

Approved February 20, 1990
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

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

9:00 a.m./~~p.m.~~ on February 15, 1990 in room 531-N of the Capitol.

All members were present except:

Senators Steineger and Gaines - Excused

Committee staff present:

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

Conferees appearing before the committee:

Bob McDanel, Administrator of the Emergency Medical Services Board
Janet Stubbs, Homebuilders Association

Bob McDanel, Administrator of the Emergency Medical Services Board, requested the introduction of a bill which would clean up or clarify the statutory language dealing with the Emergency Medical Services statutes created by the act of 1988. (See Attachment I).

Sen. Ehrlich made a motion to introduce the bill, Sen. Daniels seconded, and the motion carried.

Sen. Petty had a request for the introduction of a bill relating to the consolidation of operations, procedures and functions of municipalities. (See Attachment II).

Sen. Petty made a motion to introduce the bill, Sen. Burke seconded, and the motion carried.

The Chairman called the committee's attention to a letter he had received from the County of Decatur with the request for a bill dealing with county maintenance of township roads in non-county unit counties. (See Attachment III).

Sen. Allen made a motion to have the bill introduced, Sen. Frahm seconded, and the motion carried.

With regard to the second paragraph of the same letter, Sen. Daniels made a motion that the Revisor do research for additional information for the possible introduction of a bill, Sen. Burke seconded, and the motion carried.

Sen. Burke requested the introduction of a bill regarding the City of Olathe dealing with the merging of fire districts when a city annexes, Sen. Frahm seconded, and the motion carried.

Sen. Petty made a motion that additional information be gathered for the possible introduction of a bill regarding service fees for police and fire on tax exempt property, Sen. Burke seconded, and the motion carried.

Sen. Allen made a motion that a bill be introduced on lease-purchase agreements, Sen. Lee seconded, and the motion carried.

The Chairman called on Janet Stubbs, Home Builders Association, for further testimony on SB 577 which had been previously heard. (See Attachment IV and V).

The Chairman informed the committee that Gene Yockers of the Kansas Real

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

room 531-N, Statehouse, at 9:00 a.m. ~~p.m.~~ on February 15, 1990

Estate Commission had visited with him regarding SB 577 and said that if the bill were passed, it would severely handicap the Commission by depleting its fee fund, and it would need other revenue to operate. However, the Chairman stated that he feels this is not the case and reminded the committee that Mr. Yockers had testified that the bill would have no financial effect on the Commission. Ms. Stubbs stated that if the bill is passed and subsequently a problem develops for the consumer, she would be back to the legislature asking for changes. Discussion of the bill will continue at a later date.

The Chairman began a discussion of SB 479 which was introduced at the Revisor's request as a clean-up bill clarifying an issue not resolved by a conference committee last year. It would give counties the same authority as cities to create public building commissions. Sen. Burke began a discussion as to if the bill is merely a clean-up bill or a policy issue. It was determined it is a policy issue if the Ways and Means Committee had wanted the bill to apply to cities only. The Chairman determined that the bill may need a hearing after more research is done by staff.

The minutes of February 13 and 14 were approved.

The meeting was adjourned at 9:50 a.m.

Requested by
Robert D. Dineen
of the Emergency
Medical Services Board

SENATE BILL NO. _____

AN ACT concerning the emergency medical services board; relating to the powers, duties and functions thereof; amending K.S.A. 80-1557 and K.S.A. 1989 Supp. 65-6110, 65-6112, 65-6121, 65-6126, 65-6132, 65-6133, 65-6136, 65-6146 and 65-6149 and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 65-6110 is hereby amended to read as follows: 65-6110. (a) The board shall adopt any rules and regulations necessary for the regulation of ambulance services. Such rules and regulations shall include: (1) A classification of the different types of ambulance services; (2) requirements as to equipment necessary for ambulances and rescue vehicles; (3) qualifications and training of attendants, instructor-coordinators and first responders; (4) requirements for the licensure and renewal of licensure for ambulances and rescue vehicles; (5) records and equipment to be maintained by operators and attendants and (6) such other matters as the board deems necessary to implement and administer the provisions of this act.

