Approved March 8, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by REPRESENTATIVE M. J. JOHNSON at
Chairperson

1:35 ~~a.m.~~/p.m. on MARCH 5, 1991 in room 521-S of the Capitol.

All members were present ~~except~~:

Committee staff present:
Mike Heim, Legislative Research Dept.
Theresa Kiernan, Revisor of Statutes
Connie Smith, Committee Secretary

Conferees appearing before the committee:

Representative Brown
Karl W. Mueldener, Director, Bureau of Water, Kansas Department of Health and Environment
Gerry Ray, Johnson County
Phil Wittek, Environmental Director for Johnson Co.
Yo Bestgen, Executive Director of the Kansas Association of Rehabilitation Facilities
Paul M. Klotz, Executive Director, Association of Community Mental Health Centers of Kansas, Inc.
Robert L. Clark, President of Class LTD
Lila Paslay, representing The Association for Retarded Citizens of Kansas, Inc.
Martha K. Gabehart, Acting Executive Director, Kansas Commission on Disability Concerns
Ray Petty, Executive Director, Independence, Inc.
Jim Kaup, League of Kansas Municipalities

Chairman opened a hearing on HB 2461.

HB 2461 - Act concerning counties; relating to sanitary codes.

Representative Brown gave background and intent of HB 2461 and distributed to the committee a balloon of proposed amendments. (Attachment 1) Representative Brown answered questions from the committee.

Karl W. Mueldener, Director, Bureau of Water, Kansas Department of Health and Environment, appeared before the committee and shared his comments and concerns with several of the provisions of HB 2461. (Attachment 2) Mr. Mueldener responded to questions from the committee.

Gerry Ray, Johnson Co. Commission, appeared as an opponent on HB 2461 and provided written testimony. (Attachment 3) Ms Ray introduced Phil Wittek, Environmental Director from Johnson Co., who responded to questions from the committee. Mr. Wittek introduced Jack Maybee of their sanitation division, who is experienced in soil profile analysis and was available to answer any questions from committee on that subject.

There were no other conferees, so the Chairman closed the hearing on HB 2461.

Chairman opened the hearing on HB 2449.

HB 2449 - Concerning zoning; relating to group homes.

Yo Bestgen, Executive Director of the Kansas Association of Rehabilitation Facilities, testified in support of HB 2449. (Attachment 4)

Paul Klotz, Executive Director, Association of Community Mental Health Centers of Kansas, Inc., spoke in support on HB 2449. (Attachment 5)

Robert L. Clark, President of Class LTD, testified in support on HB 2449. (Attachment 6)

Lila Paslay, representing the Association for Retarded Citizens of Kansas, Inc., testified in support of HB 2449. (Attachment 7)

Martha K. Gabehart, Acting Executive Director, Kansas Commission on Disability Concerns, testified in support of HB 2449. Ms. Gabehart recommended an amendment that the word "handicapped" be changed to "disability" and the phrase "persons with disabilities" be inserted in place of "handicapped persons". (Attachment 8)

Ray Petty, Executive Director, Independence, Inc., testified in support of HB 2449 and offered suggested amendments. (Attachment 9)

Conferees responded to questions from the committee.

Jim Kaup, League of Kansas Municipalities, testified in opposition to HB 2449. (Attachment 10) Mr. Kaup responded to questions from the committee.

Chairman closed the hearing on HB 2449.

Chairman entertained a motion to approve the minutes of March 4, 1991. Representative Welshimer requested a change be made by inserting in the last paragraph on page 1 after the word that, "since county appraisers report to two separate supervising authorities, the county and the state,". Vice-Chairman Gomez moved that the minutes of March 4, 1991 be approved as corrected; seconded by Representative Holmes. The motion carried.

Meeting adjourned at 3:00 p.m.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE March 5, 1991

NAME	ADDRESS	REPRESENTING
Robert L. Clark	P.O. Box 266, Columbus	Class AAA
Martha Grabehart	Topeka	KS Com. on Disability Concerns
Karl Mueldener	"	KDHE
Lela Barclay	Topeka	ARC/Ks.
Jo Bertsch	Topeka	KARF
Rea Wilson	Overland Park	Sun Newspapers
Jack W. Maybee	Olathe	Johnson County
PHIL WITTEK	P.O. Box 39 SHAWNEE MISSION, KS, 66201	JOHNSON COUNTY
Gerry Ray	Olathe	Johnson Co Commission
Ray Roth	Lawrence	Independence Inc.
Mike Aduan	2044 Fillmore	Topeka, Ks. 66604
Bill Bojin	KDHE	Topeka
Stephen N. Paige	KDHE	Topeka
Jim Kaup	Topeka	League of Municipalities
Laura Doole	Topeka	City of Topeka
Willie Martin	Wichita	Sedgwick Co.
BEV BRADLEY	TOPEKA	KS ASSOC OF COUNTIES

LG
3-5-91
Attachment 1

Session of 1991

HOUSE BILL No. 2461

By Committee on Local Government

2-26

AN ACT concerning counties; relating to sanitary codes; amending K.S.A. 19-3702 and 19-3704 and repealing the existing sections.

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

Section 1. K.S.A. 19-3702 is hereby amended to read as follows: 19-3702. *(a)* For the purpose of promoting the public health, comfort and well-being of the public, the county commissioners of any county in this state which is served by a local health department may by resolution adopt a sanitary code or codes to apply to such parts of the county as set forth in this act as they deem necessary, for the control of those environments and environmental conditions that may adversely affect the health and well-being of the public.

(b) (1) The sanitary code may include provisions which establish minimum lot sizes for the use and operation of septic tank, aerobic disposal, mound disposal or other private sewage disposal systems. Any such minimum lot size requirement shall be based upon specific environmental and health requirements of the various areas of the county. ~~*Any minimum lot size shall not be less than one acre.*~~

(2) Any sanitary code which establishes a minimum lot size requirement for a private sewage disposal system shall provide a variance from such requirement if the person requesting to construct, use or operate such system demonstrates that soil profile and percolation tests show that waste discharged from such system:

(A) Does not contaminate drinking water;

(B) is not accessible to insects, rodents or other carriers of disease which may come in contact with food or drinking water;

(C) does not contaminate bathing beaches or streams used as a water supply or for recreational purposes;

(D) does not surface above ground level; and

(E) complies with all other requirements of the sanitary code.

