

Approved 4-12-91
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Herman G. Dillon at
Chairperson

2:31 a.m. on April 2, 1991 in room 519-S of the Capitol.

All members were present except:

Representative Everhart - Excused
Representative Parkinson - Excused

Committee staff present:

Hank Avila - Legislative Research
Bruce Kinzie - Revisor of Statutes
Jo Copeland - Committee Secretary

Conferees appearing before the committee:

Robert Sherburne - TOPESHAW INC. Topeka, Ks
Don Swisher - Farmway Co-op, Inc. Beloit, Ks
Jeff Wagaman - Administrative Assistant - Senator Kerr
Pat Hubbell - Kansas Railroad Association
Lynn Rogers - Public Affairs Manager -CoBank - National Bank
for Cooperatives
W. Robert Alderson - General Counsel for Mid States Port
Authority

Chairman Dillon entertained a motion to approve the March 28th minutes. Representative Gross moved the motion and Representative Correll seconded. Motion carried.

Chairman Dillon opened discussion for introduction of a Committee Bill: (Attachment 1) - An act enacting the Kansas motor fuel marketing act; declaring public policy regarding motor fuel marketing and pricing; prohibiting certain acts and providing penalties and other remedies for violations; declaring certain contracts void.

Discussion followed.

Representative Garner moved to introduce the bill and Representative Gross seconded. Motion carried.

Representative Bryant moved to reconsider HB 2557, (Vehicle identification number inspection), which had been tabled April 1, 1991. There was no second. Motion died.

Final action on SB 267.

SB 267 - Motor vehicle dealers establishment or relocation of new vehicle dealers.

Representative Freeman moved to pass SB 267 favorable and Representative Correll seconded. Motion carried.

Hearing on SB 265. (Sub. for SB 265)

SB 265 - Sub. for SB 265 - Establishing the rail service assistance program.

Chairman Dillon introduced Robert Sherburne who testified in support of SB 265. (Attachment 2)

Chairman Dillon introduced Don Swisher who testified in support of SB 265. (Attachment 3)

Chairman Dillon introduced Jeff Wagaman who presented Victor

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S Statehouse, at 2:31 ~~am~~ p.m. on April 2, 1991

C. Moser's testimony in support of SB 265. (Attachment 4)

Chairman Dillon introduced Pat Hubbell who testified in support of SB 265. (Attachment 5)

Questions and discussion followed.

Chairman Dillon introduced Lynn Rogers who testified in support of SB 265. (Attachment 6) and also presented Joe Liebers testimony in support of SB 265. (Attachment 7)

Chairman Dillon introduced W. Robert Alderson who testified in support of SB 265. (Attachment 8)

Hearing ended on SB 265.

Final action on SB 265.

Chairman Dillon asked the committees permission to take Final Action on SB 265 beings this was the last Committee meeting.

Representative Crowell moved to pass SB 265 favorable and Representative Shore seconded. Motion carried.

Chairman Dillon thanked the staff, committee members and secretary for all their cooperation in helping him through his first year as Chairman.

Meeting adjourned at 3:02 p.m.

House Bill No. _____

By Committee on Transportation

An Act enacting the Kansas motor fuel marketing act; declaring public policy regarding motor fuel marketing and pricing; prohibiting certain acts and providing penalties and other remedies for violations; declaring certain contracts void.

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

Section 1. This act shall be known and may be cited as the Kansas motor fuel marketing act.

Sec. 2. The legislature hereby makes the following findings with respect to the marketing of motor fuel in Kansas:

(a) Marketing of motor fuel is affected with the public interest;

(b) unfair competition in the marketing of motor fuel occurs whenever costs associated with the marketing of motor fuel are recovered from other operations, allowing the refined motor fuel to be sold at subsidized prices. Such subsidies most commonly occur in one of three ways: when refiners use profits from refining of crude oil to cover below normal or negative returns earned from motor fuel marketing operations; where a marketer with more than one location uses profits from one location to cover losses from below-cost selling of motor fuel at another location; and where a business uses profits from nonmotor fuel sales to cover losses from below-cost selling of motor fuel;

(c) independent motor fuel marketers, including dealers, distributors, jobbers and wholesalers, are unable to survive predatory subsidized pricing at their marketing level; and

(d) subsidized pricing is inherently predatory and is reducing competition in the petroleum industry, and if it continues unabated, will ultimately threaten the consuming public.

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Sec. 3. It is hereby declared that:

(a) Marketing of motor fuel in Kansas is affected with the public interest;

(b) it is the legislature's intent to encourage fair and honest competition, and to safeguard the public against creation of monopolies or unfair methods of competition in transactions involving the sale of, offer to sell or inducement to sell motor fuel in the wholesale and retail trades in this state;

(c) the advertising, offering for sale or sale of motor fuel below cost or at a cost lower than charged other persons on the same marketing level, which has the effect of injuring competitors or destroying or substantially lessening competition, is an unfair and deceptive trade practice, and the policy of this state is to promote the general welfare through the prohibition of such sales; and

(d) the purpose of the Kansas motor fuel marketing act is to carry out that policy in the public interest, providing for exceptions under stated circumstances, providing for enforcement and providing penalties.

Sec. 4. As used in this act:

(a) "Affiliate" means any person who, other than by means of franchise, controls, is controlled by or is under common control with any other person.

