Approved Wednesday, March 6, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

The meeting was called to order by Representative Turnquist
Chairperson

3:15 ~~a.m.~~/p.m. on Monday, March 4, 1991, 19__ in room 531 N of the Capit

All members were present except:

Committee staff present:

Chris Courtwright, Research
Gena Lott, Intern
Bill Edds, Revisor
Nikki Feuerborn, Secretary

Conferees appearing before the committee:

Larry Magill
Jim Oliver
Dick Brock
John J. Torbert
Bill Curtis
Donald F. Anderson
Dan Morgan
Bernie Hayne
Hoot Gibson
Steven M. Lange
Tom Slattery
Larry Shaffer
George Puckett
John Grace
Larry Fischer

Others attending: See Attached List

Representative Campbell moved for the approval of the minutes of February 28, 1991, meeting. Representative Sawyer seconded the motion. Motion carried.

Chris Courtwright of the Research Department gave a brief history and overview of HB 2459, HB 2415, and HB 2414.

The hearing for HB 2415, Municipal Group Funded Pool Act, opened with Larry Magill, representing the Independent Insurance Agents of Kansas, testifying as a proponent for HB 2415 and HB 2414. (See Attachment 1). Mr. Magill gave a history of the legislation leading up to the introduction of this proposed legislation. Workers compensation is mandated in Kansas for all but a few excluded types of employments and for any firm with over $10,000 in estimated annual payrolls. The Kansas Workers Compensation Plan, or assigned risk plan, is the market of last resort for Kansas employers to obtain workers compensation coverage. The plan is funded through assessments charged to insurance companies based on their premiums written compared to total premiums in the state of Kansas and on the underwriting losses of the plan. These assessments to fund the workers compensation plan paid by insurance companies then go into their loss experience and eventually help determine the rates in Kansas. HB 2415 would allow pools in Kansas to participate in funding the workers compensation plan on a fair and equitable basis. Pools can participate in paying for the plans underwriting losses without the necessity to participate in the reinsurance pool. Mr. Magill expressed alarm at the tremendous increase in workers compensation rates and claims and asked that huge legislative advantages for one privileged, rapidly growing group of insurers (i.e. pools) be created to the detriment of other insurers.

Mr. Magill urged the committee to support the addition of the work "sole" to the requirements that the 70% claims fund can only be used for paying claims. (See Attachment 1). Mr. Magill testified that there was a willingness to compromise on this point and grandfather the only pool that as been formed under the Department's current interpretation of the act.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

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A second related change dealing with the definition of surplus funds clarifies that if a pool intends to use surplus funds instead of excess insurance to protect its members, those surplus funds must amount to net worth after accounting for expenses including claims.

Jim Oliver, of Independent Insurance Agents of Kansas, spoke in support of Mr. Magill's testimony on HB 2415.

Dick Brock of the Insurance Commissioner's office presented a handout showing comparative information regarding workers compensation pools (See Attachment 2).

John J. Torbert, Executive Director of the Kansas Association of Counties, testified as an opponent to HB 2415. (See Attachment 3). He stated his association is currently in the process of initiating pools in workers compensation and employee benefits. KCAMP (Kansas County Association Multiline Pool) offers self-funded pooled protection for liability, property, automobile and errors and omissions insurance.

Problems with the bill were listed as:

1. Surplus funds would be limited to retained earnings. A new pool cannot have retained earnings and would probably not meet the definition even if it collected funds to be used for surplus "up front" from prospective members. Thus, a new pool could be formed only if it used specific and aggregate excess insurance.

2. Requiring that only an independent actuary approve the established reserves would be impractical as actuaries do not establish, they advise and recommend. They should served as a team member.

3. By adding the word "sole" on Page 3 it precludes the ability to pay the cost of specific and aggregate excess insurance out of the claims account. This is in direct opposition to the position taken by the insurance department and attorney general of this state.

Mr. Torbert summarized his testimony by stating that this proposed legislation is anti-pooling and anti-taxpayer and seeks to protect the vested interests of the independent agents.

Bill Curtis, representing the Kansas Association of School Boards, spoke as an opponent of HB 2415. In the opinion of the KASB, if HB 2415 were to pass in its present form, it would prevent the formation of a property and casualty pool and restrict the ability of the workers' compensation pool to continue to offer substantial savings. Their three objections are: (See Attachment 4).

1. By using the amended language on Page 2, an annual actuarial study for every pool would be required. These are extremely expensive and would have more value after a pool has been in operation for a number of years.

2. Using the word "sole" would prevent the formation of a property casualty pool. Both the Commissioner of Insurance and the Attorney General are of the opinion that excess insurance costs may be paid out of the claims account, under certain conditions.

3. Objection to the language requiring pools to pay assessments to assigned risk plans.

It is the belief of KASB that the passage of HB 2415 would severely restrict the abilities of municipalities to seek some solutions to the increasing costs of insurance.

Donald F. Anderson, represented the Kansas Eastern Region Insurance Trust which is a municipal workers compensation pool in operation since

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November 1, 1986. He testified as an opponent of HB 2415. The amendments contained in HB 2415 are not in the best interest of the municipalities and their taxpayers, who, in times of limited budgets, must seek out more affordable, stable and effective alternatives to the commercial insurance market. (See Attachment 5)

Bernie Hayne, representing the League of Kansas Municipalities, testified in opposition to HB 2415. The Kansas legislature should encourage the formation of public pools and should not enact further restraints to their effective development or operation. (See Attachment 6).

There were no further proponents or opponents requesting to testify on HB 2415.

The hearing for HB 2414, an act concerning group-funded workers' compensation, was begun with Larry Fischer, representing Medicalodges, Inc., of Coffeyville, appearing as an opponent (See Attachment 7). Based on an estimate, adding at least 15% to the program cost will force companies out of the program and reduce the resources available for wages and benefits in long term care. Increased cost will yield higher health care costs. Additional assessment on the present exposure will probably force pools out of the program and raise costs to all pool customers or clients. Medicalodges, Inc., currently carries current and aggregate insurance with Aetna.

Dan Morgan, representing the Kansas City Chapter of the Associated General Contractors and The Builders' Association, testified as an opponent of HB 2414 (See Attachment 8). Mr. Morgan spoke of the merits and advantages of their currently operating pool and requiring the fund to pay excess liabilities will hurt the Association. It would be a disservice to the members' employees who currently enjoy a safer working environment because of the group-funded pool. Members have saved $1 million in advance discounts. They have been paid dividends of $400,000 - $500,000 with no years of assessments. There is open membership to anyone who is a member of the builders' association.

Hoot Gibson, Fund Manager of the Builders' Association Self-Insurers' Fund of Kansas, testified against HB 2414 (See Attachment 9). To require Kansas Group Funded Workers' Compensation Pools to share the over burden charges of the Kansas Assigned Risk Pool with insurance companies is in conflict with the 1983 legislative intent for Group Worker's Compensation Pools and not in the best interest of the construction industry. Mr. Gibson stated a number of reasons why HB 2414 should not be enacted (See Attachment 9). The true solution to th assigned Risk Pool dilemma is for the State of Kansas to enact some meaningful workers' compensation benefit reform and for the insurance companies and the agent/broker community to provide effective and professional Claims Administration and Loss Prevention/Loss Control services.

Steven M. Lange, representing Alexander and Alexander, testified as an opponent to HB 2414 (See Attachment 10). He told the differences in concept and operation between BASIF (Builders Association Self Insurance Fund) and an insurance company. He stated that the real issue of the proposed legislation is the adequacy of Kansas rates. The past several rate increases were reduced to the point that a big increase is now needed to support the writing of workers compensation. This move to pull the self-insured pooled risk into the assessment is just a maneuver to get some of the assessments picked up without the rate issue being fully addressed. The existence of the BASIF is an alternative to the assigned risk for many accounts. The financial consequences of having the assigned risk assessment hitting the BASIF could cause the BASIF to discontinue operations. This would remove a valuable facility from the construction industry and complicate the workers compensation issue facing the remaining voluntary markets.

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Tom Slattery, Association of General Contractors, reiterated the comments of the three preceding conferees and stressed that the passage of the proposed legislation would be detrimental to their association.

George Puckett, Executive Director of the Kansas Restaurant and Hospitality Association (KRHA), testified as an opponent of HB 2414. (See Attachment 11). For the State to add another administrative cost of approximately 15 to 20% would totally destroy the concept of group self insured workers' compensation pools in Kansas. It would have a detrimental impact on employers in Kansas and the insurance industry in Kansas. These funds are usually created because the participants are unable to find any coverage with normal insurance providers. If they are placed in the Assigned Risk Pool, they will have to pay more for their coverage due to surcharges and not offering discounts. The Assigned Risk Pool will have to provide coverage for more employers. There are less than ten insurance carriers who offer specific and aggregate excess insurance. To limit this type of market to only Kansas certified carriers is a competition limiting act.

Larry Shaffer, representing the Kansas Hospital Association, spoke in opposition to HB 2414 (See Attachment 12). It is the intent of the KHA Workers Compensation Fund to work toward eliminating the need for any of its member hospitals to participate in the Kansas Workers Compensation Plan. It will be the result of the KHA Fund offering its member hospitals ample education and loss prevention activities designed to improve safety in the work environment and to vigorously process those claims failed against the Fund.

John Grace, Kansas Association of Homes for the Aging, presented written testimony in opposition to HB 2414 (See Attachment 13). The passage of this legislation would eliminate their workers compensation pool.

The Hearing on HB 2459 began with Larry Fischer of Medicalodges, Inc. He appeared as a proponent of HB 2459 which would allow employers with five or more operating locations within the state to apply for authority to operate a pool for liabilities for Kansas Workers Compensation benefits and employer's liabilities. Due to time constraints, Mr. Fischer presented only written testimony. (See Attachment 14).

There were no opponents to HB 2459.

The meeting adjourned at 5:04 p.m.

GUEST LIST

COMMITTEE: Insurance DATE: 3-4-91 M

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Kevin McFarland	Topeka	Ks Homes for Aging
[illegible] Hagan	Topeka	League of Ks Municipalities
John Grace	Topeka	KAHA
George Puckett	Wichita	KS Restaurant and Hospitality Assn.
Ed Treadwell	Kansas City	KING
Donald Anderson	Olathe	Kansas Eastern Region Insurance Trust
Denny Burgess	Topeka	Kansas Health Care Assn.
Jameson McBride Jr.	Topeka	Meade Ins.
Dennis Payne	Topeka	Drier Payne Ins.
Bernie Zalaznik	Wichita	Employers Mutual Cos
Art Brown	KC MO	KS [illegible] Dealers Assn
Pat Wiechman	Topeka	Ks Automotive Dismantlers & Recyclers Assn
Bob Totten	Topeka	Kansas Contractors Assn
John Torbert	"	Assn of Counties
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Steve Wanamaker	"	IIAK Sargent-Wanamaker, Inc
Jim Oliver	"	PIAK
Dick Brock	"	Ins Dept

2415

Testimony on HB 2414 & HB 2415
Presented to The House Insurance Committee
By Larry W. Magill, Jr. Executive Vice President
Independent Insurance Agents of Kansas
March 4, 1991

Thank you Mr. Chairman and Members of the Committee for introducing these two bills at our request and for this opportunity to appear in support of the legislation. To save time on what we know is a very busy schedule, we will combine our testimony on the two bills since many of the changes are essentially the same. This legislation is one of our association's top priorities for 1991.

I would like to give you a brief history of the legislation allowing both workers compensation group funded pools and municipal group funded pools. As a result of legislation introduced in the 1982 legislative session, a special interim committee on labor and industry studied workers compensation pools during that summer. They introduced legislation which was ultimately passed in the following 1983 session. It was closely patterned after similar legislation in Florida.

During the 1987 session, legislation was introduced to allow municipal group funded pools. This committee through a subcommittee spent a considerable amount of time that session working on what ultimately became the House substitute for SB 250. That legislation was patterned closely after the Workers Compensation Group Funded Pooling Act including the requirement for a 70% claims fund.

The Municipal Group Pooling Act was amended last session to give authority to pools to provide group life and health coverages. That bill, SB 587 clarified that the excess insurance purchased by municipal group pools must be through Kansas admitted insurers.

Throughout the debate on these two major acts, the legislative approach has been to essentially treat them as assessable mutual insurance companies with some major exceptions:

1. They are not subject to the capital (net worth) requirements of a normal insurance company. For multiline authority in Kansas, that would be $1.5 million dollars in addition to the premiums an insurer might collect.

2. They are not subject to insurance laws and regulations except to the extent specifically spelled out in the two acts. Although it is difficult to quantify, we feel it saves them substantial amounts of money in the cost of their operation and allows greater flexibility.

3. They are not under the Kansas guarantee funds nor are they subject to assessments for those guarantee fund losses.

4. They do not have to support the assigned risk plans for auto and workers compensation through assessments.

We would also like to point out that IIAK supports the concept of

House Insurance
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Attachment 1

self-insurance as well as the concept that pooling is essentially the same as forming your own insurance company. Our members are involved with both individual self-insurance and pooling, although pooling activities tend to be limited to only the larger agencies in the country because of the specialized knowledge needed.

Pools provide an important alternative market to traditional insurance and there is a place for them so long as the participants fully understand the risks involved and the fact that they are not transferring risk but assuming it through the formation of their own insurance company.

Based on the Insurance Departments records, following are the pools operating in Kansas by category along with their estimated annual premiums:

EXISTING WORKERS COMPENSATION POOLS	**ESTIMATED ANNUAL PREMIUMS**
Builders Association Self Insurers Fund of KS	$3,620,785 (W.C. - 4/1/90)
Kansas Eastern Regional Insurance Trust	2,548,112 (W.C. - 4/1/90)
Medicalodges Affiliates Workers Compensation Affiliates	621,199 (W.C. - 4/1/90)
Kansas Restaurant Association Self Insurance Fund	548,906 (W.C. - 4/1/90)
Kansas Association of Homes for the Aging	506,953 (W.C. - 4/1/90)

EXISTING MUNICIPAL POOLS	**ESTIMATED ANNUAL PREMIUMS**
Kansas Association of School Boards W.C. Fund	$3,499,923 (W.C. only - 7/1/90)
Kansas County Association Multiline Pool	1,835,633 (est. 1/1/91 - no W.C. - auto prem. of $406,328)

POOLS BEING FORMED	**ESTIMATED ANNUAL PREMIUMS**
Kansas Hospital Association	
Kansas Motor Car Dealers Association	

We would also like to ask that in your consideration of pooling, you keep in mind the debate this session and last on group health insurance availability and affordability. The two are very much interrelated as firms are increasingly self-insuring their group health exposure to escape state mandates placed on insured groups and the state's premium tax.