(c) Each sanitary code may provide for permits, licenses and fees. The county commissioners as set forth in this act may adopt reasonable fees for permits, licenses or other activities as required in

Variances from minimum lot size requirements shall not provide for the use and operation of a private sewage disposal system on less than one-acre lots.

as set forth in this act deems it necessary to adopt a sanitary code, they shall prepare such sanitary code and submit it to the secretary of health and environment for review and approval.

(b) The secretary shall not approve any sanitary code which arbitrarily establishes minimum lot sizes for private sewage disposal systems. A minimum lot size shall be deemed arbitrary if it is not based on specific environmental and health requirements of the various areas of the county.

(c) After such approval, the county commissioners shall hold at least one public hearing thereon and shall afford interested parties an opportunity to be heard either in favor or in protest of the proposed code. Such public hearing may be continued at the discretion of the county commissioners. Notice of the public hearing, including the date, time, place of the meeting, the purpose of the sanitary code, and in reasonable detail, the boundaries of the areas to be subjected to the code, shall be published in the official county newspaper once a week for three consecutive weeks. The notice also shall state that copies of the proposed sanitary code are available for public inspection at the local health department or at a place designated by the board of county commissioners. The date of the public hearing shall be not less than 10 nor more than 30 days after the date of the last notice published. After the final adjournment of such hearing or hearings, the county commissioners, to adopt the sanitary code, ~~shall~~ by resolution *shall* declare such code as necessary for the protection of the health and welfare of the public, and shall publish once in the official county newspaper the resolution, the purpose of the sanitary code, and in reasonable detail the boundaries of the areas to be subjected to the sanitary code. The resolution also shall state that copies of the sanitary code are available for public inspection at the local health department or at a place designated by the board of county commissioners.

Sec. 3. K.S.A. 19-3702 and 19-3704 are hereby repealed.

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

Testimony presented to

House Committee on Local Government

by

The Kansas Department of Health and Environment

House Bill 2461

The Department has concerns with several of the provisions of this bill.

Lot sizes would be limited to a minimum of not less than one acre. While this might be appropriate in some cases with on-site disposal systems, it is probably excessive for areas served by sanitary sewers. We suggest clarifying exemptions for sewered areas.

We have concerns with the language with the section allowing variance when waste "discharged" meets certain provisions. Our concern is that the language would be interpreted as allowing the discharge from on-site treatment systems to surface waters. This is not legal without a state and federal discharge permit. We have not allowed discharges to surface water from individual residential systems. We want to avoid accidentally encouraging a proliferation of discharging residential wastewater systems.

The bill directs the secretary not to approve a sanitary code establishing minimum lot sizes, unless based on specific local criteria. While we understand the logic of this proposal, we also realize a county might want to implement controls on residential development for reasons other than local soil or site conditions. The reasons might include the county wanting to see development occur in areas with sanitary sewer service, or a county decision to avoid scattered or large lot developments as it is contrary to county development policy. If this was the county policy, we believe the county code should be able to reflect that policy.

Testimony presented by: Karl W. Mueldener
Director, Bureau of Water
Division of Environment
March 5, 1991

LSS
3-5-91
Attach. 2

PREPARED TESTIMONY
ON
HOUSE BILL NO. 2461

PRESENTED BY
PHIL WITTEK
ENVIRONMENTAL DIRECTOR
JOHNSON COUNTY, KANSAS

MARCH 5, 1991

LY
3-5-91
Attach. 3

I. INTRODUCTION

On behalf of the Board of County Commissioners of Johnson County, Kansas, I would like to extend our appreciation for the opportunity to present testimony to the Committee on House Bill No. 2461. The Board of County Commissioners is unanimously and firmly opposed to adoption of House Bill 2461. As Environmental Director for Johnson County, I am professionally opposed to the Bill.

That Bill seeks to amend K.S.A. 19-3702 and 19-3704, which is the current statutory authorization for counties to adopt and enforce provisions of a Sanitary Code. The Bill as drafted would impose unnecessary conditions upon establishing minimum lot size requirements for the use and regulation of private sewerage systems, primarily septic tanks.

As drafted, the Bill would create more issues and problems and would not solve any health or environmental concern. The Board of County Commissioners and I, as Environmental Director, must, therefore, oppose the Bill.

II. POSITION OF JOHNSON COUNTY

We do oppose House Bill 2461 for the following primary reasons:

1. Sanitary Code provisions are matters of primary local concern;

2. The intent and purpose of this Bill do not promote any beneficial health or environmental concern and would, in fact, detract from it;

3. This Bill would apply only to counties and would, therefore, create incompatibilities between codes within cities and those in counties;

4. The requirement for variance procedures would render enforcement extremely difficult and does not address adequate health and environment concerns;

5. The intent of the Bill focuses too narrowly upon present conditions when most health and environmental concerns related to septic tanks arise years after they are in place;

6. The Bill, as drafted, focuses upon the developer issue when, in fact, it is most often the subsequent home buyer who encounters the problem;

7. The Bill would effectively eliminate provisions currently within codes in most counties; and

8. The Bill, as drafted, would be extremely difficult to administer since it attempts to apply some very vague standards of "arbitrary" and "environmental requirements".

III. DISCUSSION

A. PROVISIONS OF THE SANITARY CODE ARE MATTERS OF LOCAL CONCERN. The essence of this Bill is to impose conditions upon County Governments in setting minimum lost size requirements for use of septic tanks. The many factors which are considered legislatively by local governments to implement code provisions are too numerous to detail for the committee, but they do include a wide range of issues from staff avail-

ability to administer and enforce the code to the activities sought to be regulated.

The concern here for minimum lot size variances is an issue particularly limited to local government, whether city or county. The governing body of the local government can and should address how code requirements best apply to the local area.