(b) "Basic cost of motor fuel" means whichever of the two following amounts is lower, namely: (1) the invoice cost of motor fuel to the wholesaler or retailer, as the case may be; or (2) the lowest replacement cost of motor fuel to the wholesaler or retailer, as the case may be, within five days prior to the date of sale, in the quantity last purchased (whether within or before the said five-day period), less, in either of

said two cases, all trade discounts except customary discounts for cash, plus the full value of freight costs and any taxes which may be required by law, now in effect or hereafter enacted, if not already included in the invoice cost of the motor fuel to the wholesaler or retailer, as the case may be. In computing its basic cost of motor fuel, its cost of doing business and in meeting competition under section 8, refiner that assesses a processing fee of any kind for credit card transactions must assess such fees in a like manner to its affiliates.

(c) "Buying pool" means any combination, corporation, association, affiliation or group of retail dealers operating jointly in the purchase, sale, exchange or barter of motor fuel, the profits of which accrue directly or indirectly to such retail dealers.

(d) "Competition" means any person who competes with another person in the same market area at the same level of distribution.

(e) "Cost of doing business" or "overhead expense" means all costs incurred in the conduct of business, including but not limited to: labor (including salaries of executives and officers); rent (which rent must be no less than fair market value based on current use); interest on borrowed capital; depreciation; selling cost; maintenance of equipment; transportation or freight cost; losses due to breakage or damage; credit card fees; or other charges; credit losses; all types of licenses; taxes; insurance; and advertising.

(f) "Cost to refiner" means that refiner's posted terminal price to the wholesale class of trade. In the event a refiner does not regularly sell to the wholesale class of trade at that terminal or does not post such a terminal price, it may use as its cost the posted price of any other refiner at any terminal within the general trade area which has motor fuel

readily available for sale to the wholesale class of trade.

(g) "Cost to retailer" means, as applied to retail sales, the lesser of either the invoice cost or the replacement cost of the motor fuel within five days prior to the date of sale, in the quantity last purchased, less all trade discounts except customary discounts for cash, to which shall be added all applicable state, federal and local taxes, inspection fees, freight cost, if paid by the retailer, plus the cost of doing business.

(h) "Cost to wholesaler" means, as applied to wholesale distribution, the lesser of either the invoice cost or the replacement cost of the motor fuel within five days prior to the date of sale, in the quantity last purchased, less all trade discounts except customary discounts for cash, to which shall be added all applicable state, federal and local taxes, inspection fees, freight charges not otherwise included in the cost of motor fuel, cartage to the retail outlet, if paid by the wholesaler, plus the cost of doing business.

(i) "Customary discount for cash" means any allowance, whether a part of a larger discount or not, made to a wholesaler or retailer when such person pays for motor fuel within a limited or specified time.

(j) "Loss leader" means any product sold at less than cost for the purpose of inducing, promoting or encouraging the purchase of other merchandise.

(k) "Motor fuel" means any refined or blended motor fuel products, including gasoline, diesel fuel, aviation fuel, gasohol and all other fuel of a type designated for use as a motor fuel in self-propelled vehicles.

(l) "Person" means an individual, firm, association, organization, partnership, business trust, joint stock company, company, corporation or other legal entity.

(m) "Refiner" means any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this state or elsewhere, and includes any affiliate of such person.

(n) "Retailer" means any person who is engaged in this state in the business of selling motor fuel at retail to the general public for ultimate consumption, and includes any group of persons, cooperative organizations, buying pools and any other person or group purchasing motor fuel on a cooperative basis from licensed distributors or wholesalers.

(o) "Sale" or "sell" means any transfer for a combination, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for motor fuel and distribution in any manner or by any means whatsoever.

(p) "Sell at retail," "sale at retail" and "retail sales" means any sale for consumption or use in the ordinary course of trade or usual conduct of a retailer's business.

(q) "Sell at wholesale," "sale at wholesale" and "wholesales" means any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

(r) "Transfer price" means the price used by a person in transferring motor fuel to itself or an affiliate for resale or distribution at another marketing level, and it includes credit terms, discounts, rebates, allowances, services or facilities granted any of a supplier's own marketing operations in excess of those provided to a person who purchases for resale at the same level of distribution. Such price shall be determined using standard, functional accounting procedures.

(s) "Wholesale distribution" means the purchase of motor fuel for sale, consignment or distribution to another or receipt of motor fuel for

sale, consignment or distribution to another, to one's own motor fuel accounts or to accounts of one's supplier.

(t) "Wholesaler" means any person engaged in commerce within this state, including any affiliate of such person, who purchases motor fuel for sale, consignment or distribution to another, or receives motor fuel on consignment for consignment or distribution to such person's own motor fuel accounts or to accounts of such person's supplier; such term shall include a distributor, as that term is defined in K.S.A. 79-340(g), and amendments thereto, but shall not include a person who is an employee of, or merely serves as, a common carrier providing transportation services for such supplier.

Sec. 5. All persons engaged in commerce in this state are required to establish transfer prices and to disclose, upon request, their transfer prices on each grade of motor fuel transferred or sold to itself or an affiliate for resale at another marketing level of distribution. Such disclosure shall only be made to those persons affected by such transfer prices or in any legal proceedings arising from this act.

Sec. 6. It shall be unlawful for any person engaged in commerce in this state to sell or offer to sell any grade of motor fuel below cost or to sell it at a price lower than the seller charges other persons on the same day and on the same level of distribution, within the same market area, where the effect is to injure competition.

