

Approved 2-26-71
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Sen. Edward F. Reilly, Jr. at
Chairperson

11:00 a.m./~~p.m.~~ on February 21, 1991 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mary Galligan, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Dr. Terry Harmon, Kansas State Historical Society
Dr. Paul Wilson, President, Kansas State Historical Society
Dr. William Wagon, Professor of History, Washburn University

The minutes of the February 19, 1991, meeting were approved.

The Chairman thanked Senator Morris for chairing the committee in his absence.

Hearing on: SB 5 - Governor's records transferred to State Historical Society after end of term.

Dr. Terry Harmon, Kansas State Historical Society, presented testimony in support of the bill, saying that in order to have an effective state archives program, the records of state agencies must be assembled in a centralized repository. He continued that adoption of SB 5 is a step in the right direction but still not an ideal solution to problems presented by the current provisions of K.S.A. 75-104. (Attachment 1)

He was asked what control governors now have and responded that they have control by law during their lifetimes but that access could not be prohibited after their death. This bill is not retroactive.

The Chairman asked Dr. Harmon to meet with staff and balloon out amendments that would be appropriate. They will have those next week.

Dr. Paul Wilson, Retired Law Professor, KU, and current President of the Kansas State Historical Society, expressed his pleasure in seeing Senator Bond, a former student, and said he thought he had influenced the senator's interest in politics. He also spoke of his first meeting with Senator Reilly at the time the senator was to be graduated from KU.

He said he did not have much to add; he did not proprot to speak for the whole society, but he thinks most feel it should be passed. They are committed to the idea of a central place for research and believe it should focus on the capital city. He said that in 1879 the Legislature made the State Historical Society trustee for state agencies to maintain and preserve historical collections, which include governors' records. He told of working as an assistant Attorney General in the Brown v. Board of Education case and said they relied heavily on some archival reports of educators. He feels that it is important to current and prospective state officers, lawyers, and all

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs,
room 254-E Statehouse, at 11:00 a.m./~~p.m.~~ on February 21, 1991

Kansans who want to know how we got to where we are that the records not be scattered throughout the state; they should belong to all people of the state.

Dr. William Wagnon, Professor of History, Washburn University, said that archives are very expensive. We should not be in the business of duplication; current law encourages duplication. SB 5 will prevent important papers from being disbursed across the state to institutions ill equipped to house, preserve, and make them accessible to successive generations. (Attachment 2)

Dr. Wilson said that Governors' records sent to KU are at Spencer Library and are properly accessible.

In response to a question as to where all these papers will be kept, Dr. Harmon said we must determine which have permanent value. We may eventually have to dispose of records of lesser value.

The Chairman had received word from Jack Alexander, Governor's office, that the Governor didn't have a position on the bill.

The Chairman appointed a subcommittee for SB 39 - prearranged funerals arrangements: Sen. Bond, Chairman; Sen. Morris, Vice chairman; Sen. Walker.

The meeting was adjourned at 11:50 a.m.

TESTIMONY CONCERNING SENATE BILL NO. 5

Presented to the Senate Committee on Federal and State Affairs
by Terry Harmon, Assistant State Archivist

I appreciate very much this opportunity to appear before the committee as a representative of the Kansas State Historical Society.

K.S.A. 75-104 currently allows each governor to designate an "institution of post secondary education" in Kansas as the repository for most records of the governor's office created during his or her gubernatorial administration. This could be any state university, community college, municipal university, or private college or university which is "approved by the state board of regents to award academic degrees." If no such academic repository is designated by the governor, the records must be transferred to the custody of the State Historical Society at the end of the governor's term of office or upon the death of a governor while in office.

S.B. 5 would amend K.S.A. 75-104 in order to eliminate the option of transferring records of the governor's office to an academic institution and would require that they be deposited in the custody of the State Historical Society.

It is appropriate for colleges and universities to develop special collections of manuscripts, rare books, photographs, and other library materials. The State Historical Society welcomes competition from academic institutions in collecting the papers of individuals, corporations, social organizations, etc. It is appropriate, moreover, for each state university to set up an archives program for preservation of its own records possessing enduring value. We believe, on the other hand, that in order to have an effective state archives program, the records of other state agencies must be assembled in a centralized repository. K.S.A. 45-405 gives the responsibility of serving as such a centralized repository for the state archives to the State Historical Society.

Records of the governor's office are not simply personal papers which a governor should be able to bestow on his or her alma mater as a gesture of good will. They were created at public expense largely by the governor's staff, and they document the official actions and policies of a state agency. Correspondence and other documents found in the files of the governor's office sometimes have important legal and administrative value. When proceedings in the important Brown v. Topeka Board of Education case and the Kansas v. Colorado case were reopened during the past few years, attorneys for both the plaintiffs and the defendants made thorough searches for relevant documents in the state archives holdings, including records of the governor's office. Needless to say, it would be very cumbersome if attorneys, historians, and

other persons needing information in these important records had to travel to colleges and universities scattered around the state in order to conduct their research.