B. THE PURPOSE OF THE BILL DOES NOT PROMOTE HEALTH OR ENVIRONMENT. Sanitary Codes are intended to promote health and environmental concerns within the counties. The requirement for review by State officials is designed to ensure appropriate regulation.

This bill runs contrary to that interest. Its purpose is to lessen regulation and to promote developer interests, at the expense of subsequent home owners. To demonstrate that a septic tank, as designed, would adequately function, before use, on any given lot, in 1991, cannot and does not ensure that the tank will function adequately throughout the future under constant use.

The health and environmental issue arises only when the tank fails to function adequately. When that occurs, there are few options for the homeowner-be fined, find a sewer, or redo the private system. Those problems occur after the developer who wanted this variance is gone from the scene.

This Bill not only does not address that very real health problem, but it appears intended to encourage more of those problems.

We respectfully ask that you not adopt problems in the guise of code regulations.

C. APPLICATION ONLY TO COUNTIES. This Bill affects only county authority. Cities do have their own codes or do adopt provisions from the county codes. This Bill would create significant difficulties in attempting to coordinate codes between cities and counties.

D. ENFORCEMENT DIFFICULTY. The variance requirement would clearly adversely affect enforcement. It would be very difficult to prosecute a homeowner for a failing septic tank when state law authorizes and counties are forced to grant a variance from code requirements that permitted the septic tank to be used in the first place.

Likewise, the conditions for granting the variance do not begin to address the environmental concerns that would have an affect upon minimum lot size requirements. What might appear to be acceptable on one lot in a wide open area could very easily be unacceptable if that lot is surrounded by 40 other lots on septic tanks.

Too often the health concerns arise on adjoining property since ground water and sewerage do not follow property lines. In addition, the cumulative affect of a whole subdivision

using septic tanks is far more environmentally sensitive than the one isolated lot.

E. BILL FOCUSES UPON PRESENT. This Bill focuses only upon an occurrence when the developer wants to build. As noted already, the real health issues arise later, in the future. The practical problems are encountered not by the builder but the homeowner, most often years after the house is built. The proposed restrictions on lot size requirements completely ignores that real problem in favor of a very time limited interest.

F. EXISTING CODES WOULD BE AFFECTED. Most counties do now have existing minimum lot size requirements for use of septic tanks. Those requirements range from one acre to five acres. This Bill would effectively eliminate all of those existing requirements and would not provide any beneficial health or environmental gain.

G. VAGUE STANDARDS. The Bill, as drafted, imposes conditions which are to be evaluated by standards of "environmental requirements" or "arbitrary". Those terms are exceptionally vague. If, indeed, the intent is to prevent county governments from being arbitrary or capricious, no law is needed. That standard is always applied by the Courts.

However, if the intent is to force counties into proving actions by other standards, the terms used are so vague that we, as environmental specialists, cannot adequately do our

professional duties to protect the environment and health of the citizens.

IV. CONCLUSION

The Board of County Commissioners of Johnson County and I, as Environmental Director, firmly oppose House Bill No. 2461 and strongly urge you not to adopt the Bill. Sanitary Code provisions are a matter of local concern and should be left to local governing bodies. Most important, however, is the fact that this Bill cannot and will not promote any health or environmental concern. Rather, it imposes conditions that will certainly increase those environmental concerns and impose difficulties on administering and correcting problems.

We respectfully ask that this Bill be defeated.

Kansas Association of Rehabilitation Facilities

Jayhawk Tower • 700 Jackson • Suite 802 • Topeka, Kansas 66603

TO: House Local Government Committee
Rep. Mary Jane Johnson, Chair

FROM: Kansas Association of Rehabilitation Facilities

RE: HB 2449; Group Home Zoning

DATE: March 5, 1991

My name is Yo Bestgen and I am the Executive Director of the Kansas Association of Rehabilitation Facilities. I represent forty-two community based facilities in Kansas serving children and adults with mental retardation and developmental disabilities. These facilities provide early intervention, vocational rehabilitation and residential alternatives and services.

Today I would like to speak to you concerning the Kansas Statute on group home zoning. This law was passed in 1988 to provide the opportunity for community living in residential neighborhoods for individuals with disabilities. I have several issues to cover today. The impact of the current Kansas zoning law, the state laws compliance with the Federal Fair Housing Amendments Act of 1988 and why Kansas should amend the current law.

With the passage of the Kansas group home zoning law it was the intent to open up traditional single family areas to group homes. It was the expectation by those that advocated for the law that problems and concerns experienced prior to its passage would be reduced, and hopefully eliminated. That, unfortunately, has not been the case.

A primary barrier in the state law is the inclusion of the requirement of a special or conditional use permit. This requirement has continued to cause problems in the following areas:

1. Loss of access to certain properties due to the delay in obtaining such a permit, resulting in a financial burden to the sponsor seeking the property.

2. Additional financial burden due to the cost of obtaining such a permit. In Wichita, for example, the fee is $1,000 for the permit. In addition, there is staff time and attorney fees for the processing of the permit.

3. State funding sources for placements into the community are put 'at risk' of being lost by a Facility when they're delayed from opening a group home. This delay can deny a community placement to the individual, impairs the State's desire to serve people in the community who are waiting at home and in state institutions for services and causes a loss of economic growth to the community.

4. The greatest concern continues to be the invasion of the personal rights of the individuals who will live in the group home. The special

3-5-91
Attach 4

use permit allows for a public hearing. This public hearing is "cloaked" in the language of land use. Such a hearing is to assure the local government that the home will adhere to building codes and meet the residential nature of the neighborhood. In fact, these public hearings have served to needlessly alarm residents and allow public embarrassment of the people who will be living in the homes. It is not unusual for a sponsor of a group home to decide not to seek housing in certain areas based upon the risk of public embarrassment of the residents.

If land use is of concern, it is important to note that group homes must meet the same requirements of any other single family dwelling, whether or not there is a special use permit! In fact, group homes are under much greater scrutiny than their neighbors. These homes are monitored by the state and local Fire Marshal, state and county Health Departments, Department of Health and Environment, and the Department of Social and Rehabilitation Services on a regular basis. I would say to you that group homes are substantially monitored for health and safety standards.