Sec. 7. It shall be unlawful for any person engaged in commerce in this state to sell or transfer any grade of motor fuel to itself or an affiliate for resale at another marketing level of distribution at a transfer price that is below cost or lower than the price it charges a person who purchases for resale on the same day and at the same

distribution level, within the same market area, where the effect is to injure competition.

Sec. 8. (a) It is not a violation of this act if a difference exists between the transfer price or sales price of motor fuel of like grade and quality and the price charged to a person who purchases for resale at the same level of distribution, including any discounts, rebates, allowances, services or facilities granted any of a supplier's own marketing operations in excess of those provided to a person who purchases for resale at the same level of distribution, if the lower price is due to a cost differential incurred because of a difference in shipping method.

(b) It is not a violation of this act if any price is established in good faith to meet but not be lower than a specific price of a competitor in the same market area on the same level of distribution selling the same or a similar product of like grade and quality or is exempt under section 13.

Sec. 9. It shall be unlawful for:

(a) Any person engaged in commerce in this state to sell, offer to sell or use any grade of motor fuel as a loss leader, where the effect is to injure competition;

(b) any person, where the effect is to injure competition, to offer a rebate, to offer to give a rebate or to offer a concession of any kind in connection with the sale of motor fuel; or

(c) any retailer to induce or attempt to induce or to procure or attempt to procure the purchase of any grade of motor fuel at a price less than cost to the wholesaler.

Sec. 10. In all advertisements, offers for sale or sales involving two or more items, at least one of which is motor fuel, at a combined

price, and in all advertisements, offers of sale or sales involving the giving of any gift or concession of any kind whatsoever, whether it be coupons or otherwise, the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions, except that if any such articles, products, commodities gifts or concessions shall not be motor fuel, the basic cost thereof shall be determined in like manner as provided in subsection (b) of section 4.

Sec. 11. When one wholesaler sells motor fuel to any other wholesaler, the former shall not be required to include in his selling price to the latter the cost to the wholesaler, but the latter wholesaler, upon resale to a retailer, shall be required to include in the selling price to the retailer the cost to the wholesaler.

Sec. 12. (a) The provisions of this act shall not apply to a sale at wholesale or a sale at retail made:

(1) In an isolated transaction and not in the usual course of business;

(2) where motor fuels are advertised, offered for sale or sold in a bona fide clearance sale for the purpose of discontinuing trade in such motor fuel, and said advertising, offer to sell or sale shall state the reason therefor and the quantity of such motor fuel advertised, offered for sale or to be sold;

(3) where motor fuel is advertised, offered for sale or sold as imperfect or damaged, and said advertising, offer of sale or sale shall state the reason therefor and the quantity of such motor fuel advertised, offered for sale or to be sold;

(4) where motor fuel is sold upon the final liquidation of a business; or

(5) where motor fuel is advertised, offer for sale or sold by any fiduciary or other officer under the order or direction of any court.

(b) The notice required to be given under this section shall not be sufficient unless the subject of such sales is kept separate from other stocks and clearly and legibly marked with the reason for such sales, and any advertisement of such goods must indicate the same facts and the quantity to be sold.

Sec. 13. (a) Any wholesaler may advertise, offer to sell or sell motor fuel at a price made in good faith to meet, but not be lower than, a specific price of a competitor who is rendering the same type service and is selling the same article at cost to the said competing wholesaler as defined in this act. Any retailer may advertise, offer to sell or sell motor fuel at a price made in good faith to meet, but not be lower than, a specific price of a competitor who is selling the same article at cost to the said competing retailer as defined in this act. The price of motor fuel advertised, offered for sale or sold under the exceptions specified in section 12 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the actual cost to the said competing wholesaler or the said competing retailer, as the case may be, such cost may be presumed to be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same market area as determined by a cost survey made pursuant to subsection (b) of section 15.

Sec. 14. Any contract, express or implied, made by any person in violation of any of the provisions of this act, is illegal and void and no recovery shall be had thereon.

Sec. 15. (a) In determining cost to the wholesaler and cost to the retailer in any proceeding before a court of competent jurisdiction in this state, the court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased the motor fuel involved in the complaint at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true costs, discounts or terms of purchase, and also shall receive and consider as bearing on the bona fides of such costs, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the market area.

(b) Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for a market area in which a violation of this act is committed or charged, to determine and establish on the basis of actual existing conditions the lowest cost to wholesalers or the lowest cost to retailers within the said area, the cost survey shall be deemed competent evidence in any action or proceeding under this act as tending to prove actual cost to the wholesaler or actual cost to the retailer complained against, but any party against whom any such cost survey may be introduced in evidence shall have the right to offer evidence tending to prove any inaccuracy of such cost survey or any state of facts which would impair its probative value.

Sec. 16. (a) Any person who violates this act shall be subject to a civil penalty not to exceed \$10,000.00 per violation for each offense. Any

such person also shall be liable for attorney fees and shall be subject to injunctive relief. Each day that a violation of this act occurs shall be considered as a separate violation.

(b) Such penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction by the attorney general or by any district attorney. If a penalty is recovered in an action brought by a district attorney, the entire amount of the penalty shall be paid to the treasurer of the county in which the judgment was entered, for deposit in the county treasury to the credit of the county general fund. If a penalty is recovered in an action brought by the attorney general, one-half of the penalty shall be paid to the treasurer of the county where the judgment was entered, for deposit in the county treasury to the credit of the county general fund and one-half shall be paid to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund.

