

Approved March 26, 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 March 23, 1990 in room 531-N of the Capitol.

All members were present except:

Senators Gaines and Burke

Committee staff present:

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

Conferees appearing before the committee:

Rep. George Teagarden
Sen. Dan Thiessen
Joe Scammey
Dan Small
Darrell Boulanger
Bill Pounds
Waynes Blaes
Connie Tucker
Ron McPherson
John Torbert, Kansas Association of Counties
Barry Hokanson, Johnson County
Jim Kaup, League of Kansas Municipalities

The hearing began on HB 3077 relating to planning and zoning in counties. Rep. George Teagarden testified in support. He said it was done at the request of the planning committee in Miami County. Current law allows 11 on a county planning commission. The bill increases this to 13 or one for each township, with a maximum of 20 as on page 1, line 20.

Sen. Dan Thiessen followed with further testimony in support, particularly the section which provides that zoning in Montgomery County must be put to a vote of the people.

Several Montgomery County residents testified in support of HB 3077 as follows: Joe Scammey (See Attachment I), Dan Small (See Attachment II), Darrell Boulanger (See Attachment III), Bill Pounds (See Attachment IV), Wayne Blaes (See Attachment V), Connie Tucker who stood in support of the others, and Ron McPherson (See Attachment VI).

Staff reviewed the Attorney General's opinion with regard to Section 3 of the bill. County zoning laws are uniform except for this one section.

John Torbert, Kansas Association of Counties, testified in opposition to HB 3077. (See Attachment VII).

Discussion followed concerning a situation in Montgomery County where a petition was refused by the county commissioners. Sen. Steineger said he feels this is a local problem which should not be handled statewide. He determined that there is no initiative referendum for counties, therefore, the commissioners had the authority to refuse the petition in Montgomery County. The only remedy for this other than this bill is to not vote for the commissioners the next election.

Barry Hokanson, Johnson County, expressed his concern with certain provisions of the bill. (See Attachment VIII).

Jim Kaup with the League of Kansas Municipalities stood to offer his

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on Msrch 23, 1990

unofficial testimony. He will submit written testimony later. His organization is an advocate of local home rule, and the impact of Section 3 is over and above Montgomery County which makes it a policy issue. These decisions should be down at the local level, and if the people of the county are unhappy with the commissioners, they should vote them out of office. Sen. Daniels commented that the situation in Montgomery County seems to be too urgent to wait for the next election. With this, the hearing on HB 3077 was concluded.

The Chairman called the committee's attention to HB 2982 concerning abatement of nuisances which had been previously heard and discussed. The revisor had prepared an amendment on page 2, line 30, to guarantee that a person surrendering his tag and registration would be given a refund. Sen. Frahm made a motion to so amend HB 2982, Sen. Allen seconded, and the motion carried.

A discussion began regarding the time limit for a person to remove the undesirable vehicle from his property. Sen. Steineger felt the bill should provide how much notice a city must give prior to towing a vehicle away. It should be adequate time, such as 30 days, to allow for the possibility that the owner might not be home upon the issuing of the notice.

Sen. Allen made a motion to report HB 2982 adversely, Sen. Daniels seconded. The voice vote was unclear. The Chairman called for a show of hands, and the motion failed.

Attention was returned to HB 3077. Sen. Allen expressed the same concerns with the bill as was expressed by Mr. Hokenson and Mr. Torbert. He informed the conferees from Montgomery County of a similar situation occurring in Franklin County in the '80's. There being no further time, the Chairman said the committee will meet on Monday.

The minutes of March 22 were approved.

The meeting was adjourned at 10:00 a.m.

To: Chairperson, Local Government Committee

March 23, 1990

I appreciate being able to appear before you today as one of the 1500 members of the Concerned Montgomery County Citizens group and regard it as a privilege to be able to speak as a proponent for HB 3077. My name is Joe Scamney and I'm a farmer/stockman from Montgomery county. Just as it is a privilege for me to be here, it is also the privilege of eligible citizens to vote on those issues that affect their destiny. Since the signing of the Declaration of Independence the United States has stood for equal rights with each eligible citizen having not only the privilege but the right to vote.

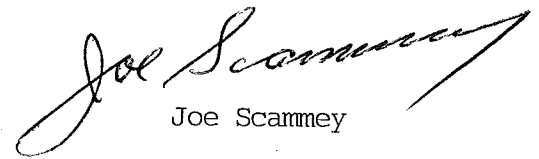
By design ours is a government of the people, by the people and for the people--we must constantly be vigilant that this concept not be adulterated either overtly--or insidiously--such as is our situation in Montgomery county. I do not feel two of three county commissioners should be able to impose any issue--in this case, zoning--that directly affects a voter without that voter having a right to express his opinion at the voting booth.

These petitions I have before me represent the feelings of 1000 Montgomery county voters who subscribe to the aforementioned voting rights concept and who will not willingly relinquish their rights.