It should also be noted that concerns about traffic in residential areas or re-sale value of homes have never been substantiated. Even city planners, through published articles have recognized these issues as a faulty premise for restricting group homes.

The Federal Fair Housing Amendments of 1988 established without question that acts of discrimination in housing will be penalized. It expressly prohibits inquiring into the nature and extent of a persons disability. These public hearings are not targeted at land use, but at the residents. The special/conditional use permit should be eliminated from the Kansas law.

The Kansas Attorney General issued an opinion in August, 1989, OR 122-89, which concludes that significant portions of the state law are in conflict with the Federal Fair Housing Act. In section 8 of the Federal Fair Housing Amendments Act it provides for enforcement by the United States Attorney General where the legality of any state or local zoning or other land use law or ordinance is called into question, and the enforcing federal agency (the Department of Housing and Urban Development) has indicated that "the act is intended to prohibit the application of restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of Handicapped individuals to live in the residence of their choice in the community." The opinion further articulates the non-compliance of the Kansas group home zoning law.

Finally, there is the question of why should Kansas move forward and change the current law? Why shouldn't we just wait until litigation is resolved and then act? First, it is simply good public policy. It provides for all Kansas citizens an opportunity for a choice in community living. In addition, it responds to the national effort to remove barriers of discrimination for individuals with disabilities and the state's initiative to reduce the population of the institutions. The Federal Fair Housing Amendments Act of 1988 and the recent American's With Disabilities Act of

1990 both establish a clear message that this will no longer be accepted.

Litigation has occurred around the nation, including Kansas. The City of Russell, Kansas was found by HUD to be in potential violation of the Federal Fair Housing Amendments Act and backed away from prohibiting the opening of group homes. In fact, in October, 1990 the City welcomed the new residents to Russell with an open house. Two hundred Russell residents came to the opening and welcomed their new friends to the community. Unfortunately, the neighbors sued on their own volition. The Department of Justice has filed a law suit against the neighbors, based upon discrimination. The fact is that even if the original intent is not to discriminate, if that is the effect of ones actions then it is a violation of the law.

If Kansas responds now to what is good public policy it would also result in good fiscal policy. It would allay substantial money judgements and attorney fees. But most of all it would say to Kansas citizens with disabilities, that you too should enjoy the privilege and the opportunity to choose where you live.

I ask that you support HB 2449 and amend the Kansas Statute on group home zoning. Thank you for your time and consideration.

Association of Community
Mental Health Centers of Kansas, Inc.
835 SW Topeka Avenue, Suite B, Topeka, KS 66612
Telephone (913) 234-4773 Fax (913) 234-3189

TESTIMONY
on H.B. 2449
Honorable Mary Jane Johnson, Chair
Local Government

By: Paul M. Klotz
March 5, 1991

Thank you for this opportunity to comment.

H.B. 2449 would go far in bringing Kansas zoning law into compliance with federal law relative to group homes. If the mentally ill and/or the mentally retarded are to have any meaningful life beyond insititutions, **H.B. 2449** must be in place. To do less is discriminatory, not to mention expensive. The Kansas legislature has spoken over and over again that they want to serve these people in the community wherever possible. **H.B. 2449** will help that to happen.

Thank you.

LG
3-5-91
Attach 5

HB 2449

Testimony Before the House Local Government Committee

March 5, 1991

Robert L. Clark, President

CLASS LTD

PO BOX 266

Columbus, KS 66725

(316) 429-1212

OUTLINE OF COMMENTS:

1. CLASS LTD is a comprehensive Community-based Mental Retardation/Developmental Disabilities Center. We have been continuously accredited by the "Commission on Accreditation of Rehabilitation Facilities" (CARF) since 1983. We are fully licensed to provide all current services by the State of Kansas Departments of Health and Environment and Social and Rehabilitation Services.

2. We strongly support the enactment of HB 2449 for the following reasons:

- To bring Kansas Statutes into conformity with the Federal "Fair Housing Amendments Act" of 1988.

3-5-91
attach. 6

- To provide State guidance to municipalities, needed for the updating of often misleading or discriminatory local zoning ordinances.

- To hopefully avoid the re-enactment of past "special use permit" hearings, which tend to focus on the proposed residents of a single-family dwelling—illegally and to their embarrassment.

- To avoid unnecessary citizen misunderstanding and legal expense—based on less than current state statutes and local zoning ordinances.

3. In the fall of 1990, certain Parsons residents took action, under local zoning codes, which, if not stopped by the City Attorney (attached), could have resulted in a lawsuit by the U.S. Justice Department against those residents. The cost of this preventive action to CLASS LTD was $404.60 in legal fees. in this case, an unnecessary public hearing was avoided. However, this is not always the case.

4. In the autumn of 1989, CLASS LTD was required to go through an unnecessary permit hearing in Pittsburg to acquire a single-family residence for our clients. The comments were directed at the "danger" which our residents would bring to the area, not on any issues of land use or the possibility of structural modifications.

5. CONCLUSION:HB 2449, as proposed, is needed to provide Statuatory guidance to the many part-time City Attorneys and local zoning boards in smaller Kansas municipalities, such as are found in the four Southeast Kansas Counties served by CLASS LTD.

PARSONS, KANSAS
December, 17,1990

RECEIVED DEC 1 8 1990

HONORABLE SENATOR ROBERT DOLE
141 Hart senate Office Bldg.
Washington, D.C. 20510
ATTN: Marcie Adler

Dear Senator Dole;

Attached is a copy of a letter from Class Limited and a petition from subdivision residents.

Class Limited is planning to force a group home in a rather new subdivision zoned residential single family by the city planning and zoning commission.

We understand they have been given license by the Federal Government to do this over local citizen and board approvals. I have worked thirty years on Government contracts and never been allowed to violate state, county and city guidelines.

We the citizens strongly resent this encroachment and request something be done to stop this action through law or through funding widhdrawal.

The existing group homes is this area do not appear to be very well run or controlled and they tend to severely depreciate the value of neighboring homes if indeed they are saleable at all.

