panel or county**} board {**of equalization**} on or before the date of final adjournment of {**such hearing officer or panel or**} the {**county**} board {**of equalization**}, shall be deemed to have been denied as of the date of final adjournment of the {**such hearing officer or panel or county**} board {**of equalization**} and the {**such hearing officer or panel or county**} board {**of equalization**} shall mail a notice of such denial to the taxpayer with five days after the date of such final adjournment.

Section 12: K.S.A. 79-1402, 79-1409, 79-1448, 79-1460, 79-1466, 79-1467, 79-1470, 79-1481, 79-1606, 79-1609 and 79-1610 are hereby repealed.

Section 13: This act shall take effect and be in force from and after its publication in the Kansas register.

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TAX PROTESTS

PROPOSAL VI

I. *SUMMARY.* This proposal would eliminate tax protests concerning the classification or valuation of the taxpayer's property under the provisions of K.S.A. 79-2005. Under the current provisions of K.S.A. 79-2005, taxpayers are given a second opportunity to challenge the classification and valuation of property. This proposal would permit the State Board Of Tax Appeals to hear an appeal which had not been timely filed under the appeal provisions upon showing of excusable neglect by the taxpayer. The protest procedure would then be limited to matters other than classification and valuation. (Bill Draft Attached)

II. *BACKGROUND.* Under present statutes any taxpayer aggrieved by the classification and/or valuation of their property may choose either or both of two totally separate appeals of such classification or valuation. First, the taxpayer may, after receiving the 'valuation notice' file an 'equalization appeal'. This appeal must be made within 21 days of the receipt of the 'valuation notice' by arranging an informal meeting with the county appraiser. If dissatisfied after the informal meeting, the taxpayer may continue the appeal through a hearing officer or panel, on to the county board of equalization, and further to the state board of tax appeals. In the alternative, the taxpayer may simply ignore the 'equalization appeal' process, pay the taxes under protest, have an informal meeting with the county appraiser and appeal the classification and/or valuation of the property to the state board of tax appeals. It is also possible that the taxpayer could go through the 'equalization appeals' process--not get the relief sought and run the same property through the 'protest process' to get a second chance at changing the classification or valuation in the same tax year.

It should also be pointed out that any changes in classification or valuation which are made during the 'protest process' are made after budgets have been approved and the levies for financing local budgets have been set.

III. *FISCAL IMPACT.* None.

Senate F&SA
2-7-90
Att. 2

1990 LEGISLATIVE PROPOSAL
TAX PROTESTS

AN ACT relating to property taxation; concerning protesting payment of taxes; written statement of grounds; proceedings for recovery of protested taxes, limitations; refund of protested taxes; taxing districts authorized to issue no-fund warrants; levy of taxes for payment of no-fund warrants; levy exempt from tax lid.

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

Section 1. K.S.A. 79-2005 is amended to read as follows: 79-2005. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or if the whole or part of the taxes are paid prior to December 20, no later than December 20, to file a written statement with the county treasurer, on forms approved by the director of property valuation {state board of tax appeals} and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which the whole or any part of such taxes are protested and citing any law, state or facts on which such taxpayer relies in protesting the whole or any part of such taxes. The county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or the taxpayer's agent or attorney and shall, within five business days thereof, notify the taxpayer of the results of the informal meeting.

(b) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of valuation or of assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested. {For tax years commencing after December 31, 1989, all tax protests shall be limited to illegal levies.}

(c) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such {The written} statement {of protest} shall further state the exact portion of such tax which is being protested.

(d) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county

treasurer shall mail a copy of such protest to the governing body of the taxing district making the levy being protested.

(e) Within 30 days after notification of the results of the informal meeting {filing the written statement of protest}, the protesting taxpayer must file an application for refund {a copy of the written statement of protest} with the state board of tax appeals, on forms approved by the state board of tax appeals and provided by the county treasurer, together with a copy of the written statement of protest.