It should be noted, moreover, that storing the large quantities of records created by the governor's office requires substantial storage space which is not available to most colleges and universities. Properly arranging large quantities of government records, determining which documents should be retained, preparing finding aids for them, and retrieving requested items are difficult tasks requiring considerable labor by personnel with archival training and experience. The current statute creates the potential for academic libraries to receive offers of records from governors which are difficult to refuse for political reasons but for which they are ill-equipped.

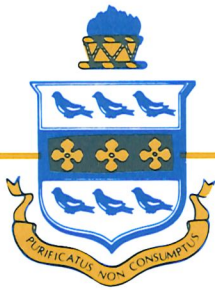
Adoption of S.B. 5 certainly would be a step in the right direction from an archival point of view, but it is not an ideal solution to the problems presented by the current provisions of K.S.A. 75-104. Deciding which records merit permanent preservation should be an administrative function, and the legislature has established a State Records Board to make such determinations, with the assistance of the state archives staff. Thousands of different types of records are created by state agencies, and a number of diverse factors must be considered in making decisions about the enduring value of each. It would not be feasible for the legislature to study these mundane matters carefully and incorporate retention and disposition schedules in the statutes. Yet that is just what the legislature attempted to do in subsection 1(a) of K.S.A. 75-104. Subsection 1(c) provides for determinations by the State Records Board regarding the enduring value of financial records. Then subsection 1(e) contains the implicit (and false) assumption that all other records created by the governor's office merit permanent preservation.

It would be much simpler, and much better records management, to repeal most existing provisions of K.S.A. 75-104 and replace them with a simple statement that decisions regarding disposition of records of the governor's office shall be made by the State Records Board pursuant to K.S.A. 75-3501 et seq. and 45-401 et seq. This would make disposition of records of the governor's office part of the same records management system which exists for other state agencies, would help avoid the preservation of documents lacking enduring value, and would prevent scattering of some of the state's most valuable archival resources.

This committee might also want to consider changing the provisions of subsection 1(e) on lines 17-23 of page 2 of S.B. 5. The reference to "records, correspondence or other papers which are not required to be disclosed under K.S.A. 45-221" is confusing. Rather than requiring disclosure of records, K.S.A. 45-221 authorizes agencies to refuse to disclose specified types of

records. Attorneys in the revisor's office and the office of the attorney general recently stated in informal conversations that this provision enables a former-governor to control access only to the types of records listed in K.S.A. 45-221, but that does not seem to be what this provision of the statute literally says. If subsection 1(e) were revised to state clearly that records of the governor's office are subject to the provisions of the Open Records Act, it would provide ample protection for 70 years against disclosure of the types of records listed in 45-221 which sometimes contain sensitive information. John Carlin, incidentally, has recently decided to provide full access by researchers to all the records of his administration, totalling more than 800 cu. ft., which have been deposited in the state archives.

On numerous occasions during the past 13 years I have appeared before this committee to support adoption of statutory changes needed to strengthen the state archives program. The Senate Committee on Federal and State Affairs has played an important role in creating the statutory framework for preserving state and local government records with enduring value and for granting adequate public access to them. A favorable recommendation for S.B. 5, or perhaps a revised version of the bill, would be one more significant step in the development of a satisfactory state archives program for Kansas, and it would be appreciated very much.



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February 21, 1991

Mr. Chairman, Ladies and Gentlemen of the Committee:

I favor adoption of SB 5 in my capacity as a professional historical researcher and Professor at Washburn University. Moreover, I have been an active member of Historic Topeka, the Shawnee County Historical Society, and the Kansas State Historical Society. As such I have been keenly interested in history education and implementing the legislative mandate for teaching Kansas History in the schools.

The preservation of Kansas records is essential if the story of our past is to be written and studied. The papers of the governors of Kansas are important to that story and deserve the highest priority for preservation. The state archives deposited with the Kansas State Historical Society represent the logical depository.

As currently written KSA 72-104 allows Governors to deposit papers with any post secondary education institution in the state regardless of its archival capability. The character of any archive depends upon its mission, the professional level of its staff, its budgetary resources, its preservation reputation, and the availability of its holdings to the research public. By any of these qualities, the Historical Society compares favorably.

By amending KSA 72-104 as directed by SB 5, the legislature indicates the priority of the state archives at the Society, reinforces its mission, and recognizes the benefits to the research public of being able to locate most of the gubernatorial records in one place.

Without passage of SB 5 we risk these papers being disbursed across the state with institutions ill equipped to house, preserve, and make accessible key papers for telling the Kansas story to successive generations interested in its past.

William O. Wagon, Jr., Professor of History, Washburn University

Senate F&SA
2-21-91
Att. 2