As residents of the subdivision and tax supporters of the Class Limited program we ask your support and influence in an ammicable correction of an unfair and intolerable situation.

Thank you for your consideration.

Best Regards,

H. L. Lakin

HARVEY L. LAKIN
222 Kay Lane
Parsons, Kansas 67357
316-421-1405/7425

6-3

December 5, 1990

PETITION

To: Parsons City Planning and Zoning Board

We the undersigned, as interested parties, request the City of Parsons secure an injunction prohibiting Mr. Bob Clark and Class Limited from purchasing and occupying the property located at 218 Kay Lane in Parsons, Kansas for use as a "group home".

The property in question is located in an area zoned single family residential and as such should not be used for such purposes.

NAME	ADDRESS
Harvey L. Lakin	222 Kay Lane
Mr. & Mrs. Linus Hayward	106 Kay Lane
Mr. & Mrs. Earl Deshler	120 Kay Lane
Helen L. "Chic" Piotrowski	210 Kay Lane
[illegible]	[illegible]
Mr. & Mrs. Jerry [illegible]	214 Kay Lane
Mr. & Mrs. Jim Shipman	102 Kay Lane
Mr. & Mrs. Luther Peters	205 Kay Lane
Pete L. Trotman	207 Kay Lane
Betty Henderson	209 Kay Lane
Juanita Ermey	211 Kay Lane

6-4

FROM THE DESK OF

HARVEY L. LAKIN

The attached letter & petition has been sent to

Sen. Dole

1st Natl Bank

Commercial Bank

Maloney Hardman

City Commission Planning

Parsons

LAW OFFICES
DEARTH & MARKHAM
CHARTERED

RICHARD C. DEARTH
DAVID K. MARKHAM

GLENN JONES, 1911 - 1985
JOHN B. MARKHAM, of Counsel
JEFFRY L. JACK

1712 BROADWAY
P.O. BOX 1034
PARSONS, KANSAS 67357

TELEPHONE
(316) 421-1970
FAX (316) 421-8846

December 21, 1990

Harvey L. Lakin
222 Kay Lane
Parsons, Kansas 67357

Dear Harvey:

This letter is in response to your letter to Sen. Robert Dole of December 17, 1990 and the petition that you apparently sent to Sen. Dole, the First National Bank and Trust Company, the Commercial Bank, Maloney-Hardman Real Estate, the City Commission, the City Planning Commission and the Zoning Appeals Board, in addition to Class LTD. Apparently your concerns arise out of the intention to locate a home to house mentally handicapped individuals near yours on Kay Lane.

At the outset I wish to advise you that this firm represents on a regular basis all of the groups that you have addressed, with the exception of Sen. Dole. I am by copy of this letter making all of the parties aware of this situation. We feel no conflict of interest does appear and that we may speak on behalf of everyone in this matter.

You ask that the group home be enjoined by the City because the home is to be located in an area zoned single family residential. The Fair Housing Amendments Act of 1988 that was passed by the U.S. Congress, caused the Kansas Legislature to amend the Kansas law concerning zoning relating to the establishment of group homes for mentally retarded persons. I have enclosed a copy of the statute for your review.

Essentially, the law provides that mentally retarded or handicapped persons shall not be excluded from the benefits of single family residential surroundings. The law prohibits cities from prohibiting the location of the group home in any zone or area where single family dwellings are permitted. The State law does provide for the issuance of a special use permit and a distance requirement of 1000 feet from another group home. The Attorney General of Kansas ruled in an opinion of August 11, 1989 that the requirement of a special use permit and the distance requirement were in violation of Federal law, thus unenforceable. I enclose a copy of the Attorney General's opinion for your review as well.

6-6

It is my opinion, therefore, that the City is not only powerless to seek injunctive relief but, moreover, for the City to take the action you request would be a direct violation of the Federal law prohibiting discrimination against mentally handicapped individuals.

The staff of Class LTD has heard unsubstantiated rumors that individuals in the neighborhood may be threatening various economic sanctions against some or all of the parties involved in this sale and project. I would like to bring to your attention a case involving the Developmental Services of Northwest Kansas, Inc., an organization similar to Class, LTD. This group sought to establish a group home in Russell, Kansas. A group of neighbors filed a lawsuit in the District Court of Russell County to enjoin the project based upon some restrictive covenants on the land in question. As a result of some of the alleged actions of these residents, the United States Justice Department commenced a civil suit against these individuals in the Federal District Court claiming damages for the violation of the Federal Fair Housing Act. I enclose for your review a copy of the complaint filed by the government. I do not yet have a completed file on this case, but I know that the case is still pending.

It is my understanding that Class LTD intends to finalize the sale of the property in the near future and to take steps necessary of complete the project. Should this letter fail to answer your concerns about this matter, I urge you to seek independent legal advice before taking any further actions in this regard.

Very truly yours,

RICHARD C. DEARTH
For the Firm

RCD/hp

cc: Mr. and Mrs. Ernest Haynes
Mr. and Mrs. Earl Abshier
Helen S. Piotrowski
Mr. and Mrs. John H. Jones
Mr. and Mrs. Leroy Jones
Mr. and Mrs. Jim Shepard

cc: Mr. and Mrs. Luther Peters
Pat Strahan
Betty Henderson
Juanita Ermey
Sen. Robert Dole
First National Bank
Commercial Bank
Maloney-Hardman Real Estate
Commissioner Bob Bartelli
Commissioner Tim Ren
Mayor Bill Wheat
Chairman, Parsons Planning Commission
Chairman, Parsons Zoning Ajustments Board
Class LTD
Dick Combs

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

August 11, 1989

ATTORNEY GENERAL OPINION NO. 89-99

Robert L. Earnest
Russell City Attorney
P.O. Box 72
410 North Main Street
Russell, Kansas 67665

Re: Cities and Municipalities--Planning and Zoning; Group Homes--Group Homes, Exclusion of, Prohibited; Conditions; Special or Conditional Use Group Home Permit; Validity Under the Fair Housing Amendments Act of 1988

Synopsis: Where a special use permit is not required for single family dwellings of similar size, a city ordinance which requires the issuance of a special use permit as a condition precedent to locating a "group home" (as that term is defined in K.S.A. 1988 Supp. 12-736, as amended by L. 1989, ch. 58, §1) in a residential district violates subsection (f)(1) of 42 U.S.C. §3604, as amended by the Fair Housing Amendments Act of 1988, P.L. 100-430, 102 Stat. 1619. Accordingly, such an ordinance, and the provisions of K.S.A. 1988 Supp. 12-736(e), as amended by L. 1989, ch. 58, §1, which authorize such municipal legislation, are invalid under 42 U.S.C. §3615. Cited herein: K.S.A. 1988 Supp. 12-736, as amended by L. 1989, ch. 58, §1; 42 U.S.C §§3604, 3615; P.L. 100-430, 102 Stat. 1619.

