

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Vice Chairperson Mays at 1:30 p.m. on February 21, 1995 in Room 521-S of the Capitol.

All members were present except: Representative Broderick Henderson - Excused

Committee staff present: Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Representative Gene Shore
Laura Kelly, Kansas Recreation and Parks Association
Don Moler, General Counsel-Kansas League of Municipalities
Representative Doug Spangler
Anne Spiess, Director of Legislation-Kansas Association of Counties
Jo Ann Hamilton, Osage County Treasurer and President of the Kansas County Treasurers' Association
Mary P. Ladesic, County Treasurer, Wyandotte County, Kansas City, Kansas (Written Only)
Bob Watson, City Attorney, Overland Park, Kansas
Mike Rees, Chief Counsel-Kansas Department of Transportation

Others attending: See attached list

Vice Chairman Mays opened to meeting at 1:30 p.m. since Chairman Glasscock was testifying in another committee. The minutes of the February 16, 1995 meeting were distributed and approved.

Vice Chairman Mays opened the public hearing for **HB 2358**.

HB 2358: An Act concerning recreation commissions; requiring the election of the members thereof; relating to the powers and duties thereof; amending K.S.A. 12-1922, 12-1924 and 12-1925 and K.S.A. 1994 Supp. 12-1927, 12-1928 and 12-1935 and repealing the existing sections; also repealing K.S.A. 12-1929 to 12-1933, inclusive, and K.S.A. 1994 Supp. 12-1926.

The Vice Chairman called on Representative Gene Shore who spoke in favor of **HB 2358** which would require board members of Recreation Commissions to be elected as other boards with taxing authority are elected. He closed by saying that it makes sense to have a board which has public approval. (Attachment 1).

Vice Chairman Mays introduced Laura Kelly, Executive Director of Kansas Recreation and Parks Association who spoke in opposition to **HB 2358**. She said that the Kansas Recreation and Park Association supports the recreation commission statutes as they are currently written because they work for the majority of recreation commissions. She further stated the belief that the intent of **HB 2358** is to provide direct accountability of recreation commissions, particularly those with significant budgets, to the people through the election process. She stated that she knows of no other public entity that operates with the understanding that if the public doesn't like what you have to offer or how you are spending its money, you can be elected out of existence. She also believes this bill would create 170 new separate and distinct taxing districts. (Attachment 2).

Don Moler, General Counsel, League of Kansas Municipalities, spoke in opposition to **HB 2358**, because the League is opposed to the creation of new taxing districts in Kansas. He stated his belief that the current system is working and opposed efforts to create yet more independent taxing entities. (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT, Room 521-S Statehouse, at 1:30 p.m. on February 21, 1995.

Since there was no additional testimony for this bill, Vice Chairman Mays closed the public hearing for **HB 2358**.

The Committee was asked to turn its attention to **HB 2393**.

HB 2393: County treasurer, commencement of term of office.

The Vice Chairman welcomed Representative Doug Spangler who spoke in favor of **HB 2393**. He apologized for speaking without written testimony, but had not had time to get it prepared. He said that he was following through on the concern of a constituent who was unable to attend the hearing. After doing some research, he said that he learned that the constituent's alleged concern is state law and that it is a policy which causes the election of a city official and does not replace that official for one year and 74 days after the election occurs. Representative Spangler believes it is a serious policy matter, and line 16 of the bill basically changes the commencement of office of City Treasurer from the second Tuesday in October of the election year rather than the way every other elected office is treated--that being the second Monday in January of 1997. He questioned if we should have a statute in effect which allows public vote when we tell citizens their right to vote is important and then wait one year and conceivably one year and 74 days before we replace the loser of the election. He closed by saying that he thinks it is only fair that commencement of the County Treasurer's office should run concurrently with other elected offices.

Vice Chairman Mays introduced Anne Spiess, Director of Legislation for the Kansas Association of Counties, who spoke in behalf of the County Treasurers' Association in opposition to **HB 2393**. She had two primary concerns: 1) A new treasurer would be handling millions of dollars with very little preparatory time before assuming the duties of the office. She said that under the current law, the treasurer has time to learn the applications of the office. 2) The current treasurers in office were elected to a four year term, but if this bill were to become law, they would be shorted on the term by 10 months. (Attachment 4).