The Senate Financial Institution's and Insurance Committee is presently considering legislation that would authorize MEWA's that are multifirm self-insurance associations similar to pools. That legislation, SB 189, would not subject MEWA's to the mandates or the premium tax.

In addition this committee is considering a health insurance assigned risk plan that may be funded by assessments on insurance companies and will probably pass an amended version of HB 2001 mandating that insurance companies accept impaired risks, community rating and much more. As the Health Insurance Association of America has pointed out, the commercial

insurance market is gradually being forced out of the market for group health insurance leaving Kansans with fewer options and more risks associated with self-insurance programs. These higher risk self-insurance schemes may thwart the legislature's intentions on mandates and community rating if a level playing field is not provided.

KANSAS WORKERS COMPENSATION PLAN ASSESSMENTS

The Kansas Workers Compensation Plan, or assigned risk plan as many call it, is the market of last resort for Kansas employers to obtain workers compensation coverage. Workers compensation is mandated in Kansas for all but a few excluded types of employments and for any firm with over $10,000 in estimated annual payrolls. The plan is funded through assessments charged to insurance companies based on their premiums written compared to total premiums in the state of Kansas and on the underwriting losses of the plan. These assessments to fund the workers compensation plan paid by insurance companies then go into their loss experience and eventually help determine the rates in Kansas.

Attached to my testimony is a 10 year history of the workers compensation plans underwriting results and the assessment levels over the past 10 years on insurance companies' written premiums. Also attached is an exhibit showing the assessment levels in the other states where NCCI's reinsurance pool reinsures the state workers compensation assigned risk plan. We are proposing under HB 2414 page 2 lines 26 through 29 and on HB 2415 beginning on page 3 line 42 and ending on page 4 line 2 that pools in Kansas participate in funding our workers compensation plan on a fair and equitable basis.

If you do not enact these provisions:

1. You give pools a 16.14% competitive edge now and who knows what edge in the future.
2. You allow them to use rates that have these assessments built into them but that they do not have to pay.
3. You create a significant market place incentive for buyers to go to pools - potentially further increasing the assessments on the remaining voluntary premiums written and further drying up the market for voluntary workers compensation coverage. As this happens, you will limit the firm's options to transfer the workers compensation risk rather than assume it through pooling or self-insurance and eliminate cost saving options like deviations, dividends, retention and retrospective rating plans that the voluntary insurance market has traditionally offered the better businesses.
4. If you do not apply the assessment to pools you narrow the base of premium the assessment is applied to and actually raise it on the insurance companies and those businesses that remain in the voluntary insurance market. This is not equitable to all the other businesses in Kansas who are then supporting the assigned risk plan. If pooling were to substantially increase, it could eventually create a "death spiral" like Maine where the assessment hit 702% before the plan was terminated or Texas where there plans assessments have actually caused their

largest workers compensation insurer to become insolvent.

5. You will allow the pools to "cherry pick" the best risks within any group of businesses leaving only the high risk businesses with poor loss records and a lack of concern for lost control and injury prevention going into the assigned risk plan further aggravating the assessments.

We would have proposed this provision when the two pooling laws were enacted, but we were told by NCCI and the Insurance Department that pools could not participate in the workers compensation plan reinsurance pool. Technically that is still correct. For example, the Kansas workers compensation plan is financially backed by NCCI's reinsurance pool in which all workers compensation companies participate. This reinsurance pool eliminates any possibility that an assigned risk plan will ever become insolvent. However, it has now become clear that pools can participate in paying for the plans underwriting losses without the necessity to participate in the reinsurance pool. Thus they are not putting their assets on the line behind the plan but they are helping pay for the cost.

We think this is consistent with the legislative intent when these two pooling laws were enacted that there be a level playing field between pools and insurance companies.

Furthermore, this is not the only way our association has tackled the problem of the huge underwriting losses in the Kansas workers compensation plan and the sky rocketing assessments. We supported implementation of the ARAP, Assigned Risk Adjustment Program, the use by the plan of lower non stock premium discounts, an increase in the sole proprietor payroll limitation, and a proposed take-out credit program all designed to discourage placement of business in the Kansas workers compensation plan. The plan currently accounts for nearly 25% of the workers compensation market in Kansas.

We also hope the Insurance Department will approve an adequate workers compensation rate increase. The National Council on Compensation has applied for 30.9% average rate increase while the department's actuary, Tillinghast, has tentatively supported a 23.5% increase on average.

Last legislative session we actively supported a medical fee schedule and utilization review bill to contain the medical costs under workers compensation. This session we have actively supported SB 220, a workers compensation deductible option for insured workers compensation.

We are alarmed at the tremendous increase in workers compensation rates and claims as depicted on the attached graphs. We simply ask that you not create a huge legislative advantage for one privileged, rapidly growing group of "insurers" (i.e. pools) to the detriment of other insurers. For example, is it fair that a non-member of an association does not get this 16% price break? Ultimately, it is the consumer that suffers if they choose insurance over higher risk pooling and you do not enact HB 2414 and HB 2415.

In addition, HB 2415 would require that any pool providing auto insurance participate in the Kansas Auto Insurance Plan for commercial vehicles. Again, we were told in 1987, that pools could not participate under Kansas' auto assigned risk plan because they would be required to issue insurance policies for assigned risk business. Since then, the auto plan has adopted a special reinsurance mechanism for commercial auto insureds based on assessments against insurance companies premiums written. Thus, like workers compensation, pools can participate on an equal footing with insurance companies.

PURCHASE OF EXCESS INSURANCE

The second most controversial provision in this proposal is on page 3, line 18 of HB 2415 adding the word "sole" to the requirements that the 70% claims fund can only be used for paying claims.

Up until February, 1990, the Insurance Department had consistently interpreted the municipal group self-insurance act the same as it has consistently interpreted the workers compensation group self insurance act to say that excess insurance must be purchased using administration funds and not the special claims funds. In February, 1990 the Department reversed that interpretation for one pool without any change in the underlying statute.

Historically, this legislature set up three significant safeguards against insolvency of pools that was part of the trade off for not requiring any capital or net worth when a pool is formed. These were the establishment of a 70% claims fund along with the requirement that pools purchase excess insurance and that they be assessable. Of course, assessability protects the pools solvency but does not protect members of the pool from the potential additional costs of assessments.

As a result of the Department's change of position, we sought an Attorney General's opinion through Representative Dale Sprague. Attached to our testimony is a copy of that opinion which can simply be summarized by saying that the A.G. found the Department's reversal to be "not clearly erroneous".

The Department has stated that with the addition of the word "sole", their interpretation would switch back to their previous position and be consistent with their interpretation of the workers compensation self-insurance act. We urge the committee to support this change for the following reasons:

1. The cost of excess insurance can be a significant drain on the protection provided on the 70% claims fund. For example, the Kansas County Association multiline pool's excess cost was $325,000 based on 30 counties participating or 25% of their total claims fund.
2. As market conditions vary, the cost of excess insurance can increase dramatically as well as the attachment points and aggregate limits affecting the protection provided by the 70% claims fund requirement. Excess insurance is less expensive today than at any time since 1984 due to the "soft" market.
3. Allowing the purchase of excess insurance from the claims fund can

open the door wider to self dealing. This would be where the broker representing the pool places the excess insurance with an affiliated excess insurance carrier. Of course, there is nothing in the present law or proposed bills that would prevent this but if a pool spends its administrative money that way, at least it does not affect their claims fund.

4. According to the Insurance Department's own survey of other states with pooling laws, of the six states that require a 70% claims fund, five of those states do not allow the excess insurance to be paid for out of the claims fund.
5. Excess insurance is generally treated as an expense by insurance companies - not as a "claim".
6. We would point to the fact that a number of pools have already been successfully formed in Kansas under our proposed interpretation.
7. We have attached to our testimony a copy of our Attorney's arguments to the Attorney General stating what we thought was a very clear case for our interpretation of the present law.
8. We think it was clearly the legislative intent when the act was first passed that the 70% claims fund was set aside for the payment of claims not the purchase of insurance.

We are willing to compromise on this point and grandfather the only pool that has been formed under the Department's current interpretation of the act. For example, the legislature could provide that any pools formed as of this date have up to two years before they have to purchase their excess insurance through their administrative fund to prevent any hardship on the one pool that has been formed using this interpretation.

A second related change is the definition of surplus funds on page 2 lines 23 to 30 and page 3 lines 23 to 27 of HB 2415. This clarifies that if a pool intends to use surplus funds instead of excess insurance to protect its members, those surplus funds must amount to net worth after accounting for expenses including claims.

Without this clarification, it would be possible to argue that out of "x" dollars being collected for premiums, it only needs "y" dollars to pay premiums with the difference being "surplus" before the pool is ever officially formed. In other words, by using an artificially low <u>expected</u> loss ratio, those wishing to form a pool could "create" a surplus by declaring some additional premium as such. We think the legislature intended to mean net worth accumulated after the close of a fiscal year and after all claims have been adequately reserved. Down the road, if pools are successful, they may reach a point where their net worth eliminates the need to buy excess insurance. However, we would point out that the largest insurance companies in the country still buy reinsurance, which is equivalent to excess insurance for pools, to protect themselves.

UNFAIR TRADE PRACTICES ACT AND AGENT's LICENSING

In our view these two changes are simply a clean up of the original legislation clarifying that the unfair trade practices act and agents licensing requirements apply while a pool is being formed as well as after one has been authorized by the department.

To do otherwise, would allow pools to ignore the unfair trade practices act and licensing requirements during the crucial formation stage. This could lead to misrepresentations and inaccurate comparisons with insurance that our change would hopefully avoid. Everything that a pool does in promoting itself is identical to what insurance agents and insurance companies do when they market their products. There is no logical reason to not apply the same rules prior to a pool being formed. After a pool has been formed, a number of entities have already been convinced to join and it is then too late and very difficult and possibly costly for a participant to withdraw. This change simply gives the consumer protection from pool consultants and promoters and allows the Insurance Department to adequately regulate the activities from day one.

ADMITTED EXCESS INSURER

This change contained in HB 2414, page 2 lines 14 through 17 simply brings the workers compensation group self insurance act into line with the municipal group self insurance act. Last session, the municipal pooling law was changed to clarify that the excess insurance must be provided through a Kansas admitted or licensed insurance company, at the same time the legislature authorized pooling of group life and health coverages.

Requiring a licensed excess insurer gives the Insurance Department regulatory control over the excess insurers activities, rates and forms and gives the pool participants the benefit of the Kansas guarantee fund coverage for the excess carrier should they become insolvent.

We feel this makes good sense and that the two acts should be consistent in this regard.

CONCLUSION

Despite what you will hear from opponents, we are not trying to put them out of business. If anything, pools have been good from the stand-point of involving the buyers of insurance (pools) in legislation effecting their costs, such as changes to the workers compensation act.

We are simply asking that everyone be put on as nearly equal a footing as possible. We are asking for fair and equitable treatment and clarification of what we feel was clearly the legislative intent when these acts were passed.

We are willing to work with the committee and these bill's opponents to attempt to come to a compromise. We urge the committee to ultimately act favorably on the legislation. Thank you for this opportunity. We will be happy to answer questions or provide additional information.

National
Council on
Compensation
Insurance

Government, Consumer &
Industry Affairs
Western Division

Michael A. T
Director

February 5, 1991

Facsimile Transmission

Mr. Larry Magill, Jr.
Executive Vice President
Independent Insurance Agents of Kansas
815 Topeka Avenue
Topeka, Kansas 66612

Dear Larry:

As a follow up to my earlier letter, I have obtained the residual market burden you have requested. Unfortunately, the data available only goes back to 1982, however, I hope it is beneficial.

Operating Loss as a % of Voluntary Written Premium (as of 09/30/90)

Year	Kansas Only	Nationwide Excluding Maine
1982	1.38	3.42
1983	2.77	3.53
1984	3.67	4.29
1985	7.17	8.09
1986	9.16	10.83
1987	14.48	12.07
1988	12.17	12.32
1989	11.86	12.64
1990	16.14	13.25

Please let me know if you have any additional questions regarding this information.

