

Approved March 18, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Kathleen Sebelius at  
Chairperson

1:30 ~~am~~ p.m. on Thursday, February 14, 1991 in room 526-S of the Capitol.

All members were present except:  
Representative ARthur Douville - Excused  
Representative Al Lane - Excused  
Representative James Cates - Excused  
Committee staff present:  
Mary Galligan, Kansas Legislative Research Dept.  
Lynne Holt, Kansas Legislative Research Dept.  
Mary Torrence, Office of the Revisor  
Connie Craig, Secretary To the Committee

Conferees appearing before the committee:

PROPOSERS - HB 2063, 2064 and 2065  
Rebecca Rice, Legislative Counsel for the Kansas Retail Liquor Dealers Assoc.  
Pat Oppitz, Kansas Retail Liquor Dealers Association, Inc.  
Rich Ferguson, Owner, Ferguson Liquor Store, Overland Park, Kansas

OPPOSERS - HB 2063, 2064 and 2065  
Reverend Richard Taylor  
Donald Rogers, Topeka, Kansas  
Paul Pettit, Bethel Baptist Church, Topeka, Kansas  
Frances Wood, President, Capital City Woman's Christian Temperance Union  
Ed Klumpp, Kansans For Highway Safety

HB 2063, 2064 and 2065

In support of HB 2063, 2064 and 2065, Rebecca Rice presented testimony that explained the technical changes enacted by this legislation, Attachment #1.

Pat Oppitz explained in her testimony the business related reasons for supporting HB 2063, 2064 and 2065, Attachment #2.

Rick Ferguson urged the Committee to support and pass favorably HB 2063, 2064 and 2065, Attachment #3.

Committee Discussion:

In response to a question asked by a committee member, Pat Oppitz stated that increased law enforcement and education are taking more of the problem drinkers off the streets. She did not have statistics. She added that this legislation would not make it easier to purchase liquor, but the measures would better the business practices for retail liquor dealers. She stated that revenues in the state are going down and consumption is down, which is a nationwide trend.

When asked by a committee member, Rebecca Rice pointed out that because retail liquor dealers pay an excise tax on their product, and assuming that the tax is paid on what is sold, the Department of Revenue can keep track of consumption. Although, revenues are not down due to an increase in the taxes, but consumption is down. She gave reasons for reduction in consumption are better health awareness and higher taxes. She added that in regards to taxes, liquor enforcement tax at 8% retail on beer, wine and spirits grossed in FY1990 tax collection was \$19,890.00; and the drink tax which is 10% put on at clubs is was \$14,275.00. This information was taken from Kansas Tax Facts written by Research.

One Committee member requested information for 1988 and 1990 tax revenues, because there was not a tax increase between those years and the actual consumption level could be compared.

In regards to HB 2063, proponents agreed that they wanted to have a business sign on the premise.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 526-S, Statehouse, at 1:30 ~~am~~/p.m. on Thursday, February 14, 1991.

Jim Conant, Acting Director of Alcoholic Beverage Control, gave the position of the neighboring states as it relates to restrictions on the days retail liquor dealers are allowed to be open:

Arkansas - every day except Sunday and Christmas  
Missouri - every day except Sunday and Christmas  
Nebraska - No restrictions  
Iowa - No restrictions  
Colorado - Every day except Sunday and Christmas  
Oklahoma - their restrictions mirror Kansas' restrictions:  
closed Sunday, Memorial Day, Labor Day, Independence Day,  
Thanksgiving, Christmas, New Years and election days

This was information gathered in a survey done by his department. Mr. Conant gave hours for purchasing liquor by the drink, except by a caterer, on-premise places are open from 9:00 a.m. to 2:00 a.m. the next morning, every day of the week. A caterer can begin at 6:00 a.m.. Cereal malt beverages can be purchased from 6:00 a.m. until midnight. He added that the ABC Commission did not have a position on these three pieces of legislation.

Mr. Conant did say that the ABC did mirror the Retail Liquor Dealers concerns about the sign issue from the point of view that there are problems enforcing that statute as it sits right now. Signs for retail liquor dealers must have a product name or price on their sign, and non-alcohol beer qualifies as a product name.

As an opponent to HB 2063, 2064 and 2065, Reverend Richard Taylor urged the Committee to vote no on all three bills if they wanted less alcohol related suffering, Attachment #4.

Donald Rogers opposed the passage of HB 2063, 2064 and 2065 because he felt that it would increase alcohol use and would cost government and private sectors more in both money and misery, Attachment #5.

Paul Pettit gave testimony, Attachment #6, opposing the passage of HB 2063, 2064 and 2065. He urged the Committee to not pass the three pieces of legislation, but to help liberate Kansas families from more pain and suffering caused by easier access.

Frances Wood urged the Committee to reject HB 2063, 2064 and 2065 as a "courtesy" to the citizens of Kansas, Attachment #7.

Ed Klumpp presented testimony to the Committee in opposition to HB 2064, Attachment #8; and testimony opposing HB 2065, Attachment #9, as Kansans for Highway Safety feel that both of these bills could contribute to the increase of alcohol related collisions on Kansas highways. His organization had no position on HB 2063.

Committee Discussion:

One Committee member requested statistics from Ed Klumpp relating to the reduction of DUI's and injuries from alcohol related collisions on holidays. Mr. Klumpp said he could get some overall figures for the entire year on some of that information. He added that DUI arrests were not tracked up until about a year and half ago. Alcohol related collisions tell us more about what is really happening as far as numbers of drunk drivers on the road because generally speaking the same percentage of those are going to be colliding with something on the way home.

When asked by a committee member if alcohol use was declining nationwide, Reverend Taylor replied that nationwide, total consumption is declining and generally speaking so should alcoholism.

Ed Klumpp also explained to the Committee that 40% to 65% of persons arrested for DUI also test positive for some kind of drug.

Representative Don Smith moved that the minutes for January 29, 1991, and January 30, 1991 be approved. Representative Jones seconded the motion, which passed on a voice vote.

Chair Sebelius brought to the Committee's attention, a memorandum from Mike Heim, Principal Analyst, Kansas Legislative Research Department, that gave an overview of local initiative and referendum, Attachment #10.

The Committee adjourned at 2:55 p.m..

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE Feb 14, 1991

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Paul Pettit	900 SW Robinson #502	KJTY Radio
RICHARD TAYLOR	TOPEKA	LIFE AT ITS BEST
Francis Wood	4724 SE 37 <sup>th</sup> 66605	Capital City WCTU
Eldon Wood	✓ ✓ ✓	✓ ✓
Richard B. Lawrence	10333 Mastin Oaks	KRLDA
Richard B. Lawrence	Topoka	KRLDA
Patricia Oppitz	839 Laurelawn	KRLDA
William Carter	604 N. Green	—
Justin Morrison	TOPEKA	observer
Steve Talbott	Lawrence	Rep. Baker
Umelissa Bounds	5561 W 1st	Shadow - Rep. Baker
Albert D. Lollar	Topoka	KRLDA
Donna Harling	Topoka	KRLDA
Don Peyton	Topoka	KRLDA
Richard Black	Kansas City	K.R.L.D.A.
Joseph Wright	Merriam	KRLDA
Ken Baker	Topoka	Peterson's Assoc.
Bill Scott	Box 1434 / Topoka	Martin OUTDOOR Adv.
Thomas McBride	Lawrence	observer
Donald W. Rogers	1346 N. B. Oakland - Topoka	—
Steve Korman	TOPEKA	PETER SKILL ASSOC.!
Ed Klump	4339 SE 21 TOPEKA, KS	KANSAS FOR HIGHWAY SAFETY
Jack Dillman	700 Jackson #803	KWSWA —

**REBECCA RICE**  
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TESTIMONY PRESENTED TO  
HOUSE COMMITTEE ON FEDERAL  
AND STATE AFFAIRS  
re: HBs 2063, 2064, & 2065

02/14/91

by: Rebecca Rice  
Legislative Counsel for the  
Kansas Retail Liquor Dealers Assoc.