The Vice Chairman welcomed Jo Ann Hamilton, Osage County Treasurer and President of the Kansas County Treasurers' Association who also opposed **HB 2393**. (Attachment 5).

Written Testimony only was distributed for Mary P. Ladesic, County Treasurer, Wyandotte County, Kansas City, Kansas, which said that due to the current bill's far reaching implications, she respectfully requested the Committee to oppose this measure. She offered the following four reasons: 1) County fiscal year is statutorily mandated for November 1 - October 31; 2) January is the peak time of the year for collections and distributions; 3) New County Clerk and County Treasurer starting same term at same time; 4) Smaller counties do not have a large permanent staff. (Attachment 6).

There being no other conferees, Vice Chairman Mays closed the hearing for **HB 2393**.

The Vice Chairman opened the public hearing for **HB 2451**.

HB 2451: Roads and highways; federal aid; contracts entered into by secretary of transportation.

Vice Chairman Mays introduced Robert J. Watson, City Attorney of the City of Overland Park, Kansas, who was a proponent of **HB 2451** because he said that if enacted by the Legislature, it would prohibit the Kansas Department of Transportation from transferring its liability to cities and counties in contracts involving state highway connecting link work and street and bridge work involving federal pass-through funds. He said that it would further result in each party being responsible for its own actions. Robert Watson then introduced Jane Neff-Brain, Senior Assistant Attorney. (Attachment 7).

The Vice Chairman next called on Mike Rees, who presented written testimony by the Kansas Department of Transportation who was in opposition to **HB 2451**. He explained in detail the legal relationship referred to an agency, and that he thought that the impetus for **HB 2451** was a project undertaken by the Department for the reconstruction of I-35 and 75th Street in Johnson County. He further stated that this bill will most probably lead to more and more complex agreements driven not so much by a desire to complete the work, but by the need to limit liabilities. He said that contract administration, up to now undertaken by engineers and administrators, will likely become the province of lawyers seeking to protect against, or shift, liabilities. This, he said, could cause a proven and reasonably efficient system to become subject to intricacies and nuances of legal draftsmanship by members of the legal profession. (Attachment 8).

There being no additional testimony, Chairman Glasscock closed the public hearing for **HB 2451**.

Chairman Glasscock asked the Committee members to direct their attention to **HB 2192**.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT, Room 521-S Statehouse, at 1:30 p.m. on February 21, 1995.

HB 2192: Special district, creation or enlargement, consideration by board of county commissioners.

Theresa Kiernan reviewed this bill for the Committee. She said that it gives the county 30 days instead of 7 to make a decision whether to create a benefit district as defined by law. It also shifts responsibility from the Board of County Commissioners to allow consideration of any testimony offered at the public hearing.

Representative Tomlinson moved that **HB 2192** be passed out favorably. Representative Feuerborn seconded. Discussion followed.

Representative Sloan asked for clarification on the language in lines 8 and 9. His concern was that the language was limited, but Theresa Kiernan explained that the language was not limiting.

Representative Powers asked for additional clarification, and Mike Heim summarized the change by saying that basically counties testified that the current law was causing problems because when they were considering the alteration of boundaries in one of these benefit districts which is defined on page 1 of the bill as current law, they had to consider those factors, but sometimes they had difficulty getting information that only the city had, so wanted to circumvent this problem.

Representative Sloan moved that **HB 2192** be amended to clarify in lines 8 and 9 that this is not an exclusive list or any way limiting. Representative Toplikar seconded. Motion passed.

Representative Tomlinson's motion was voted on to move **HB 2192** out as amended. Motion passed.

Since Chairman Glasscock had finished his testimony in another committee, he opened hearing on **HB 2356**.

HB 2356: Township fire departments, tax levy

Theresa Kiernan explained that Representative Dawson and Senator Moran had asked for **HB 2356** because in Ellis County they have outgrown the description in County/Township, so this bill authorizes any township to join with the county and the city to form a fire department. It also increases the mill levy authority from 1 to 5 mills.

Since there was no other testimony, the Chairman announced the opening and closing of the hearing on **HB 2356**.