Sec. 17. (a) Any person injured by any violation of this act, or who would suffer injury from any threatened violation of this act, may maintain an action in any court of competent jurisdiction to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this act shall be established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit, including reasonable attorney fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and cost of suit, including reasonable attorney fees,

shall be entitled to recover from the defendant the damages sustained by the plaintiff.

(b) A person injured as a result of an act or practice which violates this act may bring a civil action for appropriate relief, including an action for a declaratory judgment, injunctive relief and for actual damages. Any actual damages found to have resulted from violations of this act shall be trebled by the court in making its award. Any action under this subsection shall be brought within two years after the alleged violations occurred.

(c) The court, in making an award under subsection (b) of this section, may award court costs and reasonable attorney fees to the prevailing party.

(d) The courts of this state are empowered with jurisdiction to hear and determine all cases brought under this section. Venue lies in any county where the defendant or any of them resides or does business or where the cause of action accrues.

Sec. 18. In any action brought under section 15, 16 or 17, upon a prima facie showing of a violation, the burden of rebutting the prima facie case thus made by showing justification shall shift to the defendant. A prima facie showing of a violation shall be constituted if the plaintiff shows that:

(a) The plaintiff's purchase price from a refiner or wholesaler is greater than said refiner's transfer price; or

(b) the plaintiff's purchase price from a refiner or wholesaler plus the plaintiff's cost of doing business is greater than said refiner's or wholesaler's retail posted sales price; or

(c) the plaintiff's basic cost of motor fuel plus the plaintiff's

cost of doing business is greater than the posted sales price at a retail location of a competitor, within the plaintiff's marketing area, suspected of selling motor fuel in violation of this act.

Sec. 19. A person who purchases motor fuel for resale who has cause to believe that a refiner marketing motor fuel has violated section 6, 7 or 9 may, upon motion to the court and a proper showing of cause, obtain an order requiring the refiner to provide such person with the following information:

(a) The price or transfer price at which each grade of motor fuel is transferred to each level of distribution in the marketing of motor fuels together with information relevant to the market area which serves as the basis for the order; and

(b) the cost of, amount and nature of all discounts, rebates, allowances, services or facilities connected with the handling, sale or offering for sale of any motor fuel provided to each level of such refiner's marketing operations and to the local market area of the complainant.

Sec. 20. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the legislature hereby declares its intent that such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

Dear Legislator,

Attached is a map of the Area South of Topeka to Forbes Field. Thereupon you will find the Project entitled Topeshaw of which I am a principal. The area East of US 75 (Topeka Blvd) to California Ave. (2 Miles) and from Forbes Field North to 45th St. and the existing City Limits has been approved by the State of Kansas as an Enterprise Zone. The Area also has been Zoned "Light Industrial" by the Topeka - Shawnee County Planning Agency. The entire area is volatile for development. It was determined by studies, the location and the proximity to Forbes and Interstate Highways that Topeshaw should become a Free Foreign Trade Zone under the Kansas City Charter.

However we have been confronted with the abandonment of the Missouri Pacific Railroad since 1988. This is the only line which can serve the Area described.

Topeshaw protested the abandonment thru all phases of appeal with the Interstate Commerce Commission. Our support for appeal included all the Congressional Delegation. The Shawnee Co. Legislative Delegation, all applicable City, County, and State Agencies, also the Property Owners, and the Kansas Corporation Commission.

I am here speaking to you in relation to Senate Bill #265 or House Bill # 2348 asking you to add certain verbage as follows:

Senate Bill #265

Sec.7 (a) Line 30 after rehabilitation.

Also, all or any part of railroads previously abandoned, salvaged, and the Right-of-Way Corridor placed in "Railbanking" by the Interstate Commerce Commission:

Also Sec. 7 (e) Qualified Entity. Line 22

Private for profit Corporation established in accordance with Kansas laws.

Sec.8 (a) Line 35 same as 7 (a) above

Sec.8 (b) Line 4 same as 7 (a) above

House Bill # 2348

Sec. 5 (a) Line 30 after rehabilitation

Same as Sec. 7 (a) Line 30 Senate Bill # 265 above.

Sec. 5 (c) Line 38

Same as Sec. 7 (a) Line 12 after rehabilitation same as Sec. 7 (a) Bill # 265 above.

Sec. 9 qualified entity after port authority private for profit corporation under Kansas law.

This is the extent of our request. We would wish the approval and the support of the secretary of Transportation when we approach the Interstate Commerce Commission again.