Sincerely,

Michael A. Taylor
Director
Government, Consumer and Industry Affairs

MAT:ah

11430 Gravois Road, P.O. Box 8530, St. Louis, Missouri 63126-0530
Telephone: 314-843-4001

NATIONAL WORKERS COMPENSATION REINSURANCE POOL
OPERATING RESULTS - STATE OF KANSAS

CALENDAR YEAR BASIS

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
EARNED PREMIUMS	$15,367,980	$16,375,892	$13,868,425	$9,531,379	$10,452,825	$17,382,973	$39,826,987	$51,378,160	$54,973,569	$63,151,323
INCURRED LOSSES	$15,013,893	$11,988,861	$9,641,177	$7,678,544	$8,814,462	$21,737,161	$40,139,386	$59,722,487	$47,971,239	$64,284,763
NET EXPENSES	$4,918,927	$5,508,053	$4,734,532	$3,808,631	$3,871,696	$8,094,141	$15,763,375	$19,322,884	$20,046,540	$24,224,023
OPERATING GAIN(LOSS)	($4,564,840)	($1,121,022)	($507,284)	($1,955,796)	($2,233,333)	($12,448,329)	($16,075,774)	($27,667,211)	($13,044,210)	($25,357,463)
CHANGE IN EBNR PREMIUM RESERVE	$2,027,460	($901,770)	($551,765)	($473,539)	$135,556	$64,058	$300,000	$0	$220,000	$830,000 –
CHANGE IN EBNR EXPENSE RESERVE	$709,611	($315,620)	($198,118)	($165,739)	$47,445	$22,420	$105,000	$0	$77,000	$312,500 +
ADJUSTED OPERATING GAIN(LOSS)	($3,246,991)	($1,707,172)	($860,931)	($2,263,596)	($2,145,222)	($12,406,691)	($15,880,774)	($27,667,211)	($12,901,210)	($24,839,963)
CALENDAR YEAR LOSS RATIO	0.977	0.732	0.695	0.806	0.843	1.250	1.008	1.162	0.873	1.018

POLICY YEAR BASIS AS OF 12-31-89

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
EARNED PREMIUMS	$14,973,619	$15,185,609	$11,637,555	$9,786,837	$10,988,715	$27,151,054	$48,130,298	$52,853,184	$58,079,851	$35,372,560
INCURRED LOSSES	$11,910,775	$13,068,584	$9,345,295	$9,840,401	$11,555,175	$27,877,568	$47,672,082	$59,196,089	$57,457,375	$36,472,996
NET EXPENSES	$5,234,871	$5,238,733	$4,283,810	$3,778,579	$4,376,988	$10,010,845	$17,199,888	$19,110,195	$20,615,916	$19,249,195
OPERATING GAIN(LOSS)	($2,172,027)	($3,121,708)	($1,991,550)	($3,832,143)	($4,943,448)	($10,737,359)	($16,741,672)	($25,453,100)	($19,993,440)	($20,349,631)
CURRENT EBNR PREMIUM RESERVE	$0	$0	$0	$0	$0	$0	$0	$0	$550,000	$1,100,000
CURRENT EBNR EXPENSE RESERVE	$0	$0	$0	$0	$0	$0	$0	$0	$192,500	$407,000
ADJUSTED OPERATING GAIN(LOSS)	($2,172,027)	($3,121,708)	($1,991,550)	($3,832,143)	($4,943,448)	($10,737,359)	($16,741,672)	($25,453,100)	($19,635,940)	($19,656,631)
POLICY YEAR LOSS RATIO	0.795	0.861	0.803	1.005	1.052	1.027	0.990	1.120	0.989	1.031

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MAR-01-'91 14:22 ID:NCCI-ST LOUIS OFFICE TEL NO:314-842-31
FEB-04-'91 THU 13:45 ID:NCCI RESIDUAL MARKET TEL NO:FAXLINE 407-997-4722 #419 P02

RESIDUAL MARKET BURDEN

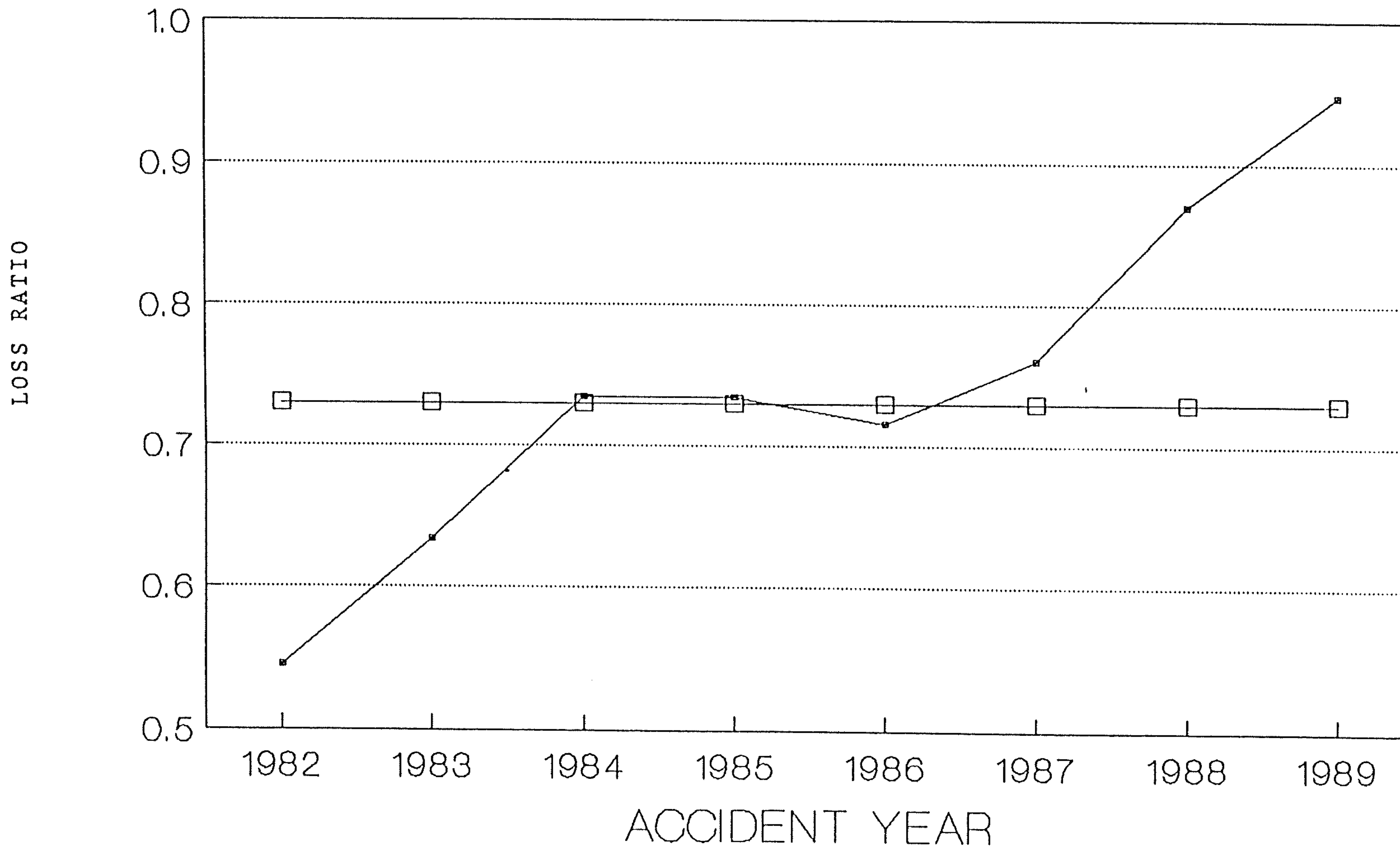
RESIDUAL MARKET PROJECTED OPERATING LOSS AS A PERCENTAGE OF VOLUNTARY MARKET WRITTEN PREMIUM AS OF 9-30-90

STATE	1982	1983	1984	1985	1986	1987	1988	1989	19
* ALABAMA	-4.49%	-3.12%	-7.56%	-12.11%	-14.49%	-12.51%	-15.78%	-15.71%	-28.[illegible]
* ALASKA	-0.96%	-3.35%	-0.83%	-1.78%	-3.09%	3.32%	2.57%	2.79%	-1.72%
* ARIZONA	-0.09%	0.12%	-0.13%	-0.26%	-1.50%	-0.40%	-0.22%	-0.28%	-0.78%
ARKANSAS	-0.94%	-2.09%	-2.83%	-7.99%	-17.30%	-15.04%	-16.44%	-23.90%	-43.64%
CONNECTICUT	-0.80%	-0.15%	-0.66%	-2.82%	-3.26%	-4.43%	-3.74%	-4.36%	-3.88%
* DELAWARE	-0.60%	0.33%	-0.69%	-3.15%	-0.03%	-1.78%	1.16%	-0.98%	-2.13%
* DIST. OF COLUMBIA	-6.48%	-0.46%	-3.83%	-4.11%	-2.81%	-1.41%	-0.33%	-2.51%	-1.88%
FLORIDA	-12.14%	-7.59%	-8.74%	-14.96%	-20.83%	-26.30%	-25.03%	-19.96%	-7.84%
GEORGIA	-1.56%	-2.62%	-3.45%	-9.12%	-13.47%	-12.04%	-8.39%	-6.26%	-10.82%
* HAWAII	-1.39%	-2.54%	0.86%	0.10%	-0.49%	-0.68%	-0.56%	-1.55%	-3.87%
ILLINOIS	-3.03%	-4.92%	-5.51%	-6.12%	-7.98%	-6.62%	-5.77%	-5.37%	-4.66%
* INDIANA	-0.87%	-2.62%	-3.77%	-8.53%	-11.98%	-13.19%	-13.17%	-8.14%	-2.03%
* IOWA	-0.89%	-1.04%	-2.69%	-5.80%	-11.02%	-11.51%	-8.19%	-5.20%	-2.43%
KANSAS	-1.38%	-2.77%	-3.67%	-7.17%	-9.16%	-14.48%	-12.17%	-11.06%	-1[illegible]
KENTUCKY	-14.62%	-19.32%	-8.84%	-11.80%	-8.66%	-10.65%	-13.44%	-8.75%	-[illegible]
LOUISIANA	-9.06%	-9.80%	-15.51%	-36.67%	-48.69%	-56.71%	-78.29%	-85.82%	-1[illegible]
MAINE	-28.77%	-30.71%	-51.68%	-74.51%	-187.02%	-702.02%			
MASSACHUSETTS	-8.00%	-5.80%	-5.22%	-11.31%	-18.43%	-26.60%	-26.96%	-38.52%	-29.45%
MICHIGAN	-1.24%	-0.49%	-1.17%	-3.98%	-2.79%	-1.80%	-2.77%	-3.42%	-2.74%
* MISSISSIPPI	-4.13%	-3.95%	-3.66%	-10.05%	-14.29%	-15.61%	-11.74%	-16.39%	-38.19%
MISSOURI	-3.38%	-4.59%	-6.26%	-13.29%	-14.10%	-14.22%	-14.83%	-15.50%	-19.68%
* NEBRASKA	-1.05%	-0.11%	-1.18%	-7.67%	-10.39%	-11.07%	-13.55%	-18.12%	-12.46%
* NEW HAMPSHIRE	-4.54%	-4.00%	-3.05%	-4.28%	-6.72%	-11.01%	-9.77%	-2.19%	-7.31%
* NEW JERSEY	-0.81%	-0.90%	-8.62%	-2.87%	-5.44%	-4.22%	-5.27%	-6.88%	-7.73%
NEW MEXICO	-1.13%	-0.91%	-0.85%	-7.46%	-22.80%	-35.13%	-30.95%	-43.86%	-55.96%
* NORTH CAROLINA	-0.01%	-0.24%	-1.74%	-3.61%	-5.95%	-6.57%	-8.32%	-8.67%	-7.32%
OREGON	-0.39%	-0.31%	-1.08%	-1.57%	-2.00%	-1.98%	-1.90%	-2.70%	-6.17%
RHODE ISLAND	-19.43%	-12.90%	-19.64%	-26.87%	-68.77%	-76.28%	-82.83%	-169.91%	-278.80%
* SOUTH CAROLINA	-1.73%	-2.11%	-2.74%	-3.64%	-6.91%	-14.04%	-11.56%	-22.28%	-35.68%
* SOUTH DAKOTA	-3.99%	-7.82%	-7.12%	-14.67%	-20.26%	-15.40%	-9.42%	-5.32%	1.00%
* TENNESSEE	-1.93%	-2.73%	-6.87%	-8.57%	-12.56%	-16.21%	-16.68%	-18.87%	-20.46%
VERMONT	-4.30%	-4.66%	-6.54%	-8.76%	-11.17%	-11.21%	-9.92%	-11.17%	-19.94%
* VIRGINIA	-0.75%	-2.26%	-2.10%	-2.57%	-4.31%	-4.94%	-6.63%	-6.81%	-10.63%
TOTAL	-3.78%	-3.99%	-5.09%	-9.00%	-12.30%	-14.19%			
TOTAL EX. MAINE	-3.42%	-3.53%	-4.29%	-8.09%	-10.83%	-12.07%	-12.32%	-12.64%	[illegible].26%