The Chairman asked Jim Kaup, City of Topeka, if he had done any research since the Committee meeting yesterday. He said that he had looked at 4 bills that he thought were most relevant and had found **HB 2496** on its own merit that he was requesting the statutory authority not be repealed. He said this statute has to do with parking garages and is the only statute he knows of that has GO bond authority, so would like to keep it. He also said the city of Topeka has private authorship on this since the 1940's.

Representative Tomlinson moved that **HB 2483** be passed out favorably. Representative Powers seconded. Motion passed.

Representative Tomlinson moved that **HB 2487**, which was bounced back this morning, favorable for passage. Representative Sloan seconded. Motion passed.

Representative Tomlinson moved **HB 2488** favorable for passage. Representative Powers seconded. Motion passed.

Representative Tomlinson moved **HB 2489** favorable for passage. Representative Sloan seconded. Motion passed.

Representative Tomlinson moved **HB 2490** favorable for passage. Representative Powers seconded. Motion passed.

Representative Tomlinson moved **HB 2491** favorable for passage. Representative Sloan seconded. Motion passed.

Representative Tomlinson moved **HB 2492**, which was bounced back this morning, favorable for passage. Representative Powers seconded. Motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT, Room 521-S Statehouse, at 1:30 p.m. on February 21, 1995.

Representative Tomlinson moved **HB 2493** favorable for passage. Representative Sloan seconded. Motion passed.

Representative Tomlinson moved **HB 2494** favorable for passage. Representative Powers seconded. Motion passed.

Representative Tomlinson moved **HB 2495** favorable for passage. Representative Sloan seconded. Motion passed.

Representative Tomlinson moved **HB 2497** favorable for passage. Representative Powers seconded. Motion passed.

Representative Tomlinson moved **HB 2498** favorable for passage. Representative Sloan seconded. Motion passed.

Representative Tomlinson moved **HB 2526** favorable for passage. Representative Powers seconded. Motion passed.

Representative Tomlinson moved **HB 2496** favorable for passage. Representative Sloan seconded.

The Chairman asked for discussion, and Representative Tomlinson explained that since they can do anything they choose in home rule and since this was the only bill that was questioned, he believed it was in the city of Topeka's best interest to move this bill out.

Representative Tomlinson's motion for **HB 2496** was voted and passed.

The meeting adjourned at 3:25 p.m.

The next meeting is scheduled for February 22, 1995.

LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: TUESDAY, FEBRUARY 21, 1995

NAME	REPRESENTING
Dotty McDonald	Cowley County TREASURER
Nancy Weeks	HASKELL COUNTY TREASURER
Nancy Hempen	Douglas County Treasurer
Eileen King	Riley County Treasurer
Nancy Burns	Wyandotte Commissioner
Lynn Scarrow	Jewell County Treasurer
Donna Delet	Polk Co Treasurer
Sary Watson	Jugo Co. Treasurer
MIKE BILLINGER	ELLIS CO. TREASURER
LAURA KELLY	KS RECREATION + PARK ASSN
Dollie Clark	N/A
Brenda Becker	McPherson Co Treas
NORM WILKES	KASB
Dorothy Hunter	FORD Co. TREASURER
Hazel Krayman	Cherokee County Treasurer
Pat Robertson	CK Co. Treasurer
Colmyn (Name) (Signature)	Osage Co Treas / President KS CO TREAS ASSOC
Paul (Name) (Signature)	KAC

EUGENE L. SHORE
 REPRESENTATIVE, 124TH DISTRICT
 GRANT, W. HASKELL, MORTON,
 STANTON AND STEVENS COUNTIES

ROOM 446-N, CAPITOL BLDG
 TOPEKA, KANSAS 66612-1504
 (913) 296-7677
 FAX (913) 296-1154



TOPEKA

HOUSE OF
 REPRESENTATIVES

HB 2358
 by
 Representative Shore

COMMITTEE ASSIGNMENTS
 VICE-CHAIRMAN EDUCATION
 MEMBER TAXATION
 MEMBER TRANSPORTATION

HB 2358 would require board members of Recreation Commissions to be elected as other boards with taxing authority are elected.

Currently, board members are appointed by the sponsoring agency, either a school board or a city. Truthfully, after the initially appointed board, the members and the board are pretty much self perpetuating.