(f) Upon receipt of the application for refund {copy of the written statement of protest}, the board shall docket the same and notify the taxpayer and the county treasurer of such fact. In addition thereto if the grounds of such protest is that the valuation of assessment of the property is illegal or void the board shall notify the county appraiser thereof.

(g) After examination of the application for refund {copy of the written statement of protest}, the board shall fix a time and place for hearing, unless waived by the interested parties in writing, and shall notify the taxpayer and the county treasurer of the time and place so fixed. The county treasurer shall then notify the clerk, secretary or presiding officer of the governing body of any taxing district affected by such application for refund, of the time and place for hearing. In addition thereto if the grounds of such protest is that the valuation of assessment of the property is illegal or void the board shall notify the county appraiser thereof.

(h) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the application {copy of the written statement of protest} with the board. In all instances where the board sets a request for hearing and requires the representation of the county by its attorney or counselor at such hearing, the county shall be represented by its county attorney or counselor.

(i) When a determination is made as to the merits of an application for refund {the tax protest}, the board shall enter its order thereon and give notice of the same to the taxpayer, county treasurer, and other interested parties as determined by the board by mailing to each a certified copy of its order. The county treasurer shall notify all affected taxing districts of the amount by which tax revenues will be reduced as a result of a refund. The date of an order, for purposes of filing an appeal to the district court, shall be the date of certification.

(j) If a protesting taxpayer fails to file ~~such application for refund~~ {**a copy of the written statement of protest**} with the board within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(k) In the event the board orders that a refund be made and no appeal is taken from such order, the county treasurer shall, as soon thereafter as reasonable practicable, refund to the taxpayer such protested taxes from tax moneys collected but not distributed. Upon making such refund, the county treasurer shall charge the fund or funds having received such protested taxes.

(l) Whenever, by reason of the refund of taxes from any fund, it will be impossible to pay for the imperative functions of such fund for the current budget year, the governing body of the taxing district affected shall issue no-fund warrants in an amount necessary to pay such refund. Such warrants shall conform to the requirements prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state board of tax appeals. The governing body of such taxing district shall make a tax levy at the time fixed for the certification of tax levies to the county clerk next following the issuance of such warrants sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and the tax levy limitations imposed by article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, and K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto, shall not apply to such levies.

(m) The county treasurer shall disburse to the proper funds all portions of taxes paid under protest and shall maintain a record of all portions of such taxes which are so protested and shall notify the governing body of the taxing district levying such taxes thereof and the director of accounts and reports if any tax protested was levies by the state.

(n) This statute shall not apply to the valuation and assessment of property assessed by the director of property valuation and it shall not be necessary for any owner of sate assessed property, who has an appeal pending before the board of tax appeals, to protest the payment of taxes under this statute solely for the purpose of protecting the right to a refund of taxes paid under protest should that owner be successful in that appeal.

Section 2. {**For tax years commencing after December 31, 1989, no taxpayer may appeal the classification or valuation of the taxpayer's property to the state board of**

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tax appeals unless the taxpayer has first appealed such classification or valuation to the hearing officer or panel or county board of equalization appointed pursuant to K.S.A. 79-1602, and amendments thereto, except that, the state board of tax appeals may, upon a showing of excusable neglect or undue hardship, hear an appeal from the classification and valuation of any taxpayer's property and may order a refund of taxes for any taxpayer who has not timely appealed such classification or valuation to such hearing officer or panel or county board of equalization. Provided however, that in no event shall the state board of tax appeals consider an appeal pursuant to the authority granted herein that extends back more than three years from the current tax year. Provided further, the state board of tax appeals shall have no authority under this section to order a refund of taxes for any tax year commencing prior to January 1, 1990.}

Section 3: K.S.A. 79-2005 is hereby repealed.