* NON-REVIEWED STATES

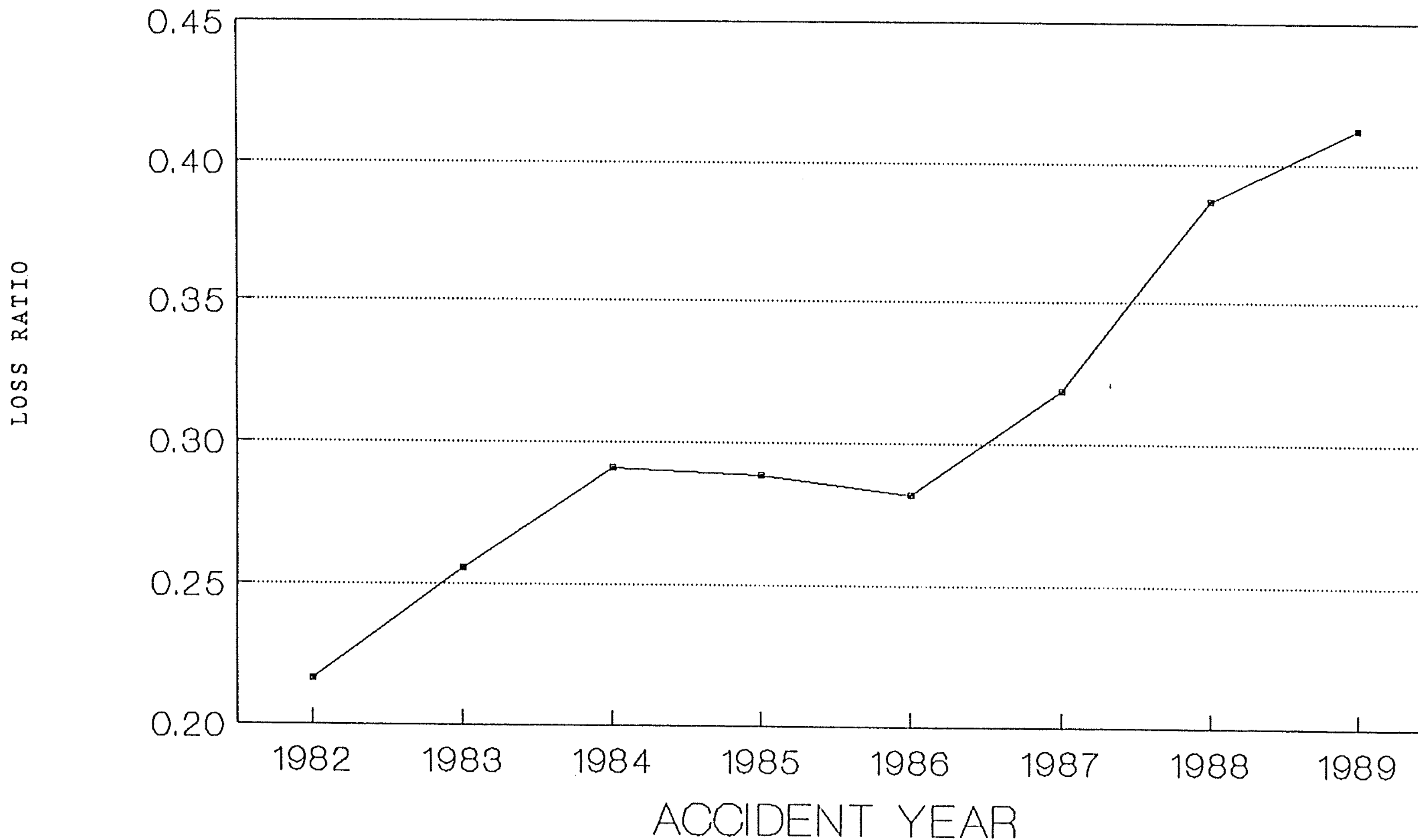
KANSAS - HISTORICAL LOSS RATIOS

INDEMNITY + MEDICAL



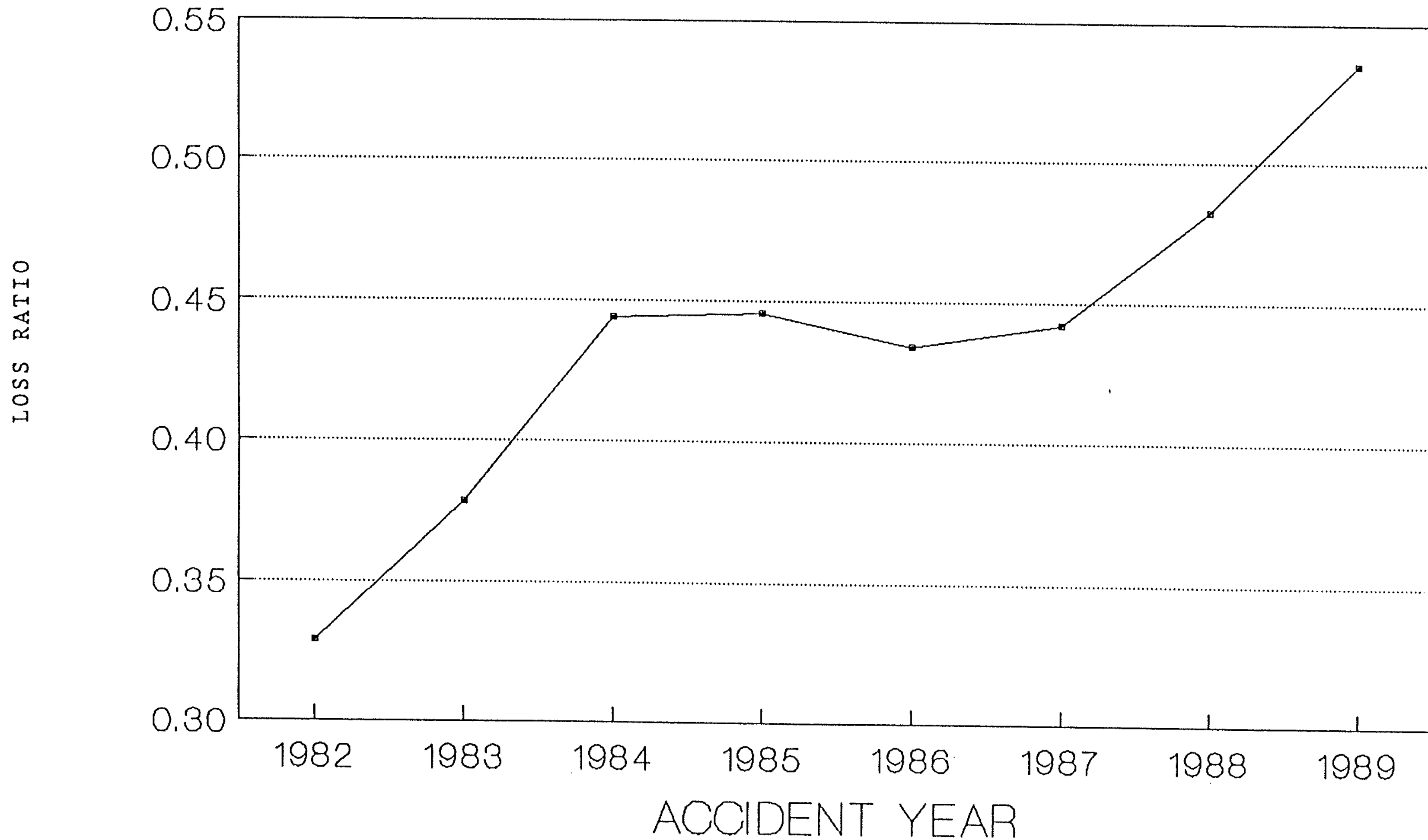
NOTES:
1. Source: filing.
2. Premiums are on current rate level.
3. Indicated losses are under current law.
4. Target loss ratio is .730 .

KANSAS - HISTORICAL LOSS RATIOS
MEDICAL



NOTES: 1. Source: filing.
2. Premiums are on current rate level.
3. Indicated losses are under current law.

1241



NOTES:
1. Source: filing.
2. Premiums are on current rate level.
3. Indicated losses are under current law.

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GEHRT & ROBERTS, CHARTERED

ATTORNEYS AT LAW
5601 SW BARRINGTON COURT SOUTH
P.O. BOX 4306
TOPEKA, KANSAS 66604
(913) 273-7722
FAX # (913) 273-6560
ID # 48-0992424

FLOYD E. GEHRT
ROBERT L. ROBERTS
WILLIAM A. LARSON
WILLIAM W. SNEED
GREGORY A. LEE
RON D. MARTINEK
BRIAN G. BOOS
MATTHEW S. CROWLEY

ASSOCIATED COUNSEL
HARLAND K. RIEGER

September 5, 1990

Dorothy M. Taylor
Executive Director
Professional Insurance Agents
214 S.W. 7th
Topeka, Kansas 66603

Larry Magill
Independent Insurance Agents of Kansas
815 Topeka Avenue
Topeka, Kansas 66612

Re: K.S.A. 12-2621(b)

Dear Dorothy and Larry:

Pursuant to your request we have had an opportunity to review the question of whether, in our opinion, the determination by the Kansas Insurance Department to allow payment for specific and aggregate excess insurance out of a claims fund established pursuant to K.S.A. 12-2621(b) is in conformity with the statute. In our opinion the appropriate interpretation of K.S.A. 12-2621(b) would not allow for the payment of specific and aggregate excess insurance out of a claims fund established by the Act.

In coming to our conclusions we have reviewed the Kansas Municipal Group Funded Pool Act in its entirety. In addition we have reviewed various correspondence from the Kansas Insurance Department, including the letter of February 15, 1990 in which the Department approved the use of the claims fund to pay for specific and aggregate excess insurance, and the letter from the Kansas Association of Counties dated December 18, 1989 in which the Kansas Association of Counties outlined its position concerning the issue in question. In addition we have also reviewed certain information provided by the Kansas Association of Counties to the Insurance Department and others concerning the proposed multiple lines pool.

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Our conclusion that K.S.A. 12-2621(b) would not allow payment for specific and aggregate excess insurance out of the claims fund is first founded upon the specific language of the statute itself. K.S.A. 12-2621(b) states:

> An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative or other operational costs in an administrative fund account.

It appears to us that the wording of K.S.A. 12-2621(b) is very clear and very specific when it comes to the use of the monies to be paid into the claims fund. The statute states quite specifically that those funds are to be used for the purpose of "paying claims". There is obviously no wording in this portion of the statute stating that a portion of those funds can be used for any other purpose, including the payment of specific and aggregate excess insurance, nor is there any indication that the pools established by the Act will have any discretion to use the monies deposited in the claims fund for any other purpose regardless of whether it is legitimately related to the pool or not.

This is not true with respect to the administrative fund which is referred to in the second sentence of K.S.A. 12-2621. The second sentence provides that the remaining funds shall be placed in a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account. Obviously the wording in the second sentence of (b) which refers to the administrative fund and not to the claims fund is much less restrictive. The use of the term "other operational costs" provides that the administrators and trustees of the pools established by this Act will have the discretion to use these funds for other purposes which presumably would include the purchase of specific and aggregate excess insurance as provided for under K.S.A. 12-2618(h).

In short, it would appear to us given the restrictive nature mandated by the Legislature on the use of the claims fund, that if it was the intention of the Legislature to allow the use of the claims fund for the purchase of specific and aggregate excess insurance, the Legislature would have said so.

There are other indications in the statute which substantiate our conclusion that the claims fund was not intended to be used to pay for specific and aggregate excess insurance.

At the outset one has to consider the purpose of the Act. The Act is named by statute: "Kansas Municipal Group--Funded Pool Act". The entire purpose of the Act is to allow five or more municipal entities to pool their funds to provide for the bulk of their potential

SEP 5 '90 9:25 FROM GEHRT ROBERTS CHTD PAGE.006

liabilities in the areas specified by the Act. In other words, it is a self insurance arrangement. It appears to us that in writing the statute, the Legislature made a determination that at least 70% of all funds collected should be used for self insurance purposes.

It is important to note that under the provisions of K.S.A. 12-2618(h) the Legislature provided that a pool shall either purchase specific and aggregate excess insurance or maintain sufficient surplus funds to protect it against loss beyond 70% of its gross annual premium. It should be noted that in allowing a pool to have a choice between the two it is clear that the surplus funds referred to in K.S.A. 12-2618(h) are not funds included in the claims fund provided for in K.S.A. 12-2621(b). The only place the term "surplus funds" is defined is in K.S.A. 12-2621(c). It is defined as those funds "in excess of the amount necessary to fulfill all obligations of the pool for that fund year". Since the pool is obligated to maintain 70% of all of its gross premium in a claims fund, obviously the surplus funds referred to in K.S.A. 12-2621(c) and 12-2618(h) are not funds included within the claims fund.

Thus, if the pool chooses to use surplus funds to protect against loss in excess of 70% of the gross premium of the pool, the Legislature's plan is very clear. 70% of the gross premiums remain in the claims fund, and a "adequate" amount of surplus funds are maintained for exposure above the funds maintained in the claims fund. It is our opinion that the legislative plan is equally clear and only makes sense if, in the alternative, the pool chooses to purchase specific and aggregate excess insurance rather than using surplus funds, the funds for the purchase of the excess insurance would be provided from funds in excess or in addition to the funds maintained in the claims fund.

It appears that the Kansas Insurance Department's determination is based upon the argument in the letter of December 18, 1989 from the Kansas Association of Counties that purchase of specific and aggregate excess insurance is simply another way of paying claims. This logic seems highly questionable to us. Indeed we would suspect that an individual policy holder would, for example, bitterly dispute that the amount he or she pays in premiums would be the same as the amount the insurance carrier pays for claims under the policy. Purchasing insurance is simply not the same as paying claims.

If extended to its ultimate conclusion, the Insurance Department's interpretation of the statute would mean that if a pool chose to do so, it could purchase specific and aggregate "excess" insurance to fund 100% of its claims obligations, and the Insurance Department could not intervene because the financial solvency of the pool would be provided.

In such a circumstance, there would be no true "pool". In effect the "pool" would be simply a group fire and casualty insurance policy issued by the excess carriers under the guise of

being a "pool". This is obviously not the intent of the Kansas Municipal Group--Funded Pool Act. Furthermore, group fire and casualty policies have not been allowed in Kansas.

There is at least one other indication in the statute that it was not the intent of the Legislature to allow for the purchase of specific and aggregate excess insurance out of the claims fund.

Under K.S.A. 12-2624 the Kansas Municipal Group--Funded Pool Act provides for the payment of gross premium tax in the amount of one percent per annum to be paid out of the administrative ~~pool~~ fund of the pool. A deduction is allowed for that portion of the premium tax that would be attributable for the purchase of specific and aggregate excess insurance. The obvious purpose of this is to eliminate dual taxation in that a premium tax is charged and paid for by the pool when it purchases specific and aggregate excess insurance. If the pool is to be allowed to use the claims fund to pay for specific and aggregate excess insurance, the premium tax for that insurance would in effect be paid for out of the claims fund. K.S.A. 12-2621(b) specifically provides that taxes are to be paid out of the administrative fund. This would be a clear violation of the statute in our opinion but yet that would be the result under the Insurance Department's present interpretation of K.S.A. 12-2621(b).

In conclusion it is our opinion that it was not part of the Legislative plan that the cost of specific and aggregate excess insurance be paid out of the claims fund established under the Kansas Municipal Group--Funded Pool Act. We believe that if the Legislature had intended to allow this it would have stated so specifically in the Act. If you have any questions or comments, please feel free to contact us.