Madame Chairman and members of the committee, I appear before you today to request the committee recommend House Bills 2063, 2064, and 2065 favorable for passage.

I will address the bills in numerical order which are not necessarily in order of importance to the association. In addition, I am appearing first in order to discuss the technical changes enacted by this legislation. The actual business needs driving this legislation and the policy positions taken by the association will be further addressed by subsequent conferees.

HB 2063

HB 2063 eliminates the statutory advertising sign restrictions. As you can see by reviewing the bill, the retailers in the past were restricted to a very small sign in the window of the place of business. The history of this legislation would appear to be a moralistic attempt to restrict public access to my clients' legal product although such attempts have historically been failures.

The retailers have, for many years, felt the statutory sign restrictions were illogical and punitive. More importantly, the sign restrictions have now been rendered moot by the passage of price and brand legislation.

As many of you are aware, price and brand legislation was adopted, in part, to allow advertising by retailers under certain conditions. With the adoption of that legislation, the Legislature determined the use of signs for such advertising should be allowed. The Association agreed with that legislative action and would now like to further adjust the legislation to allow compliance without certain technical but meaningless compliance.

Under present law, a retailer can place any advertising sign in or around his place of business so long as the sign contains a price or a brand. Therefore, retailers are erecting signs, similar to other retail signs in accordance with zoning laws, advertising the location of their business while complying with the technical requirement of inclusion of a brand name or monetary denomination. Because of this meaningless technicality, the retailers respectfully request that the sign limitation language be eliminated from the statutes.

#### HB 2064

HB 2064 eliminates the statutory prohibition of accepting credit cards for payment when selling packaged liquor to consumers. You will note that the amendment which we are requesting does not eliminate the prohibition of selling liquor on credit but only creates an exception for credit cards.

The prohibition was enacted in 1949. As we are all aware, the use of credit cards has become the favored method of purchase by most consumers. Whether we personally agree with the use of credit cards as the favored choice, for retailers it has become a fact of life. Retailers are receiving an increasingly large number of bad checks. Therefore, the cost of doing business by personal check has become prohibitive for retail liquor dealers.

I do note that the current prohibition does not apply to retailers selling liquor by the drink. It is that point alone which is the primary argument for allowing retailers to accept credit cards for payment if the retailer so desires. Any argument that citizens are unable to make informed financial decisions and, therefore, should be controlled, is negated by the legislature's previous endorsement of the use of credit cards to purchase liquor by the drink. During the debates regarding liquor by the drink, many alleged that such legislation would bring down the Kansas public and havoc would reign. However, consumption instead decreased, the change was orderly and most Kansans are pleased with the results.

Such will be the result of this legislation if you should adopt it. Most people now use credit cards as their primary, or no less than secondary, mechanism to purchase. Allowing individuals to use a now socially acceptable monetary source will not create more alcoholics nor bankrupt families. In fact, it is illogical to assume that packaged liquor somehow is a greater contributor to alcoholism or bankruptcy than liquor by the drink retailers.

#### HB 2065

The last bill, HB 2065, eliminates the prohibition of packaged liquor sales on Memorial Day, Independence Day and Labor Day. Liquor by the drink is allowed to be served on these holidays as well as cereal malt beverages. In addition, these days are non-religious holidays and, therefore, no logical reason appears to exist to continue to discriminate against my clients in this area. Therefore, a continued prohibition for my clients is again a value judgment that the product we sell is somehow more insidious or less desirable than other forms of the same product.

Thank you for your attention.

# KANSAS RETAIL LIQUOR DEALERS ASSOCIATION INC.

400 SW CROIX  
TOPEKA, KS. 66611  
(913) 266-3963

PATRICIA A. OPPITZ  
PRESIDENT

ALBERT LOLLAR, 1st Vice-President  
TRACY MOODY, 2nd Vice-President  
MAXINE STROTHMAN, Secretary-Treasurer

February 14, 1991

TESTIMONY PRESENTED TO THE HOUSE COMMITTEE  
ON FEDERAL AND STATE AFFAIRS  
RE: House Bills No. 2063, 2064 & 2065

Madame Chairman and members of the committee, I am Patricia Oppitz, President of the Kansas Retail Liquor Dealers Association. I am pleased to have this opportunity to talk to you about our members' concerns and the need to be able to conduct our businesses in the same manner as other lawful businesses in the State. We sell only legal products and we try to do so in a responsible way.

House bill 2063: would allow retailers to have a sign on the premises, in place of or in addition to the neon sign we have in our windows now. As an example, my store here in Topeka on Fairlawn Road cannot be detected from the street, because I am in a strip shopping center, and I cannot have a sign on the building or above my door, like the other businesses around me. I feel I am operating with one arm tied behind my back. The only way a retailer may have an outdoor sign now is to advertise prices and/or brands or have a party shop.

House bill 2064: would allow Kansas retailers the choice of selling their products with the use of a "credit card". Both Missouri and Oklahoma allow credit card usage in liquor stores. This Association feels that restaurants with bars, taverns and grocery stores all can sell alcohol products with credit cards, and we should be allowed the same privilege. When we talk about credit cards, we are talking about Nationally Recognized credit cards such as Visa and Master Card. We cannot under present statutes accept anything other than a personal check or cash for the purchase of our products. Any business man or woman from Kansas or any other state cannot purchase our products and give us a company check. We don't dare accept a check from a person who is just traveling through the State. And all Retailers have a constant battle with "bad checks". One local retailer told me he accumulated \$150.00 in bad checks in four days. Even though it would be an extra expense to the Retailer to rent the equipment needed for credit card usage, it would be very advantageous to the customer and the retailer to be able to put purchases of over a certain amount on a credit card. It would not be feasible to use credit cards for smaller purchases.

House bill 2065: would allow us to be open on non-religious holidays, just like grocery and convenience stores and restaurants and taverns, who also sell alcoholic products. We are just asking for equal treatment.

A year ago at this time, there were 849 liquor stores in Kansas. Now there are 792. Stores are going out of business each month. The use of alcoholic beverages is down. Our retailers will live with that. Education and increased law enforcement are taking the problem drinker off the streets. Allowing us to use sound business practices won't increase the use of our products.

HOUSE FEDERAL AND STATE AFFAIRS  
February 14, 1991  
Attachment #2 - Page 1

(over)



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# FERGUSON LIQUOR STORE

*Rich Ferguson - Owner*

I am Richard B. Ferguson, Jr., a member of the Kansas Retail Liquor Dealers Association. My store is located in Johnson County in Overland Park. The store is approximately 8 miles from the Missouri state line. I currently serve on the Board of Directors, representing District 2 (Johnson and Wyandotte counties) for the KRLDA. I strongly support House Bills 2063-2064-2065.