~~(b) -- Vehicles in use as emergency ambulances on July 17, 1975, may continue to be used for this purpose as long as the owner or lessee of such vehicle as of July 17, 1977, continues to own or lease such vehicle.~~

(b) The provisions of this act shall not apply to rescue vehicles operated by a fire department.

Sec. 2. K.S.A. 1989 Supp. 65-6112 is hereby amended to read as follows: 65-6112. As used in this act: (a) "Administrator" means the administrator of the emergency medical services board.

(b) "Ambulance" means any privately or publicly owned motor

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vehicle, airplane or helicopter designed, constructed, prepared and equipped for use in transporting and providing emergency care for individuals who are ill, or injured ~~or otherwise disabled,~~ including ~~any specially constructed and equipped motor vehicle,~~ ~~airplane or helicopter which is capable of providing life support services for extended periods of time.~~

(c) "Ambulance service" means any organization operated for the purpose of transporting sick, or injured, ~~disabled or otherwise incapacitated~~ persons to or from a place where medical care is furnished, whether or not such persons may be in need of emergency or medical care in transit.

(d) "Attendant" means a crash injury management technician, an emergency medical technician, an emergency medical technician-intermediate, an emergency medical technician-defibrillator or a mobile intensive care technician whose primary function is ministering to the needs of persons requiring emergency medical services.

(e) "Board" means the emergency medical services board established pursuant to K.S.A. 1988 1989 Supp. 65-6102, and amendments thereto.

(f) "Crash injury management technician" means any person who has successfully completed a course of training, approved by the board, in preliminary emergency medical care.

(g) "Emergency medical service" means a service which provides for the effective and coordinated delivery of such emergency care as may be required by an emergency, including services provided by first responders and transportation of individuals by ground or air ambulances and the performance of authorized emergency care by a person licensed to practice medicine and surgery, a licensed professional nurse, a registered physician's assistant, a crash injury management technician, an emergency medical technician, emergency medical technician-intermediate, emergency medical technician-defibrillator or a mobile intensive care technician.

(h) "Emergency medical technician" means any person who has

successfully completed a course of training, approved by the board, in preliminary emergency medical care.

(i) "Emergency medical technician-defibrillator" means any person, currently certified as an emergency medical technician or emergency medical technician-intermediate, who has successfully completed a training program in cardiac defibrillation approved by the board.

(j) "Emergency medical technician-intermediate" means any person, currently certified as an emergency medical technician, who, after not less than one year's certification as an emergency medical technician, has successfully completed a course of training approved by the board which includes training in veni-puncture for blood sampling and administration of intravenous fluids and advanced patient assessment.

(k) "First responder" means a person who has successfully completed a course of training in preliminary emergency care, who holds a valid first responder certificate under this act and who provides services to individuals in need of emergency medical care that assist in stabilization or improvement of such individual's condition until personnel with a higher level of training arrive at the scene and assume responsibility for the individual.

(l) "Instructor-coordinator" means any person who has successfully completed a course of training, approved by the board, to instruct attendants.

(m) "Local component medical society" means a county medical society or a multicounty medical society.

(n) "Medical adviser" means a person licensed to practice medicine and surgery.

(o) "Mobile intensive care technician" means any person who has successfully completed a course of training, approved by the board, in emergency cardiac and noncardiac care in a training program.

(p) "Municipality" means any city, county, township, fire district or ambulance service district.

(q) "Operator" means a person or municipality who has a permit to operate an ambulance service in the state of Kansas.

(r) "Person" means an individual, a partnership, an association, a joint-stock company or a corporation.

Sec. 3. K.S.A. 1989 Supp. 65-6121 is hereby amended to read as follows: 65-6121. Notwithstanding any other provision of law to the contrary, an emergency medical technician may perform any of the following:

- (a) Patient assessment and vital signs;
- (b) airway maintenance to include use of:
 - (1) Oropharyngeal and nasopharyngeal airways;
 - (2) esophageal obturator airways with or without gastric suction device; and
 - (3) oxygen demand valves.
- (c) Oxygen therapy;
- (d) oropharyngeal suctioning;
- (e) cardiopulmonary resuscitation procedures;
- (f) control accessible bleeding;
- (g) application of pneumatic anti-shock garment;
- (h) management of outpatient medical emergencies;
- (i) extrication of patients and lifting and moving techniques;
- (j) management of musculoskeletal and soft tissue injuries to include dressing and bandaging wounds or the splinting of fractures, dislocations, sprains or strains;
- (k) use of backboards to immobilize the spine; or
- (l) monitor peripheral intravenous line delivering intravenous fluids during interfacility transport with the following restrictions:
 - (1) The patient is noncritical and deemed stable by the transferring physician and the physician approves the transfer by an emergency medical technician;
 - (2) no medications or nutrients have been added to the intravenous fluids;
 - (3) the emergency medical technician may monitor and,

maintain and shut off the flow of intravenous fluid ~~and shut off the flow except that by voice contact with a person licensed to practice medicine and surgery or a registered professional nurse when authorized by a person licensed to practice medicine and surgery the intravenous line may be discontinued.~~

Sec. 4. K.S.A. 1989 Supp. 65-6126 is hereby amended to read as follows: 65-6126. ~~(a) Except as provided in subsection (b),~~ Each emergency medical service shall have a medical adviser appointed by the operator of the service to review, approve and monitor the activities of the attendants. The board may approve an alternative procedure for medical oversight if no medical adviser is available.

~~(b) Each emergency medical service which employs an emergency medical technician defibrillator shall have a medical adviser appointed by the operator of the service to review, approve and monitor the activities of the emergency medical technician defibrillator.~~

Sec. 5. K.S.A. 1989 Supp. 65-6132 is hereby amended to read as follows: 65-6132. (a) An operator's permit may be denied, revoked, limited, modified or suspended by the board upon proof that such operator or any agent or employee thereof:

(1) Has been guilty of misrepresentation in obtaining the permit or in the operation of the ambulance service;

(2) has engaged or attempted to engage in, or represented themselves as entitled to perform, any ambulance service not authorized in the permit;

(3) has demonstrated incompetence as defined by rules and regulations adopted by the board or has shown themselves otherwise unable to provide adequate ambulance service;

(4) has failed to keep and maintain the records required by the provisions of this act, or the rules and regulations promulgated thereunder, or has failed to make reports when and as required;

(5) has knowingly operated faulty or unsafe equipment; or

(6) has violated or aided and abetted in the violation of

any provision of this act or the rules and regulations promulgated thereunder.

(b) The board shall not limit, modify, revoke or suspend any operator's permit pursuant to this section without first conducting a hearing in accordance with the provisions of the administrative procedure act.

Sec. 6. K.S.A. 1989 Supp. 65-6133 is hereby amended to read as follows: 65-6133. (a) An attendant's or instructor-coordinator's certificate may be denied, revoked, modified or suspended by the board upon proof that such attendant:

(1) Has been guilty of misrepresentation in obtaining the certificate;

(2) has engaged or attempted to engage in, or represented themselves as entitled to perform, any service not authorized in the certificate;

(3) has demonstrated incompetence as defined by rules and regulations adopted by the board or has shown themselves otherwise unable to provide adequate service;

(4) has violated or aided and abetted in the violation of any provision of this act or the rules and regulations promulgated thereunder;

(5) has been convicted of a felony and, after investigation by the board, it is determined that such person has not been sufficiently rehabilitated to warrant the public trust;

(6) has demonstrated habitual intemperance or is addicted to the use of habit-forming drugs; or

(7) has engaged in unprofessional conduct, as defined by rules and regulations adopted under this act.

(b) The board shall not limit, modify, revoke or suspend any attendant's or instructor-coordinator's certificate pursuant to this section without first conducting a hearing in accordance with the provisions of the Kansas administrative procedure act.

Sec. 7. K.S.A. 1989 Supp. 65-6136 is hereby amended to read as follows: 65-6136. (a) Nothing in this act shall be construed:

(1) To prevent the operation of a police emergency vehicle;

(2) to affect any statute or regulatory authority vested in the department of transportation concerning automotive equipment and safety requirements;

(3) to prohibit any privately owned vehicles and aircraft not ordinarily used in the ambulance service business from transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless;

(4) to prevent any vehicle from being pressed into service as an ambulance when the operator determines an emergency exists and provides written notification to the board within 72 hours after the use of such vehicle; or

(5) to prohibit any ambulance lawfully operating under the laws of a state adjoining Kansas from providing emergency transportation of a patient from a municipality not otherwise served by an ambulance service located in Kansas to a location within or outside the state of Kansas when the governing body of such municipality declares a hardship. The governing body or board shall notify the board 30 days prior to the initiation of such out-of-state service.