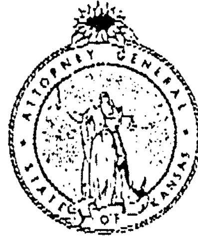
Very truly yours,

GEHRT & ROBERTS, CHARTERED

William A. Larson

William W. Sneed

WAL:WWS/js



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

December 26, 1990

ATTORNEY GENERAL OPINION NO. 90-138

The Honorable Dale M. Sprague
State Representative, Seventy-Third District
P.O. Box 119
McPherson, Kansas 67460

Steven R. Wiechman
Legal Counsel
Kansas Association of Counties
212 S.W. 7th St.
Topeka, Kansas 66603

Re: Cities and Municipalities--Insurance--Group-Funded Liability Pools; Use of Claims Fund Account to Pay for Specific and Aggregate Excess Insurance

Synopsis: The Kansas insurance department has authority to review the proposed use of moneys in a claims fund established pursuant to K.S.A. 1989 Supp. 12-2616 et seq. The interpretation of the statute by the insurance department (allowing moneys deposited and maintained in the claims fund to be used to purchase specific and aggregate excess insurance) is not clearly erroneous. Cited herein: K.S.A. 1989 Supp. 12-2616; 12-2617, as amended by L. 1990, ch. 76, § 1; 12-2618, as amended by L. 1990, ch. 76, § 2; 12-2620; 12-2621, as amended by L. 1990, ch. 76, § 3; K.S.A. 1989 Supp. 12-2624; 12-2626; 12-2627; 12-2629; K.S.A. 44-581; 44-5850; 77-201.

* * *

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Dear Representative Sprague and Mr. Wiechman:

You request our examination of the interpretation by the Kansas insurance department (department) of K.S.A. 1989 Supp. 12-2621(b), as amended by L. 1990, ch. 76, § 3. Specifically, the issue raised is whether claims account moneys of a group-funded liability pool may be used to purchase aggregate and specific excess insurance, or whether such purchase may only be made from the administrative account. A February 15, 1990 letter from the department to the Kansas Association of Counties (KAC) sets forth the position of the department with regard to the issue we have been asked to review:

> "We have now completed a review of our position regarding the requirements of K.S.A. 12-2621(b). Based on our review of this matter, Ron Todd, Assistant Commissioner of Insurance, has advised us that it would be permissible for the cost of aggregate and specific excess insurance to be paid from the claims fund account of your proposed municipal group-funded general liability pool.
>
> "We do, however, reserve the right to review the premium and policy provisions of the excess coverage to assure that they would not adversely impact the claims fund account. In addition, the insurer providing excess coverage must be authorized to transact business in the state of Kansas.
>
> "We would also request an estimate of the balance of the claims fund account after payment of the cost of excess insurance to assure adequate funds to meet the expected losses of the pool. Expected losses should be based on the historical losses of the pool's members." (Emphasis added).

K.S.A. 1989 Supp. 12-2621(b) states:

> "(b) An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims funds account. The remaining annual premium shall be

> placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative account." (Emphasis added).

It is a well established rule of construction that an administrative agency's interpretation of a statute is given deference, especially when the statute is enforced by the agency. K.S.A. 1989 Supp. 12-2618, as amended by L. 1990, ch. 76, § 2, empowers the department to issue certificates of authority to pools created pursuant to K.S.A. 1989 Supp. 12-2616 et seq. These certificates allow the group funded pools to operate. There is specific authority permitting the department to request and review information concerning specific and aggregate excess insurance. See K.S.A. 1989 Supp. 12-2618, as amended. In addition, in determining the fiscal coverage required, use of funds may impact upon matters which the department is required to review [specifically, the authority to review the financial condition of a pool. See e.g. K.S.A. 1989 Supp. 12-2620 and 12-2626(d)]. K.S.A. 1989 Supp. 12-2629 states that the "commissioner of insurance shall make recommendations as deemed advisable to assist Kansas local governments in the effective, efficient and fiscally sound operation of any proposed group-funded pool." (Emphasis added). It is therefore our opinion that the Kansas insurance department has the authority to determine whether portions of premiums paid into the claims fund may be properly expended to purchase specific and aggregate excess insurance coverage and such determination must be upheld unless incorrect as a matter of law.

Neither the legislative history surrounding this act nor the language of the statutes themselves specifically or clearly address whether the moneys in the claims fund may be permissibly used to purchase excess insurance coverage. We must therefore look to the act as a whole and the legislative history and intent surrounding its enactment. Counsel for the independent insurance agents has profered several arguments opposing the department's current interpretation of K.S.A. 1989 Supp. 12-2616 et seq. and K.S.A. 1989 Supp. 12-2621(b), as amended. Counsel believes the use of moneys in the claims fund for purchase of excess coverage violates the provisions of K.S.A. 1998 Supp. 12-2616 et seq. for the following generally stated reasons:

(1) The language of K.S.A. 1989 Supp. 12-2621(b) uses the words "for the purpose of paying claims", which does not leave

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room for discretion or allow payment of premiums from the claims fund.

However, the term "for the purpose of paying claims" is not defined in the act nor was it discussed by the legislature. While it is true that the purchase of insurance is not directly a payment of claims, premiums for excess coverage ultimately are used for the payment of claims. The statute does not limit use of the claims fund to pay claims. Compare K.S.A. 44-585(b), workers compensation pool "at least 70% of the renewal premium shall be placed into a designated depository for the sole purpose of paying claims. This shall be called the claims fund account. . . ." (Emphasis added). Rather, a claims fund account established pursuant to K.S.A. 12-2616 et seq. should be used "for the purpose of paying claims." (Emphasis added). Excess coverage assists the pool in paying claims. Purchase of such coverage helps to pay for claims that exceed the policy limits. Thus, it is a defensible position that funds expended to purchase excess coverage are indeed used for the purpose of paying claims.

(2) The administrative fund established by K.S.A. 1989 Supp. 12-2621(b) contains much less restrictive language than the language of the previous sentence concerning the claims fund.

However, the administrative fund language does not specifically mentioned excess insurance premium payments. Rather, it appears to be a "catch all" fund intended to provide for all expenditures not associated with funding claims. As much as 30% of premiums paid by pool members are placed in the administrative fund "for the payment of taxes, fees and administrative and other operational costs." This broad language does not necessarily negate the use of claims funds for "the purpose of paying claims" if purchasing excess insurance fulfills such a purpose.

(3) The purpose of the act is to allow a pool for self-insurance purposes. The legislature determined that at least 70% of premiums paid by pool members should be used for self-insurance. To allow excess insurance to be purchased using moneys deposited in the claims fund, rather than the administrative fund moneys, could allow all claim obligations to be purchased. This could eliminate the pool nature of the group and essentially create a group fire and casualty insurance policy.

However, the purpose of K.S.A. 12-2616 et seq., as evidenced by legislative history and as interpreted by the department, was to allow municipalities to join together and provide insurance as an alternative to traditional coverage. This was regarded as a positive attempt to provide municipalities with alternatives to and potential decreases in the cost of traditional insurance coverage. The legislature clearly wanted the pool to have and maintain sufficient funds on deposit in order to cover claims made. To require excess coverage premium payments to be made from the 30 percent of funds set aside for administrative purposes will not automatically result in sufficient claims coverage or adequate funds remaining in the claims fund. Moreover, requiring the purchase of excess coverage from the administrative fund could substantially increase the amount of premiums that must be paid by pool participants. Such an increase in premiums could make pools non-competitive with traditional insurance. The legislature did not intend that pools cost municipalities more than traditional insurance coverage. The legislature intended these pools to be financially responsible and economically sound, not cost prohibitive. Group purchasing can accomplish these purposes and is not prohibited by the act. Moreover, the facts in this situation do not indicate an attempt to purchase all coverage. Rather a pool does in fact exist, with only the excess coverage being purchased. If at least 70% of premiums paid are maintained for the purpose of paying claims, we must rely on the expertise of the insurance department in determining the sufficiency of claims coverage.

(4) K.S.A. 1989 Supp. 12-2618(h), as amended, permits either the purchase of excess insurance coverage or, alternatively, the maintenance of surplus funds. Counsel believes that these alternatives evidence legislative intent that the excess coverage be purchased from the administrative funds or that the surplus funds be in excess of the minimum 70% claims fund level. Counsel argues that the choice permitted by K.S.A. 1989 Supp. 12-2618(h), as amended, evidences a difference between the claims fund and purchase of excess coverage or maintenance of surplus funds.

K.S.A. 1989 Supp. 12-2621(c), as amended, discusses surplus funds; however, this discussion refers to permissible use of any surplus moneys "in excess of the amount necessary to fulfill all the obligations of the pool. . . ." (Emphasis added). Payment of claims, purchase of excess coverage or funding claims in excess of policy limits all represent potential obligations of the pool. All premiums paid by pool participants are split and deposited in one of two funds;

claims or administration. Expenditures from those fund do not negate the split, nor may the pool underfund coverage. Payments for excess coverage or maintenance of surplus funds both attempt to cover unforeseen losses.

K.S.A. 1989 Supp. 12-2618(h), as amended, requires confirmation of excess coverage purchase or, alternatively, maintenance of sufficient surplus funds. The act does not discuss or address whether surplus funds or excess insurance costs should be accounted for as part of the claims fund or the administrative fund. What is ultimately required is the maintenance of adequate funds sufficient to cover losses. However, the amounts necessary to fund losses cannot be absolutely predicted. Thus, the legislature made the decision that at least 70% of premiums paid should be set aside for the purpose of paying claims and required the pools to either purchase excess coverage or maintain sufficient surplus funds. The legislature also granted the department review authority concerning the fiscal reliability of such pools. The amount of premiums paid will ultimately determine the funding available for loss coverage. Adequacy of coverage will be based upon dollar amounts available and losses predicted or actually occurring. The fact that the legislature required either purchase of excess coverage or, alternatively, the maintenance of sufficient surplus funds does not, in our minds, negate the possibility that excess coverage may be provided for from funds maintained in the 70% of premiums paid which must be set aside for the purpose of paying claims if the department determines that such an accounting method maintains adequate funding for the purpose of paying claims. The requirement of excess coverage or maintenance of surplus funds speaks to adequacy of funding, not what may be permissibly paid from the claims fund. As evidenced by the February 15, 1990 letter to KAC, the department intends to review funds and excess coverage payments to assure that they do not adversely impact the claims fund account. Thus, the legislative mandate requiring adequate funding continues to be overseen by the department.

(5) K.S.A. 1989 Supp. 12-2624 permits a deduction from the premium tax on the portion of premium used to purchase excess insurance; "In the computation of tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (h). . . ." K.S.A. 1989 Supp. 12-2621(b), as amended, states that taxes should be paid from the administrative fund. Counsel

2341

therefore argues that if the claims fund is used to purchase excess coverage, the premium tax paid by the excess insurance carrier will be paid from funds that originated out of the claims fund.

However, K.S.A. 1989 Supp. 12-2621(b), as amended, refers to taxes paid by the pool, and not taxes paid by third parties. K.S.A. 1989 Supp. 12-2624 permits a deduction on tax paid by pools. Premiums paid are not taxes. Thus, K.S.A. 1989 Supp. 12-2624 and 12-2621(b), as amended, do not clearly evidence legislative intent prohibiting the payment of excess coverage from the claims fund.

Thus, while every legal argument offered by counsel for the independent insurance agent's may have merit, the decision of the department is not clearly contrary to the statutory language set forth at K.S.A. 1989 Supp. 12-2616 et seq. Based upon a review of the act as a whole, we believe the department's position is consistent with the legislative intent.

The insurance department and legislative history indicate that K.S.A. 1989 Supp. 12-2616 et seq. was in part modeled after the Kansas group-funded workers' compensation pool law, K.S.A. 44-581 et seq. Pools currently authorized to operate under this enactment have purchased specific and aggregate excess insurance and we have been informed by the department that, in each case, these pools have paid the cost of the premium for such coverage as an expense from the pool's administrative fund accounts. In addition, the normal insurance regulatory standard applicable to insurance companies operating in Kansas requires the cost of specific and aggregate excess insurance to be an administrative expense, not a loss. Thus, the interpretation placed upon K.S.A. 1989 Supp. 12-2621(b), as amended, represents a departure from practices applicable to workers' compensation pools and standard insurance companies.

However, our review of the statutes and relevant case law reveals no mandate that such expense may only come from the administrative account of pools created pursuant to K.S.A. 1989 Supp. 12-2616 et seq.

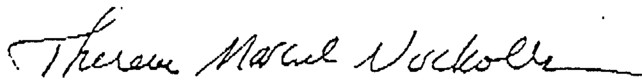
Unlike these pools, insurance companies are not held to a specific percentage of premiums that must be set aside to fund claims. Rather, the amount of premium paid into the claims fund account of insurance company is flexible and the percentage required or maintained for claims is determined on

a case by case basis. Moreover, K.S.A. 1989 Supp. 12-2617, as amended, specifically states that these pools are not insurance or insurance companies. Thus, despite similarities, a group-funded liability pool created pursuant to K.S.A. 1989 Supp. 12-2616 et seq. is not held to the same standards as other insurance arrangements over which the department has authority, just as standard insurance companies are not held to the same requirements applicable to a pool created pursuant to K.S.A. 1989 Supp. 12-2616 et seq. See K.S.A. 1989 Supp. 12-2617, as amended.

Thus, it is our opinion that the February 15, 1990 decision by the Kansas Insurance Department is permissible under the provisions of K.S.A. 1989 Supp. 12-2616 et seq. Any subsequent review of the financial condition of a pool could result in further or alternate action by the insurance department. However, we do not find evidence that the legislature contemplated, required or dictated that the insurance department prohibit use of moneys in the claims fund for the purpose of paying specific and aggregate insurance premiums. Thus, the decision of the department is not clearly erroneous or contrary to the law and may be permitted to stand.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas

25-11

	Workers' Compensation Fund Assessment	Workers' Compensation Insurance Plan (National Reinsurance Pool Assessment)	Division of Workers' Compensation Assessment
Insurance Company	Yes	Yes	Yes
Group-Funded Workers' Compensation Pools	Yes	No	Yes
Municipality Group Funded Pools	Yes	No	Yes
Individual Employer Self-Insured	Yes	No	Yes

NOTES:
1. The basis for assessment on the Workers' Compensation Fund is claims paid or payable.
2. The basis for assessment on the Workers' Compensation Insurance Plan (National Reinsurance Pool) is net Workers' Compensation insurance premiums written.
3. The basis for assessment on the Division of Workers' Compensation is Workers' Compensation benefits paid.