## **HOUSE BILL #2063--SIGNS**

Currently all businesses are afforded the luxury of signs noting their locations, such as grocery stores, convenience stores and even motor fuel stores, all of which, at their discretion, can sell CMB (cereal malt beverage). Even restaurants and on-premise drinking establishments can have signs.

I find this to be a gross inequity in the law when we, as business people, are not afforded the same business practice.

## **HOUSE BILL #2064--BANK CARDS**

At anytime, someone holding a bank (credit) card can purchase dinner and alcoholic drinks with these cards. One can also purchase just alcoholic drinks. Some grocery stores and most convenience stores now accept bank cards for payment of goods purchased which could also include cereal malt beverages.

Missouri accepts bank cards and at least 4 or 5 times a week, I have a request to accept bank card payments. Upon turning this form of payment down, I always hear, "We'll just have to go to Missouri."

Bank cards no longer are an extension of credit. Within hours, that money would be transferred to my store account. This is not so with the new regulations on checks. Checks can now take up to seven (7) days to clear the bank. Plus you don't always know when a check is accepted if it will clear the bank. Notices I received last year took as long as two (2) weeks before I received them back. Used properly, bank cards can be verified within seconds guarantying payment to me. Not allowing bank cards in retail

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**10333 Mastin  
Overland Park, KS 66212  
(913) 888-4029**

HOUSE FEDERAL AND STATE AFFAIRS  
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Attachment #3 - Page 1





liquor stores represents a loss of revenue to our state that we so desperately need. Let's support our state and not keep benefiting our neighboring states. Again, treat us as the business people we are.

**HOUSE BILL #2065, MEMORIAL DAY, JULY 4TH, LABOR DAY**

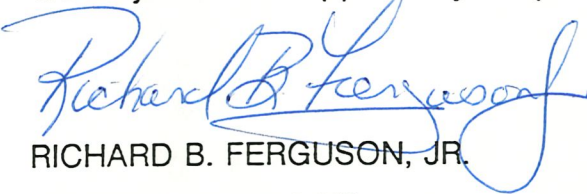
The holidays listed in this bill represent the greatest loss of revenue. Since 2 of these holidays always fall on a Monday, CMB can be sold and again, Missouri is open for business. After each of these holidays, I repeatedly hear, "We had to go to Missouri or we could only buy CMB." This still happens even after placing signs on doors, by registers and by verbal reminders.

These are holidays enjoyed outdoors with family and friends. BBQ, potato salad, beer and wine coolers. Yet again, I am closed but are the Drinking Establishments or the CMB Outlets?? **NO!!**

I have spoken with many of my fellow liquor retailers and they too support these issues. House Bills #2063-2064-2065 represents added choice in our industry. Retailers will have the **OPTION** to accept bank cards, to install a sign or to be open on these holidays. Maybe not all retailers will want to do so, but they should at least have the **OPTION**, as in any other business.

In summary, I feel these bills need to be put into law and move our industry forward out of the dark ages. The state of Kansas could enjoy increased revenues that is now being lost to Missouri or bordering states. I hope you will pass these 3 bills out of committee with support for their passage into law.

Thank you for the opportunity to speak to you.



RICHARD B. FERGUSON, JR.

OVERLAND PARK, KS

"Alcohol is a drug. It is the No. 1 drug of abuse in our society. Its only close rival is tobacco."

JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

Approval of these measures will be a negative in our war on drugs. When persons become dealers in this deadly drug, they know Kansas has restrictive control laws. Liquor stores are legal today, but they have no right to exist. The Kansas Supreme Court has said it well. (Vol. 195, page 748) U. S. Supreme Court 34L Ed 2d 805

**§ 2. Summary**

It is settled that under the Twenty-first Amendment, the states have the power to absolutely prohibit or to limit and regulate traffic in intoxicating liquors within their borders,<sup>3</sup> and that such power is not generally limited by the commerce clause<sup>4</sup> or the equal protection<sup>5</sup> and due process<sup>6</sup> clauses of the Federal Constitution, insofar as such regulations discriminate against or impose special burdens on activities and persons involved in such traffic.

*SAME—Power of State Under Amendment—As to Alcoholic Liquor—Police Powers.* Pursuant to the Twenty-first Amendment to the Constitution of the United States, a state may authorize or prohibit the consumption of alcoholic liquor and adopt measures reasonably appropriate to effectuate its policy in the exercise of the police power, unfettered by the due process clause and the equal protection clause of the Fourteenth Amendment or the commerce clause of the Constitution of the United States.

On any day, 63 House members and 21 Senators could pass a law and put them out of business with total loss of investment. That can not be done with others in business and industry.

Last Kansas Day, Governor Finney accepted and wore the Freedom Pin. Wearers just say NO to alcoholic beverages or they just say NO after one or two drinks on days when they drink and wait before driving. If every Kansan wore this Freedom Pin, laws that help people drink less would not be needed, except for age 21.

Because drinking impairs thinking, alcohol causes more human misery than all other drugs combined. Abraham Lincoln said it well when asked why he did not use the drug. Quoting Shakespeare he responded, "Why put an enemy in your mouth to steal away your brains." He also said that liquor has many defenders, but no defense.

Liquor defenders told Kansans that liquor by the drink in public places would not increase consumption. According to the Department of Revenue, here is what happened the first year with liquor by the drink in Kansas public places. While other states experienced a drop in total social consumption, Kansas experienced an increase! Law makes a difference.

Gallons of liquor shipped into Kansas				Percent alcohol	
	FY 87	FY 88	Increase		
Spirits	2,710,292	2,718,939	8,647	0.32%	45%
Fortified wine	152,377	159,477	7,100	4.66%	20%
Light wine	2,567,727	3,290,187	722,460	28.14%	12%
Strong beer	24,534,916	26,092,762	1,557,846	6.35%	6%

HB 2065

If number of days do not make a difference in profits, permit sales one day a week. They would sell the same amount and enjoy lots of free time. Liquor store owners would gladly support this - if number of days did not make a difference in sales.

HB 2063

Across Kansas, liquor stores are full of neon signs. Is that illegal according to current law in subsection (b)? A concern for aesthetics alone dictates fewer obnoxious bright signs. Concerned drinkers have no difficulty finding a liquor store under current law. Are liquor store owners afraid that drunks can not find them?

HB 2064

Bad checks in liquor stores is the strongest reason for voting NO on this measure. If a user of our most abused drug does not have enough in the bank to support his habit, he should change his habits. Should liquor store owners be so greedy as to destroy a family with credit card debt that SHALL BE RECOVERABLE IN ACCORDANCE WITH LAW? (Line 23) Under current law, liquor credit debt SHALL NOT BE RECOVERABLE AT LAW. (Line 19)

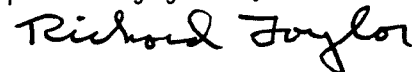
And suppliers are so aggressive in their marketing practices. Every week most people receive a mailing from some group that wants to provide you with another credit card.

If you want to help liquor sales and make liquor store owners happy, vote YES on all three bills.

If you want less alcohol related suffering, vote NO.

If they will sell the same amount with or without extra days, more signs, and credit cards, WHY are liquor stores asking for these changes? If these measures will not help sales, they would care less.

Respectfully yours,



Richard Taylor

## Editorials

### Too easy

**T**he Kansas Retail Liquor Dealers Association is beside itself because of the unfair business disadvantages its members are forced to endure.