(b) Ambulances owned and operated by an agency of the United States government shall be exempt from the provisions of this act.

(c) Any ambulance based outside of this state receiving a patient within the state for transportation to a location within this state or receiving a patient within this state for emergency transportation to a location outside this state shall comply with the provisions of this act except when such ambulance is rendering service in the case of a major catastrophe, such ambulance is making a prearranged hospital-to-hospital transfer or except as otherwise provided by rules and regulations adopted by the board.

New Sec. 8. (a) It shall be unlawful for any individual to represent oneself as an attendant or instructor-coordinator unless such individual holds a valid certificate as such under

this act.

(b) Any violation of subsection (a) shall constitute a class B misdemeanor.

Sec. 9. K.S.A. 1989 Supp. 65-6146 is hereby amended to read as follows: 65-6146. (a) A first responder's certificate may be denied, revoked, limited, modified or suspended by the board upon proof that such first responder:

(1) Has been guilty of misrepresentation in obtaining the certificate;

(2) has engaged or attempted to engage in, or represented oneself as entitled to perform, any service not authorized in the certificate;

(3) has demonstrated incompetence as defined by rules and regulations adopted by the board or has shown oneself otherwise unable to provide adequate service;

(4) has violated or aided and abetted in the violation of any provision of this act or the rules and regulations promulgated thereunder;

(5) has been convicted of a felony and, after investigation by the board, it is determined that such person has not been sufficiently rehabilitated to warrant the public trust;

(6) has demonstrated habitual intemperance or is addicted to the use of habit-forming drugs; or

(7) has engaged in unprofessional conduct.

(b) The board shall not revoke, limit, modify or suspend any first responder's certificate pursuant to this section without first conducting a hearing in accordance with the provisions of the Kansas administrative procedure act. Proceedings under this section may be initiated by the board or by any person filing written charges with the board.

Sec. 10. K.S.A. 1989 Supp. 65-6149 is hereby amended to read as follows: 65-6149. (a) Any certified first responder, emergency medical technician or emergency medical technician-intermediate in this state may be certified in the use of automated defibrillators for cardiac defibrillation in accordance with the

provisions of this act. The board shall adopt rules and regulations establishing minimum, basic standards governing training in the use of automated defibrillators in accordance with this act. This training shall be conducted by instructors who are qualified to conduct such training in accordance with the rules and regulations adopted by the board. The minimum course of training shall be not less than four clock hours in length and the maximum course of training shall be not more than six clock hours in length.

(b) Each local service provider shall develop medical protocols consistent with the criteria established by the board and approved by the local component medical society if available.

(c) Upon the satisfactory completion of training in the use of automated defibrillators for cardiac defibrillation as authorized under this section, the certified first responder, emergency medical technician or emergency medical technician-intermediate who has satisfactorily completed such training shall be issued a certificate indicating that such person has satisfactorily completed such training. The certificate shall be issued in a form prescribed by the board by rules and regulations. The certificate shall be valid ~~for one~~ through December 31 of the year following the date of initial issuance and may be renewed ~~upon the expiration thereof at the end of such one-year period~~ thereafter for a period of one year by retaking and satisfactorily completing the training in the use of automated defibrillators for cardiac defibrillation authorized under this section. An individual who holds a valid certificate under this subsection (c) may perform cardiac defibrillation with an automated defibrillator on a pulseless, nonbreathing patient.

(d) No individual who holds a valid certificate under subsection (c) for the satisfactory completion of training in the use of automated defibrillators for cardiac defibrillation shall be liable for civil damages as a result of the use by such individual of an automated defibrillator to provide cardiac defibrillation during an emergency, except such damages which may

result from gross negligence or by willful or wanton acts or omissions on the part of such individual.