BW:crf
1248

House Insurance
March 4, 1991
Dick Brock
attachment 2

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Executive Director
John T. Torbert

March 4, 1991

TESTIMONY

To: House Insurance Committee

From: John T. Torbert
Executive Director

Subject: HB 2415- Municipal Group Funded Pool Act

The Kansas Association of Counties is opposed to HB 2415.

Background

The Kansas Association of Counties received a certificate of authority from the Kansas Department of Insurance on December 27, 1990 to begin operations on a multi-line insurance pool. That pool, which goes by the acronym of KCAMP (Kansas County Association Multiline Pool) offers self funded pooled protection for liability, property, automobile and errors and omissions insurance. About the only coverages not afforded by the pool are for workers compensation and employee benefits. We are currently in the process of initiating pools in both of those areas. The insurance department granted this certificate of authority after an extensive review process which lasted more than a year. The KCAMP pool now provides self funded coverage for 37 Kansas counties.

The KAC contracted with Rollins Burdick Hunter (RBH), a national insurance/consulting firm with Kansas offices in Overland Park and Wichita to assist us in the formation of this pool. RBH was selected after an extremely competitive bid process and was chosen largely based on their successful self funded pooling history.

As most of you know, Kansas has very specific statutes relating to pooling. This legislation proposes making some very damaging (and possibly fatal from our perspective) changes in these statutes. Kansas law first of all provides that there are two main methods of protecting the assets of the pool. The first is through the use of "adequate surplus funds." The

House Insurance
March 4, 1991
Attachment 3

other is through "the purchase of specific and aggregate excess insurance provided by an insurance company holding a Kansas certificate of authority." (K.S.A. 12-2618 paragraph h.) KCAMP made the decision at the outset that we wanted the security that specific and aggregate excess insurance provided.

The second critical issue at stake here involves the section of the law that provides that "at least 70% of the annual premium shall be maintained in a designated depositary for the purpose of paying claims.... The remaining annual premium shall be deposited into a designated depositary for the payment of taxes, fees, and administrative and other operational costs"... (K.S.A. 12-2621 b) Note that there is very little if any definition provided as to what actually constitutes "claims" and "administrative."

This is an issue that we broached at our very first meeting with the insurance department on December 6, 1989. Specifically, we asked department representatives at that meeting if it would be possible to pay the cost of the specific and aggregate excess insurance out of the claims account. It was our feeling that since such activity was not sufficiently defined by the law and since the only purpose of this type of insurance is to pay claims when they exceed a certain level, that this was a logical use of the claims account. We were invited to make that request to the department formally in writing. We did so. (A copy of the letter containing that request dated 12/18/89 is attached.) The department responded on 2/15/90 (copy attached) and stated that "Based on our review of this matter, Ron Todd, Assistant Commissioner of Insurance, has advised us that it **would** be permissible for the cost of aggregate and specific excess insurance to be paid from the claims fund account of your proposed municipal group-funded general liability pool."

That departmental ruling was later questioned by the Independent Agents Association. To provide further support for the insurance department's position on this issue, the Kansas Association of Counties asked the Attorney General to review the department's ruling and render a formal opinion on it. A similar request was filed the day following ours by Representative Sprague. The attorney general's office issued their opinion on 12/26/90 and supported the position of the department. A copy of the summary of that opinion is attached. It is important that you understand this somewhat lengthy background because of what HB 2415 is attempting to do.

Problems

On page 2, lines 23 through 30 provide a definition of what constitutes surplus funds. The practical affect of this section would be to preclude the use of surplus funds as a method of protecting the pool. For any pool to be formed in the future, the "surplus" would be limited to "retained earnings." A new pool can't have retained earnings and would probably not meet the definition even if it collected funds to be used for surplus "up

front" from prospective members. Thus, a new pool could be formed only if it used specific and aggregate excess insurance.

This section also provides that reserves be established and approved by an independent actuary. I'm not sure that any independent actuary would want to be in that business. Actuaries routinely perform studies on reserves or reserving practices and make recommendations on them but to give an independent actuary the ability to "establish" a reserve would be extremely unusual. Actuaries do not establish, they advise and recommend. Actuaries are one of the team members that would make these sort of recommendations. Other considerations would belong to outside claims auditors, excess carrier audits, audits by independent accounting firms and broker/consultant advice.

The other major problem with this legislation is on page 3 line 18 where the word "sole" is added. I think the purpose of this amendment very clearly is to preclude the ability to pay the cost of specific and aggregate excess insurance out of the claims account- in direct opposition to the position taken by the insurance department and attorney general of this state. Excess insurance is not cheap. If the cost of that insurance is shifted to the administrative account (which this legislation would apparently require) it simply won't work financially. Thirty percent of your premium does not provide enough "room" financially to pay the cost of excess insurance and do the other things necessary to properly administer an insurance pool. In our situation, if the cost of our excess insurance had been paid from the administrative account, our administrative costs would have be in excess of 40%. I doubt that any other pool would have a much different scenario. By paying the cost of our excess insurance out of the claims account, our administrative costs are going to be in approximately the 26-27% range.

So, I think the intent of the legislation is clear. By redefining "surplus" it forces the use of excess insurance. Then, by adding the word "sole" to the wording dealing with the claims account, payment of excess insurance costs out of that account would be precluded. I think the legislation would effectively put KCAMP out of business next year and I think the legislation would make it impossible for any new multiline pool to start. And I think that is exactly the intent of the legislation.

This legislation is anti-pooling and anti-taxpayer and seeks to protect the vested interests of the independent agents. It goes against the established policy of the state department of insurance as supported by the attorney general. It would effectively put a pool out of business that provides coverage for 37 Kansas counties and would effectively preclude the formation of any new multi-line pool. I would hope that this committee would not want to be a party to this kind of activity.

I would be happy to respond to questions.

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Wabaunsee County Commissioner
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Executive Director
John T. Torbert

December 18, 1989

Mr. Ray Rathert
Fire and Casualty Supervisor
Kansas Insurance Dept.
420 S.W. 9th
Topeka, Kansas 66612-1678

Re: Group-funded pool proposal

Dear Mr. Rathert:

Thank you for meeting with us last week on our proposal for a group funded pool for Kansas counties, tentatively scheduled to begin operation July 1, 1990. Your comments and responses to our questions were very helpful.

The one remaining matter which could seriously affect the financing of the pool and its cost to member counties is the Department's interpretation of the seventy percent requirement in K.S.A. 12-2621 (b);

> An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account.

We understand from our December 6 meeting that the seventy percent would include amounts for incurred losses and for allocated and unallocated loss adjustment expenses. You stated that it is currently the Department's position that the cost of aggregate and specific excess insurance cannot be included in the calculation of the seventy percent requirement for workers compensation pools. We are requesting that the Department reconsider its position as it would be applied to a general liability pool proposed by our association based upon the following reasons.

4-3

As you will recall, we asked that consideration be given to allow the amount set aside to pay specific and aggregate excess insurance, which transfers the risks of covered claims from the pool and claims account to an insurer, be included in the calculation of the seventy percent requirement since it would be used "for the purpose of paying claims."

The anomalous effect of not including the cost of aggregate and specific excess insurance within the seventy percent requirement is that <u>the more the pool pays to transfer risks away from the pool and the claims account through the purchase of aggregate and specific insurance, the more the county members will have to pay into the claims account just for the purpose of meeting the seventy percent requirement</u>. As the risks to the pool and the claims account are reduced for the member counties, the cost to members increases so that the percentage requirements are met. The figures we provided during the meeting indicated that the increased amount could exceed one million dollars.
To apply the interpretation of the statute as you adopted it for workers compensation pools to a general liability pool is a disincentive to purchase aggregate and specific excess insurance. We believe that this is not in accord with the legislative intent of requiring (in K.S.A. 12-2618 (h)) a confirmation of specific and aggregate excess insurance of adequate surplus funds approved by the commissioner, nor is such a disincentive good public policy. The pool, its county members, taxpayers and claimants benefit when a reasonable amount of risk is transferred from the pool to excess insurers.

It is understood that the Commissioner has previously been very hesitant to authorize a pool to begin operation without specific and aggregate excess insurance and with only surplus funds. We certainly are not proposing the alternative use of surplus funds. However, if surplus funds were used in lieu of specific and aggregate excess insurance, those funds could be counted to meet the seventy percent requirement. It seems logical to allow the cost of specific and aggregate excess insurance, which performs a function similar to surplus funds, to be treated in the same way.

Although we understand your concern for insuring the protection of workers compensation pools by your interpretation of the statutes, we see nothing in the group funded pool statute which requires the Department to conclude that the cost of aggregate and specific excess insurance cannot be included in calculating the seventy percent requirement. The statute contemplates that <u>the seventy percent requirement is "for the purpose of paying claims", which is the purpose of purchasing aggregate and specific excess insurance.</u> The last sentence of the referenced statute identifies the remaining annual premium as being for such purposes as payment of "taxes, fees and administrative and other operational costs"; the cost of purchasing specific and aggregate insurance is not specifically mentioned. In our opinion, it is really not an operational cost. That cost -- similar to the cost of the surplus alternative -- falls more logically into the category of claims payment costs rather than administrative costs.

If you need additional information on this matter or desire to discuss it further, we would be happy to accommodate you. Thank you again for the time that you, Mr. Wimpe and Mr. Spain spent with us.

Sincerely,

John T. Torbert
Executive Director

Steven R. Wiechman
Legal Counsel

LTSINSDP

EXHIBIT 1

STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

FLETCHER BELL
Commissioner

February 15, 1990

Kansas Association of Counties
212 S.W. 7th Street
Topeka, KS 66603

Attention: John T. Torbert
Executive Director

Steven R. Wiechman
Legal Counsel

Group-Funded Pool Proposal

Gentlemen:

This follows our letter of December 29, 1989, regarding the captioned matter.

We have now completed a review of our position regarding the requirements of K.S.A. 12-2621(b). Based on our review of this matter, Ron Todd, Assistant Commissioner of Insurance, has advised us that it would be permissible for the cost of aggregate and specific excess insurance to be paid from the claims fund account of your proposed municipal group-funded general liability pool.

We do, however, reserve the right to review the premium and policy provisions of the excess coverage to assure that they would not adversely impact the claims fund account. In addition, the insurer providing excess coverage must be authorized to transact business in the state of Kansas.

We would also request an estimate of the balance of the claims fund account after payment of the cost of excess insurance to assure adequate funds to meet the expected losses of the pool. Expected losses should be based on the historical losses of the pool's members.

We anticipate the above comments have adequately responded to your request, however, we request you contact our office should you require additional information.

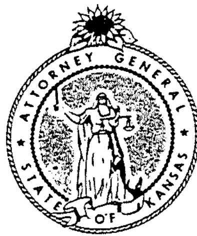
Very truly yours,

Fletcher Bell
Commissioner of Insurance

Raymond E. Rathert
Fire and Casualty Supervisor

RER:JVS:jbfc

7-3



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

December 26, 1990

ATTORNEY GENERAL OPINION NO. 90-138

The Honorable Dale M. Sprague
State Representative, Seventy-Third District
P.O. Box 119
McPherson, Kansas 67460

Steven R. Wiechman
Legal Counsel
Kansas Association of Counties
212 S.W. 7th St.
Topeka, Kansas 66603

Re: Cities and Municipalities--Insurance--Group-Funded Liability Pools; Use of Claims Fund Account to Pay for Specific and Aggregate Excess Insurance

Synopsis: The Kansas insurance department has authority to review the proposed use of moneys in a claims fund established pursuant to K.S.A. 1989 Supp. 12-2616 et seq. The interpretation of the statute by the insurance department (allowing moneys deposited and maintained in the claims fund to be used to purchase specific and aggregate excess insurance) is not clearly erroneous. Cited herein: K.S.A. 1989 Supp. 12-2616; 12-2617, as amended by L. 1990, ch. 76, § 1; 12-2618, as amended by L. 1990, ch. 76, § 2; 12-2620; 12-2621, as amended by L. 1990, ch. 76, § 3; K.S.A. 1989 Supp. 12-2624; 12-2626; 12-2627; 12-2629; K.S.A. 44-581; 44-5850; 77-201.

*   *   *

8 of 3

KANSAS ASSOCIATION OF SCHOOL BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony on H.B. 2415
before the
House Committee on Insurance

by

Bill Curtis, Assistant Executive Director
Kansas Association of School Boards

March 4, 1991

Mr. Chairman and members of the Committee, we appreciate the opportunity to testify today on H.B. 2415 on behalf of the Kansas Association of School Boards. In 1987, the Kansas Association of School Boards formed a separate, not-for-profit corporation to offer insurance services to members. Currently, only workers' compensation is offered but it is our intent to begin a property and casualty program within the next three to four months. All administrative services for the KASB Risk Management Services, Inc. are provided by the Kansas Association of School Boards by written contract. As of March 1, the workers' compensation pool had 127 members with an annual premium volume of approximately $3.7 million. The average savings offered to members of the workers' compensation pool amounts to 7%. In our opinion, if H.B. 2415 were to pass in its present form it would prevent the formation of a property and casualty pool and restrict the ability of the workers' compensation pool to continue to offer substantial savings.

The Kansas Municipal Group-Funded Pool Act, K.S.A. 12-2616 through 12-2629, was passed during the 1987 session of the Kansas Legislature. It was patterned after K.S.A. 44-581 through 44-592 but recognized the inherent

House Insurance
March 4, 1991
Attachment 4

differences between private businesses and municipalities. Also, K.S.A. 44-581 et. seq. permits only workers' compensation pools while K.S.A. 12-2616 et. seq. permits property and casualty and health pools. However, both acts have the same underlying philosophy. Pools formed under either act are not to be considered insurance or insurance companies and both acts have oversight authority granted to the Commissioner of Insurance, particularly in the area of financial solvency.

KASB has three objections to H.B. 2415. The first is the amended language on page two, lines 23 through 30. That language would require an annual actuarial study for every pool. Such studies are expensive and, at least initially, would show very few pools with "adequate surplus funds". Actuarial studies have more value after a pool has been in operation for a number of years. While actuarial calculations are helpful, they can be provided by a third party administrator as a part of service costs. Also "all other liabilities" should be determined by an accountant.