What is democracy? The dictionary defines it a (1) rule by the people, (2) a community so governed. Montgomery countians feel they should have the right to vote on any issue that will affect their lives and property. Those trying to prevent Montgomery countians from voting would do well to look up the work "democracy" in the dictionary.

I, and all Concerned Montgomery County Citizens members, as well as those individuals who signed this petition, support HB 3077 and we ask for your support in defense of our basic right to vote.

Member CMCC



Joe Scamney

Senate Local Gov't
3-23-90
Attachment I

Honorable Members of the Senate;

My name is Dan Small and I am a lifetime resident of Montgomery County. I have been engaged full time in farming since 1976 and had several small businesses on the side.

I am concerned about the intention of our county commission to place a comprehensive zoning plan on our county that could adversely effect the security of my future as a small business man.

Many farmers operate small businesses on the side to help justify the year round employment of agricultural help.

If these businesses are not related directly to agriculture then they would be regulated by the proposed zoning plan, eliminating this option.

I encourage your support of house bill 3077 that would give the residents of unincorporated Montgomery County the opportunity to be heard through a vote.

Up to this point those few that have the power to zone Montgomery County have chosen to ignore the voice of the people.

The passing of 3077 would send a message loud and clear that our elected STATE officials are truly "For the People by the People".

Dan Small

Senate Local Group
3-23-90
Attachment II

Honorable Members of the Senate:

My name is Darrell Boulanger and I am a resident of Montgomery County, Kansas, and a member of the board of Concerned Montgomery County Citizens.

I appreciate this opportunity to speak in favor of this House bill #3077, which will give the citizens of any unincorporated area of Montgomery County the right to vote on any proposed zoning affecting them. We are here to ask you to restore our right as citizens to vote on this issue which will affect the quality of our lives in Montgomery County. We do not understand how we lost our right to vote in the first place, but we do want this public vote restored as soon as possible.

I have lived in different counties of this country, and due to the rapid growth of industry and housing, zoning laws were justified. Montgomery County does not even remotely resemble those counties with its' lack of urban growth and almost non-existent industrial potential. According to the Kansas Statistical Abstract published by the University of Kansas in 1987-88, Montgomery County will likely lose population over the next 30 years. The reason for zoning of unincorporated areas of our county is simply not needed now, nor in the foreseeable future.

Kansas has just witnessed the results of what can happen to a well-intentioned property tax law. It might look good

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Attachment III

on paper, but after the law was implemented most individuals received something totally unexpected. I believe that same result will happen in Montgomery County, if the people are NOT allowed to vote on county wide zoning. If the county commissioners feel that an area of our county needs zoning protection, let them come to the voters of that area with positive proof of what laws need to be implemented.

Simply stated, the passage of this bill into law will give the people the right to vote their conscience on the zoning issue.

Thank you.

My name is Bill Pounds and I am a resident of Montgomery county.

I have attended several Montgomery County commissioner and zoning board meetings during which county wide zoning was discussed. I had hoped to find out more about the proposed zoning ordinances, get answers to some of the questions I have, and to take part in deciding if this was something Montgomery County wanted or needed. What answers I did get were at best vague and at worst misleading, and from an informal poll, it appears the issue has already been decided with at least two of our county commissioners and a majority of the zoning board in support of county wide zoning and intending to go ahead with it.

Judging from the number of other citizens who also attended these meetings, I don't think I am the only one who is concerned, not only by the proposed ordinances but even more so by the arrogance of our local elected and appointed officials who suddenly are much more intelligent than the people who put them in office and are not very concerned about listening to public opinion.

When asked publicly if they would allow the people to vote on this issue, one of the commissioners stated that they were obligated to do only what the statutes required. While he is technically correct, he is morally wrong if we are to continue as a democracy. A little over 200 years ago, the then ruling government ignored the wishes of the American people and to quote from a document drafted then: " That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, - That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it."

We are not asking to abolish our local government, we just want to alter it so that it remains responsive to the people it is supposed to serve. That is why I support House Bill Number 3077.

William D. Pounds

Senate Local Group

3-23-90

Attachment IV

My name is Wayne Blaes. I am a fulltime farmer and pork producer in Montgomery County. I would ask that House bill 3077 be made into law. I feel strongly about this because I believe the people affected by county planning and zoning should have a vote on an issue of this importance.

I feel the unincorporated areas of Montgomery County should be the only ones allowed to vote on this issue since they are the ones directly affected by planning and zoning. I have owned property in the city limits while living in the rural area and I did not have a vote on any city election. I buy supplies and repairs in the city and have no vote on the city sales tax.

These reasons are why it is so important that House bill 3077 be enacted into law as it reads.

Wayne Blaes

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Attachment IV

HONORABLE MEMBERS OF THE SENATE;

I have been asked to speak to you on behalf of the Concerned Montgomery County Citizens, which is an organization in Montgomery County with a membership of approximately 1500 people. I am, also, a newly appointed member of the Montgomery County Zoning Commission.