People in my district and across the state feel they should have a voice and a vote on a board that spends the amount of money recreation boards spend. Even in small communities in my district, some commissions spend over \$500,000 on an annual basis. If you look at some of the larger counties, very large dollar amounts are spent with no voter oversight.

Recreation commissions also are allowed to buy real estate with tax money. I feel it is important for boards which buy real property with tax money to be elected and not appointed.

This bill in no way is meant to limit the activity or ability of Recreation Commissions to perform or to provide recreation for their communities. Most of the programs are very effective and cost conscious. It just makes sense to me to have a board which has public approval.

6788 E RD 24
 JOHNSON, KANSAS 67855
 (316) 492-2449
 (316) 492-2277
 FAX (316) 492-1520

House Local Government
 2-21-95
 Attachment 1

Kansas Recreation and Park Association



700 SW Jackson St Ste 705 • Topeka Kansas 66603-3758 • (913) 235-6533 (Phone) • (913) 235-6655 (Fax)

TESTIMONY BEFORE THE
KANSAS HOUSE OF REPRESENTATIVES
LOCAL GOVERNMENT COMMITTEE
TUESDAY, FEBRUARY 21, 1995
RE: HB 2358

Chair Glasscock, Members of the Committee: I am Laura Kelly, Executive Director of the Kansas Recreation and Park Association. I represent the 170 recreation commissions across the state of Kansas. I appreciate the opportunity to testify before you today regarding HB 2358 which would amend recreation commission statutes to elect commissioners rather than have them appointed by the city, school district or both.

The Kansas Recreation and Park Association supports the recreation commission statutes as they are currently written primarily because they work for the vast majority of recreation commissions. Recreation commissions have been established by vote of the people to provide program services for communities using facilities provided by the city and/or school district. This arrangement encourages cooperation among the governmental units, discouraging duplication and competition.

We believe that the intent of HB 2358 is to provide direct accountability of recreation commissions, particularly those with significant budgets, to the people through the election process. Most recreation commissions have very modest budgets. In a survey conducted in 1993, (74 responses) 88% (65) of the recreation commissions operated with budgets of less than \$500,000. 58% (43) reported budgets of less than \$100,000. These amounts include not only tax dollars but fee generated revenues as well. Only 4 commissions (.05%) reported budgets greater than \$1,000,000.

It is our contention that the current recreation commission statutes already provide accountability in the following ways:

- *first and foremost, the public must elect to tax themselves to provide organized recreation services.
- *the initial levy (through the city or school district) can be for no more than 1 mill (excluding employee benefits and liability insurance.)
- *subsequent requests for mill levy increases must be approved by the school district or the city.
- *mill levies can be increased no more than one mill per year
- *there is a cap of 4 mills on recreation commissions' general funds
- *authorized recreation commission levies may be reduced by vote of the public
- *recreation commissions can be voted out of existence any time after their 3rd year of operation

We know of no other public entity that operates with the understanding that if the public doesn't like what you have to offer or how you are spending its money, you can be elected out of existence.

HB2358 would not significantly add to that accountability but would create 170 new separate and distinct taxing districts.

Thank you for the opportunity to appear before you today.

House Local Government
2-21-95
Attachment 2

President
Sid Stevenson PhD CLP
Manhattan

President-elect
Paul Keller CLP
Great Bend

Past President
Dave Graversen CLP
Topeka

Secretary
Ernie Shaw CLP
Lawrence

Treasurer
Tony Cosby
Overland Park

Member at Large
Marc Trent CLP
Hutchinson

Member at Large
Janice Jewett
Pittsburg

Executive Director
Laura Kelly





**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

LEGISLATIVE TESTIMONY

TO: House Local Government Committee

FROM: Don Moler, General Counsel

RE: Opposition to HB 2358

DATE: February 21, 1995

First I would like to thank the members of the committee for allowing the League to appear before you today in opposition to HB 2358. According to the League publication **Local Governments in Kansas--An Inventory of Governmental Taxing Units, 1991 edition**, Kansas has a lot of governmental units--some 4,025. In addition to the state government, there are 2,146 general purpose local units and 1,879 limited purpose school and special districts with taxing powers. These totals exclude many special districts that do not have property tax powers. The average number of governmental units per state is 1,663 according to a 1987 survey by the Bureau of the Census. Only the states of Illinois, Pennsylvania, Texas and California, in that rank order, have more local governments than Kansas. However, if special districts without property tax powers are excluded from the Bureau's figures, and only taxing units are compared, Kansas ranks 2nd highest in the nation, exceeded only by Illinois.