And they got Rep. Kathleen Sebelius, chairman of the House Federal and State Affairs Committee, to champion their cause.

That committee is sponsoring a bill that would allow those who drink to buy their alcoholic beverages with credit cards.

Two other bills also have been introduced by the committee that are favorable to the liquor dealers. One adds the Fourth of July, Memorial Day and Labor Day to those during which liquor stores can be open. The other removes existing regulations limiting the kinds and sizes of advertising signs liquor stores may display.

The introduction of such measures is justified in a free and open society, but their passage would demonstrate an absolute reckless disregard for a problem that is of epidemic proportions and has been for most of our lifetimes.

The misuse of alcohol is at least a contributing factor in a majority of our crimes. Alcohol is an important factor in at least half of our fatal automobile accidents.

Alcohol is a major factor in our divorce rates and various forms of abuse.

The Kansas Legislature would better serve its constituents by lowering the blood alcohol levels in the legal definition of driving under the influence.

The last thing a problem drinker needs is the ability to put his problem on a credit card.

—Jim Hitch

Squandered Money  
Can Be Replaced  
Wasted Time Cannot

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8:30 - 4:30  
Monday to Friday Noon  
Friday afternoon by  
appointment only.

January 30, 1991

Reverend Richard Taylor  
1273 SW Harrison  
Topeka, Kansas 66603

RE: Charging alcoholic beverages on credit card

Dear Mr. Taylor,

I noticed in today's paper, January 30th, that you object to the proposed legislation which would allow charging liquor on a credit card. You were quoted as saying that it would bring even greater damage and injury to the family of the user.

I agree with you, but it would bring an additional burden to the other creditors of the user also.

I do not handle bankruptcy cases because I live 128 miles from the nearest bankruptcy court. But I do handle divorces. A lot of divorces. One thing that I am seeing in divorce cases now that I did not see ten years ago is credit card charges. I could pull one file at this time in which the mother agreed to pick up four thousand dollars worth of credit card expenses on just two credit cards. Prior to filing for divorce they were talking about bankruptcy. Now it is even more likely than before.

I suspect that if they all are allowed to charge alcohol you will even see more and bigger bankruptcy claims than we are seeing now, and its already bad enough. You will also see other creditors getting burned because they just happen to be one of the creditors of the proposed bankrupt.

Yours very truly,



Floyd Sorrick

FS/mf

HOUSE FEDERAL AND STATE AFFAIRS  
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Attachment #4 - Page 4

I oppose the proposals in this bill for the following reasons

A. Proposals would increase use of alcohol when we are in midst of a war to decrease use of drugs

HB 2063

1. Use of credit cards

a. Big part of credit advanced by banks + lending instit

b. Already in big, expensive bailout.

c. Abuse of credit cards easy

d. Puts pressure on other family members

2. Larger and more easily read signs

a. Negates efforts to reduce use of drugs

1. By government agencies

2 By alcohol manufactures themselves

b. Send wrong signals to Young People

3. Extending hours to Sundays and Holidays

a. Weekends and Holidays already produce more deaths (highway) than other days of week.

b. Present hours allow people to prepare for those days any way.

c. Caters to compulsive and problem drinkers.

B. Would cost government and private sector more in both money and misery.

Donald W. Rogers

1346 N.E. Oakland

HOUSE FEDERAL AND STATE AFFAIRS

February 14, 1991

Attachment #5 - Page 1

Paul Pettit  
Bethel Baptist Church  
4011 North Kansas Ave  
Topeka, Kansas 66617

HEARING ON  
2063, 64, 65  
February 13, 1991

(Connie Craig)  
Happy Valentines Day! No really, I mean it Happy Valentines Day! It is a real joy to be able to come ~~down~~<sup>up</sup> here as an ordinary citizen and to be able to speak to you as elected officials. I sit this the beauty of the democratic process. You probably remember how you first felt the day you were elected! Wow! What a task, to represent the people of this great state, To speak and to vote on their behalf. My name is Paul Pettit and I was born here in Topeka, I graduated from High school here and went over to Lawrence and graduated from the University of Kansas. I Love this State and the people of Kansas. I am Director of Youth at a local church.

I want to comend you for being good legislators, but before us today ~~we~~ we are discussing bad legislation. And I know that good legislators reject bad legislation!

(Pause) Kyle is 18 yrs. old. ~~He's~~ He's a Senior at Seaman High school here in Topeka. Kyle is on the debate team and is in the school play next month. You would think, ~~and~~ looking at Kyle, that he is a well adjusted Senior planning for college. ~~But~~ There's a big problem in Kyle's life however. It's his dad's drinking. His dad was a truck driver but he got 2 DWI's and as you know thats the limit. Kyle's dad ~~then~~ drinks away the family money. I know, because Kyle is in my youth Group. <sup>Experts</sup> When a drug or alcohol problem arises, people turn to a pastor more frequently than to any other professional.

Approximately 28 million adults in the United States grew up in a home where at least one parent was alcoholic. Research shows that the children who grow up in these homes are affected, for life, by this background.

Dr. James Blevins, a recovering addict from prescription Drugs, who works at Ridgeview Institute, Smyrna Georgia makes these observations about persons addicted to alcohol: "The public has an image of an alcoholic as a skid-row bum. This is far from reality. 95% of all alcoholics are employed, many of them high in their businesses." "An alcoholic," he says, "cannot control the timing, location, or amount of his drinking. Once begun, he will usually drink to the point of intoxication!"

Please; don't give these vulnerable men and women "Credit Card" <sup>convenience</sup> ~~convenience~~ to tempt them.

How many wives, How many husbands, how many children will become credit card casualties if this bad legislation is allowed to slip through. A man or woman may charge one more bottle, ~~but~~ and a Liquor dealer may make a little bit more money, but who's going to be there for the family at the end of the month when the ~~credit~~ ~~collection~~ collection agencies from Kansas City come colling. This is a bad bill. It does not help the families of Kansas!



I hope that you continue to pass good legislation. Rev. Richard Taylor supports good legislation. Bills that help Kansas families. He speaks for the average man. The man that works at a factory in your district ~~the~~ woman who teaches school, the families that want Kansas to be a good place to grow up in. Look at him over there, he's so dry some people say he won't even drink cough syrup or Scope mouthwash. But he loves Kansas Kids.

What about the Liquor Lobbyists? who do they speak for. A few dealers and wholesalers that just want to make a <sup>little</sup> more money. there not ~~at there~~ when Dad comes home in a rage. Or mom maxes ~~her~~ out her VISA on VODKA!

You know, we all feel for the people of Iraq, the majority don't support their dictator, ~~and~~ and their homeland keeps getting bombed. Well the people of, Kansas keep getting bombed by bad liquor bills. Be a patriot legislator, and shoot down this Scud liquor bill.

Help Liberate Kansas families from more pain and suffering caused by easier access! don't be a part of this CREDIT CARD CATASTROPHE in Kansas. Tuesday we celebrated Abraham Lincolns Birthday. That great legislator and President said, "Drink is a cancer in human society, eating out its vitals and threatening its destruction."

I have seen alot of pain and suffering caused by easier access to alcohol.  
Allow me to close with a verse from God's word the Bible,  
Peter and John answered and said to them, "Whether it is right in the sight of God to listen to you more than to God, you judge. For we cannot but speak the things which we have seen and heard." Please vote no. Thank You.