Thank you,



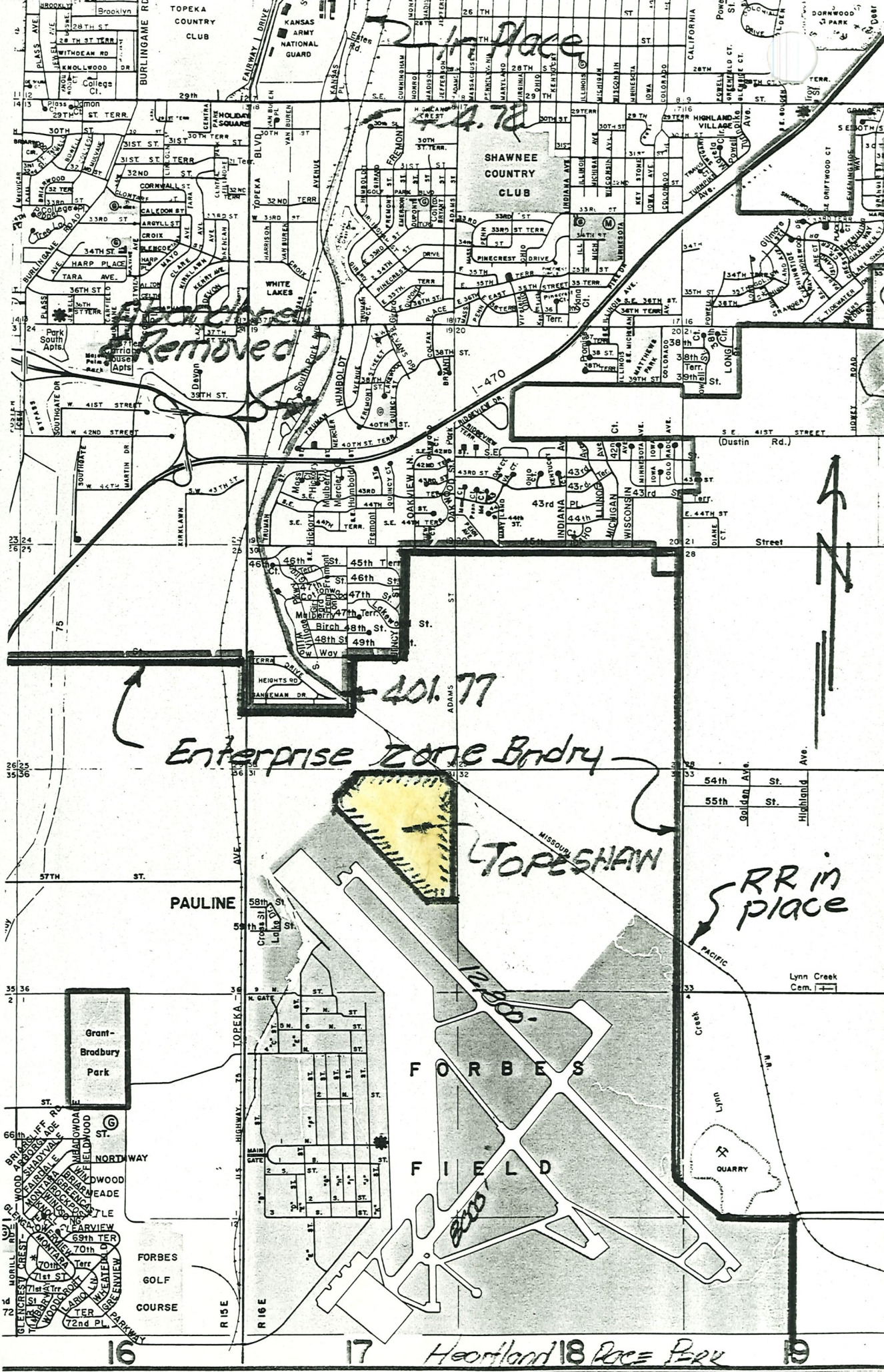
TOPESHAW INC.

506 S.W. 6th St.

Topeka, Kansas 66603

ph. 235-6239

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Removed

Place
4.78

401.77

Enterprise Zone Bdry

TOPEKA SHAW

RR in place

FORBES

FIELD

17 *18* *19* *Heartland Race Park*

House

Testimony of Substitute S. B. 265

~~Senate~~ Transportation and Utilities Committee

April 2, 1991

Prepared By
Don Swisher
Farmway Co-op, Inc.
Beloit, Kansas

Mr. Chairman and members of the committee, my name is Don Swisher and I am the Grain Department Manager of Farmway Co-op, Inc.; a grain marketing and farm supply cooperative serving over 4,700 members in Mitchell, Lincoln and surrounding counties in North-Central Kansas.

About six months ago, the Santa Fe Railroad placed 700 miles of Kansas track in class 1 abandonment. These are so-called "low -density" lines that are unprofitable for the Santa Fe to operate. One of the lines slated for abandonment is the Salina to Osborne branch which would directly affect 4 communities that Farmway serves. The loss of rail service from these communities would adversely impact the economic well-being of all residents of Lincoln, Mitchell, and Osborne Counties.

Obviously, grain producers would be the most directly affected through increased freight costs and loss of any possible rail premiums.

If the Salina to Osborne branch of the Santa Fe Railroad were abandoned and closed down, it would result in an additional traffic load of over 3200 semi-truck loads of grain on area roads and highways just from Farmway's elevators. If they were farm trucks, you could double that amount. The resulting inefficient use of energy, safety and pollution factors and road and bridge maintenance costs would affect all residents of the State.

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(2)

Another factor to consider in the event of abandonment and scrapping the line is the impact on county taxes. Every citizen of Lincoln, Mitchell, and Osborne counties would feel that in their pocketbook.

Farmway would be impacted with additional operational costs amounting to 5 to 7 cents per bushel as well as the obvious inconvenience, congestion and resulting danger to our employees and patrons of attempting to load that many trucks during harvest. Also, a capital expenditure of about \$50,000 per elevator for additional truck loading facilities would be needed.

Our rail shipments on this line has remained steady if you discount the drought years of 1988 and 1989; in fact there has been a gradual increase.