For many years the League has opposed the creation of new taxing districts in Kansas. As the above numbers indicate, we already have more taxing units of government than 48 other states. In the **1994-1995 Statement of Municipal Policy** of the League of Kansas Municipalities, Section I-6(a) reads in pertinent part: "Existing, general purpose local governments are the logical and democratic units for the provision of local government services." We believe the current system is working and oppose efforts to create yet more independent taxing entities.

*House Local Government
2-21-95
Attachment 3*



"Service to County Government"

215 S.E. 8th
Topeka, Kansas 66603-3906
(913) 233-2271
FAX (913) 233-4830

EXECUTIVE BOARD

President
Barbara Wood
Bourbon County Clerk
210 S. National
Fort Scott, KS 66701
(316) 223-3800, ext. 54

Vice-President
Dudley Feuerborn
Anderson County Commissioner
100 E. 4th
Garnett, KS 66032
(913) 448-5411

Past President
Murray Nolte
Johnson County Commissioner
9021 W. 65th Dr.
Merriam, KS 66202
(913) 432-3784

Nancy Hempen
Douglas County Treasurer
110 Massachusetts
Lawrence, KS 66044
(913) 832-5275

Roy Patton
Harvey County Director of Special Projects
P.O. Box 687
Newton, KS 67114
(316) 283-1890

DIRECTORS

Mary Bolton
Rice County Commissioner
101 W. Commercial
Lyons, KS 67554
(316) 257-2629

Ethel Evans
Grant County Commissioner
108 S. Glenn
Ulysses, KS 67880
(316) 356-4678

Frank Hempen
Douglas County Director of
Public Works
1242 Massachusetts
Lawrence, KS 66044
(913) 832-5293

Mary Ann Holsapple
Nemaha County Register of Deeds
607 Nemaha
Seneca, KS 66538
(913) 336-2120

Eldon Hoyle
Geary County Commissioner
106 Bunker Hill Road
Junction City, KS 66441
(913) 762-4748

William Leach
Cheyenne County Commissioner
HC1 Box 26
Bird City, KS 67731
(913) 734-2604

NACo Representative
Edgar
Edwards County Commissioner
312 Massachusetts
Kinsley, KS 67547
(316) 995-3973

Sam Schmidt
Riley County Appraiser
110 Courthouse Plaza
Manhattan, KS 66502
(913) 537-6310

Darrell Wilson
Saline County Sheriff
300 W. Ash
Salina, KS 67401
(913) 826-6500

Executive Director
John T. Torbert, CAE

TO: House Local Government Committee
Representative Kent Glasscock, Chair

FROM: Anne Spiess
Director of Legislation

DATE: February 21, 1995

RE: HB 2393

Thank you Mr. Chairman and House Local Government Committee members for the opportunity to testify on HB 2393.

The Kansas Association of Counties (KAC), here on behalf of the Kansas County Treasurers' Association, has the following concerns with HB 2393 if enacted:

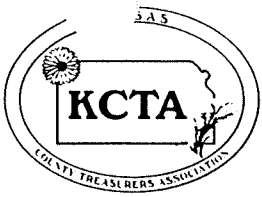
By the time a newly elected county treasurer takes office in January, the outgoing treasurer has done 50% to 65% of the tax collection since November 1st, when the tax year becomes effective. However, the distribution would be the responsibility of the new treasurer. That means the new treasurer would be handling millions of dollars with very little preparatory time before assuming the duties of the office. It would be similar to a county clerk coming into office with one day to get ready for a general election. Under current law, the treasurer has time to learn the applications of the office.

Another concern has to do with the treasurers currently in office. They were elected to a four year term but if this bill were to become law, they would be shorted on the term by 10 months. County treasurers who are retiring this term would be greatly affected by losing that 10 months. Some might have to run for another term to reach 62 years of age and then have to retire mid-term. It could also affect their KPERs, health insurance, and social security.