HB 2063 on

HB 2064 ← Bad checks into Good Credit Cards?

HB 2065 Hypermart - Check Machine (Good?)  
← Good check?

House Federal and State Affairs Committee Hearing on House Bill #2063,  
2064, 2065

Frances Wood, 4724 S. E. 37th, Topeka, Ks. 66605 Phone 379-5529

President Capital City Woman's Christian Temperance Union

Speaking in opposition to the above bills

I would like to recognize those in the committee room who are supportive of this position.

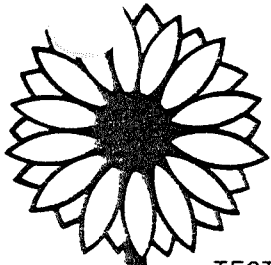
We do not seek to benefit monetarily by our presence here. We are here strictly out of concern.

I also have petitions from 70 people who also have no money to be gained by their stand. These represent a tiny portion of the people who feel this way - mostly from one source.

I seriously doubt that there are that many citizens who have no personal gain who would be wanting these bills enacted.

According to the paper, these bills were introduced as a "courtesy" to the alcoholic beverage industry. Well, as a "courtesy" to the citizens of Kansas, I implore you to reject Bill #s 2063, 2064, and 2065. Why? Turn to the attached brochure. Really look at these percentages. In addition to these, it is 100% of all fetal alcohol syndrome birth defects, 100% of all alcohol overdose deaths, 100% of alcoholism cases. You know these bills would increase consumption of alcoholic beverages or the dealers, who do have money to be gained, would not be pushing for their passage.

Why oh Why would any responsible body of government do anything that increases consumption of alcoholic beverages - America's No. 1 Drug Problem?



## **Kansans for Highway Safety**

FEBRUARY 14, 1991

TESTIMONY BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
REFERENCE HOUSE BILL NO. 2064

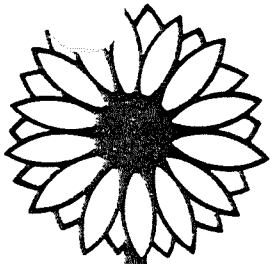
Kansans for Highway Safety opposes House Bill 2064. The sale of liquor on credit will make it even easier for those with alcohol dependency problems to obtain the liquor that feeds their dependency. Since they are functioning at the whim of their dependency and not with the use of good judgement and reasoning, most would not be able to use the discretion that is necessary in utilizing charge accounts without overextending themselves and putting their families into an even worse financial hardship.

It is our belief that the passage of this bill would increase the availability of liquor to those drivers with alcohol dependency problems and carry the high probability of exposing the users of Kansas highways to the hazards of an increasing number of intoxicated drivers. This would be counterproductive to the efforts made over the last several years to reduce the number of alcohol related injuries and deaths by programs legislated with the intent of bringing those in need of treatment for alcohol dependency into the treatment programs.

We strongly urge the committee to not pass this bill favorably and thus continue to support the efforts for reducing the alcohol related problems on our highways.

Ed Klumpp  
President  
4339 SE 21st  
Topeka, Kansas 66607  
913-235-5619 (home)  
913-354-9450 (work)

HOUSE FEDERAL AND STATE AFFAIRS  
February 14, 1991  
Attachment #8 - Page 1



## **Kansans for Highway Safety**

FEBRUARY 14, 1991

TESTIMONY BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
REFERENCE HOUSE BILL NO. 2065

Kansans for Highway Safety opposes House Bill 2065. On a national basis alcohol related fatalities and alcohol related accidents are highest on the three summer holidays of Decoration Day, Independence Day, and Labor Day. Nationally, the accident rate on these holidays is 33 percent higher than the accident rate on Thanksgiving, Christmas and New Years.<sup>1</sup> The sale of liquor on these holidays will only make the alcohol more available to the drivers on our highways and add to the accident rate resulting in increased loss of life and injury. These three holidays are the ones that need the most emphasis on the reduction of drunk driving and yet are the most difficult to address due to the diversity of activities occurring on these three holidays. Passage of this bill would only add to the burden of reducing these alcohol related holiday collisions, deaths and injuries.

We strongly urge the committee to not pass this bill favorably and thus continue to support the efforts for reducing the alcohol related problems on our highways.

Ed Klumpp  
President  
4339 SE 21st  
Topeka, Kansas 66607  
913-235-5619 (home)  
913-354-9450 (work)

HOUSE FEDERAL AND STATE AFFAIRS

February 14, 1991

Attachment #9 - Page 1

<sup>1</sup>National Safety Council, 1990 Accident Facts, page 66.

# MEMORANDUM

## Kansas Legislative Research Department

Room 545-N – Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

February 13, 1991

**To:** House Federal and State Affairs Committee  
**From:** Mike Heim, Principal Analyst  
**Re:** Local Government Initiative and Referendum Opportunities

### INTRODUCTION

#### Overview of Local Initiative and Referendum

The initiative and referendum processes at the local government level in Kansas are interrelated. The initiative process enables voters to propose, or initiate, a local law or action by filing a petition signed by a specified number of voters. The filing of an initiative petition usually requires the governing body of the local unit of government to then submit the proposal to a vote.

The referendum process relates to the referring of proposed legislation, legislation with a delayed effective date, or other action by a local governing body to a vote of the electorate for approval or rejection. The trigger for the election can be state law which provides for one of the following: (1) an initiative petition; (2) an automatic election; (3) an election but only if a local governing body decides to act; or (4) a protest petition.

Kansas law affords electors living within local government jurisdictions various opportunities for the exercise of both the initiative and the referendum process. Only cities are covered by a general law that provides city voters fairly broad power to initiate local legislation. State laws which are issue specific and which provide for referendums are common at the local level. Of the four methods for invoking a local election, the protest petition procedure is the one most commonly found in state law. This memorandum gives an overview of city general initiative law and the several hundred individual initiative and referendum provisions that apply to the various local units of governments.

#### Number and Types of Kansas Local Governments

Local governments in Kansas are diverse and numerous. Despite a relatively small population, Kansas ranks fifth among the states in the number of local units with 3,804 units identified by the Bureau of the Census in 1987. (See *1987 Census of Governments*, Volume 1, Government Organization Bureau of the Census, 1988, page 1, Table 1.) The average number of

local governments per state in 1987 was 1,663. Only California, Illinois, Pennsylvania, and Texas, all states with much larger populations, have more local governments than Kansas.

The principal units of local government in Kansas are its 627 cities, 105 counties, and 304 school districts. In addition, there are 19 community colleges, Washburn University, 1,360 townships, and 1,387 other special district governments in Kansas, according to the 1987 Census of Governments. Three entities, cities, counties, and school districts, account for the bulk of the taxes levied and expenditures made by local governments, as well as the key services and functions performed. As a result, the major emphasis in this memorandum is on the initiative and referendum provisions that apply to cities, counties, and school districts.

### **Cities: A General Initiative Law**

Cities are the only local unit of government in Kansas that are covered by a general law granting citizens the right to initiate local legislation on a variety of subjects. The law, which appears at K.S.A. 12-3013, applies to all cities but contains different petition requirements for cities of the first class. Presumably, as a result of this nonuniformity, any city may exempt itself entirely from this statute or provide alternate or substitute provisions under city home rule powers. (See *Kansas Constitution*, Article 12, Section 5.)