I believe that in the near future, the Santa Fe will cease to operate this line. If this is true, we are left with 2 possibilities; the line will be abandoned and scrapped out, or a short line railroad could purchase the line from the Santa Fe and operate it.

It may be possible for a short line railroad to profitably operate this line because of their more efficient organizational structure and lower overhead and labor costs.

We believe that the provisions of Substitute S. B. 265 are positive steps toward the preservation of the Kansas Rail System and applaud the committees efforts.

On the other hand, I would remind the committee that many of these lines have been allowed to deteriorate to the point they are nearly inoperable. As an example, the Santa Fe Salina to Osborne branch suffered two de-rail incidents last wheat harvest while attempting to operate during the daylight hours when the heat causes excessive track expansion. Obviously, this should not occur on a well maintained track.

(3)

I would pray the committee would consider the long-term value of our rail system. In addition to the obvious fuel efficiency factor, we should consider the fact that several developing countries have the ability to produce grain and soybeans cheaper than we can. However, they lack the means to transport their crop to the coast for export. Ironically, we are dismantling our transportation infrastructure.

Considering the billions of dollars we annually pump into highway construction and repair, it would seem logical to put a few dollars into railroad repair.

TESTIMONY OF VICTOR C. MOSER

President, Flatland Professional Services, Inc.
Hutchinson, Kansas

April 2, 1991

CONCERNING: Senate Bill 265 and House Bill 2348

Mr. Chairman, I once again thank this committee for the opportunity to support the rail service assistance program as embodied in Senate Bill 265 and House Bill 2348. Please accept my apology for not appearing in person. My father's house and farm as well as those of many others near Abbyville were struck by a tornado last Tuesday and I am needed there.

Please understand that my absence here today does not indicate a lessened interest in the enactment of this legislation. My twenty-two years of experience in transportation including that as a state rail planner within the Kansas Department of Transportation and now as an independent transportation consultant lead me to the strong conclusion that state financial assistance is critical to the survival of rail service in rural areas.¹

¹ I was employed as a civil engineer by the Kansas Highway Commission in 1969. I held various responsibilities as road designer, urban planner, and planning for all the non-highway modes of transportation. In 1978, I became the State's second rail planning official and shortly after was appointed by the Governor to head an inter-agency task force charged with finding solutions for restoration of service on the failed Rock Island Railroad. In 1983, I founded Flatland Professional Services in Hutchinson to offer transportation consulting services. I have testified before the U.S. Senate Committee on Transportation and Utilities, the Interstate Commerce Commission, committees of the Kansas Legislature, and as an expert in federal district court. I have served as member and chairman of the State Advisory Committee on Rail Planning.

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In my testimony on March 5th concerning these bills, I said that rail service is essential to the State's economic well-being, that shortline railroading is legitimate and that the establishment of shortlines for the purpose of operating Kansas branchlines will act to restore adequate rail service and save branchlines. I pointed out that the biggest problem faced by a new operation is capital for purchase and rehabilitation of track. I advocated state involvement in rail financing in order to establish a balanced transportation system which would provide for the service needs of Kansas shippers and lay the foundation for future economic development.

I am pleased that these bills have moved forward and in their present versions embody most of the recommendations of the conferees. Today, I have the pleasant duty of favoring one bill over the other. I say "pleasant" because both are headed in the right direction. Both provide financial support which is critically needed at this time in consideration of the large number of lines which are abandonment candidates. Both recognize economic feasibility as the basis of the award of state assistance.

I favor the Senate version, first because it embodies the formation of a program advisory committee. Public input should be sought in the development and administration of program rules and regulations. I say this from my own experience as a former administrator of the state rail planning program and as the director of a task force which was given the task of finding ways to restore service on the failed Rock Island Railroad. During that time I relied heavily on the state advisory committee on rail planning for solid "real world" counsel. The advice of these people who represented the

railroads, rail labor, and the shipping public helped us to discard the poor ideas and fine tune the good ones. Because it broadened our sources of information, we were alerted to trends that never would have been discovered. I attribute the success we had in those days in large part to this committee.

The fact is that transportation is dynamic. The complexities of industry trends, international and domestic markets, federal legislation and administrative rulings require constant monitoring. But unlike the system of public roads where policy is controlled by various levels of government, railroad policy is determined largely by economics and certainly not in the public arena. Therefore, the opinions and experience of those involved on a daily basis with shipping, operation of railroads, and financing capital projects is essential for the development of a successful rail service improvement program. I will add that the concept of an advisory committee was supported by all conferees in the March 5th committee hearings.

The other major difference between the two bills is that House Bill 2348 establishes both a loan and loan guarantee program while Senate Bill 265 establishes only a loan guarantee program. The source of funding for loans is the federal rail service continuation program.

It is my recommendation that only the loan guarantee program be implemented at this time. It would be difficult to practically differentiate between two parallel loan programs. ^{For example} (What type of project is eligible for which program?) Further, as Kansas ⁽²⁾ share of current federal funding limited to about \$30,000, the loans would be insignificant in comparison to loan guarantees. The result would be a serious imbalance between programs having similar intent and

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qualification requirements. Federal and state criteria for use of the federal funds as a grant requiring recipient participation in the amount of 30% is established and the program is ongoing. A dual program of state loan guarantees and federal grants would be much simpler to design and implement.

Finally, I urge you to amend and pass these bills in their final version in order to put the rail service improvement program into effect this year. There will never be a more critical need and as you know, there is nothing of less worth than a good idea that comes too late.