House Local Government
2-21-95
Attachment 4

There was a survey done of the 105 county treasurers with 69 responses. Nine answered that there would be no problem if the term was not shortened. 60 were against the bill.

We thank the Committee for their consideration and look forward to working with you on this issue.



KANSAS COUNTY TREASURERS' ASSOCIATION

OFFICERS:

JoANN HAMILTON
OSAGE COUNTY
President

KEVIN JONES
OTTAWA COUNTY
Vice President

NANCY WEEKS
HASKELL COUNTY
Secretary

EILEEN KING
RILEY COUNTY
Treasurer

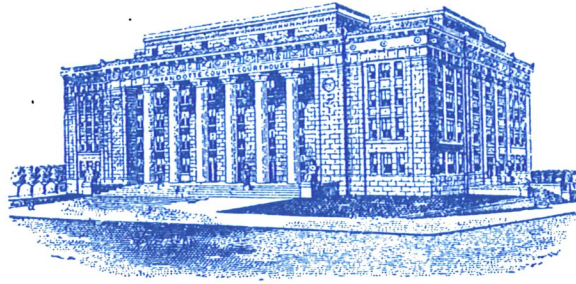
February 21, 1995

I am Jo Ann Hamilton, Osage County Treasurer and
President of the Kansas County Treasurer's Association.

The concerns presented to you today on HB 2393 are shared by
a majority of the County Treasurers across the State. On
behalf of this Association, we oppose HB 2393 and ask the
Committee consideration in not moving this bill out of
Committee.

We have Treasurers present and would be happy to answer any
questions you have.

House Local Government
2-21-95
Attachment 5



573-2823

OFFICE OF
MARY P. LADESIC
COUNTY TREASURER
WYANDOTTE COUNTY COURT HOUSE
KANSAS CITY, KANSAS 66101



February 21, 1995

RE: HB 2393, An act concerning the commencement of the term of office for the County Treasurer

Distinguished Members of the Kansas House Committee on Local Government:

As elected officials, you are all keenly aware of the need for continuity and experience during periods of transition within office. While attempting to balance the terms of elected county officials, **HB 2393** may seriously erode a county's ability for sound fiscal management. Currently, as you know, the County Treasurer does not take office with other county elected officials on the second Monday in January. Rather, County Treasurers are sworn in on the second Tuesday in October, some ten (10) months later than all others due to the different fiscal year cycles of the various taxing entities.

This current bill's implications are far reaching, therefore I respectfully request that you DO NOT support this measure. I offer the following reasons for your consideration.

1. County fiscal year is statutorily mandated for November 1 - October 31

By law, all county treasuries must be audited by an independent, outside accounting firm. Audits are performed in October due to the close of the fiscal year of the county. By changing the Treasurer's term to end in January following the preceding election year, an additional mid-term audit would be required, at the tax-payer's expense, if the incumbent were not returning. In the event that an incumbent is re-elected, an audit would still be required to insure an accurate accounting from one term to another.

2. January is the peak time of the year for collections and distributions

Historically, over 60% of any of a county's fiscal year's collections and distributions are made in January. Because of this staggering amount of work during this period, any newly elected County Treasurer would be overwhelmed. By allowing the terms of the County Treasurer to remain the same, heavy work periods will be handled with experience rather than chaos.

House Local Government
2-21-95
Attachment 6

Kansas House Committee on Local Government
February 21, 1995
Page Two

3. New County Clerk and County Treasurer starting same term at same time


Because of the statutorily required close working relationship between these two offices, having both offices filled by new officials at the same time would cause much confusion, especially during peak periods for both offices.

4. Smaller counties do not have a large permanent staff

When a transition is made from an incumbent to a new County Treasurer, the offices of the smaller counties in Kansas (which are by far the majority) cannot afford to adjust to an inexperienced new County Treasurer.

Although the intention of making all terms the same for county officials is somewhat admirable, **SB 2393** would cause much more harm and potential for serious revenue loss if passed; I urge you to defeat this measure. If you like any additional information on this matter or would like to meet personally, please contact me at 573-2823. Thank you for your attention.