Sec. 11. K.S.A. 80-1557 is hereby amended to read as follows: 80-1557. (a) As used in this section:

(1) "Rescue service" means a service which provides emergency care by qualified personnel through a township or fire district fire department.

(2) "Emergency care" means the services provided after the onset of a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to: (A) Place the patient's health in serious jeopardy; (B) seriously impair bodily functions; or (C) result in serious dysfunction of any bodily organ or part.

(3) "Qualified personnel" means any individual who holds a certificate as ~~a-crash-injury-management-technician,-an-emergency medical-technician,-an-emergency-medical--technician-intermediate or--a--mobile--intensive--care--technician~~ an attendant or first responder, as these terms are defined in K.S.A. 65-430~~±~~ 65-6112, and amendments thereto.

(4) "Township" means any township which has established a fire department pursuant to K.S.A. 80-1901 et seq., and amendments thereto.

(5) "Fire district" means any fire district which has established a fire department pursuant to K.S.A. 80-1540 et seq., and amendments thereto.

(b) The township board or governing body of the fire district may authorize the township or fire district fire department to provide rescue service as a township or fire district function, within or without the township or fire district, or may contract with any person or governmental entity for the furnishing of rescue service and upon such terms and conditions, and for such compensation as may be agreed upon which shall be payable from the township general fund or the fire fund or the fire district fund.

(c) The township board or governing body of the fire district may establish charges to persons receiving rescue service inside or outside of such township or fire district. The charges so made and received shall be deposited in the general funds of the township or fire district, and the same may be used in addition to funds received under the tax levies authorized by K.S.A. 80-1546 and 80-1903, and amendments thereto ~~and-K-S-A-80-1546-and-amendments-thereto.~~

(d) Qualified personnel providing rescue service shall be compensated in the same manner as other fire department employees and volunteers as provided by K.S.A. 80-1544 and 80-1904, and amendments thereto ~~and-by-K-S-A--80-1544-and-amendments-thereto.~~

Sec. 12. K.S.A. 80-1557 and K.S.A. 1989 Supp. 65-6110, 65-6112, 65-6121, 65-6126, 65-6132, 65-6133, 65-6136, 65-6146 and 65-6149 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

MEMBERS COPY

SENATE BILL NO. _____

By Senator Petty

AN ACT concerning municipalities; relating to the consolidation of operations, procedures and functions; amending K.S.A. 1989 Supp. 12-3903 and 12-3904 and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 12-3903 is hereby amended to read as follows: 12-3903. Whenever the governing body of any political or taxing subdivision of this state shall by resolution determine that duplication exists in the operations, procedures or functions of any of the offices or agencies of such subdivision or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single office or agency, or whenever the governing body of any two or more political or taxing subdivisions of this state shall by the passage of identical resolutions determine that duplication exists in the operations, procedures or functions of offices or agencies of such subdivisions or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single intergovernmental office or agency or by a single office or agency of one of the participating political or taxing subdivisions, such governing body or governing bodies are hereby authorized to consolidate any or all of the operations, procedures or functions performed or carried on by such offices or agencies by the passage of a resolution or identical resolutions setting out the time, form and manner of consolidation and designating the surviving office or agency. The

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elimination of an elective office by consolidation under the provisions of this act shall be subject to the approval of a majority of the electors of the political or taxing subdivision served by such office, voting ~~in--the--next--regular--general~~ election-of-the-county-in-which-the-office-of-governor-is-elected at an election called and held for such purpose, in the manner provided by the general bond law. Any such proposed consolidation which eliminates any such elective office shall provide that the elimination of such office shall become effective upon the date of normal expiration of the term of such office. Any such proposed consolidation which eliminates any such elective office shall not be voted on by the governing body of the political or taxing subdivision until a special public hearing is held within the political or taxing subdivision. Notice of such special hearing shall be published in a newspaper of general circulation in the political or taxing subdivision once each week for two consecutive weeks prior to the hearing. The first publication shall not be less than 21 days prior to such hearing. Any elected officer whose office would be eliminated in such consolidation and any other interested party shall be given an opportunity to appear and offer testimony at any of such hearings.