**Initiative Exclusions.** The initiative statute does not apply to administrative ordinances; ordinances relating to public improvements to be paid in whole or in part by special assessments; and ordinances subject to referendums under other statutes. (See K.S.A. 12-3013(e).)

**Petition Requirements.** The city electorate may initiate, by petition, ordinances other than those noted above. If the petition is found to be sufficient, the governing body must either pass the requested ordinance without alteration within 20 days of the petition being submitted or call a special election unless a regular city election is scheduled within 90 days after submitted. (See K.S.A. 12-3013(b).) In cities of the first class, electors equal in number to at least 25 percent of those who voted in the last preceding city election must sign the petition. In cities of the second and third class, the number of signatures needed must be equal to at least 40 percent of those who so voted. The petition must contain a request that the ordinance be passed by the governing body or submitted to a vote of the electors and must contain the address of each signer. One person signing each page must verify under oath that each signature is genuine. (See K.S.A. 12-3013(a).)

**Limits on Governing Body, Ability to Amend or Repeal.** Any initiative ordinance adopted by the governing body or approved by voters cannot be repealed or amended except by a vote of the electors or by the governing body once an ordinance has been in effect for ten years. (See K.S.A. 12-3013(c).) A governing body, however, may submit a proposition to amend or repeal an initiated ordinance at any succeeding regular city election. (See K.S.A. 12-3013(d).) Moreover, a governing body cannot impose regulations exceeding the scope of the initiated ordinance approved by voters. For example, in *State ex rel Harley v. City of Wichita*, 151 Kan. 390, 99 P.2d 812 (1940), the court invalidated an ordinance adopted by the governing body of the City of Wichita, which established additional regulations which went beyond the regulations contained in an initiated ordinance. No mayor may veto these ordinances. (See K.S.A. 12-3013(c).)

**Style of Initiative Ordinances.** According to the Attorney General (Opinion No. 89-61), an initiated ordinance must comply with the provisions of K.S.A. 12-3005, which requires an ordaining clause. The opinion stated that an initiated ordinance of the City of Olathe, without such a clause, was void and unenforceable.

**Administrative Versus Legislative Matters.** The major exclusion from the application of the city initiative statute involves administrative ordinances. The distinction between administrative and nonadministrative ordinances is discussed in 5 McQuillin, Mun Corp (3rd Ed) § 16.55, pages 194-195, which in part states:

"The power of initiative or referendum usually is restricted to legislative ordinances, resolutions or measures, and is not extended to executive or administrative action, although a city charter may dispense with this distinction. It has been said, however, that if the subject is one of statewide concern in which the legislature has delegated decision-making power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an "administrative" characterization, hence is outside the scope of the initiative and referendum. The courts have noted that the constitutional provisions conferring the initiative and referendum are placed within the article defining and delegating the state's legislative powers, and have taken cognizance of the ways in which the conduct of government would be seriously hampered were the initiative and referendum to be used to compel or bar "administrative" acts by elected officials.

"Actions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative. In this connection an ordinance which shows an intent to form a permanent rule of government until repealed is one of permanent operation. Obviously, details which are essentially of a fluctuating sort, due to economic or other conditions, cannot be set up in and by an ordinance to be submitted to the vote of the people.

"The test of what is a legislative and what is an administrative proposition, with respect to the initiative or referendum, has further been said to be whether the proposition is one to make new law or to execute law already in existence. The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it. Similarly, an act or resolution constituting a declaration of public purpose and making provision for ways and means of its accomplishment is generally legislative as distinguished from an act or resolution which merely carries out the policy or purpose already declared by the legislative body."

In *City of Lawrence v. McArdle*, 214 Kan. 862, 522 P.2d 420 (1974), the first four paragraphs of the syllabus summarize succinctly the legislative versus administrative distinction as follows:

1. The operation of the initiative and referendum statute is to be confined with a considerable degree of strictness to measures which are quite clearly and fully legislative and not principally executive or administrative.



2. One crucial test for determining that an ordinance is administrative or legislative is whether the ordinance is one making a new law or is executing a law already in existence.
3. Acts constituting a declaration of public purpose and making provisions for ways and means of its accomplishment may be generally classified as calling for the exercise of legislative power. Acts dealing with only a small segment of an overall policy question are generally of an administrative character.
4. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of policy.

The *McArdle* court ruled that a proposed ordinance which would have retroactively equalized firemen's salaries with policemen's salaries was administrative in nature and therefore not subject to the initiative and referendum statute.

In addition to the *McArdle* decision, there are several other examples where the court has found a proposed ordinance to be administrative rather than legislative in nature. These include a proposed ordinance declaring that no industrial revenue bonds would be issued under a resolution adopted earlier by the city governing body in *Rauh v. City of Hutchinson*, 223 Kan. 514, 575 P.2d 517 (1978). A proposed initiative ordinance, which would have limited a city's ability to proceed with the construction of a city's water system which had already been approved by voters until plans and specifications were available for public inspection insuring construction materials were available, was held to be an administrative matter in *Lewis v. City of South Hutchinson*, 162 Kan. 104, 174 P.2d 51 (1946). The court also held that an initiative ordinance selecting a specific plan for implementing a flood control project was an administrative matter in *State ex rel v. Salmone*, 167 Kan. 766, 208 P.2d 198 (1949).

The court said a proposed initiative ordinance dealing with the widening of a street was legislative in nature in *State ex rel v. Jacobs*, 135 Kan. 513, 11 P.2d 739 (1932). The court, likewise, found that an ordinance was legislative in nature which provided for a city to build its own gas plant and issue bonds to finance the project in *State v. Charles*. 136 Kan. 875, 18 P.2d 149 (1933).

## **Initiative and Taxation**

### **Taxes, Excises, Fees, and Charges Under City and County Home Rule**

Electors in cities and counties may initiate the question of levying any tax, fee, excise charge, or exaction permitted under city or county home rule powers. (See K.S.A. 12-138a and K.S.A. 19-117.) Ten percent of the city voters who voted in the last general city election are needed, whereas 5 percent of the qualified county voters are needed at the county level. The requirements are substantially the same for both cities and counties since the number of persons who actually vote in local elections is often only about half the number of those who are eligible to vote. The county

procedure also permits the governing body of each of one or more cities which contain not less than 25 percent of the county population to initiate a vote on a county tax or other revenue issue. Once a petition is presented to the city or county governing body, the issue then must be presented to the electors. Governing bodies of cities and counties may impose taxes or revenue measures on their own without an initiative petition but their actions are then subject to a protest petition and election procedure.

#### **Local Sales Taxes: Cities and Counties**

Voters of cities and counties may initiate the question of imposing local sales taxes. Signatures of 10 percent of the electors of cities are required to force a vote on the issue. At the county level, 10 percent of those who voted in the last preceding county general election for the Office of Secretary of State are required. Further, the governing body of one or more cities comprising 25 percent of the population of the county may initiate an election on a local sales tax issue. Governing bodies of cities and counties may place the issue of adopting a local sales tax before voters by their own action without an initiative petition.

#### **Local Intangibles Taxes: Cities, Counties, and Townships**

Electors in cities, counties, and townships may initiate an election on the issue of either deleting, reducing, raising, or imposing a local intangibles tax. Procedures are invoked by petitions signed by 5 percent of the qualified electors of the local unit of government. (See K.S.A. 1990 Supp. 12-1, 101(e) and (f).) Local governing bodies may call an election on these questions without being required to do so by initiative petition.