* * *

6-9

Dear Mr. Earnest:

You request our opinion as to whether the portion of subsection (e) of K.S.A. 1988 Supp. 12-736, as amended by L. 1988, ch. 58, §1 which states that "group homes" may be required by municipalities to procure a special use permit has been voided by virtue of the Fair Housing Amendments Act of 1988, P.L. 100-430, 102 Stat. 1619.

Subsection (b)(1) of K.S.A. 1988 Supp. 12-736, as amended defines the term "group home," with subsection (e) providing as follows:

> "(e) Except as hereinafter provided, no municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation which prohibits the location of a group home in such zone or area in violation of this act is invalid. Notwithstanding the provisions of this act, group homes may be required to procure a special or conditional use group home permit and shall be subject to all other regulations applicable to other property located in the zone or area that are imposed by any municipality through its building regulatory codes, subdivision regulations, special or conditional use group home permit regulations or other nondiscriminatory regulations. For the purpose of preserving the single family residential character of the area, the governing body of the municipality may require the physical structure of the group home to be generally compatible with other physical structures in the surrounding neighborhood. In order to avoid excessive concentration of group homes, from and after the effective date of this act, no such group home may be located within 1,000 feet of another such group home in areas zoned exclusively for single family dwellings, unless the governing body of the municipality approves a closer location by a majority vote thereof. A special or conditional

> use group home permit shall be issued upon a determination by the governing body of the municipality that the establishment of the group home is in compliance with the provisions of this section." (Emphasis added.)

The Fair Housing Amendments Act of 1988, (F.H.A.A.), P.L. 100-430, 102 Stat. 1619, extends the provisions of the Fair Housing Act of 1968 to handicapped persons. The term "handicap" is defined as follows:

> "'Handicap' means with respect to a person --
>
> "(1) a physical or mental impairment which substantially limits one or more of such persons major life activities,
>
> "(2) a record of having such an impairment, or
>
> "(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))."

Section 6 of the 1989 law amends subsection (f)(1) of 42 U.S.C. §3604 to make it unlawful

> "[t]o discriminate in the sale or rental, or <u>to otherwise make unavailable or deny, a dwelling to any buyer or renter because of handicap of</u> --
>
> "(A) that buyer or renter,
>
> "(B) <u>a person residing in or intending to reside in that</u> dwelling after it is sold, rented, or made available; or
>
> "(C) any person associated with that buyer or renter." (Emphasis added.)

The legislative history of the above-quoted 1989 law makes it clear that Congress intended to prohibit local zoning laws which discriminate against persons with handicaps:

> "The new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such means as the enactment or imposition of health, safety or land use requirements on congregate living arrangements among nonrelated persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.

> "The committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The act is intended to prohibit the application of special requirements through land use regulations, restrictive covenants and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. Under H.R. 1158, land use and zoning cases are to be litigated in court by the Department of Justice. They would not go through the administrative process.

> "Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land use in a manner which discriminates against people with disabilities. Such discrimination often

> results from false or over protective assumptions about the needs of handicapped people as well as unfounded fears of difficulties about the problems that their tendencies may pose. These and similar practices would be prohibited." House of Representatives Report 100-711, 100th Congress, 2d session, p. 24.

Additionally, section 8 of the F.H.A.A. provides for enforcement by the United States Attorney General where the legality of any state or local zoning or other land use law or ordinance is called into question, and the enforcing federal agency (the Department of Housing and Urban Development) has indicated that "the act is intended to prohibit the application of restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of [handicapped] individuals to live in the residence of their choice in the community." (54 Federal Register 3246).

Finally, the Fair Housing Act provides that "any law of a state, political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid." 42 U.S.C. §3615.

In regard to the validity of K.S.A. 1988 Supp. 12-736, as amended, under the federal act, it is apparent that the requirement of a special use permit may "otherwise make unavailable or deny, a dwelling" to a handicapped person. Thus, where a special use permit is not required for single family dwellings of similar size, it is our opinion that a city ordinance which requires the issuance of a special use permit as a condition precedent to locating a "group home" (as that term is defined in K.S.A. 1988 Supp. 12-736, as amended by L. 1989, ch. 58, §1) in a residential district violates 42 U.S.C. §3604, as amended by the Fair Housing Amendments Act of 1988, P.L. 100-430, 102 Stat. 1619. Accordingly, such an ordinance, and the provisions of K.S.A. 1988 Supp. 12-736(e), as amended by L. 1989, ch. 58, §1 which authorize such municipal legislation, are invalid under 42 U.S.C. §3615.

Although you have not requested an opinion regarding the same, we are impelled to note that the requirement that no group home be located within 1,000 feet of another group home in areas zoned exclusively for single family dwellings also appears to violate subsection (f)(1) of 42 U.S.C. §3604, as

amended. Accordingly, we would urge the Kansas Legislature to repeal that prohibition and other offending portions of subsection (e) of K.S.A. 1988 Supp. 12-736, as amended.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm

THE ASSOCIATION FOR
RETARDED CITIZENS OF KANSAS, INC.

