Approved 3-31-92
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:02 a.m./~~p~~m. on March 24, 1992 in room 254-E of the Capitol.

All ~~members~~ except ~~x~~ Members present:
Senators Morris, Doyen, Brady, Hayden, Kanan, Martin, Rock, Sallee, Thiessen and Vidricksen.

Committee staff present:
Ben Barrett, Legislative Research Department
Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Don Low, Director of Utilities Division, Kansas Corporation Commission
Dr. Stacy Ollar, Jr., Citizens' Utility Ratepayer Board
Barbara Smith, United Way Association of Kansas
Leslie Spencer, KDOT
Ray Olson - Silver Haired Legislature
Bill Cutler - Department of Aging

Hearing and Action on H.B. 2899 - Utility rates; dues, donations and contributions.

Don Low, KCC, said this bill would clarify KCC's authority regarding ratemaking treatment of utility dues and donations. It would allow KCC to adopt a policy of splitting the costs of dues and donations between ratepayers and shareholders. This kind of policy has been adopted by other state commissions and accepted by some utilities in Kansas as fair and reasonable. (Attachment 1).

As a result of court decisions in regard to this issue, KCC is forced to pass on the costs of all dues and donations to ratepayers. (Some utilities have not contested a 50/50 split of these costs in the past but could do so in light of the court decisions.)

Dr. Stacy Ollar, CURB, said they support this bill to clarify KCC's authority regarding civic and charitable dues and donations. They feel, however, that because civic, charitable, and social dues, donations, and contributions present such difficult rate case issues, the utilities should be required to prove that dues and donations are reasonable expenses. (Attachment 2).

Barb Smith spoke of how important the corporate gifts by utility companies are to United Way. The money is returned back to the community by those most in need of assistance. Much of it goes for utility bills. She asked that the committee bring HB 2899 to the Senate floor as it stands and requested that they do everything they can to keep it from exceeding 50%. (Attachment 3). The committee decided to leave the contribution amount to 50%. If they went any higher the whole amount could be disallowed. A motion was made by Sen. Martin and was seconded by Sen. Sallee to amend H.B. 2899 on Page 3, line 23 by striking all after the word "commission, all of lines 24, 25 and up to the word "may" on line 26. Motion carried.

A motion was made by Sen. Hayden that H.B. 2899 as amended, be recommended favorably for passage. Motion was seconded by Sen. Rock. Motion carried.

Hearing and Action on H.B. 2865 - Abandoned and disabled vehicles, removal.

Ms. Leslie Spencer, KDOT, said this was an effort to deal with vehicles that are abandoned or left disabled along state highways. Their biggest problem is storing these vehicles. They are sent to area maintenance yards and neighbors are protesting that these areas look like junkyards. It is also costly to the Department. (Attachment 4).

A motion was made by Sen. Sallee to recommend H.B. 2865 favorably for passage. Motion was seconded by Sen. Rock. Motion carried.

Hearing and Action on HCR 5041 - Urging highway safety for older drivers.

Ray Olson, Silver Haired Legislature, said this was the same as a Resolution which was passed in 1991. They were concerned about improved road markings to help older citizens. (Attachment 5).

Bill Cutler, Department on Aging, said they were interested in driver improvement courses for older drivers. By giving older citizens the incentive of reduced insurance rates, it encourages them to take the course. (Attachment 6).

The committee discussed the bill and felt that the lower insurance rates should apply only to those 55 or older. This bill is primarily for older citizens to encourage them to take these special driving classes.

A conceptual motion was made by Sen. Thiessen to limit this bill to those aged 55 or older. Motion was seconded by Sen. Hayden. Motion carried.

A motion was made by Sen. Martin to recommend HCR 5041, as amended, favorably for passage. Motion carried.

Action on H.B. 2482- Mailing notice of security interest on motor vehicles.
H.B. 2823 - Certificates of title for repossessed vehicles.

These two bills had been amended into H.B. 2765. A motion was made by Sen. Hayden to recommend H.B. 2482 and H.B. 2823 adversely. Motion was seconded by Sen. Thiessen. Motion carried.

The Chairman had received a request from Dairl Bragg, Williamburg, Va. to introduce a Resolution relating to window tinting for automobiles.

A motion was made by Sen. Doyen to introduce the Resolution. Motion was seconded by Sen. Martin. Motion carried.

A motion was made by Sen. Rock to approve the Minutes of March 17 and March 18, 1992. Motion was seconded by Sen. Hayden. Motion carried.

Meeting was adjourned at 10:00 a.m. Next meeting March 25, 1992.

SENATE TRANSPORATION AND UTILITIES COMMITTEE

Date March 24. Place 254-E Time 9:02

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Barb Smith	PO Box 116, Lawrence 66044	United Way
Ray Olson	Topeka	Silver Haired Legislature
George Goebel	Topeka	AARP-SLC-CCTF
Doug Smith	Topeka	SITA
Don Low	"	KLC
Kevin Kelly	"	KCC
ALAN DECKER	"	CURB
DR. STACY OLLAR JR.	4826 County Line KCK 66106	CURB
Bill Curtis	"	KDOA
Rosalie Thornburg		KDOT
Rick Scheibe	Topeka	KDOR
Mark Clements	Topeka	KDOT
C. Leslie Sponsler	Topeka	KDOT
Nancy Bogina	Topeka	KDOT
Laura Lee	Topeka	KDOT
ED SCHAUB	"	KPL

SENATE TRANSPORATION AND UTILITIES COMMITTEE

Date _____ Place _____ Time _____

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Tom Whitaker	Topeka	Ks Motor Carriers Assn
TREVA POTTER	TOPEKA	PEOPLES NAT. GAS
Dan Haas	Overland Park	KCPL
Jim Ludwig	Topeka	KPL

PRESENTATION BEFORE
THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
ON HOUSE BILL NO. 2899

BY THE CORPORATION COMMISSION
DON LOW, DIRECTOR - UTILITIES DIVISION
MARCH 24, 1992

THE COMMISSION SUPPORTS H.B. 2899 INSOFAR AS IT CLARIFIES THE KCC'S AUTHORITY REGARDING RATEMAKING TREATMENT OF UTILITY DUES AND DONATIONS. ATTACHED IS A COPY OF OUR TESTIMONY BEFORE THE HOUSE COMMITTEE EXPLAINING THE NEED FOR THIS LEGISLATION. BASICALLY, THE CLARIFICATION WOULD ALLOW THE KCC TO ADOPT A POLICY - WHICH HAS NOT BEEN ALLOWED BY THE COURTS - OF SPLITTING THE COSTS OF DUES AND DONATIONS BETWEEN RATEPAYERS AND SHAREHOLDERS. THIS KIND OF POLICY HAS BEEN ADOPTED BY OTHER STATE COMMISSIONS AND ACCEPTED BY SOME UTILITIES IN KANSAS AS FAIR AND REASONABLE.