#### **Suspension of the Tax Lid**

Pursuant to K.S.A. 79-5029, 5 percent of the qualified electors of cities, counties, townships, community colleges, or a municipal university have the power to initiate an election on the issue of suspending the tax lid. This law is scheduled to expire on July 1, 1991. Governing bodies under the law had the ability to place before voters the issue of suspending that tax lid without an initiative petition.

#### **Various Tax Levies: Cities and Counties**

Five percent of the voters of either a city or county may initiate an election on the issue of levying a property tax for programs for the elderly. (See K.S.A. 12-1680.) The issue of levying a tax for a county fair can only be brought before voters in certain counties upon the initiative of 1,000 electors. (See K.S.A. 2-302.) Twenty-five percent of the electors of any city or county may have the issue of constructing a war memorial building and levying a tax for that purpose placed before voters of the city or county. (See K.S.A. 73-402.)

## **Initiative and Other Areas**

### **Form of Government; Name Change; Other**

The question of the adoption or abandonment of any form of city government where the law provides for an election on the issue may be initiated by 10 percent of the qualified electors of a city. (See K.S.A. 12-184(a).) The issue also may be brought before voters by action of the city governing body.

The issue of voting on changing the number of members of the board of county commissioners may be initiated by 5 percent of the qualified electors of a county. (See K.S.A. 19-204(b).)

Ten or more electors in school districts may propose a change in the voting plan or method of election of members of local school boards and then submit their plan to the State Board of Education. The proposed plan, after review by the State Board, is subject to approval by electors of the school district. (See K.S.A. 72-8006. For similar authority in regard to community colleges, see K.S.A. 71-1410.)

A vote on the issue of a change in the name of a city may be initiated by 10 percent of the qualified electors of a city under K.S.A. 12-154. County voters (generally three-fifths of the qualified voters) may petition for an election on the question of relocating the county seat. (See K.S.A. 19-1602.)

### **Formation of Cities, Special Districts**

The formation process for cities and for over half of the various types of special district governments authorized under Kansas law begins by petition of residents or landowners to the board of county commissioners or some other public body or officer. (See for example, K.S.A. 15-116 regarding initiative petition requirements for the incorporation of cities; K.S.A. 12-1220 for the initiative petition requirements for the formation of municipal libraries; K.S.A. 12-1925 for the initiative petition requirements for the establishment of recreation commissions; and K.S.A. 82a-614 for the initiative petition requirements for the formation of rural water districts.) Elections are often but not always required following the presentation of an initiative petition asking for the formation of these special districts. See for example, K.S.A. 24-1207, which requires an election following an initiative petition on the issue of the formation of watershed districts. It also is fairly common for there to be special qualifications for signing petitions or voting in an election on the issue of formation of a special district. For example, petitioners for the formation of sewer districts, rural water districts, drainage districts, watershed districts, and industrial districts must own land. Petitioners for the formation of conservation districts must be owners or operators of farm land. Petitioners for groundwater management districts must own land and use groundwater. Irrigation district petitioners must be owners of irrigation lands.

It is also common for boundary changes of cities and special districts to be initiated by petition. See for example, K.S.A. 12-520(a)(7), which permits a city to annex land where the landowners have petitioned for the annexation, and K.S.A. 19-3629, requiring an initiative procedure for expansion of territory of certain fire districts.

## **Consolidation, Dissolution, Other Boundary Changes of Local Governments**

The issue of the consolidation of two or more adjacent cities may be brought before voters by 10 percent of the electors under K.S.A. 12-302(b). The issue of disorganizing a school district may be brought before voters by a number of qualified voters equal to at least 20 percent of those who voted in the last general election. (See K.S.A. 72-7302(b).)

A majority of the electors of a city of the third class may petition to have the city dissolved under K.S.A. 15-111. Further, 20 residents of a dormant city may petition the township board to reactivate the city. (See K.S.A. 12-1614. See also K.S.A. 80-1106, which provides for the consolidation of townships upon petition of 25 percent of the qualified electors of the township.)

The consolidation of the operations, procedures, or functions of the local entities may be initiated by 10 percent of the qualified electors of any political or taxing subdivision under K.S.A. 12-3904. Moreover, the actual physical consolidation of two separate legal entities is not permitted under this statute. The term "political or taxing subdivision" is defined in K.S.A. 12-3902 to include: counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, fire districts, and taxing subdivisions.

A change in county boundaries must be initiated by petition of citizens of two or more counties. (See K.S.A. 18-202.)

## **Liquor Issues**

Electors may petition for an election on the issues of the package sales of alcoholic beverages within cities under K.S.A. 41-302, and on the issue of the sale of liquor by the drink within a county under K.S.A. 41-2646.

## **Miscellaneous Initiative Statutes**

Five percent of the qualified electors of any county may petition the Secretary of the State Board of Agriculture for a declaration that certain plants are noxious weeds. (See K.S.A. 2-1314b.) The issue of abolishing a board as the governing body of city cemeteries must be initiated by electors under K.S.A. 12-1427. The issue of establishing a county youth center and recreational grounds may be placed before voters by initiative petition under K.S.A. 19-3901. Petitioners also may have the following issues placed on ballots: the adoption of countywide law enforcement under K.S.A. 19-4403; the establishment of a county hospital under K.S.A. 19-4603; the use of voting machines in counties under K.S.A. 25-1314; the recall of local elected officials under K.S.A. 25-4300; the establishment of a county juvenile detention facility under K.S.A. 38-501; the issuance of general obligation bonds of the county to pay the state's share of highway improvements under K.S.A. 68-435; the establishment of the county road unit system under K.S.A. 68-515b; and the requirement for an audit of municipalities which are not otherwise required to have such audits under K.S.A. 75-1125.

## **Mandating Elections**

Certain actions of local governments are subject to mandatory elections under state law. The preceding section revealed a number of these instances in conjunction with the discussion of initiative opportunities. For example, the formation of approximately one-third of the various kinds of special district governments require an election. Local sales taxes cannot be imposed by cities or counties without an election, nor may local intangibles taxes be imposed, raised, lowered, or abolished without a vote. The following is a brief discussion of other instances in which elections are required by state law.

### **Bond Issues for Public Building and Other Construction Projects**

Cities are required to hold elections on the question of issuing bonds for the purpose of acquiring or constructing city offices, public libraries, auditoriums, or community or recreational buildings. (See K.S.A. 12-1737.) Counties are required to hold elections on general obligation bond proposals exceeding \$300,000 for county building projects. (See also K.S.A. 3-121, which requires a vote on bond issues for airport acquisitions by cities or counties, and K.S.A. 19-15,140, which requires a vote on bond issues by certain counties for civic centers.) Elections must be held by school districts on all bond issues which exceed \$20,000 for construction, repair, or remodeling of school buildings under K.S.A. 72-6761. Townships must have voter approval before issuing general obligation bonds for township buildings. (See K.S.A. 80-113.)