Section 4: This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. ____

By ~~Representative Johnson~~ Committee Bill

AN ACT concerning weights and measures; relating to annual inspections; amending K.S.A. 83-304 and 83-404 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 a registered technical representative employed by a licensed scale testing and service company 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 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 be conducted by an authorized representative of the city or county weights and measures department. A fee may be charged by any city or county conducting scale tests or inspections. 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 which conducts tests pursuant to this section shall, at the time of testing and inspection, promptly furnish to the owner

or operator of the scale a report showing the results of the tests and inspection. Within five calendar days thereafter, the scale testing and service company or the city or county shall furnish a copy of such report to the state sealer.

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

Sec. 2. K.S.A. 83-404 is hereby amended to read as follows: 83-404. (a) The owner or operator of a dispensing device which is used for commercial purposes shall have such device 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 dispensing devices, the test shall be conducted by a testing service in accordance with rules and regulations adopted by the state sealer. The test weights and measures used by the testing service shall have been approved and sealed by the state sealer pursuant to K.S.A. 83-214, and amendments thereto, within the 12 calendar months preceding the date of the test. The annual tests and inspections shall be at the expense of the owner or operator. In any city or county which has a department of public inspection of weights and

measures which annually inspects such dispensing devices, the tests shall be conducted by an authorized representative of such city or county weights and measures department. A fee may be charged by any city or county conducting such tests and inspections. Farmers or ranchers who own and operate a dispensing device used in private treaty transactions are exempt from the annual testing requirements.

(b) A testing service or the city or county which conducts tests pursuant to this section, at the time of testing and inspection, shall promptly furnish to the owner or operator a report showing the results of the tests and inspection. Within five calendar days thereafter, the testing service or the city or county shall furnish a copy of such report to the state sealer.

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

Sec. 3. K.S.A. 83-304 and 83-404 are hereby repealed.

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

UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899

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.

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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

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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

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.

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MEMORANDUM

TO: The Honorable Edward F. Reilly, Chairman
Senate Committee on Federal and State Affairs

FROM: Jim Conant, Revenue Manager
Dept. of Revenue, ABC Division

DATE: February 7, 1990

SUBJECT: Senate Bill 516, As Introduced

I appreciate the opportunity to appear before you today in support of legislation proposed by the Department of Revenue. Senate Bill 516 would repeal 14 statutes which have been identified by the Department as obsolete or unenforceable. Following is a brief description of the affected statutes, including an explanation why each is no longer effective.

K.S.A. 1989 Supp. 41-307a

This statute authorized the director to establish administrative procedures to convert distributors to the new three-license system (spirits, wine, beer). Procedures were established and all licensees converted effective Jan. 1, 1988. The statute has no further use or effect.

K.S.A. 41-329

This statute, in effect, would prohibit a manufacturer or supplier of alcoholic liquor from making direct sales to a military installation in the state of Kansas. This statute has been successfully challenged and is not being enforced.

K.S.A. 41-411

This statute provided a grace period during the implementation of the franchise laws in 1979 during which a distributor was allowed to sell out stocks of alcoholic liquor on hand for which they were not obtaining the required franchise rights. The statute has no further use or effect.

K.S.A. 41-501a

Similar in effect to K.S.A. 41-329, this statute deals with the taxability of alcoholic liquor sold to military installations. State gallonage taxes are not collected on alcoholic liquor sold directly to the military. In fact, the 1989 Legislature provided for a refund of the gallonage tax to distributors on all spirits sold to the military.

K.S.A. 41-504, 41-505, 1989 Supp. 41-506

These statutes provide for the sale or redemption for credit of tax stamps and crowns used to identify containers on which the gallonage tax has been paid. Since all gallonage tax is collected only from the Kansas licensee (distributor,

farm winery or microbrewery) which first manufactures or receives the product, these procedures are no longer in use. Generic tax stamps (decals) are applied to the original package by the manufacturer or supplier prior to shipping to Kansas distributors. Although there are procedures in place to allow for refunds to distributors on broken or unfit merchandise, there is no longer any need for redemption of unused stamps or crowns.

K.S.A. 41-1103, 41-1104, 41-1106

All three of these statutes were used in implementing the Liquor Control Act in 1949 and have no further use or effect.