THE KCC, HOWEVER, DOES HAVE CONCERNS WITH THE PROVISION IN SECTION 3 OF THE HOUSE BILL WHICH REQUIRES COMMISSION DISALLOWANCE OF INCOME TAX EXPENSES OF SUBCHAPTER S NATURAL GAS UTILITIES. THE COMMISSION DOES NOT BELIEVE THAT SUCH AN ABSOLUTE PROHIBITION IS DESIRABLE AND FAVORS CASE-BY-CASE RESOLUTION OF THIS ISSUE. THE ISSUE OF INCOME TAX EXPENSES FOR SUBCHAPTER S ENTITIES IS A DIFFICULT ONE AND HAS EVOLVED BEFORE THE COMMISSION IN THE LAST TWO YEARS IN CASES INVOLVING GREELEY GAS COMPANY.

THE BASIC ISSUE ARISES FROM THE FACT THAT SUBCHAPTER S CORPORATE EARNINGS ARE NOT SUBJECT TO "DOUBLE" TAXATION - BOTH TAX ON THE CORPORATE INCOME AND TAX ON THE EARNINGS DISTRIBUTED TO INDIVIDUAL SHAREHOLDERS - BUT ONLY TO INDIVIDUAL TAXATION ON THE OWNERS' RESPECTIVE SHARE OF THE COMPANY'S EARNINGS. THE BASIC PROBLEM IS HOW TO TREAT THE TAX EXPENSES ASSOCIATED WITH THOSE SUBCHAPTER S EARNINGS SO THAT IT IS COMPARABLE TO THE TREATMENT GIVEN TO NORMAL CORPORATE TAX EXPENSE AND DOES NOT RESULT IN A WINDFALL TO THE "S CORP" OWNERS.

Att. 1
T&U
3-24-92

AS A RESULT OF EXTENSIVE DISCUSSIONS AND NEGOTIATIONS AMONG THE PARTIES IN THE LAST CASE, THE COMMISSION APPROVED OF A STIPULATION ON THIS ISSUE WHICH IS BENEFICIAL TO RATEPAYERS. THAT STIPULATION (ATTACHED) ALLOWS THE RECOVERY IN RATES OF THE INCOME TAX EXPENSE OF THE INDIVIDUAL SHAREHOLDERS AT A TAX RATE OF 27% RATHER THAN THE NORMAL 34% CORPORATE TAX RATE. THUS, RATEPAYERS RECEIVE THE LOWER TAX RATE BENEFITS OF THE COMPANY'S SUBCHAPTER S ELECTION, APPROXIMATELY $200,000 ANNUALLY.

THE STIPULATION ALSO PROVIDES THAT GREELEY WILL NOT MAKE A DISTRIBUTION OF EARNINGS TO ITS SHAREHOLDERS OF MORE THAN THE TAX LIABILITY ON THE COMPANY EARNINGS. FURTHERMORE, IF THERE IS A SALE OF STOCK, THE COMPANY HAS AGREED TO RETURN TO RATEPAYERS THE TAX BENEFITS WHICH MIGHT ARISE DUE TO THE DIFFERENCE IN TREATMENT OF THE TAX "BASIS" OF THE "S CORP" STOCK. THESE TWO PROVISIONS ENSURE THAT THE STOCKHOLDERS WILL NOT EARN A GREATER RETURN ON THEIR INVESTMENT THAN WOULD A NORMAL CORPORATE SHAREHOLDER.

FINALLY, THE STIPULATION PROVIDES THAT GREELEY WILL MAINTAIN SUBCHAPTER S STATUS AS LONG AS IT IS ADVANTAGEOUS FOR GREELEY'S CUSTOMERS TO DO SO. THE COMMISSION IS CONCERNED THAT THIS BILL WILL RESULT IN GREELEY REVERTING TO NORMAL "C CORP" TAX STATUS WITH A HIGHER TAX RATE AND TAX EXPENSE TO BE INCLUDED IN THE UTILITY'S RATES. WE DO NOT BELIEVE THAT SUCH A RESULT WOULD BE BENEFICIAL AND HOPE THAT THE LEGISLATURE WILL NOT ENACT THAT ASPECT OF H.B. 2899 WHILE ACTING FAVORABLY ON THE PROVISIONS DEALING WITH UTILITY DUES AND DONATIONS.

PRESENTATION BEFORE
THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
ON HOUSE BILL NO. 2899

BY THE CORPORATION COMMISSION
DON LOW, DIRECTOR - UTILITIES DIVISION
FEBRUARY 20, 1992

THE COMMISSION REQUESTS THIS AMENDMENT TO VARIOUS STATUTES IN ORDER TO CLARIFY ITS AUTHORITY WITH REGARD TO THE ISSUE OF WHETHER RATEPAYERS SHOULD PAY FOR THE COSTS OF CIVIC AND CHARITABLE DUES AND DONATIONS BY UTILITIES.

ALTHOUGH THE AMOUNT OF THESE COSTS ARE A RELATIVELY SMALL PORTION OF UTILITY COSTS, THEY HAVE TRADITIONALLY BEEN THE SUBJECT OF CONSIDERABLE DEBATE AND CONTENTION IN RATE CASES. THE KCC HAS STRUGGLED FOR AT LEAST THIRTY YEARS WITH THE OPPOSING VIEWPOINTS ON THE ISSUE AND BELIEVES THAT LEGISLATION EXPLICITLY AUTHORIZING THE COMMISSION TO ADOPT A POLICY OF SHARING THE COST OF DUES AND DONATIONS BETWEEN RATEPAYERS AND UTILITIES IS DESIRABLE.[1]

TO APPRECIATE THE NEED FOR LEGISLATION, A BRIEF REVIEW OF COURT DECISIONS ON THIS ISSUE IS NECESSARY. (ATTACHED ARE EXCERPTS FROM THE KANSAS COURT DECISIONS DEALING WITH THE ISSUE.) IN 1963 AND 1983, THE KCC ATTEMPTED TO EXCLUDE ALL CIVIC AND CHARITABLE DUES AND DONATIONS FROM BEING REFLECTED IN RATES. THIS WAS BASED ON FINDINGS THAT RATEPAYERS SHOULD NOT BE FORCED TO INVOLUNTARILY MAKE SUCH INDIRECT PAYMENTS TO ORGANIZATIONS, EVEN IF THEY WERE WORTHWHILE CAUSES. HOWEVER, THE SUPREME COURT IN 1963 OVERTURNED THAT FINDING BASED ON ITS CONCLUSION THAT SUCH EXPENSES ARE

[1]This policy would not apply to "dues" for which there is a clear basis for disallowance, such as those to country clubs which benefit only utility employees, or to professional organizations which engage partially in political lobbying.

(3-12)

LEGITIMATE FOR ANY BUSINESS IN MAINTAINING "ITS STANDING AND GOOD WILL." THE 1983 KCC DECISION WAS ALSO OVERTURNED BASED ON THE 1963 COURT DECISION.