There are statutory alternatives to the mandatory election requirements regarding bond issues for public buildings. For example, both cities and counties have the ability to create public building commissions under K.S.A. 12-1757 *et seq.*, and may issue revenue bonds for the construction of public buildings. These revenue bond issues are subject to protest petition and election procedures. Cities, counties, and school districts also may enter into lease purchase agreements for the construction or purchase of public buildings. Lease purchase agreements exceeding 3 percent of the total budget excluding debt service are subject to a protest petition and election procedure. (See K.S.A. 10-1116c.) There are also various special laws that authorize particular public building projects without requirements for a mandatory election although protest petition and election procedures are commonly included. Further, cities and perhaps counties under home rule powers are able to exempt themselves from nonuniform state laws which mandate elections on public building projects by charter ordinance or charter resolution, respectively. Such charter ordinances and charter resolution, however, are subject to protest petition and election procedures.

### **Miscellaneous Election Requirements**

Cities must get voter approval for: the purchase of privately owned utilities under K.S.A. 12-811; a change in the form of city government under K.S.A. 12-184; the purchase of land and construction of dams under K.S.A. 12-1616c; and the increase in the mill levy for the operation of historical museums. Any local government which decides to abolish a locally elected office under K.S.A. 12-3903 must hold an election. Elections are also required for the issuance of bonds by certain cities of the first class for parking of airport purposes under K.S.A. 13-1348a; for the issuance of bonds by certain cities of the second class for hospital purposes under K.S.A. 14-662; for the sale

of airport facilities by airport authorities under K.S.A. 27-334; and for the exemption of local taxing subdivisions from the tax lid law under K.S.A. 79-5029.

### **Protest Petitions**

Protest petitions provisions are common in a wide variety of laws affecting local governments. Typically, the state law will provide that a local governing body's action is not final until after notice of the action is published one or more times in a newspaper and a certain period of time has expired during which electors may gather a specified number of signatures on protest petitions which, if filed, require an election on the issue. The following is a review of some of the more common areas of the law which provide for protest petitions.

### **Charter Ordinances and Charter Resolutions**

Both cities and counties may exempt themselves by charter ordinance or charter resolution, respectively, from nonuniform state law, which apply to them. The charter ordinance or charter resolution may provide that the whole or any part of the state law shall not apply and may provide substitute or additional provisions.

Procedures for passage of charter ordinances are set out in the City Home Rule Amendment. (See *Kansas Constitution*, Article 12, Section 5.) A two-thirds vote of the governing body of the city is required. Publication of the charter ordinance is required once each week for two consecutive weeks in the official city newspaper or, if there is no official city newspaper, then in a newspaper of general circulation. A 60-day waiting period is mandated after first publication to allow for a protest petition. The required signature threshold is 10 percent of those who voted at the last regular city election. Election procedures are set out in detail if a protest petition is filed including the wording for the ballot. A governing body may abandon a proposed charter ordinance after a petition is filed simply by failure to call the election. (See Attorney General Opinion No. 75-375.)

Procedures required for the passage of charter resolutions are generally similar to those required of cities for the passage of charter ordinances, with some exceptions. County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper. A charter resolution shall take effect 60 days after final publication unless submitted to public vote in which case the effective date is when a majority of the electors approves it.

An election on the issue may be required if a petition is filed with the county election officer, which is signed by 2 percent of the number of electors who voted in the last November election or 100 electors, whichever is greater. The election must be called within 30 days and held within 90 days after the petition has been filed. The election must be conducted in the same manner as elections for officers of the county. Attorney General Opinion No. 86-49 concluded that the mail ballot election act could be utilized for such elections since the language in K.S.A. 19-101b, "in the same manner as are elections for officers of the county" was deemed ambiguous. The Attorney General rejected a literal interpretation of the language that would require an election on the issue of a charter resolution only at an election for county officers. The mail ballot law may not be used at any election where any candidate is elected, retained, or recalled. (See K.S.A. 25-432(d).)

## **Taxing Powers**

Protest petition provisions are common in statutes authorizing the levy of taxes by local units of government. For example, electors of cities and counties have a right to protest taxes, excise fees, charges, or other exactions imposed under home rule authority by the means of protest petition. (See K.S.A. 12-137 for cities and K.S.A. 19-117 for counties. See also K.S.A. 12-5304, which provides for a protest petition process when a city or county desires to impose an emergency telephone system tax.) The following are examples of property tax levies of local units of government that are subject to protest petitions:

1. tax levies for county fairs (K.S.A. 2-129f, 2-131b, 2-132);
2. tax levies in certain counties for extension council facilities (K.S.A. 2-620);
3. tax levies for city law enforcement and ambulance and fire fighting equipment (K.S.A. 12-110b);
4. tax levy increases for library districts (K.S.A. 12-1247);
5. tax levies for city refuse collection (K.S.A. 12-2104);
6. a tax levy for the Kansas City Area Transportation District (K.S.A. 12-2535);
7. tax levies for certain cities and counties for child care centers (K.S.A. 12-4801);
8. tax levy increases for certain cemetery districts (K.S.A. 17-1344);
9. tax levies for certain county homes for the aged (K.S.A. 19-2106b);
10. tax levy for county services to the physically handicapped (K.S.A. 19-2698);
11. tax levy increases for certain fire districts (K.S.A. 19-3622);
12. tax levies for county mental health and mental retardation facilities and services (K.S.A. 19-4004);
13. tax levies for county economic development programs (K.S.A. 4102);
14. tax levy increases for watershed districts (K.S.A. 24-1208);
15. tax levy increases for certain airport authorities (K.S.A. 27-322);
16. tax levies for city, county, or township emergency medical services (K.S.A. 65-6113);
17. tax levies for community college buildings (K.S.A. 71-501);
18. tax levies for adult basic education by school districts (K.S.A. 72-4523);
19. tax levies for school district capital outlay (K.S.A. 72-8801); and

20. tax levies for county weather modification programs (K.S.A. 82a-1425).

### **Bond Issues and Protest Petitions**

A number of statutes which authorize bond issues by local government make these authorizations contingent upon protest petition and election procedures. Examples include the following:

1. bond issues by cities or counties in an amount not to exceed \$50,000 annually for airport runway improvements (K.S.A. 3-121);
2. bond issues for bridges of counties, cities, or townships (K.S.A. 10-203);
3. general obligation bonds of cities which refund utility revenue bonds (K.S.A. 10-1211);
4. general obligation bonds of cities for fire fighting equipment (K.S.A. 12-110c);
5. bond issues for city street repaving (K.S.A. 12-614);
6. bond issues of cities for water and sewer system improvements (K.S.A. 12-862);
7. revenue bonds of city and county public building commissions (K.S.A. 12-1774);
8. city tax increment financing bonds backed by the full faith and credit of the city (K.S.A. 12-1774);
9. bond issues by cities, counties, school districts, and other taxing subdivisions for asbestos removal (K.S.A. 12-5401); and
10. general obligation bond issues by certain airport authorities (K.S.A. 27-334).

### **Other Miscellaneous Actions and Protest Petitions**

The following are other miscellaneous actions of local governing bodies that are subject to protest petition and election procedures:

1. granting city franchises for utilities (K.S.A. 12-824 and 12-2001);
2. privatization of public services by cities or counties (K.S.A. 12-5504);
3. sale of county property valued over \$50,000 (K.S.A. 19-211);
4. turnover of township road maintenance responsibilities to counties (K.S.A. 68-560);
5. closure of school buildings (K.S.A. 72-8213);



6. changing the use of military memorial buildings (K.S.A. 73-446);
7. cities and townships joining the state KPERS retirement system (K.S.A. 74-4910);  
and
8. disorganization of townships (K.S.A. 80-1111).

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