Sec. 2. K.S.A. 1989 Supp. 12-3904 is hereby amended to read as follows: 12-3904. Whenever a sufficient petition, ~~signed--by~~ ~~not--less--than-10%-of-the-qualified-electors-of-any-political-or~~ ~~taxing-subdivision-of-this-state-or-any-two-or-more-political--or~~ ~~taxing--subdivisions--of--this--state,~~ shall be is filed with the governing body of such a political or taxing subdivision or subdivisions of this state requesting that a proposition for the consolidation of specified operations, procedures and functions of designated offices or agencies of such subdivision or subdivisions be submitted to the electors thereof, such governing body or governing bodies shall submit such proposition at an election called and held for such purpose in the manner provided by the general bond law. ~~If--such--proposition--eliminates--an~~

elective--office--by--consolidation,--the--governing--body--of--such
 subdivision--or--subdivisions--shall--provide--for--the--hearing--and
 submit--such--proposition--at--the--next--regular--general--election--of
 the--county--in--which--the--office--of--governor--is--elected--in
 accordance--with--K.S.A.--12-3903,--and--amendments--thereto. Any such
 petition shall be signed by at least 5% of the qualified electors
 of each political or taxing subdivision involved in the proposed
 consolidation.

Sec. 3. K.S.A. 1989 Supp. 12-3903 and 12-3904 are hereby
 repealed.

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

Additional possibilities — pts of discussion:

1. majority of votes within ^{each of} the governmental units
2. once majority vote is made, joining of functions (i.e. public works, law enforcement) would occur within the next budget cycle.
3. specifications would be drafted by ~~a~~ ^{the} governmental unit interested in being in charge of delivering the service
4. Each governmental unit would bid against each other for most cost effective service delivery for cost over three year period.
5. Bid would be selected by a panel comprised of representatives from each participating governmental unit.
6. There would be an "out" if bids are more than than the individual budgets when added together (i.e. signifying consolidation is not cost effective).

County Of Decatur

Dennis L. Sloan
Jack Noone
Ralph D. Unger
Commissioners
913-475-2922

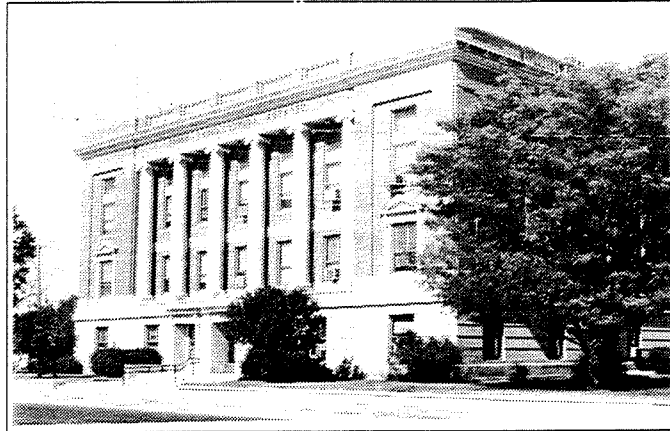
Marilyn Horn
County Clerk
913-475-2132

Pat Fringer
County Treasurer
913-475-2521

Steven W. Hirsch
County Attorney
913-475-2296

Ken Badsky
County Sheriff
913-475-3884

Patricia M. Whetzel
Register Of Deeds
913-475-3051



John E. Bremer
Magistrate Judge
913-475-3161

Charlotte Meints
Clerk Of The District Court
913-475-2932

County Engineer
913-475-3041

Charles F. Votapka
County Weed Supervisor
913-475-3094

Ruth M. Bainter
County Appraiser
913-475-2627

Joy V. Haney
County Health Nurse
913-475-3090

P. O. Box 296, Oberlin, Kansas 67749

February 9, 1990

State Senator Don Montgomery
State Capitol
Topeka, KS 66612

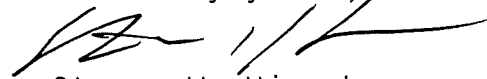
Dear Senator Montgomery:

Our county commissioners have asked that I mail you our proposed amendments to K.S.A. 68-561 dealing with county maintenance of township roads in non-county unit counties. Our concern is that some townships may not levy sufficient funds to provide for maintenance, thus providing the county with a potential liability exposure. We would like to see the statute changed to provide that the county commissioners shall determine the road levy in these particular townships.