SUBSEQUENTLY, THE COMMISSION INFORMALLY ADOPTED A GENERAL POLICY WHICH ALLOWED ONE-HALF OF A UTILITY'S DUES AND DONATIONS AS AN OPERATING EXPENSE. THIS WAS BASED ON A JUDGMENT THAT UTILITY SHAREHOLDERS BENEFITTED AT LEAST AS MUCH AS RATEPAYERS FROM THE GOODWILL GENERATED BY DUES AND DONATIONS AND SHOULD THEREFORE BEAR HALF THE COSTS. HOWEVER, IN TWO APPEALS DEALING WITH THE ISSUE, THE COURT OF APPEALS FOUND ITSELF BOUND BY THE 1963 AND 1983 CASES. THE COURT HELD THAT THE KCC DECISION, "WHILE IT MIGHT BE SUPPORTED IN TERMS OF FAIRNESS," DID NOT COMPLY WITH THOSE PRIOR CASES, WHICH CONTEMPLATED DISALLOWANCE ONLY OF SPECIFIC DUES OR DONATIONS WHICH WERE FOUND TO BE UNREASONABLE. THE COURT STATED: "IN THE ABSENCE OF LEGISLATION OR REGULATIONS CODIFYING THE POLICY FOLLOWED BY THE KCC IN THE PRESENT CASE, THE KCC WAS REQUIRED TO FIND THE CHARITABLE CONTRIBUTIONS UNREASONABLE IN ORDER TO DISALLOW THEM AS OPERATING EXPENSES."

AS A RESULT OF THESE COURT DECISIONS, THE KCC HAS NO LATITUDE - IN THE ABSENCE OF LEGISLATION - TO REQUIRE THE SHARING OF COSTS OF CIVIC AND CHARITABLE DUES AND DONATIONS BETWEEN RATEPAYERS AND SHAREHOLDERS. AS A PRACTICAL MATTER, THIS MEANS THAT KCC IS FORCED TO PASS ON THE COSTS OF ALL DUES AND DONATIONS TO RATEPAYERS.[2] THIS IS BECAUSE THE COMMISSION FINDS IT ALMOST IMPOSSIBLE TO DETERMINE THAT ANY SPECIFIC DUE OR DONATION IS UNREASONABLE. THERE IS SIMPLY NO BASIS, IN MOST CASES, TO DETERMINE THAT A SPECIFIC AMOUNT OF DONATION IS EXCESSIVE OR THAT A CERTAIN TYPE OF CAUSE IS UNWORTHY, WITHOUT BEING ARBITRARY OR CAPRICIOUS.

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[2]Some utilities have not contested a 50/50 split of these costs in the past but clearly could do so in light of the court decisions.

(4-12)

THE COMMISSION CONTINUES TO BELIEVE THAT A POLICY OF SHARING THESE COSTS IS THE MOST APPROPRIATE. MANY OTHER STATES HAVE ADOPTED POLICIES OF DISALLOWING PART OR ALL OF SUCH COSTS, EITHER THROUGH COMMISSION DECISIONS OR BY LEGISLATION. THE KCC IS REQUESTING THAT IT BE GIVEN SIMILAR AUTHORITY.

THANK YOU.

was included in the consolidated return as a deduction.' In his computations for the determination of the amount of income tax allocable to the Applicant, he included interest expense which was paid by the Applicant to its parent or other members participating in the filing of this consoldated income tax return. Yet in filing this consolidated tax return he eliminated such interest. In fact, he testified as follows:

"'I go back to my original statement, Mr. Rice. In a consolidated return you *will have to eliminate interest payments between parties within the consolidation.*' (Emphasis supplied.) His computation includes as a deduction interest *which was not* deducted in computing federal income taxes (interest payments to the parties within the consolidation), and neglects to include interest which was utilized as a deduction for federal income taxes (interest on system-wide debt).

"The Staff proposed an adjustment of federal income taxes of $298,431. Witness Leroy, formerly a revenue agent with the Internal Revenue Service, proposed to correct witness Griesedieck's computation by accepting only those things which witness Griesedieck concedes must be done in the tax returns as they were filed and the taxes were actually paid by A. T. & T. He began with the total capital employed in the State of Kansas, as reflected in Whiteaker's Exhibit No. 2. He thereupon applied the system-wide debt ratio of 34.29 percent to this total capital and determined that the amount of system-wide debt which was allocable to the property in Kansas was $62,389,859, and computed the debt cost allocable to the State of Kansas of $2,133,733. This interest cost was substituted for the interest cost used by the Applicant in its compuations of income tax liability. Using this method he ascertains that the actual income tax expense incurred by the Aplicant was $298,431 less than the amount presented by the Applicant in its testimony.

"The Applicant's federal income tax liability was incurred and assessed on a basis of a consolidated income tax return filed by A. T. & T. and its operating subsidiaries. The Applicant introduced copies of checks which indicated that it paid funds direct to the Director of Internal Revenue. This method of payment does not affect the ultimate liability of the Applicant, nor does it constitute evidence of the amount of taxes which were in fact incurred. Apparently the Applicant paid a portion of income taxes which should have, in fact, been paid by its parent, A. T. & T. In the final analysis the tax liability was incurred and the taxes paid on the basis of the consolidated return. In such return the interest expense which was deducted from gross income was not the interest expense which witness Griesedieck testified he used in his computations, but rather, the consolidated interest costs of the groups paid to persons or entities outside the consolidated group."

The parent company has seen fit to take advantage of a consolidated income tax return by combining its income and expense with that of its numerous subsidiaries. We cannot say as a matter of law that the Commission abused its discretion in calculating the Company's income tax liability on the actual debt ratio of the parent and its subsidiaries which is approximately 66 percent equity and 34 percent debt.

Another expense item, which is immaterial in this case but appears to be a matter of principle worthy of considerable space in the briefs, is that of the Chamber of Commerce dues and charitable donations. In its brief, the Commission states its position as follows:

"The Company, in its income statement, included the sum of $18,337, which constituted Chamber of Commerce dues and charitable contributions. The Commission granted to the Company the benefit of 52 per cent income tax deduction resulting in a net adjustment of approximately $9,000. The Commission ascertained that these amounts were donations and not a business expenditure which should be borne by the telephone subscribers. Accordingly, charitable contributions were found to be donations to be absorbed by the stockholders."

The district court found that the items should be allowed as expense. There is no contention that the amounts are unreasonable or excessive.

It is concluded that such expenditures are necessary if a company, firm or individual is to maintain its standing and good will in a community. Such expenditures should be allowed as a legitimate expense in any business. They are, however, subject to strict scrutiny by the Commission as to their reasonableness and propriety. Decisions may be found supporting both sides of the argument. Their review would serve no purpose here. It has not been the policy of this state to penalize any individual or corporation for assuming reasonable charitable and civic responsibilities.