P.O. BOX 676 • HAYS, KS 67601

Hope through understanding

March 5, 1991

TO: Rep. Mary Jane Johnson, Chair
Members of the Local Government Committee

FROM: Lila Paslay, Chair
Legislative Affairs

RE: H. B. 2449

I am here today to represent the Association for Retarded Citizens of Kansas. This organization has approximately 5,000 members who belong to 37 local units across the state. Most of these members are parents or relatives of individuals with mental retardation or developmental disabilities.

The Association for Retarded Citizens supports H.B. 2449. We worked along with other organizations for the passage of the original legislation. We believe the state should comply with the federal laws regarding Fair Housing.

I would like to address one area of concern to families I represent and a fear they have regarding zoning ordinances.

There are several families that I am aware of who have established trusts for their sons and daughters who are mentally retarded. Within these trusts, they have made arrangements for their family home to be left to the trust in order that their son or daughter could continue to live there after they no longer are. In order to make it financially feasible, they have instructed that the home become a small group home. In most instances, a family home would only be able to accommodate 2 or 3 other individuals.

If the issue of restrictive covenants and other regulations causes them some fear that what they desire for their son or daughter may be impossible. They would like some assurance that the family home could continue to be used as they desire.

We would like to see this issue no longer need to be a concern of families as they develop the plans for the future of their son or daughter with mental retardation.

SG
3-5-91
attach. 7

KANSAS DEPARTMENT OF HUMAN RESOURCES

Commission on Disability Concerns
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
913-296-1722 (Voice) -- 913-296-5044 (TDD)
913-296-4065 (Fax)

Joan Finney, Governor

Michael L. Johnston, Secretary

Testimony on HB 2449 to the
House Local Government Committee
by Martha K. Gabehart,
Acting Executive Director
Kansas Commission on Disability Concerns
March 5, 1991

<u>The opinions stated here are those of the Kansas Commission on Disability Concerns (KCDC) and do not necessarily reflect the opinions of the administration.</u>

Thank you for the opportunity to testify in support of HB 2449, the amendments to prohibit zoning which discriminates against group homes for people with disabilities. KCDC supports HB 2449 because it brings our state law into line with the Fair Housing Amendments Act (FHAA) of 1988 which prohibits zoning discrimination against people with disabilities.

Group homes are necessary to help people with disabilities adjust to community living when they have not had the experience of living in a community setting or who have been out of the community for a while and need to be reacclimated. Those of us who have not been institutionalized were taught about community living as children. People with disabilities who have been in institutions, have not had this training.

As the state moves toward reducing the number of people in institutions, more group homes will be needed to assist people

LG
3-5-91
Attach 8

in adjusting to community living. Because of some people's fear of the unknown, resistance to allowing groups homes into neighborhoods occurs. This fear could be that dangerous people will be moving in or that the house will not be taken care of and property values will drop. People transitioning into the community are screened to determine their readiness. It is to no one's advantage to put people into group homes who are not ready. As for inadequate care for the property, I have heard of no problems with inadequate care of property.

The only amendment we would recommend is that the word "handicapped" be changed to "disability" and the phrase "persons with disabilities" be inserted in place of "handicapped persons". Disability is the terminology accepted by most people with disabilities and putting the word "person(s)" in front of the word "disability" emphasizes the person and not the disability. This terminology is also consistent with the Americans with Disabilities Act (ADA) and the FHAA.

KCDC urges your support of HB 2449.

\hb2449

Session of 1991

HOUSE BILL No. 2449

By Committee on Local Government

2-25

AN ACT concerning zoning; relating to group homes; amending K.S.A. 1990 Supp. 12-736 and repealing the existing section.

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

Section 1. K.S.A. 1990 Supp. 12-736 is hereby amended to read as follows: 12-736. (a) It is hereby declared to be the policy of the state of Kansas that ~~physically handicapped,~~ mentally ill, ~~mentally~~ retarded or other ~~developmentally disabled~~ *handicapped* persons shall not be excluded from the benefits of single family residential surroundings by any municipal zoning ordinance, resolution or regulation. ~~It is also declared to be the policy of the state of Kansas to encourage the dispersion of group homes within areas zoned exclusively for single family residences.~~

(b) For the purpose of this act:

(1) "Group home" means any dwelling occupied by not more than 10 persons, including eight or fewer ~~physically handicapped,~~ mentally ill, mentally retarded or other ~~developmentally disabled~~ *handicapped* persons who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the ~~physically handicapped,~~ mentally ill, mentally retarded or other ~~developmentally disabled~~ *handicapped* residents of the home, which dwelling is licensed by a regulatory agency of this state;

(2) "municipality" means any township, city or county located in Kansas;

(3) ~~"developmental disability" means a severe chronic disability of a person, which:~~

~~(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;~~

~~(B) is manifested before the person attains age 22;~~

~~(C) is likely to continue indefinitely;~~

~~(D) results in substantial function limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living and (vii) economic self-sufficiency; and~~

*This bill amends the Kansas group home zoning law into compliance with the Fair Housing Act Amendments of 1988 (FHA). With the following minor revisions, please support it for passage.

strike "handicapped"

ADD "with a disability"

strike from "physically" through "handicapped"

INSERT "with a disability"

strike from "physically" through "handicapped"

Attach 1
3-15-91

Independence, Inc.
THE LAWRENCE INDEPENDENT LIVING RESOURCE CENTER

Ray Petty
Executive Director

1910 HASKELL • LAWRENCE, KANSAS 66046
913-841-0333

~~(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated;~~ *"handicap" means, with respect to a person:*

(A) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(B) a record of having such an impairment; or

(C) being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the controlled substance act (21 U.S.C. 802);

(4) "licensed provider" means a person or agency who provides mental health services and is licensed by:

(A) The department of social and rehabilitation services pursuant to K.S.A. 75-3307b or 65-425 *et seq.*, and amendments thereto; or

(B) the behavioral sciences regulatory board pursuant to K.S.A. 75-5346 *et seq.* or 74-5301 *et seq.*, and amendments thereto; or

(C) the state board of healing arts pursuant to K.S.A. 65-2801 *et seq.*, and amendments thereto.