Again, thank you for the opportunity to support the rail service improvement program.

KANSAS RAILROAD ASSOCIATION

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PATRICK R. HUBBELL

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Statement of the Kansas Railroad Association

Presented to the House Committee on
Transportation

The Honorable Herman Dillon, Chairman

Statehouse
Topeka, Kansas
April 2, 1991

Mr. Chairman and Members of the Committee:

My name is Pat Hubbell. I appear here today in support of Senate Bill 265 relating to Kansas establishing the rail service assistance program.

Senate Bill 265 contains amendments that were suggested by the Railroad Association before the Senate Committee when this bill was heard. I believe the important provisions of this legislation establishes the rail service assistance program advisory committee consisting of nine members appointed by the governor for terms of three years. It also establishes the rail service assistance program loan guarantee fund in the state treasury to facilitate financing, acquisition and rehabilitation of railroads. It exempts from public disclosure any financial data or traffic information from a railroad company to a public agency concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

Two other important provisions which are in the legislation would be the ratio of benefits to costs must be greater than one and must be based on the most recent standard benefit/cost methodology approved by the federal railroad administration of the United States department of transportation.

The other important point is the qualified entity must demonstrate that it is financially sound and that adequate funding is not otherwise available. The railroads recognize the problems that are associated with railroad abandonments and feel it is in their best interest and the interest of the state to find qualified buyers for these lines.

I appreciate the opportunity to testify today. Thank you Mr. Chairman.

*House Transportation
4-2-91
ATTACHMENT 5-1*

**Statement by Lynn Rogers
Public Affairs Manager
CoBank - National Bank for Cooperatives
April 2, 1991**

My name is Lynn Rogers and I serve as the Public Affairs Manager for CoBank - National Bank for Cooperatives. I want to thank this committee for your continued interest in the transportation needs of the agriculture industry.

CoBank, as part of the Farm Credit System has been serving agricultural cooperatives for over fifty years. We serve 195 out of 201 agricultural cooperatives in Kansas. To these Kansas-owned businesses, railroad service means a lot. Millions of bushels of grain and thousands of tons of fertilizer are shipped every year through these businesses. In many cases, the railroad also owns the land that the cooperative uses for the co-op's elevator facilities.

The legislation currently in the Kansas Legislature (House Bill #2348 and Substitute Senate Bill #265) will provide options to these co-ops and other rural businesses. From past experience, the loss of rail service can be devastating to a grain and farm supply business as well as rural America itself. The current proposed legislation shows that the State of Kansas views our railroads as important as our highways and that a dual transportation system has economic value for the state, taxpayers and industry.

As a lender, CoBank has been following this issue because we want to see our customers protected as much as possible. We have encouraged them to join together with other shippers and look at every option. If we are approached to provide financing for a railroad, we will look first to the feasibility of such a project. Having a state guarantee will not insure a loan is made, but will help make the proposal more "bankable".

Overall, CoBank supports the intent of this legislation because it will continue to give agriculture and other industries competitive options.

*House Transportation
4-2-91
ATTACHMENT 6-1*

Testimony on Substitute for SB 265
House Transportation Committee
April 2, 1991
Prepared by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the Committee, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of nearly 200 local cooperatives which have a combined membership of nearly 200,000 Kansas farmers and ranchers.

The Council supports the intent of SB 265 which will help maintain rail service to rural Kansas. SB 265 is not only a transportation bill, it is also a rural development bill. Many communities are far enough away from urban centers that the only economical way to ship and receive goods is by rail.

The economics of Kansas, as well as the nation's, depends on the capability to ship our agricultural products to the cities as well as to export facilities.

SB 265 will help keep the system intact. Adequate rail service will help the economy of Kansas as well as preserve rural Kansas.

Thank you.

House Transportation
4-291
ATTACHMENT 7-1

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MEMORANDUM

TO: House Committee on Transportation

FROM: W. Robert Alderson, General Counsel for
Mid States Port Authority

RE: 1991 Sub. for Senate Bill No. 265

DATE: April 2, 1991

The purpose of this memorandum is to provide the House Committee on Transportation with relatively current information regarding the Mid States Port Authority ("Authority" or "MSPA") and to indicate MSPA's support of the general purpose underlying Sub. for Senate Bill No. 265.

The Mid States Port Authority is a public body corporate and politic, organized and existing under the authority of K.S.A. 12-3401 et seq., as amended, by agreement of the following fourteen (14) Kansas counties: Clay, Cloud, Decatur, Jewell, Norton, Phillips, Republic, Riley, Sheridan, Sherman, Smith, Thomas, Wabaunsee and Washington (collectively, the "Members"). Subsequent to MSPA's inception and organization, Wabaunsee and Riley Counties withdrew from the Authority.

The Authority exists for the sole purpose of preserving adequate rail service within the territory served by the Authority. It is governed by a Board of Directors comprised of one individual appointed by each Member County Commission and eight individuals elected at large and collectively by the Commissions of the Member Counties.

The population of the Member Counties is approximately 77,850. There are 62 banks with assets in excess of \$1,331,615,000. Agriculture is the principal economic activity along the railroad and the total annual agricultural production is in excess of \$519 million. Attached to this Memorandum as Appendix A are tables of statistics which provide the source for these figures.