It was estimated that the expense of the Company in preparing and presenting this rate case before the Commission would cost approximately $558,950. The Commission amortized this amount over a five-year period for the purpose of normalizing future expense. Included in the estimated expense is the sum of $119,886 which the Company claims represents the wages and salaries of regular employees who assisted the engineer in making his valuation study. It contends that the expense will be a continuing one and should be allowed as an expense. The Commission contends in its brief:

"These employees were also engineers with the Company and work on many other projects. If their work is performed on a capital asset, such as building or other telephone plant, the wages and salaries of such personnel are capitalized. These sums are then returned in the form of depreciation expense over the life of the building or plant on which the work is performed. If the work performed is on a building having a forty-year life, then such wages and salaries are recouped at the rate of 2½% a year and not for 100 per cent. The Commission was of the opinion that such employees, whose entire wages and salary which are not necessarily placed in operating expenses,

pertains to time periods other than the test period. [Cite omitted.] A satisfactory resolution of this conflict is that when *known and measurable* post-test-year changes affect with certainty the test-year data, *the commission may, within its sound discretion,* give effect to those changes. [Cite omitted.]' *Narragansett Elec. Co. v. Harsch,* 117 R.I. 395, 416, 368 A.2d 1194 (1977)." 4 Kan. App. 2d at 635-36 (emphasis original).

Accord *Kansas Power & Light Co. v. Kansas Corporation Commission,* 5 Kan. App. 2d 514, 517, 620 P.2d 329 (1980), *rev. denied* 229 Kan. 670 (1981).

The Commission recognized the known and measurable test in making a number of staff-proposed adjustments to the test year. We conclude the Commission abused its discretion and unreasonably refused to adjust the test year to recognize the loss of sales to the refinery. We also recognize our decision to be a hollow victory for Gas Service, because it has applied for another rate increase which will replace any increase the Commission ultimately makes in this proceeding. In addition, any such increase will be applicable during the summer months when natural gas sales are low, so the practical effect of our decision will be of little consolation to Gas Service.

Gas Service also argues the Commission erred in disallowing as operating expenses the dues and charitable donations made during the test year. The Commission disallowed *all* of the contributions and dues and devoted some three pages of its order to explaining why it was doing so. The Commission basically determined ratepayers should not be required to involuntarily pay dues and charitable donations made by a utility. It further determined there was a lack of evidence by Gas Service to show the reasonableness of any of the dues and charitable donations. We deem the latter argument to be of no real significance. For at least twenty years, utilities have been allowed to include in operating expenses the dues and charitable donations they pay, subject only to a reasonableness standard. Most of the $105,041 disallowed here (about 25 cents a year per user) was given to legitimate, recognized charitable organizations such as United Way, Heart Association, Menninger's, and educational institutions. In addition, Gas Service paid dues such as those to Chamber of Commerce, and to Rotary Club and Kiwanis Club for its key employees. Staff counsel conceded at oral argument that the Commission is now disallowing charitable donations and dues as a matter of policy, and we deem that to be the issue

before us. The list of charitable donations and dues paid by Gas Service is such that it would be unreasonable to disallow them in toto, for at least a substantial number of them are reasonable on their face without further evidence as to their reasonableness. Thus, the issue before us is not their reasonableness but whether the Commission can, as a matter of policy, disallow *all* dues and charitable contributions as operating expenses.

The Supreme Court in *Southwestern Bell Tel. Co. v. State Corporation Commission,* 192 Kan. 39, Syl. ¶ 8, 386 P.2d 515 (1963), stated:

"The reasonable cost of meeting civic responsibilities such as Chamber of Commerce dues and charitable donations should be allowed as an operating expense in a public utility rate investigation, but they are subject to close scrutiny as to reasonableness."

In the absence of some indication that the Supreme Court will no longer follow its earlier decision, we are duty-bound to follow its prior case law. Although only one member of the court that wrote *Southwestern Bell Tel. Co.* is still a member of the Supreme Court, we have no indication the Court would change its position. We are aware of the considerable authority existing to support the argument that whether to allow dues and charitable donations as operating expenses is a political issue to be decided by the legislature and not a legal issue. However, the Supreme Court has spoken, and since we are of the opinion that *Southwestern Bell Tel. Co.* controls the proceeding before us, we are duty-bound to follow it. In the future, if the Commission on remand truly believes any charitable donations or dues are unreasonable, it should state specifically which it finds to be unreasonable and its reasons for so finding.

Midwest Gas Users requested at oral argument that we consider an issue not raised in the rate hearing and not briefed by the parties, and that is whether the Commission is subject to the open-meeting law and, if so, whether a new hearing is required. We do not deem the issue to be such that its consideration is necessary to serve the interests of justice or to prevent the denial of fundamental rights (*State v. Puckett,* 230 Kan. 596, 640 P.2d 1198 [1982]), thus we decline to consider the issue.

We have examined the argument of Midwest Gas Users, W. S. Dickey Company and Owens-Corning concerning the Commission's order allowing a rate increase on a volumetric basis rather

sufficient specificity to convey to the parties, and to the courts, an adequate statement of facts which persuaded the Commission to arrive at its decision. [Citations omitted.]" Ash Grove Cement Co. v. Kansas CORPORATION COMMISSION, 8 Kan.App.2d 128, 132, 650 P.2d 747 (1982).

The findings of the Commission do not, however, "have to be stated with such particularity as to amount to a summation of all the evidence." Ash Grove Cement Co., 8 Kan.App.2d at 133. In this instance, the Commission summarized the testimony of principal witnesses Moyer and York as well as the tenor of testimony offered by members of the agricultural community. Although KN may not agree with the conclusions drawn from that testimony, the findings provide an adequate explanation of the Commission's reasoning in establishing a rate of return.

We likewise find no merit in KN's contention that the distressed agricultural economy is not a valid consideration in determining rate of return. At argument on rehearing before the Commission, KN's attorney represented that 11.5% of its total customer base is comprised of irrigation customers who account for roughly one-third of its Kansas sales. They are parties whose interests are to be balanced. Kansas Gas & Electric Co. v. Kansas Corporation Comm'n, 239 Kan. at 488.

KN also contends the Commission has failed to consider its business and financial risk. The order reveals that the Commission acknowledged KN's risk but chose to limit that risk to the Kansas jurisdictional operation.

KN next argues that the return on equity was greater in its last rate case and has been greater in applications made by other utilities. This observation is irrelevant in that rate applications are unique to each company, and statutory provision is made for continuous reevaluation of rates at the instigation of either the Commission or the utility. See K.S.A. 66-101 et seq. Furthermore, res judicata does not ordinarily apply to the decisions of administrative tribunals. Warburton v. Warkentin, 185 Kan. 468, Syl. P 3, 345 P.2d 992 (1959).