We ask for your support on HB # 3077. This bill in part requires that the Montgomery County Commission put to a vote to the unincorporated Montgomery County residents the right to approve or deny the zoning of our county. The input that we have received from the taxpayers in Montgomery County has been thus far almost 100% negative on the proposed zoning issue. The County Commission has repeatedly refused to put this to a vote of the people of Montgomery County, nor do they have to, unless this bill is passed. We would urge your approval, and consideration in this matter. We thank you for your valuable time and support.

THANK YOU FROM THE CONCERNED MONTGOMERY COUNTY CITIZENS.

RON MCPHERSON

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Attachment VI



"Service to County Government"

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John Delmont
Cherokee County Commissioner
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Keith Devenney
Geary County Commissioner
(913) 238-7894

Berneice "Bonnie" Gilmore
Wichita County Clerk
(316) 375-2731

Harry "Skip" Jones III
Smith County Treasurer
(913) 282-6838

Roy Patton
Harvey County Weed Director
(316) 283-1890

Thomas "Tom" Pickford, P.E.
Shawnee County Engineer
(913) 291-4132

NACo Representative
Joe McClure
Wabaunsee County Commissioner
(913) 499-5284

Executive Director
John T. Torbert

March 23, 1990

TESTIMONY

To: Senate Local Government Committee

**From: John T. Torbert
Executive Director**

Subject: HB 3077 (County Zoning)

The Kansas Association of Counties is opposed to HB 3077 in its current form.

This bill started out as a simple piece of legislation. It stopped at line 32 on page 1 and provided that the number of members on a county planning board could be extended to 20 members. We don't have any particular problem with that legislation.

However, all the language starting on line 33 of page 1 to the end of the bill was added by the house committee of the whole and significantly changes the impact and scope of the bill. First of all, the language that was added is the same as SB 773 that passed the full senate on yesterday by a vote of 40-0.

Our largest concern with both pieces of legislation is the provision that changes the county home rule statute by the addition of a new provision. That can be found on page 6 lines 21 and 22. That provision essentially states that counties cannot use home rule authority with respect to county zoning. This is a significant change in existing policy.

This particular issue aside, we just do not like see additional exemptions to home rule authority created. This is a piece of legislation directed at one problem in one county. We question the necessity of the state legislature stepping into such issues. We stayed out of that fight however because it was a one county issue

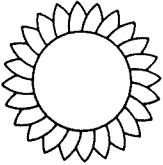
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Attachment VII

and we don't involve ourselves in those unless asked. However, the inclusion of the home rule statute makes this a statewide issue.

I know that you are amending the home rule statute to prevent Montgomery County from "chartering out." However, keep in mind that if the county chose to take that action, it would be subject to two publications and then, petition and referendum. The petition would have to be signed by two percent of the number of electors who voted at the last general election or, 100 electors-whichever number is greater. If this situation is as politically charged as it appears to be, I can't imagine that these requirements in terms of getting this issue before the voters are going to be that difficult to meet.

If you are inclined to advance this bill, (and again, we don't see the necessity of doing so) I would suggest that the portions of the bill amending the county home rule statute be stricken. That starts on page 4, line 16 and continues until page 6, line 36. The reference to K.S.A. 19-101a on line 36 would also have to be removed. Please don't let a one county political disagreement get carried to the point where we are losing home rule authority which we hold very near and dear.

tsjmtzon



Statement of Barry Hokanson, Director of Planning, Johnson County, to the Senate Committee on Local Government, concerning House Bill 3077, a bill affecting county planning and zoning procedures, on March 23, 1990

Mr. Chairman and members of the Committee, my name is Barry Hokanson; I am Director of Planning for Johnson County. I am speaking today to express our county's concern with certain provisions of House Bill 3077.

Our concern is with Section 3 of the bill, pertaining to limits of county home rule in planning and zoning matters.

Johnson County operates its planning and zoning procedures under the provisions of KSA 19-2956 to 19-2966. County zoning in Johnson County was initiated in 1941 and the system has evolved substantially over the years to support rapid growth and city-county coordination among many local units of government. Today we have an active program involving a county planning commission and seven township zoning boards. Recently the county developed special arrangements for extraterritorial zoning review for an area adjacent to the city of Lenexa, and new procedures have been established for city-county joint review of certain developments near cities. The county Planning Commission reviews annexation proposals by cities, and our county staff jointly develops planning reports and studies with city staffs concerning major development corridors.

The County Commissioners of Johnson County are very concerned that county home rule options for Article 29 of Chapter 19 be preserved. Although the provisions of HB 3077 are intended to limit home rule provisions for only one section—KSA 19-2920—Johnson County is concerned that this change could later be interpreted to apply to other sections of the zoning statutes such as KSA 19-2956, et seq., which would affect Johnson County.

Thank you for your consideration. I would be pleased to answer questions or provide any additional information you may need.

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Attachment VIII