The second objection is to the addition of the word "sole" on page three, line 18. Both the Commissioner of Insurance and the Attorney General are of the opinion that excess insurance costs may be paid out of the claims account, under certain conditions. To limit that ability is to prevent the formation of a property and casualty pool. Excess insurance costs, when added to service fees and other administrative costs, exceed 30%.

The final objection is to the language requiring pools to pay assessments to assigned risk plans. Why pay for the costs of a plan when it is not utilized by the pool? The only prerequisite for participation in the KASB Risk Management Services pool is to be a member of the association. The pool does not force any school district into the assigned risk plan. No school district is denied participation nor is any school district kicked out of the pool because of losses.

KASB played a role in the construction of the Kansas Municipal Group-Funded Pool Act. It was the result of compromise and struck a balance between the insurance requirements of municipalities and the ability to offer an alternative to the commercial insurance industry. It is our firm belief that the passage of H.B. 2415 would tip that balance and severely restrict the abilities of municipalities to seek some solution to the increasing costs of insurance. We urge your defeat of H.B. 2415. Thank you for your attention.

ISSUE PAPER

OPPOSITION TO HOUSE BILL No. 2415

BY: Donald F. Anderson,
President, Kansas Chapter, Public Risk Management Association.
and
Vice Chairman, Kansas Eastern Region Insurance Trust (KERIT),
9617 Lee Boulevard, Leawood, Kansas 66206
(A municipal workers compensation pool
operating since November 1, 1986)

The amendments contained in house bill 2415 very much miss the intent of the original legislation and the specific language contained in K.S.A. 12-2617.

> "... Such arrangements shall be known as group-funded pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein."

We "municipalities" in Kansas find ourselves with a critical need to use tax dollars to the best benefit of the taxpayer. Many of us found, that here in Kansas as in many other states, the insurance premiums charged municipalities were far in excess of the claims and/or benefits received. In order to better serve our taxpayers and best use limited tax dollars, we look to alternative methods of providing protection.

Having the choice between commercial insurance with premiums to high for limited tax source budgets or just going naked is no choice. It is in this interest that municipalities seek mutual self help by pooling resources in such a manner as to provide an affordable and an effective alternative to commercial insurance or that suicide of no coverage, ("going naked" or that which some entities call self insurance.)

Pooling is not a matter of closing the barn door after the horse is gone. It is a way of building, through pro-active measures, a new barn for the municipal community to use and thereby seek to secure economic well being. Members become involved and committed to this goal by participation in loss control programs which are tailored to their specific needs.

Pool membership is not a product of an orchard in which only the best are chosen. It is a product which allows those dedicated to sound financial management with limited resources to enjoy stability; so that they may get on with providing the basic services required of the taxpayers. With its specific customized loss control programs and the mutual aid provided by its members, it is those who are interested in participating in sound financial management who become members.

We, the member municipalities of the Kansas Eastern Region Insurance Trust(KERIT) and members of the Kansas Chapter, Public Risk Management Association on behalf of the municipalities of Kansas, submit that the amendments contained in HB 2415 are not in the best interest of the municipalities and their taxpayers, who in times of limited budgets must seek out more affordable, stable and effective alternatives to the commercial insurance market.

House Insurance
March 4, 1991
Attachment 5

League of Kansas Municipalities

Municipal Legislative Testimony

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Insurance
FROM: ~~E. A. Mosher~~, Executive Director, League of Kansas Municipalities
RE: HB 2415--Municipal Group Funded Pool Act
DATE: March 4, 1991

By action of the League Governing Body, I appear in opposition to HB 2415, to amend the Kansas Municipal Group Funded Pool Act. We interpret the clear intent of the bill to be that of making the continuation of existing municipal pools more difficult, and effectively prohibiting the development of new municipal pools in the future.

In the judgment of most municipal officials involved in the past attempts to develop a municipal pool for cities, the existing state law was developed by and for insurance agents and their association and companies with the intent to prevent competition and to prevent alternative ways of dealing with public risk management. Whether valid or not, HB 2415 is considered to be a response to the successful effort of the Kansas Association of Counties, and to stop any other municipal pools from being formed in Kansas.

We believe there is a need for a municipal pool in Kansas, which can save the public money, improve municipal risk coverage and management, and keep a lot of Kansas public money in Kansas that is now going to Des Moines, Iowa and other places. In our judgment, the Kansas legislature should encourage the formation of public pools and should not enact further restraints to their effective development or operation.

House Insurance
March 4, 1991
Attachment 6

Health Care Facilities

MEDICALODGES, INC.

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<u>Testimony before the</u>
<u>House Insurance Committee</u>

by

Larry L. Fischer
Fund Administrator and Treasurer
Medicalodges' Affiliates Workers' Compensation Self-Insurance Pool

<u>House Bill No. 2414</u>

"An Act concerning group-funded workers' compensation...."

Chairman Turnquist and Committee Members:

Medicalodges' Affiliates Workers' Compensation Self-Insurance Pool appreciates the opportunity to speak against House Bill No. 2414 to require each pool to be subject to assessment authorized by the Kansas Workers' Compensation Plan established pursuant to K.S.A. 40-~~219~~ 2109 and amendments thereto, based upon the Pool's written premium for workers' compensation insurance in Kansas.

We are not an insurance company operating to provide a profit, but a group of long-term care facilities united for common interest and benefit for employees injured on the job.

According to the Workers' Compensation Director's office, there are 150 to 200 companies currently self-insured through the Director's office. Passage of this bill may force pools to move coverage to the Director's Office Program instead of retaining under The Insurance Commission.

Based on an estimate of HB2414, adding at least 15% to the program cost will force companies out of the program and reduce the resources available for wages and benefits in long-term care. Facilities are an industry currently in the low end of the wage market. (Increased cost will yield higher health care costs.) While our Pool is small, a 15% increase in cost will cost approximately $100,000.00.

According to present statute 44-582(i), an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the workmen's compensation act, the indemnity agreement shall be in a form acceptable to the commissioner. Also, this additional assessment on the present exposure will probably force pools out of the program and raise costs to all pool customers or clients.

We appreciate the opportunity to speak against the passage of HB2414 and would be pleased to answer any questions for the Committee.

LF/bc 3-1-91, CPT 1E, 3-1-12

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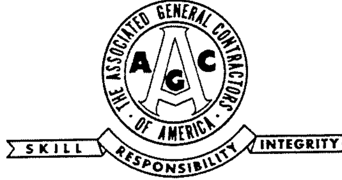

TESTIMONY BEFORE THE HOUSE

INSURANCE COMMITTEE

REGARDING HOUSE BILL NO. 2414

by Dan Morgan

Kansas City Chapter,
Associated General Contractors
and
The Builders' Association

Thank you, Mr Chairman, and members of the Committee. My name is Dan Morgan. I appear before you this afternoon in opposition to House Bill No. 2414 on behalf of the Builders' Association and the Kansas City Chapter, Associated General Contractors of America. Our Association represents some 765 general contractors, subcontractors and material or service suppliers engaged in the commercial and industrial building construction industry. Our area jurisdiction includes Johnson and Wyandotte Counties in Kansas. The majority of our members are located in the Kansas City metropolitan area and approximately one-fourth of our 765 members are domiciled in Kansas.

Mr. Chairman, some eight years ago the Kansas Legislature passed legislation which allows groups of small employers engaged in the same or similar kind of business to join together and pool their liabilities under the Workers' Compensation Act. Representatives of the Builders' Association and Kansas City Chapter, AGC joined with other construction industry trade associations to introduce that legislation and played a very active role in more than two years of hearings, negotiations and legislative studies which preceded the enactment of that law. We did so because we saw great promise in having the ability to develop a very valuable service for our members. Quite frankly, we viewed a properly administered group-funded workers' compensation pool not only as a tremendous service for our members but also a very valuable membership recruitment and membership retention tool as well.

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Ten months after the legislation was passed, the Builders' Association Self Insurance Fund (BASIF) was certified by the Kansas Commissioner of Insurance and began to grow. Today there are some 170 members in the Kansas pool. Our participating members come from five construction industry trade associations -- the AGC of Kansas, the Kansas Contractors Association, the Heavy Constructors Association of Greater Kansas City, the Kansas City Chapter AGC and the Builders' Association. The fund has been built upon a strong foundation of safety and sound administration. It has been an excellent member service. It has also been a great membership development and retention tool as anticipated. More than that, however, it has resulted in safer working environments for our members' employees.

The Builders' Association Self Insurance Fund is a non-profit plan which allows up front discounts and possible year end dividends for participating members. Not only do we provide these financial incentives for maintaining high safety standards, we also monitor participating members' safety performance and employ the service of two full-time safety specialists to help our members reach and maintain those high safety standards. Simply put, the pool is "gung ho" on safety. Safety is what makes our fund work. There is no question in my mind that our member employers would have a reduced level of employee safety and increased incidents of accidents but for their participation in the fund.

Members of the Committee, the imposition of a requirement that self-funded workers' compensation pools pay the excess claim liabilities of the assigned risk pool is inappropriate for the reasons Mr. Hoot Gibson, Fund Administrator for the Builders' Fund will explain in just a few minutes. Let me just say, on behalf of the Builders' Association and Kansas City Chapter, AGC, that we strongly oppose this bill. Requiring our fund to pay those excess liabilities will hurt our Association. It will hurt our participating members in the Fund. And, more importantly, it will be a disservice to our members' employees who currently enjoy a safer working environment because of our group-funded pool.

Mr. Chairman, that is all the testimony I have. I would be glad to try to answer any questions the Committee members might have. As I mentioned, Hoot Gibson is here and can help with any technical questions you might have. Thank you very much.

Builders' Association
Self-Insurers' Fund

3801 S.W. TRAFFICWAY • P.O. BOX 32246 • KANSAS CITY, MO 64111
PHONE 816/531-2642 • FAX 816/531-2335

TESTIMONY - KANSAS HOUSE BILL 2414 - MARCH 4,1991

TIME: 3:30 P.M. PLACE: CAPITOL BUILDING
TOPEKA, KANSAS

Ladies and Gentlemen of the committee:

My name is Hoot Gibson. I am the Fund Manager of the Builders' Association Self-Insurers' Fund of Kansas, a Group Funded Workers' Compensation Pool operating within an approved Certificate of Authority.

I appear today on behalf of the 170 participants in the Kansas Fund who contribute payments of approximately $3,000,000. per annum into a Trust and who are members of the Builders' Association, the Associated General Contractors of Kansas or the Kansas Contractors Association.

House Bill 2414 under consideration is counter-productive. To require Kansas Group Funded Workers' Compensation Pools to share the over burden charges of the Kansas Assigned Risk Pool with insurance companies is in conflict with the 1983 legislative intent for Group Worker's Compensation Pools and not in the best interest of the construction industry in the State of Kansas for the following reasons:

1. K.S.A. Chapter 44-581 approved by the Kansas Legislature in 1983 mandates that Group Funded Worker's

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Compensation Pools shall not be deemed to be insurance or insurance companies and shall not be subject to Chapter 40 of the K.S.A. except as provided within Chapter 44.

2. K.S.A. Chapter 44-587 approved by the Kansas Legislature in 1983 mandates that Group Funded Workers' Compensation Pools shall be subject to an annual Group Workers' Compensation Pool fee for operating expenditures incurred in the administration of Group Funded Workers' Compensation Pools in Kansas, said fee determined on an annual basis by the Commissioner of Insurance.

3. K.S.A. Chapter 44-588 approved by the Kansas Legislature in 1983 mandates Group Funded Workers' Compensation Pools pay a tax annually on the gross annual contributions made by participants into the Trust.

4. K.S.A. Chapter 44-589 approved by the Kansas Legislature in 1983 mandates assessments; subject to article 24 of Chapter 40 of Kansas Statutes Annotated.

5. It is apparent from the above taxes and assessments that the Kansas Legislature provides sufficient laws for payment of a percentage of the contributions to the Trust by participants to the State of Kansas. Group Funded Workers' Compensation Pools are paying their fair share.

6. House Bill 2414 relates only to Group Funded Workers' Compensation Pools, however, K.S.A. Chapter 44 refers to both stand alone self-insureds and Group Funded Workers' Compensation Pools. It would appear from a position of fairness that if the Bill is going to require Pools to be assessed to assist insurance companies for their involvement in the burden sharing of the Assigned Risk Pool the stand alone self-insureds should also be included.

Further, in considering the fairness issue, the agent/broker community who contributes all the participants to the Assigned Risk Pool should pay their fair share of the over burden expense. In addition the agent/broker community should not receive a commission from the insurance company who is assigned the participant in the pool. The agent/broker community must admit to their contribution as to why the assignment is made in the first place.

7. The self-insured pools have their own over burden charges in that all companies that participate in the pool are jointly and severally liable for all liabilities of the pool. Simply stated, if a pool cannot pay its outstanding claim liabilities with premiums collected, the pool has to assess their members just as the insurance companies have to make up for the deficiencies in the Assigned Risk Pool.

An assertion has been made that the self-insured pools are taking only the creme of their respective industries and leaving the undesirable risks in the Assigned Risk Pool. Nothing could be further from the truth. Granted, the pools must use some common sense in avoiding a risk that does not have the proper prospective regarding loss prevention and loss control, but the self-insured pools in the state are pulling a number of their new enrollees out of the Assigned Risk Pool. Of the 37 companies our pool enrolled in 1990 over half came out of the Assigned Risk Pool.

8. Passage of this bill would make the Assigned Risk Pool situation in Kansas only worse. No other state in the union requires self-insureds or self-insured pools to pay over burden charges. Requirement of the pools to pay over burden charges may force the pools to shut down. If this were to happen the Assigned Risk Pool would grow substantially.

If our pool was to shut down, well over 50% of those contractors would end up in the Assigned Risk Pool due to small premium size, classification of business, loss experience or due to the fact that very few carriers want to write Worker's Compensation on a voluntary basis.