KN finally contends that the Commission inconsistently adopted the low end of witness York's recommendation. "The Commission has discretion to weigh and accept or reject testimony presented to it." Ash Grove Cement Co., 8 Kan.App.2d at 131. The Commission's determination was within the range of evidence presented. Our Supreme Court has commented on the "elusive" range of reasonableness: "A court can only concern itself with the question as to whether a rate is so unreasonably low or so unreasonably high as to be unlawful. The in-between point, where the rate is most fair to the utility and its customers, is a matter for the State CORPORATION COMMISSION'S determination." Southwestern Bell Tel. Co. v. State CORPORATION COMMISSION, 192 Kan. 39, Syl. P 17, 386 P.2d 515 (1963).

The Commission's determination on rate of return, although less than requested by KN, is reasonable and lawful.

II. Dues and Donations.

KN challenges the elimination of 50% of its dues and donations which resulted in a reduction of $4,365 to operating expenses. The Commission's only witness on the subject acknowledged that $8,700 was not an unreasonable level of contribution.

This issue has been before the appellate courts of this state before. Our Supreme Court, in Southwestern Bell Tel. Co. v. State CORPORATION COMMISSION,

192 Kan. at 73, addressed the matter of Chamber of Commerce dues and charitable donations.

"It is concluded that such expenditures are necessary if a company, firm or individual is to maintain its standing and good will in a community. Such expenditures should be allowed as a legitimate expense in any business. They are, however, subject to strict scrutiny by the Commission as to their reasonableness and propriety. Decisions may be found supporting both sides of the argument. Their review would serve no purpose here. It has not been the policy of this state to penalize any individual or corporation for assuming reasonable charitable and civic responsibilities."

In that case the Commission had ALLOWED DUES and DONATIONS as an expense item. This court, in Gas Service Co. v. Kansas CORPORATION COMMISSION, 8 Kan.App.2d 545, 662 P.2d 264, rev. denied 233 Kan. 1091 (1983), considered a situation in which the Commission had DISALLOWED all DUES and contributions on the ground that ratepayers should not be required to contribute involuntarily. This court perceived the issue before it to be not the reasonableness of the expenses, "but whether the Commission can, as a matter of policy, DISALLOW all DUES and charitable contributions as operating expenses." 8 Kan.App.2d at 551. We felt "duty-bound" to follow the holding in Southwestern Bell Tel. Co., 192 Kan. 39, and held the total DISALLOWANCE of DUES and charitable DONATIONS unreasonable and remanded the issue to the Commission. We directed the Commission, if it finds DUES and charitable DONATIONS unreasonable, to "state specifically which it finds to be unreasonable and its reasons for so finding." 8 Kan.App.2d at 551.

Here, the only evidence is that the $4,365 excluded is reasonable. That part of the decision excluding the $4,365 from expenses is reversed.

III. Outside Services.

KN contends the Commission acted unreasonably in decreasing operating expenses by $52,361 in order to eliminate the cost of outside services used to evaluate a tender offer by Mesa Petroleum Company to purchase KN's common stock.

Staff presented testimony the studies were performed from an investor's perspective. KN testimony was that it wanted to establish a "normal and continuing annual systemwide amount."

The Commission accepted the staff adjustment to operating expense, finding:

"The adoption of a 'representative level,' however, for a single account would be violative of the matching of expense and revenue inherent in use of the test year concept. Past levels of outside service expense do not justify departure from actual test year operations. Moreover, the expenses associated with the tender offer are not in the nature of a recurring expense to be recovered again and again each year the proposed rates are in effect."

This court, in Gas Service Co. v. Kansas CORPORATION COMMISSION, 4 Kan.App.2d 623, 609 P.2d 1157, rev. denied 228 Kan. 806 (1980), reviewed principles relevant to allowance of existing operating expenses. "The general rule is that the Commission may not arbitrarily disallow an actual, existing operating expense incurred during a test year. [Citation omitted.]" 4 Kan.App.2d at 635. We acknowledged the Commission's discretion to adjust test year results to allow for known changes to make the test year representative of the future. In the present case, costs incurred to evaluate the tender offer admittedly will not recur; KN argues, however, that these costs are representative of costs incurred for outside services. This appears to violate the test year

treatment is appropriate. The KCC weighed the testimony in favor of CURB's witness. There is substantial competent evidence to support the KCC's conclusions.

The final adjustment contested on appeal is the imputation of revenue to KG & E's space-heating rate to offset projected short-term revenue losses of $3.096 million. The KCC describes this rate as "designed to give KG & E a tool to compete with the natural gas industry by offering special rates to those customers who made the investment and commitment to using electricity to heat their homes in the winter and help with load management in the summer cooling months during critical peak times and to increase sales during off-peak times." The KCC notes this rate was originally approved by the KCC on the basis that KG & E would not seek to recover the losses associated with it from its other customers. By not adjusting its revenue, however, KG & E would not be shifting the burden of this rate to the ratepayers. The KCC balanced this result against the positions presented by its staff and KG & E. The KCC acknowledged it was not finding the rate unreasonable, but was requiring the loss to continue to be borne by the shareholders.

CURB's witness testified that the imputation should be made to offset the loss expected to occur as a result of the space-heating rate. There was testimony that imputation was necessary to accomplish the result of KG & E bearing the cost of the rate, and also testimony regarding the potential economic effects of the rate over time. There was substantial competent evidence for the KCC to adopt this adjustment.

KG & E argues that the KCC, in prior orders, encouraged KG & E to make interruptible sales and off-system power sales, and to put the space-heating rate into effect. Thus, the adjustments adopted in the present order are a departure from the KCC's prior position and, in fact, KG & E is being punished for doing the very things the KCC encouraged. Without going into a lengthy analysis regarding whether this is indeed true, the KCC clearly sets forth its policy with respect to the continued viability of the Wolf Creek orders. Throughout the Wolf Creek rate orders, the KCC has been committed to balancing the risk-sharing between the shareholders and the ratepayers. The KCC iterates this policy with reference to the present case. Thus, even a departure from prior orders would not be arbitrary, capricious, or unreasonable in view of the KCC's justification.

The test is not whether we believe the KCC's orders are sound business decisions and fair to KG & E. We have studied the record before us and examined the positions taken by the parties and, under our statutory standard of review, do not find error.

Charitable Contributions

The KCC, citing a general policy of ALLOWING "equal sharing of a reasonable level of DONATIONS among ratepayers and stockholders," only ALLOWED recovery of one-half of KG & E's charitable DONATIONS.

The only testimony in the record regarding the charitable contributions was by Debra Weiss, a certified public accountant employed by the KCC as a Senior Utility Regulatory Auditor and Economist. She stated:

"In previous dockets, The Commission adopted a general standard which ALLOWS the equal sharing of a reasonable level of DONATIONS among the ratepayers and stockholders. This objective standard recognizes KG & E's interest in being an active and responsible corporate citizen in the communities it serves and that

the goodwill inuring to the Company as a result of its DONATIONS benefits the stockholders and ratepayers equally. By making this adjustment, Staff is recommending that this standard be applied in this current docket as well."