(c) (1) No mentally ill person shall be eligible for placement in a group home unless such person has been evaluated by a licensed provider and such provider determines that the mentally ill person is not dangerous to others and is suitable for group-home placement. A group home shall not be a licensed provider for the purposes of evaluating or approving for placement a mentally ill person in a group home.

(2) No person shall be eligible for placement in a group home if such person is (A) Assigned to a community corrections program or a diversion program; (B) on parole from a correctional institution or on probation for a felony offense; or (C) in a state mental institution following a finding of not guilty by reason of insanity pursuant to K.S.A. 22-3428, and amendments thereto.

(d) No person shall be placed in a group home under this act unless such dwelling is licensed as a group home by the department of social and rehabilitation services.

(e) ~~Except as hereinafter provided,~~ No municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation which prohibits the location of a group home in such zone or area ~~in violation of this act~~ *or which subjects group homes to regulations not applicable to other single family dwellings in the same zone or area* is invalid. Notwithstanding the provisions of this

"disability".

<Save a tree—no changes on p. 3>

p-2

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 Local Government
FROM: Jim Kaup, League General Counsel
RE: HB 2449; Group Home Zoning
DATE: March 5, 1991

By action of the League's Governing Body, taken on Friday, March 1, the League appears in opposition to that portion of HB 2449 which would amend K.S.A. 1990 Supp. 12-736(e).

Specifically, the League opposes the proposed amendments found at page 2, line 37;43, and page 3, lines 1;7[12]. The League has no position regarding the balance of the amendments to Supp. 12-736 proposed in HB 2449.

It is the League's understanding that the purpose of HB 2449 is to eliminate alleged "conflicts" between the Kansas statutes and the federal Fair Housing Amendments Act of 1988. The League questions the conclusion that has been reached of some that the state law in fact is in conflict with the federal law.

The League opposes the proposed amendments to Supp. 12-736(e) which would strike the statutory authority of a municipality to require a special or conditional use group home permit. These amendments go on to provide a prohibition against zoning ordinances, resolutions or regulations "which subject group homes to regulations not applicable to other single family dwellings in the same zone or area". (page 2, lines 41:43.) It appears to the League that the impetus for this proposed amendment comes from Attorney General Opinion No. 89-99. That opinion, issued to the City of Russell, dealt with the authority of cities to use Supp. 12-736 as the legal authority for the requirement of a special or conditional use group home permit. Essentially AGO 89-99 said that a city zoning regulation which required persons to obtain a special use permit before placing a group home for the mentally retarded in a single-family zoned area--but which made no similar requirement of a person who seeks to locate a group home for persons who are not similarly disabled--is invalid as violative of the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Secs. 3604)(f)(1), P.L. 100-430). Consequently, according to AGO 89-99, because Supp. 12-736 specifically authorizes municipalities to require such special use permits, Supp. 12-736, as enacted by the 1988 Kansas legislature, is invalid.

It is the opinion of the League that AGO 89-99 overlooked a simple and fundamental point: Group homes for unrelated individuals, whether for persons who are developmentally disabled or for those who are not disabled, are not permitted uses in areas zoned exclusively for single-family residential uses. In other words, but for Supp. 12-736 no group home would be allowed in a single-family zoned area unless a city's or county's zoning regulations itself provided the means for such.

Our reading of the federal law is that it does forbid a city from establishing procedural or substantive requirements for a special or conditional use group home permit for homes for the developmentally disabled or mentally ill that are more restrictive than the permit

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3-5-91
Attach. 10

requirements for group homes for persons who are not developmentally disabled or mentally ill. However, that was not the issue presented by the City of Russell in AGO 89-99. In that instance, the City of Russell tried to require a special use permit of the only type of group home that would be permitted--by operation of Supp. 12-736--in areas otherwise zoned exclusively for single-family residential use.

The conclusion made by AGO 89-99 seems to follow from the fact that the City of Russell does not require a special use permit for "groups of similar size of other unrelated people (without disabilities...)." This point is irrelevant to the issue of conflict between Supp. 12-736 and the federal act. Far from discriminating against persons with developmental disabilities, Supp. 12-736 discriminates in favor of those persons by giving them a unique advantage--a statutorily-created right to reside in group homes located in residential areas otherwise zoned exclusively for single-family purposes.

Federal law does not require any state to pass laws such as Kansas did in enacting Supp. 12-736, declaring group homes for the developmentally disabled as permitted uses in single-family zoned areas. Nor does federal law forbid a state from allowing municipalities to require special or conditional use group home permits. The irony of AGO 89-99 is that it takes a state law that discriminates in favor of a class of persons protected by the Fair Housing Amendments Act of 1988 and, painting it with broad brush, concludes that because it grants permissive authority to require special use permits, it is legislation which unlawfully discriminates against the developmentally disabled. This conclusion is reached even though no one but the protected class has a statutory right to reside in a group home in a single-family zoned neighborhood.

We see little logic to the argument that Supp. 12-736 is discriminatory against persons with developmental disabilities because persons without developmental disabilities do not have to have a group home permit under the provisions of Supp. 12-736. Persons without disabilities have no statutory right at all to live in group homes in single-family zoned areas, although the developmentally disabled do have such a statutory right. By definition only group homes for the developmental disabled face a special use permit requirement because only those group homes can be placed in areas zoned so that a special use permit is necessary in the first place. The League believes it is incorrect to call Supp. 12-736 discriminatory.

With respect to one of the other amendments proposed for Supp. 12-736, the League would merely note that the 1,000 foot spacing requirement which is now part of the Kansas law was placed in Supp. 12-736 at the insistence of those supporting the placement of group homes into single-family zoned neighborhoods. It was intended to serve as a state prohibition against local units of government concentrating group homes into particular neighborhoods or zoning districts.

League Recommendation for Action. The League respectfully asks this Committee to refrain from adopting the above-discussed amendments to Supp. 12-736. We would note, in closing, that this alleged conflict between state and federal law has been a matter of some discussion and litigation in other parts of the country, where similar state laws exist. We would ask this Committee to give laws enacted by the 1988 Kansas legislature a presumption of validity. If in fact conflict exists such will be identified in the courts and the issue thereby resolved.