In conclusion, the Kansas Legislature designed a well structured law in 1983 for Group Funded Workers' Compensation Pools with appropriate regulation and Insurance Department supervision. That law is not broken and it should not at this late date be altered by the prosecution of a group whose only true interest is seeing the demise of a funding arrangement for the consumers of Kansas in which they receive no compensation.

The true solution to the Assigned Risk Pool dilemma is for the State of Kansas to enact some meaningful workers' compensation benefit reform and for the insurance companies and the agent/broker community to provide effective and professional Claims Administration and Loss Prevention/Loss Control services.

Alexander & Alexander Inc.
1000 Walnut
P.O. Box 13647
Kansas City, Missouri 64199
Telephone 816 391-1000
Telex 4-2551

March 4, 1991

To: Kansas House Committee
From: Steven M. Lange

Re: Testimony on Ks House Bill 2414
Kansas Legislative Hearing
March 4, 1991, 3:30 PM

The pooled self insurance plan of the Builders Association Self Insurance Fund (BASIF) is more like a pooled arrangement for individual self insurers and less like an insurance company operation. Therefore they should not be assessed for assigned risk losses.

The theory behind not assessing the individual self insured accounts is that they underwrite their own risks and do not take other's risks. Therefore it is not reasonable to assess them for other's losses.

I believe that the BASIF data is not involved in the rate making statistics for the rates in Kansas. They also do not take part in the state guarantee fund. Both of these facts make BASIF like an individual self insurer.

The BASIF provides the member accounts with economies of scale savings on engineering, administration, and reinsurance protection. Any savings brought about by the plan is returned to the members in the form of a dividend. An insurance company would keep the profits.

The real issue here is the adequacy of Kansas rates. The past several rate increases were reduced to the point that a big increase is now needed to support the writing of workers compensation. This move to pull the self insured pooled risk into the assessment is just a maneuver to get some of the assessments picked up, without the rate issue being fully addressed.

The BASIF actually helps depopulate the assigned risk pool, by writing some classes of business that might be put into the assigned risk, just because of their industry type. Construction can have some of the more hazardous activities, as people work at elevations, in trenches, and around heavy machinery. The existence of the BASIF is an alternative to the assigned risk for many accounts. The financial consequences of having the assigned risk

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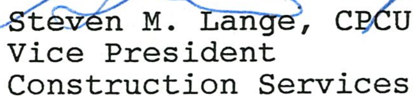
Alexander & Alexander Inc.
1000 Walnut
P.O. Box 13647
Kansas City, Missouri 64199
Telephone 816 391-1000
Telex 4-2551

assessment hitting the BASIF could cause the BASIF to discontinue operations. This would remove a valuable facility from the construction industry and complicate the workers compensation issue facing the remaining voluntary markets.

Respectfully Submitted,



Steven M. Lange, CPCU
Vice President
Construction Services

KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION
SELF INSURANCE FUND

359 SOUTH HYDRAULIC • P.O. BOX 905 • WICHITA, KANSAS 67201 • (316) 267-8387
1-800-369-6787 FAX (316) 267-8400

My name is George Puckett. I am the Executive Director of the Kansas Restaurant and Hospitality Association (KRHA), an organization of approximately 950 Kansas foodservice and hospitality industry businesses.I am also the Administrator of the Kansas Restaurant and Hospitality Association Self Insurance Fund (KRHA SIF). As the representative of both groups, we oppose HB 2414, specifically Section 1, paragraph (m); and Section 2, paragraph (c).

In 1989, the Kansas Restaurant and Hospitality Association started work on a group self insurance fund for our 950 restaurant and hospitality industry Members, since the fully insured program endorsed by the KRHA notified us of non-renewal of restaurants in the state of Kansas. One positive aspect of a self insured program that we liked is stated in KSA 44-581. It states that, "...pools... shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of Chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein." This one aspect alone saves the KRHA SIF the surcharge for experience of the involuntary market, or Assigned Risk Pool.

This savings is a very important point in the successful operation of a self insured group fund. KSA 44-58b states, "At least 70% of the annual premium shall be placed into a designated depository for the sole purpose of paying claims." This leaves a possible 30% to pay for all administrative costs, which includes the fees for a firm to adjust claims, the premium for a catastrophic loss protection insurance policy, an annual fund audit, premium taxes, Department of Insurance and Division of Workers' Compensation operating assessments, and an assessment for the State's second injury fund, all of which are already requirements of the enabling legislation.

All of these required administrative expenses totally consume the 30% available for Administrative costs. For the State to add another administrative cost, of approximately 15% to 20%, as specified in HB 2414, Section 2, Paragraph (c), would totally destroy the concept of group self insured workers' compensation pools in Kansas.

To destroy this alternative concept for providing workers' compensation insurance would have detrimental impacts on employers in Kansas and the insurance industry in Kansas. First, these funds are usually created because the participants are unable to find any coverage with normal insurance providers. The normal providers have told these employers their premiums are too small, or they are in the wrong type of business, for the carrier to make any money.

If these employers cannot use a group self insured fund for coverage, they will have to place their coverage with the Assigned Risk Pool. These employers are now going to have to pay more for their coverage, since the

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Assigned Risk Pool is charging a surcharge, or not offering discounts, both of which increase the cost for coverage. In essence, this change is going to increase the cost of doing business for employers in Kansas, including many Members of the Kansas Restaurant and Hospitality Association.

Secondly, the Assigned Risk Pool will have to provide coverage for more employers. If this aspect occurs, the surcharge for operating the Assigned Risk Pool to the voluntary market carriers will increase. This type of increase will cause more carriers to either retreat from Kansas, or apply more pressure on the Department of Insurance to increase rates. Both of these actions are undesirable for all employers in Kansas, including all Members of the Kansas Restaurant and Hospitality Association.

The group self insured funds are attempting to provide workers' compensation coverage, at or near cost, to employers not desired by other carriers. In this light the group self insured funds are a viable method for depopulating the Assigned Risk Pool.

Reducing the size of the Pool is a positive method for eventually reducing the surcharge of operating the Pool. In essence, the voluntary market carriers, not desiring to provide coverage to certain employers, should be encouraging the growth of self insured funds for providing this coverage, and consequently, reducing the size and cost of the Assigned Risk Pool.

Another negative aspect of HB 2414 is included in Section 1, Paragraph (m). While there may be a large number of insurance carriers that can offer specific and aggregate excess insurance, in reality there are less than ten that are active in the market. To limit group self insured funds' access to only carriers holding a Kansas certificate of authority is another way to increase the operating costs of these funds, and consequently, increase the cost of coverage to employers in Kansas.

The KRHA Self Insurance Fund is not asking for a carte blanche ability to select just any specific and aggregate excess coverage. This coverage needs to be provided by a long term, committed, strong carrier. However, to limit this type of market to only Kansas certified carriers is a competition limiting act.

In closing, the KRHA Self Insurance Fund is attempting to provide, at cost, a source of workers' compensation insurance to members of the KRHA. If the changes listed in HB 2414 are implemented, this source of insurance will be totally defeated. We ask the Committee's support in continuing our service by defeating HB 2414, and any other measure aimed directly at self insurance funds, particularly as these pools become utilized by even more groups, in the future as a necessary and valuable alternative source of insurance.

TESTIMONY ON HOUSE BILL 2414
KANSAS HOSPITAL ASSOCIATION
HOUSE COMMITTEE ON INSURANCE
MARCH 4, 1991

Mr. Chairman, members of the Committee, my name is Larry Shaffer and I serve as Senior Vice President of the Kansas Hospital Association and Vice President/Chief Operating Office of the Kansas Hospital Service Corporation.

I appreciate the opportunity today to speak in opposition to H.B. 2414, particularly section 2 - subsection (c).

We understand and appreciate the concern for the increasing growth in the Workers Compensation residual market.

As early as 1984 the Kansas Hospital Association was becoming concerned with what appeared to be a developing trend of instability in the availability and costs of Workers Compensation insurance .... at that time, we sought the cooperation of Liberty Mutual Insurance Company in establishing a Safety Group Plan for Kansas Hospitals. With the plan in place from 1984 through 1990, we had a total of 84 hospitals participating in the Plan.

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In October of 1990 we were advised of Liberty Mutuals plan to withdraw from the Safety Group Plan as of December 31, 1990. With a very short period of time remaining we began a search for another carrier who might be interested in establishing another Safety Group Plan.

We were unable to find what we preferred as a strong national insurer to assume such a risk. It became apparent to us that a Group Funded Workers Compensation Pool for our member hospitals might be the best opportunity to bring some stability toward the availability and affordability of Workers Compensation coverage. We were aware of several such hospital association sponsored group pool programs in New Mexico, Georgia and Illinois. These programs had been in place for several years and have been quite successful.

We have filed with the Kansas Insurance Department our application for a Certificate of Authority to begin operation of the KHA Workers Compensation Fund - a Group Funded Workers Compensation Pool. We are awaiting to hear approval by the Department.

We speak here of only one industry desiring to use the method of Group Funded Workers Compensation Pools. As you are aware there are approximately six (6) other pools already in operation in the State.

Regardless of what trade or professional group uses the pooling method for Workers Compensation, there appears to be several factors which raise questions regarding the appropriateness of authorizing assessment against these pools by the Kansas Workers Compensation Plan as proposed in H.B. 2414.

KSA 44-581 - which authorizes the establishment of Group Funded Workers Compensation Pools, states that "Group Funded Workers Compensation Pools shall not be deemed to be insurance or insurance companies."

KSA 40-2101 - which addresses apportionment agreement among insurers states, "agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance.

KSA 40-2109 section (d) - subsection (1) relating to representation on the Governing Board of The Kansas Workers Compensation Plan - does not provide for representation by Group Funded Workers Compensation Pool.

It seems relatively clear that the Kansas Workers Compensation Plan was intended for insurance companies granted the privilege of selling Workers Compensation insurance in Kansas.

Several other statutes make a clear distinction between insurance companies and pools -

* KSA 44-581 - limits pool coverage solely to the members of a trade or professional association. Insurance companies have no such limitations and have the opportunity to spread their insurers risk among the general population and consequently generate a larger revenue base.

* KSA 44-585 - requires that premium acquired by pools be apportioned on the basis of 70% for claims and 30% for fees, taxes and administration costs. It is clear that the financial viability of these smaller pools could be jeopardized by adding an unpredictable additional cost to their administrative accounts.

* KSA 44-586 - places limits on the investment option available to Group Funded Pools. This is offered as another indication limiting pools in revenue generation options which doesn't effect insurance companies.

* KSA 44-587 - authorizes the Commissioner of Insurance to assess pools for the cost of administration within the Kansas Insurance Department. This too is an unpredictable expense as explained in subsection (b).

In conclusion, it is the intent of the KHA Workers Compensation Fund to work toward eliminating the need for any of its member hospitals to participate in the Kansas Workers Compensation Plan. If this is to be accomplished it will be the

result of the KHA Fund offering its member hospitals ample education and loss prevention activities designed to improve safety in the work environment and to vigorously process those claims filed against the Fund. This will have to be accomplished within the limited financial resources available to the Fund.

KAHA

Kansas Association of Homes for the Aging

Enhancing the quality of life of those we serve since 1953.

634 SW Harrison
Topeka, Kansas 66603
913-233-7443
Fax: 913-233-9471

MEMORANDUM

Date: March 4, 1991
To: Representative Larry Turnquist, Chairman
House Insurance Committee
Members of the Committee
From: John R. Grace, President
Kansas Association of Homes for the Aging

RE: House Bill No. 2414

The Kansas Association of Homes for the Aging is a trade association of 130 not-for-profit retirement and nursing homes of Kansas.

We are opposed to House Bill No. 2421.

The Kansas Association of Homes for the Aging began working on a self-funded pool for members in late 1988 in an attempt to help members reduce costs of workers compensation. In April of 1990 the pool, the KAHA Insurance Group, Inc., (KING), became operational. We currently have 31 members as part of the pool. Dollar savings on workers compensation premiums for members have ranged from approximately 5% - 15%.

During the last few legislative sessions there has been much discussion concerning the "rising costs associated with Kansas adult care homes" and the need to control these escalating costs. Our members have responded by forming their own workers compensation pool. Not only has the pool saved members premium dollars, the intensive loss control program by the fund's third party administrator has saved members significant lost time and wages by reducing work related injuries.

House Bill No. 2414 could eliminate our workers compensation pool. I'm confident the pool developed by our members is the type of cost control program the Kansas Legislature wants adult care homes in this state to explore in order to save State dollars.

Thank you Mr.Chairman and Committee members.

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Health Care Facilities

MEDICALODGES, INC.

316-251-6700 • 512 WEST 11th STREET • P.O. BOX 509 • COFFEYVILLE, KANSAS 67337

Testimony before the

House Insurance Committee

by

Larry L. Fischer
Fund Administrator and Treasurer
Medicalodges' Affiliates Workers' Compensation Self-Insurance Pool

House Bill No. 2459

"An Act relating to group-funded workers' compensation...."

Chairman Turnquist and Committee Members:

Medicalodges' Affiliates Workers' Compensation Self-Insurance Pool appreciates the opportunity to speak in support of House Bill No. 2459 to allow any one employer which has been in existence for not less than five years and which has five or more operating locations within the state may apply for authority to operate a pool for liabilities for Kansas Workers' Compensation benefits and employer's liability.

We are in support of this position in order to allow our Pool to continue to operate effectively in the event of sale or disposition of membership or consolidation of members. During the past year, Golden Age Lodge of Burlington was sold to an outside entity which reduce our Pool fund to four groups. This required us to transfer an existing operation into another corporate entity in order to maintain the five employer requirement of existing statutes.

By approving the modification set out in this bill, in the event that less than five employers were in a pool group that had multiple locations then it would not require one of the participants to establish a new corporation or transfer locations to an existing corporation for the purpose of meeting the current statutory requirements. The Pool will continue to have the minimum net worth requirement and minimum premium requirements therefore will not effectively modify the intent of the original statute.

We appreciate the opportunity to speak in support of the passage of HB2459 and would be pleased to answer any questions for the Committee.

LF/bc 3-1-91
CPT 1E, 3-1-21

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