This issue is governed by two Kansas cases. In Southwestern Bell Tel. Co. v. State CORPORATION COMMISSION, 192 Kan. 39, 73, 386 P.2d 515 (1963), the court held that charitable contributions should be allowed as a legitimate business expense subject to "strict scrutiny by the Commission as to their reasonableness and propriety." The court recognized that, to maintain standing and goodwill in the community, such expenditures must be allowed. In addition, the court acknowledged that other jurisdictions are split on the issue.

In Gas Service Co. v. Kansas CORPORATION COMMISSION, 8 Kan.App.2d 545, 550, 662 P.2d 264, rev. denied 233 Kan. 1091 (1983), we addressed a KCC policy disallowing recovery of all charitable contributions as a matter of policy. The court stated, "We are aware of the considerable authority existing to support the argument that whether to ALLOW DUES and charitable DONATIONS as operating expenses is a political issue to be decided by the legislature and not a legal issue." 8 Kan.App.2d at 551. This court then held that it was bound by Southwestern Bell in determining whether, as a matter of policy, the KCC could disallow all contributions. We reversed the KCC's decision because there had been no determination of whether the contributions were reasonable. 8 Kan.App.2d at 552.

Based on the record before us, the KCC's decision to disallow one-half of the charitable contributions was arbitrary and capricious and not based upon substantial competent evidence. The KCC, apparently in other unidentified dockets, has articulated a general standard of equal sharing of the contributions between the ratepayers and the shareholders. The KCC stated: "The policy reflects that the charitable organizations receiving donations serve the utility's Kansas service area; do not promote a political or special interest group; that no part of each recipient's earnings inures to the benefit of any private stockholder or individual; and that each donation is to or for the use of a community chest, association, corporation, foundation, fund, organization, or trust located in and conducting substantially all of its activities in the State of Kansas."

The KCC went on to state that, because shareholders and ratepayers both benefit, requiring them to contribute equally was fair. The only reference to reasonableness in the order was a statement by the KCC that it would be unreasonable to make ratepayers fund 100 percent of the contributions because KG & E's rates were well above average for Kansas utilities.

In Gas Service Co., the court contemplated a finding by the KCC that the specific donations or contributions are unreasonable. The court states first, "The list of charitable DONATIONS and DUES paid by Gas Service is such that it would be unreasonable to DISALLOW them in toto, for at least a substantial number of them are reasonable on their face without further evidence as to their reasonableness." 8 Kan.App.2d at 551. The court further noted that on remand the KCC should state which charities it finds unreasonable and its reasons. 8 Kan.App.2d at 551.

In the present case, no testimony was introduced as to the reasonableness of KG & E's charitable contributions. The KCC did not make any finding of unreasonableness as to the charities. Rather, the KCC based its decision on a policy that, while it might be supported in terms of fairness, is not in

compliance with the standard articulated in Southwestern Bell and followed in Gas Service Co. In the absence of legislation or regulations codifying the policy followed by the KCC in the present case, the KCC was required to find the charitable contributions unreasonable in order to disallow them as operating expenses. Since we are cited to no such authority, the KCC acted arbitrarily and capriciously. This adjustment to KG & E's rates is reversed.

Supremacy Clause

KG & E contends that, because the wholesale rates for electricity sold by it to OMPA were approved by the Federal Energy Regulatory Commission (FERC), the KCC's imputation of revenue to KG & E from the sale violated the Supremacy Clause of the United States Constitution. KG & E made off-system sales of gas-fired generating capacity to OMPA. This power is less expensive than Wolf Creek power. CURB argued that, in effect, KG & E was shifting "the burden of its most expensive capacity from the company to its captive ratepayers while selling its least expensive power off system." In addition, CURB maintained KG & E had used the capacity sold to OMPA to help meet the 41 MW condition to add the Ripley impact to the third phase-in increase. The KCC agreed and, as a result, imputed $13.5 million to KG & E's revenue, reflecting Wolf Creek costs for the 41.2 MW capacity sale to OMPA, although KG & E actually only recovered the lesser gas-fired generated rate.

The FERC has exclusive jurisdiction over the wholesale rates for sale of electricity in interstate commerce. 16 U.S.C. s 824 et seq. (1988). A line of cases interpreting the Federal Power Act, 16 U.S.C. s 791a et seq. (1988), resulted in the development of what is called the "filed rate doctrine." Montana-Dakota Co. v. Pub. Serv. Co., 341 U.S. 246, 95 L.Ed.2d 912, 71 S.Ct. 692 (1951). In Montana-Dakota, the Court held, "[T]he right to a reasonable rate is the right to the rate which the Commission [at that time, the Federal Power Commission, now FERC] files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable one." 341 U.S. at 251-52. The doctrine has undergone some expansion and an overview of the cases is necessary to an understanding of the posture of the instant case.

In Narragansett Elec. Co. v. Burke, 119 R.I. 559, 381 A.2d 1358 (1977), cert. denied 435 U.S. 972 (1978), the court determined the Federal Power Act preempted the Public Utility Commission's authority to investigate interstate prices. 119 R.I. at 569. The Public Utility Commission must treat the interstate rate filed as reflecting reasonable operating expenses. 119 R.I. at 568. The Court, in Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 69 L.Ed.2d 856, 101 S.Ct. 2925 (1981), did not allow a seller of electricity to charge a higher-than-filed FERC rate pursuant to a contract with the purchaser. 453 U.S. at 581-82. The buyer and seller may contract, but if there is a conflict between the rates, the filed rates govern. 453 U.S. at 582.

KG & E relies heavily on Nantahala Power & Light v. Thornburg, 476 U.S. 953, 90 L.Ed.2d 943, 106 S.Ct. 2349 (1986), for its argument that the KCC's imputation of revenue from the OMPA sale is prohibited by the Supremacy Clause. Nantahala and Tapoco both owned power plants and produced electricity that went into the Tennessee Valley Authority. In return, they received a fixed supply of low-cost entitlement power. Nantahala purchased the remainder of power at a higher rate to serve its retail ratepayers. For the purpose of

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PRESENTATION BEFORE

THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

ON

HOUSE BILL NO. 2899

BY DR. STACY OLLAR, CHAIRPERSON

THE CITIZENS' UTILITY RATEPAYER BOARD

March 24, 1992

DUES AND DONATIONS

The Citizens' Utility Ratepayer Board supports House Bill No. 2899 and the effort to clarify the State Corporation Commission's authority regarding civic and charitable dues and donations. The Courts have held that the Commission does not have the authority to set a general policy on dues and donations. Moreover, the Courts have held that the Commission must rule on the merits and reasonableness of each due, donation, or contribution paid or made by a utility. This bill would give the Commission the authority to set a general policy on dues and donations.

As the Board understands it, this bill does not affect the Commission's authority to completely disallow certain expenses such as country club, athletic club, and social club dues. Indeed, one provision of the bill permits disallowing specific dues, donations, and contributions which are found to be "unreasonable" or "inappropriate."