The commissioners also asked that I pass along to you our concerns about the special funds which exist for our county treasurers and sheriffs dealing mainly with motor vehicles. These special funds are outside the control of the county commissioners and are inappropriate in that regard. These special funds cause real salary differentials which are difficult to justify to other county officers. It does not appear to be sound judgment to allow these special funds to be outside the province of the county commissioners.

Thank you for your time and attention given this matter.

Sincerely yours,



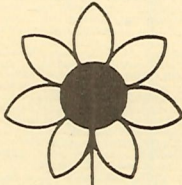
Steven W. Hirsch

SWH/ps
cc: County Commissioners

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K.S.A. 68-561. Same; procedure upon adoption of act; tax levies; use of machinery. Whenever any township has petitioned or voted to turn over the maintenance, repair and construction of the township roads to the county, as hereinbefore provided, the township board of such township is hereby authorized and directed to pay over to the board of county commissioners of such county any and all unused road money or funds or surplus funds and all other moneys received by such township for road purposes and in the hands of such township board and any road machinery or equipment owned by such township, to be used by the board of county commissioners for road work on the township roads in the township. The county engineer or road supervisor in consultation with the board of county commissioners shall determine what road work shall be done and when it shall be done.

The county commissioners shall each year determine and levy an amount of money to be raised by taxation for the purpose of maintenance, repair, and/or construction of the township's roads for the year next ensuing. Such taxes and all other money received by either the county commissioners or the township board for road purposes shall be placed by the county treasurer in a separate fund to be used by the county commissioners only for maintenance, repair, and/or construction on township roads within the township; Provided, that the county shall not be obligated to spend on the roads and highways of such townships more money than is credited to said separate fund.



HOME BUILDERS ASSOCIATION OF KANSAS, INC.

Executive Director
JANET J. STUBBS

OFFICERS

President

JIM MINER
6606 West Central
Wichita, Ks. 67212
316-942-1891

Vice President

LOWELL MILLER
5835 S.W. 29th, Suite 202
Topeka, Ks. 66614
913-273-2181

Treasurer

ELTON PARSONS
3500 North Rock Road
Bldg. 100
Wichita, Ks. 67226
316-686-3939

Secretary

MIKE HAWKS
6225 S.W. 23rd St.
Topeka, Ks. 66614
913-273-4069

H.B.A. ASSOCIATIONS

Dodge City
Hutchinson
Manhattan
Montgomery County
Salina
Topeka
Wichita

PAST PRESIDENTS

Lee Haworth 1965 & 1970
Warren Schmidt 1966
Mel Clingan 1967
Ken Murrow 1968
Roger Harter 1969
Dick Mika 1971-72
Terry Messing 1973-74
Denis C. Stewart 1975-76
Jerry D. Andrews 1977
R. Bradley Taylor 1978
Joel M. Pollack 1979
Richard H. Bassett 1980
John W. McKay 1981
Donald L. Tasker 1982
Frank A. Stuckey 1983
Harold Warner, Jr. 1984
Joe Pashman 1985
Jay Schrock 1986
Richard Hill 1987
M.S. Mitchell 1988
Robert Hogue 1989

TO: MEMBERS OF THE SENATE LOCAL GOVERNMENT COMMITTEE
FROM: JANET STUBBS, EXECUTIVE DIRECTOR
DATE: February 13, 1990
RE: SB 577

Several questions were raised during committee discussion which, in my opinion, caused needless confusion over the amendment the HBA of Kansas has requested in SB 577.

1. SB 45, of 1989, amended the Real Estate Brokers' and Salespersons' License Act to clarify that a licensee may represent either the buyer or the seller or the buyer and the seller, but must divulge this information either orally or in writing. Therefore, it is not unheard of for the seller to be represented as was indicated during committee discussion. In fact, some licensed real estate agent must have a contract with the seller to show his property. The builder's problems have been that he had that contract with a Realtor but the Realtor was more interested in making a sale to obtain the commission than he was to represent the builder/seller.

If the individual showing the house was an employee of the builder/seller, there would be no doubt who he was representing. However, the builder would be very concerned with the knowledge and conduct of his employee representative because the prospective buyer might be interested in another floor plan or location, etc., if not the particular site he is being shown, and would not want the buyer to lose confidence in the builder's agent/employee which could cost him business.