K.S.A. 41-2714, 41-2715, 41-2716, 41-2717

These statutes provided for the licensing and regulation of cereal malt beverage wholesalers. With the restructuring of the distributor licensing system to include authority to sell cereal malt beverages under the rights of a beer distributor, these statutes have no further use or effect.

MEMORANDUM

TO: The Honorable Edward F. Reilly, Chairman
Senate Committee on Federal and State Affairs

FROM: Jim Conant, Revenue Manager
Alcoholic Beverage Control Division

DATE: February 7, 1990

SUBJECT: Senate Bill 517, As Introduced

I appreciate the opportunity to appear before you today in support of legislation proposed by the Department of Revenue. Senate Bill 517 is a result of Department recommendations intended to reduce unnecessary administrative costs and provide for more consistent enforcement of the liquor laws. Following is a brief description of the bill and an explanation of the Department's reasons for requesting each of the amendments.

Section 1 of the bill would amend K.S.A. 1989 Supp. 41-318, removing the requirement that ABC notify local authorities upon receipt of an application for renewal of an existing retail liquor license.

The notice to local clerks required at renewal time results in an unnecessary expense to the agency. Hearings are docketed and notices are sent, in duplicate (1 to licensee, 1 to city or township clerk), over 800 times per year to comply with this statute, resulting in expenditures of postage, stationery and staff time. There is no record of a city or township responding to these renewal notices or of hearings actually being held to receive any such testimony. The Department estimates savings of $3800 in postage, stationery and staff time would result from removal of this requirement

Section 2 of the bill would amend K.S.A. 1989 Supp. 41-333, requiring a retailer or retailer's employee to obtain a salesperson's permit in order to solicit business from an on-premise licensee unless they work solely on the licensed retail premises.

Since 1987, retailers have been allowed to sell and deliver alcoholic liquor to on-premise licensees. Effective with this change, it was determined by ABC that it was no longer appropriate to prohibit a retailer from providing price listings to or making sales calls on the premises of a licensed club or drinking establishment. They are currently allowed to call on and solicit business from these licensees, but are statutorily exempt from the registration requirements placed on manufacturer and distributor salespersons. Removal of this exemption would result in consistent application of salesperson requirements and assist ABC in identifying persons authorized to solicit sales of alcoholic liquor.

ABC records indicate that 483 retailers make regular sales to on-premise licensees. The division estimates that less than 200 retail representatives make sales contacts on club and drinking establishment premises. The imposition of

the $10 sales permit fee on this group would have a minimal impact on the industry or state revenues.

The Department recommends an additional amendment to K.S.A. 1989 Supp. 41-334(c) to eliminate the prohibition in that section against the issuance of a salesperson's permit to a person with a beneficial interest in a licensed retailer.

Section 3 would amend K.S.A. 1989 Supp. 41-2643, requiring a licensed caterer to notify the director at least 10 days in advance of any event at which the caterer sells liquor.

A caterer is currently required to notify only local authorities, with no specified advance notice, when an event is scheduled. Sales of alcoholic liquor by all other licensees can be monitored by ABC for compliance because the times and locations of sale are known in advance by the agency. Our current inability to monitor catered events results in inconsistent enforcement of the liquor laws and allows potential violations to go undetected. There are currently 33 licensed caterers operating in the state.

Section 4 would amend K.S.A. 1989 Supp. 41-2645, requiring an application for a temporary permit to be filed with the director at least 14 days prior to the event.

Temporary permit applications are currently required to be filed not less than 7 days in advance of the event. In most cases, the applicant is completely unfamiliar with the liquor laws and regulations which apply to the permit. It has been our experience that compliance levels are greater and the potential for violations reduced when an enforcement agent can be assigned to contact a permit holder prior to the event. This allows for questions to be answered and potential violations addressed prior to the development of an illegal situation. The 7 day notice is rarely sufficient to allow enforcement personnel to make advance contact, let alone schedule an agent for coverage of the event itself. The division issued 224 temporary permits in calender year 1989.

I would be happy to answer any questions you may have.

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