Although the Board supports the proposed legislation, the Board believes two modifications would provide additional

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flexibility and support for the Commission's dues and donations policy.

First, whether and how much ratepayers should be required to pay dues and make donations through their utility bills is a difficult issue for regulators and ratepayers. The Board believes it is important that the Commission have broad authority to establish a dues and donations policy.

Second, the Board believes that rather than limiting the Commission's authority to disallowing up to 50% of dues and donations, that the Commission should have the flexibility to disallow up to 100% of these completely discretionary expenditures.

In addition, because civic, charitable, and social dues, donations, and contributions present such difficult rate case issues, the Board recommends that utilities be required to prove that dues and donations are reasonable expenses. It is not unreasonable to require utilities to demonstrate in their rate filings the reasonableness of their dues, donations, and contributions. By placing the burden of proof on the utilities, the burden of proof is where it should be. It is the utilities that are requesting these expenses and other parties should not have the burden of proving the unreasonableness of the utilities' dues, donations, or contributions. In short, because the utilities determine which dues, donations, and contributions to make, the burden of proof should be on the utilities to show that these are reasonable expenses for utility customers to pay.

The Board recognizes that civic and charitable dues and

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donations do not make up a large portion of total utility costs. Nevertheless, they do represent discretionary costs which should be subject to strict review. Furthermore, because of the unique duty and position of utilities, the Commission should have broad discretion to review these expenses. Because this bill will provide that authority, the Board recommends approval of the bill with the suggested changes.

SUBCHAPTER S INCOME TAX PROVISION

The Board would also like to address the provision in the bill which would disallow payment of subchapter S shareholder income taxes for natural gas utilities.

Subchapter S corporations are "small businesses" that elect to be taxed differently than regular or C corporations. Under the Internal Revenue Code, by electing subchapter S status, a small business does not pay corporate income taxes. Rather, the tax on the corporate income is paid by the shareholders on their individual returns. In contrast, for C corporations, the corporate income is taxed once when the corporation pays income taxes and again when individual shareholders pay income taxes on the dividends received from the corporation.

Typically, corporate income taxes are included in the costs used to set the utility rates paid by ratepayers. However, because subchapter S corporations do not pay income taxes, there is a question of what tax if any should be included in their rate calculations. This is a difficult issue, and it is one that this Commission, other Commissions, and the Courts have struggled with.

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As currently proposed, this provision will limit the Commission's authority to resolve this issue. Although CURB certainly does not like to see ratepayers pay the income taxes of shareholders for income associated with subchapter S corporations, payment of these taxes will usually be less than payment of corporate income taxes. Utility income is normally taxed at a marginal tax rate of 34%. Whereas, the marginal tax rate for individuals is typically 27% or 28%. Thus, ratepayers benefit from the subchapter S corporations lower tax liability.

This provision would limit the Commission's ability to address this issue and reach a compromise solution to a difficult situation.

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TESTIMONY IN OPPOSITION TO HB2899

Barb Smith, President, United Way Association of Kansas
Executive Director, United Way of Douglas County

The United Way Association of Kansas has been in existence for several years, providing a forum to exchange ideas and experience concerning the provision of health and human services. There are thirty united-way type organizations across the state, raising in excess of $20 million dollars to assist emergency and basic needs in local communities.

Last year, the five largest United Ways in Kansas (Wichita, Wyandotte County, Topeka, Salina, and Lawrence) were the recipients of $435,259 from corporate gifts by utility companies. We recognize that all persons receiving utilities contribute to those gifts as they affect rates for services.

Not having figures available from other communities, I want you to understand how those dollars are used in Douglas County. The total corporate contribution from utility companies last year in my community was $9,000. Our United Way granted $15,650 to one local agency to help in the provision of $30,000 in utility assistance. Not only were those utility-rate dollars returned to the community, they were returned to those most in need of assistance.

It is my understanding that HB2899 reached the House floor giving the Kansas Corporation Commission (KCC) the power to eliminate 100% of charitable contributions that affect rates and was amended to it's present state (50%) before being passed by the House, simply legislating what has already been the practice.

On behalf of the United Ways across Kansas, I would like to share some concerns.

-We are concerned that charitable contributions are even included in this legislation. I hope that I have shown that those donations are being returned to those who benefit most from the existence of charitable gifts.

-We are concerned that the writing of this legislation may do more than formalize permission to the KCC to eliminate 50% of these gifts and may be construed as a recommendation.

-We ask that if your committee brings HB2899 to the Senate floor as it stands, you do everything in your power to keep it from exceeding 50%.

I hope I have shown you through my testimony that charitable contributions provided through the utility companies are returned to those who need assistance. Please consider striking "charitable contributions" from the list of groups potentially affected by HB2899 to prevent jeopardy to basic services across Kansas.

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Secretary of Transportation

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Governor of Kansas

TESTIMONY BEFORE
SENATE TRANSPORTATION COMMITTEE
REGARDING H.B. 2865:
REMOVING ABANDONED AND DISABLED VEHICLES FROM STATE HIGHWAYS
March 24, 1992

Mr. Chairman and Committee Members:

The Department of Transportation has proposed H.B. 2865 in an effort to improve our ability to deal with vehicles that are abandoned or left disabled along state highways.

K.S.A. 8-1102 currently provides that, when a person abandons or leaves a motor vehicle on a highway or other property open to use by the public for more than 48 hours, the public agency having jurisdiction over that highway or property may remove that vehicle and store it in a safe and convenient place. Providing towing and wrecking services presents several problems for the Department. We do not have the appropriate equipment for this process. Our equipment is purchased for specific road maintenance activities, not towing. We also have to reschedule other work in order to tow a vehicle in for storage.

However, the biggest problem we have is with storing these vehicles. The storage sites are our area maintenance yards which generally service a four county area. These area maintenance yards used to be located primarily in rural or semi-rural areas. However, in many areas, the city has grown up around our locations. Frequently, now, our area maintenance yards are in suburban or commercial areas, and the neighbors object strongly when those maintenance yards look like junkyards. We recently had to move our Olathe offices, and the zoning commission specifically required that we not bring abandoned vehicles onto the new site.

The statutory changes we are proposing would incorporate flexibility into this cumbersome process. The needed flexibility appears toward the end of the bill, in Section 3(c). New language in K.S.A. 8-1102(a)(3)(c) would provide that whenever a motor vehicle is left unattended for more than 48 hours or interferes with public highway operations, any law enforcement officer would

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be authorized to move the vehicle or have it moved as provided by K.S.A. 8-1103. (K.S.A. 8-1103 concerns services provided by a wrecker or towing service.) Section 3(c) is needed to clarify the transition from K.S.A. 8-1102 to K.S.A. 8-1103 and remove confusion about how the law enforcement officers could coordinate removal of abandoned vehicles under K.S.A. 8-1103 when a wrecker or towing service is used. It delineates the procedures between the public agency under K.S.A. 8-1102 and the private sector under K.S.A. 8-1103.