2. The concern over the builder's liability vs. that of the Real Estate Broker was expressed and should be explained further.

First of all, the licensed salesperson works as an independent contractor under the licensed broker. What that means is that the broker cannot require specific hours or have control of this "independent contractor" as an "employee". This was spelled out specifically in SB 176 of the 1986 session to insure that these individuals did not have to pay worker's compensation premiums.



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In a strict employee-employer relationship, as the builder would have with his representative, the builder would have more control with the same actual legal liability to the consumer. Our attorney has stated that both broker and builder are liable for the salesperson and employee actions performed within the scope of the duties. The major difference is that the broker is an agent of the owner and selling someone else's property.

The manner in which the builder compensates his employee should not, in our opinion, be specified in the statute. Most of the people who will be exempted by this amendment will have primary responsibilities other than showing a house and will be compensated accordingly. We do not provide the method of compensation for a broker or salesperson will receive. That is negotiable between them and the seller. Mr. Mayer indicated to the Committee that that percentage of commission varies.

The builder is the owner of the property and will be the person to sign the contract on the property. It will be a transaction between a willing buyer and a willing seller, with the same investigative steps made by the title company to ensure clear title for the consumer and the closing forms will be signed with the same procedure as it is now.

The difference will be that the consumer will have had the opportunity to know more about his new purchase and will not be forced to pay a 5% to 7% Realtor commission on top of the actual material cost plus builder's overhead.

If we are truly concerned about providing affordable housing for the middle-class working people of Kansas, then this amendment will assist in reaching that goal.

SENATE BILL No. 577

By Committee on Local Government

1-31

9 AN ACT concerning real estate brokers and salespersons; relating
10 to exemptions from licensure; amending K.S.A. 1989 Supp. 58-
11 3037 and repealing the existing section.
12

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

14 Section 1. K.S.A. 1989 Supp. 58-3037 is hereby amended to read
15 as follows: 58-3037. The provisions of this act shall not apply to:

16 (a) Any person who directly performs any of the acts within the
17 scope of this act with reference to such person's own property.

18 (b) Any person who directly performs any of the acts within the
19 scope of this act with reference to property that such person is
20 authorized to transfer in any way by a power of attorney from the
21 owner, provided that such person receives no commission or other
22 compensation, direct or indirect, for performing any such act.

23 (c) Services rendered by an attorney licensed to practice in this
24 state in performing such attorney's professional duties as an attorney.

25 (d) Any person acting as receiver, trustee in bankruptcy, admin-
26 istrator, executor or guardian, or while acting under a court order
27 or under the authority of a will or a trust instrument or as a witness
28 in any judicial proceeding or other proceeding conducted by the
29 state or any governmental subdivision or agency.

30 (e) Any officer or employee of the federal or state government,
31 or any political subdivision or agency thereof, when performing the
32 official duties of the officer or employee.

33 (f) Any multiple listing service wholly owned by a nonprofit or-
34 ganization or association of brokers.

35 (g) Any nonprofit referral system or organization of brokers
36 formed for the purpose of referral of prospects for the sale or listing
37 of real estate.

38 (h) Railroads or other public utilities regulated by the state of
39 Kansas, or their subsidiaries, affiliated corporations, officers or reg-
40 ular employees, unless performance of any of the acts described in
41 subsection (f) of K.S.A. 58-3035 and amendments thereto is in con-
42 nection with the sale, purchase, lease or other disposition of real
43 estate or investment therein unrelated to the principal business ac-

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tivity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a corporation which owns or leases such real estate, if such employee owns not less than 5% of the stock of such corporation.

(j) The sale or lease of new homes by a person, partnership, association or domestic corporation who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, partnership or association or by any employee of such corporation who owns less than 5% of the stock of such corporation or an employee of such person, partnership, association or corporation.

(k) The lease of real estate for agricultural purposes.

Sec. 2. K.S.A. 1989 Supp. 58-3037 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

residential

Any earnest money received pursuant to a contract for sale or lease under this subsection shall be deposited in an escrow account held by a title insurance company.

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