In 1983, the Legislature agreed to guarantee a portion of a loan of \$18,000,000 from the Federal Railroad Administration to the Authority. The guarantee paved the way for MSPA to acquire a portion of the bankrupt Chicago, Rock Island and Pacific Railroad Company's right-of-way and track which runs from Limon, Colorado, in the west, to Belleville, Kansas, then to Clay Center, Kansas, and Hallam, Nebraska, being the eastern termination of the Authority's railroad. The property acquired includes approximately 465 miles of mainline track and right-of-way, approximately 40 miles of spur and siding track, 288 acres of real estate, depots, repair shops and bridges. Also acquired were various switching and communication equipment, tools and other items useful to the operation of rail service.

*House Transportation
4-2-91
ATTACHMENT 8-1*

Subsequently, under the Federal Government's deficit reduction program, various agencies were instructed to sell assets to generate new revenues. Pursuant to Public Law 100-457, the Federal Railroad Administration was instructed to dispose of \$99,000,000 worth of the assets it held. Among the assets the FRA identified for disposal were the Notes issued by MSPA and guaranteed by the State of Kansas. As part of the effort to sell its assets, the FRA agreed to sell MSPA's Notes back to MSPA for \$11,000,000. At that time, the notes plus accrued interest had a value of approximately \$20,000,000.

During the first five years of operations, MSPA was able to accumulate \$4,830,544 in cash. Thus, making various provisions for reserves and closing costs, MSPA was able to apply a portion of the cash on hand to reduce its current financing to less than \$7,000,000.

Because MSPA is a unique entity, as far as public bodies are concerned, lending institutions indicated that continuation of the guarantee of the State of Kansas was needed, in order to obtain ordinary bank financing. This was provided by Bank IV Wichita, N.A.

As a consequence, MSPA's property is now subject to a first mortgage and security interest in Bank IV, and the term loan agreement and accompanying promissory note are guaranteed by the state pursuant statutory enactments and annual appropriations to the Kansas Department of Transportation.

The Authority has a lease with Kyle Railroad Co. to provide rail service on the Property in Kansas and Colorado for a monthly amount of approximately \$50,700 and a lease with Union Pacific Railroad Company to provide rail service on a portion of the property in Nebraska for a monthly amount of \$24,000. The Kyle lease is for a term which corresponds with the financing and is at a rental amount which will guarantee repayment of the Authority's financing. The UP lease is for an original term of 10 years and is renewable for an additional ten-year period.

At this point, MSPA continues to be a financially viable entity. In addition to the revenues derived from the Kyle and UP leases, which are paid into an escrow account from which MSPA's debt to Bank IV is serviced, MSPA has annual operating funds of approximately \$185,000, which are derived from leases of ancillary right-of-way property. These revenues have enabled the Authority to make additional principal payments to Bank IV, in accordance with the term loan agreement.

The Authority's financial viability is due, in part, to the fact it has fulfilled its primary purpose of preserving quality rail service in the counties served by the authority. This, in turn, has stimulated the economy of Northwest Kansas and enabled Kyle Railroad to function in accordance with everyone's expectations. All of this has been facilitated by the state's guarantee of MSPA's indebtedness.

Thus, MSPA would encourage the continued expansion of a rail assistance program. As to the specifics of such program, MSPA will leave that to the sound discretion of the legislature.

APPENDIX A

The following tables describe population, financial and agricultural activity for each county that is a Member of the Mid States Port Authority:

<u>County</u>	<u>Population</u>	<u>Banks</u>	<u>Assets</u>
Clay	9,158	4	\$ 137,061,000
Cloud	11,023	8	148,186,000
Decatur	4,021	4	76,802,000
Jewell	4,251	7	58,434,000
Norton	5,947	5	88,883,000
Phillips	6,590	5	127,839,000
Republic	6,482	6	105,637,000
Sheridan	3,043	3	88,252,000
Sherman	6,926	2	103,317,000
Smith	5,078	5	104,507,000
Thomas	8,258	5	162,299,000
Washington	<u>7,073</u>	<u>8</u>	<u>130,398,000</u>
TOTAL	77,850	62	\$1,331,615,000

Source: American Bank Directory, Spring 1990

<u>County</u>	<u>Number of Farms</u>	<u>Total Land In Farms, Acres</u>	<u>Total Acres Harvested</u>	<u>Total Value of Field Crops \$</u>	<u>Livestock Value</u>
Clay	680	395,000	129,200	\$ 12,500,500	\$ 21,368,700
Cloud	660	415,000	129,700	13,200,600	10,860,600
Decatur	490	545,000	185,760	16,302,300	24,638,100
Jewell	740	520,000	210,050	21,695,300	22,877,000
Norton	480	526,000	146,100	12,484,400	13,926,100
Phillips	600	559,000	131,050	12,942,800	18,451,900
Republic	840	445,000	237,000	36,101,700	22,674,000
Sheridan	520	535,000	206,870	29,380,000	19,645,300
Sherman	530	650,000	253,680	38,661,500	15,912,300
Smith	700	565,000	197,550	20,831,600	21,049,600
Thomas	640	680,000	316,920	44,867,900	14,949,400
Washington	<u>960</u>	<u>540,000</u>	<u>230,350</u>	<u>20,651,400</u>	<u>33,786,400</u>
TOTAL	7,840	6,375,000	2,374,230	\$279,620,000	\$240,139,400

SOURCE: Kansas Farm Facts, 1989