This new section would not require any additional work for the Highway Patrol, because:

a) they tag the vehicles anyway; it simply would mean that, where agreed upon, they would contact a private firm rather than KDOT, and

b) they already maintain a rotation list, including published rates, of firms that provide wrecking or towing services for disabled vehicles.

Highway Patrol indicates, if there is a complaint against a firm, that firm will be removed from the rotation list. A positive aspect of this new process would decrease towed mileage to the owner as KDOT tows to its nearest area office while the Highway Patrol contacts the towing service closest to the abandoned vehicle.

Based on 1990 and 1991 records, only one owner in three is seeking return of the car, while two owners in three are using the highways to dispose of cars at no cost. Whether the vehicle is towed and impounded under K.S.A. 8-1102 or K.S.A. 8-1103, the owners and/or lienholders are given due process with sufficient time and notice for claiming the vehicle.

Also included in the proposed language is a clarification on the appropriate governmental entity for establishing ownership of the vehicle. K.S.A. 8-1102(a)(2) currently requires us to obtain information about the registered owner and any lienholders of record from the register of deeds of the county in which the title shows the owner resides. However, county registers of deeds do not have information about lienholders. The proposed amendment would require us to obtain that information from the Division of Vehicles, which does have information about both owners and lienholders.

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Testimony in Favor of HCR 5041
Presented by
the Silver Haired Legislature

March 24, 1992

My name is Ray Olson, and I am a Silver Haired Legislator from Shawnee County, appearing here today at the request of Arris Johnson, the Speaker of the Silver Haired Legislature.

The original language of HCR 5041 was the same as Silver Haired Legislature resolution 803, which was passed in the October, 1991 session. I was a member of the 1991 Silver Haired Legislature Transportation Committee that introduced this resolution. I have attached a copy of SHL 803 for your information.

In the House, HCR 5041 was amended to broaden the eligibility for an insurance discount for those who take a driver safety course to those of all ages. I don't believe that the Silver Haired Legislature would have any problem with this change.

In our committee discussion, the greatest interest was in the area of improved road markings, especially the white stripe on the edge of the road that helps older drivers at night. We feel that this resolution directs the Kansas Department of Transportation to encourage the American Association of State Highway and Transportation Officials and the Federal Highway Administration to further investigate this and other visual elements of the roadway system.

We hope that you will consider this bill for passage.

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[As Amended by SHL Committee of the Whole]

(As Amended by SHL Committee on Transportation)

SSHL803

SUBSTITUTE FOR
SILVER HAIRED LEGISLATURE RESOLUTION NO. 803

By PSA 2

A RESOLUTION supporting measures to improve the safety of the highways through incentives for driver improvement courses for older drivers and through more adequate highway safety measures for state and county roads in Kansas.

WHEREAS, Highway safety is of prime importance to all citizens of Kansas; and

WHEREAS, The private motor vehicle is the primary source of transportation in Kansas and is often the only [~~available~~] form of transportation available; and

WHEREAS, The continuing growth in numbers of older drivers in Kansas brings increased numbers of drivers with visual and other impairments to the highways; and

WHEREAS, Participation in driver safety courses for older drivers has been shown to produce a reduction in deaths and accidents; and

WHEREAS, Offering [~~a~~] [an] automobile insurance discount for people aged 55 and older who take these courses will provide an incentive to enroll; and

WHEREAS, The regulation of insurance policy requirements lies within the duty of the Kansas Insurance Commissioner; and

WHEREAS, The public interest would be served by the creation

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of a system which considers those elements of design which give visual information to the motorist as an interacting, unified system including such elements as road markings, carefully placed and sufficiently large road signs and special lane designation; and

WHEREAS, The improvement and upkeep of highway safety measures lie within the duty of the Kansas Department of Transportation: Now, therefore,

Be it resolved by the Silver Haired Legislature of the State of Kansas: That the Kansas Silver Haired Legislature supports a program under which the Kansas Insurance Commissioner will require automobile policies which are sold in the state to be offered with a discount for policyholders aged 55 and older who pass an approved driver safety course; and

Be it further resolved: That the Kansas Silver Haired Legislature urges the Kansas Department of Transportation to encourage the American Association of State Highway and Transportation officials and/or the Federal Highway Administrator to implement a research program which considers those elements of design which give visual information to the motorist as an interacting, unified system including such elements as road markings, carefully placed and sufficiently large road signs and special lane designation.

Testimony by the Kansas Department on Aging
in support of
HCR 5041
February 11, 1992

As a state, we have developed a system of transportation that depends overwhelmingly on the private automobile. Alternative forms of transportation are extremely limited, and while admirable in their intent and abilities to stretch scarce resources, meet only a fraction of the needs of the elderly.

The increasing deregulation of public carriers like Greyhound and Trailways has meant that fewer and fewer towns are served by buses. The decline of train travel is well known.

As a result, to take part in society as a full member requires the use of the private automobile to participate. Thus, it should be a primary goal of governments and society in general to take innovative and supportive steps to maintain the older driver on the road as long as possible, rather than focus on ways to take them from behind the wheel.

HCR 5041 contains the same language as a resolution passed in the Silver Haired Legislature last fall. At first, the Silver Haired Legislators were primarily concerned about better marking on Kansas roads, especially the solid white line on the right edge of the pavement. After committee discussion and hearings, they widened their scope to the two broad concerns of this resolution.

First, incentives for driver improvement courses. It is always hard to get someone to admit they need improvement in something they have been doing for years. If the person can say they are doing it to save money, this saves face and gets them into the classroom where learning can take place.

For example, although in one study the rate of accidents and convictions for drivers with loss of visual field (contraction of field of view) was twice as high as those with normal vision, almost half of the older drivers with reduced field were unaware of their impairment. A person's realization of their own limitations may make them change the way they drive, or encourage them to give up driving entirely. In addition, things like changes in traffic regulations and automobile design make driving very different from when we started. One innovative way to communicate all these things to older drivers is through driver improvement programs.

The House amended HCR 5041 to broaden the age eligibility for those who would qualify from "55 and older" to "any policy holder." We would concur with this amendment.

Secondly, the resolution addresses improvement of the visual information design. In plain english, making things on the roadway easier to see. For example, improving the readability of signs. The

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current guidelines for the lettering height on signs are based on standards set decades ago; they translate into requiring a visual acuity of 20/23. You can get a Kansas Driver's License with a visual acuity of 20/60. As you can see, there are many who have trouble reading our road signs at the distance the planners think you can read them.

Making more designated left turn lanes is another. Older people have more trouble safely completing left hand turns than any other age group. This is due to the high number of independent variables which go into executing a left-hand turn, as well as perception problems in judging the distance of oncoming vehicles.

At the Kansas Department on Aging, we are working to find ways to help older Kansans stay in their homes as long as they can. Safe transportation is a component of making that possible. HCR 5041 addresses two ways to improve their safety on the roadway. We encourage you to consider its passage.