Sincerely,



Mary P. Ladesic
Wyandotte County Treasurer

MPL/tjl

City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/381-5252 • FAX 913/381-9387
PROCOMM 913/381-0558

STATEMENT IN SUPPORT OF HOUSE BILL NO. 2451

TO: Representative Kent Glasscock, Chairman, and Members
House Local Government Committee
Room 522 South
State Capitol
Topeka, KS 66612

DATE: February 21, 1995

RE: House Bill No. 2451 -- KDOT as Agent

Ladies and Gentlemen:

Since at least 1958, when the City of Overland Park, or any city in Kansas, has entered into an agreement with the Kansas Department of Transportation whereby a state highway that runs through the City (connecting link), such as I-35, I-435 and I-635, is constructed or reconstructed or when federal pass-through funds are used for the construction or reconstruction of a City street or bridge, the Secretary of Transportation requires that the following language be included in the agreement it enters with the City:

"That the said project when submitted and approved shall be undertaken, prosecuted and completed for and on behalf of the said City by the Secretary acting in all things as its agent and said City hereby constitutes and appoints said Secretary as its agent, and all acts, proceedings, matters and things hereinafter done by the Secretary in connection therewith are hereby by said City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the said city acting in its own individual corporate capacity instead of by its agent." [Emphasis added.]

To give you an idea of the practical effect on cities of the inclusion of such language, let us cite to you a few examples of the language in action.

OVERLAND PARK AND MERRIAM

In 1989, the City of Overland Park and the City of Merriam were sued in the case of Edward Kraemer & Sons, Inc. v. City of Overland Park, Kansas and City of Merriam, Kansas, Johnson County District Court Case No. 91C5677. In that case, the plaintiff contractor on the I-35 and 75th St. improvement alleged that the two cities, through their agent the Secretary of Transportation, delayed issuing the Notice to Proceed on the project in a timely manner and thereby damaged the plaintiff by preventing it from receiving incentive payments available for early completion.

Neither city was involved in any respect with the design of the project, the letting of the construction contract for bid, the awarding of the contract, the administration of the contract or supervision of the contractor during the course of the project. The Secretary of Transportation was not sued. Overland Park made demand on the Secretary to enter the case and to defend it, however, the Secretary refused to do so, although he did agree to cooperate with the City in the defense of the suit and to pay all judgments rendered against both cities. Judgment in the amount of \$726,860 plus post-judgment interest thereon and all costs was entered against the two cities. The case was appealed with the outcome handed down by the Kansas Court of Appeals in favor of Kraemer. See Edward Kraemer & Sons, Inc. v. City of Overland Park, Kansas and City of Merriam, Kansas, 19 Kan. App. 2nd. 1087, 880 P.2nd. 789 (1994). Overland Park met its \$50,000 deductible prior to its insurance carrier commencing payment of legal fees. KDOT will not reimburse the City for this expense, although it has paid the judgment.

In May of 1993, a second Kraemer case, Edward Kraemer & Sons, Inc. v. City of Overland Park and Kansas Department of Transportation, Johnson County District Court Case No. 93C04878, was filed against the City of Overland Park for work done by Kraemer at the intersection of I-35 and I-635. Claim was made upon the City based on the alleged agency language of its agreement with KDOT and the case is now pending. Legal fees continue to mount against the City.

TOPEKA

The City of Topeka was required to pay a \$140,000 arbitration award that resulted against KDOT on a project in that city with which the City of Topeka had no involvement.

KANSAS CITY

From 1977 through 1983, various plaintiffs filed four lawsuits against the City of Kansas City, Kansas, and the state of Kansas for damages allegedly sustained involving four different projects

which were under the direct control of the Kansas Department of Transportation.

In National Research Foundation vs. The City of Kansas City, Kansas et al, No. 77C3438, Wyandotte County District Court, the plaintiffs alleged damages from surface water flowing from the construction of Highway I-635 near State Avenue. In Dixon v. Kansas Department of Transportation et al, No. 81C2678, Wyandotte County District Court, plaintiffs alleged damages from inverse condemnation when access to their property was restricted due to construction of the Washington Boulevard Improvement Project. In Colwell vs. Secretary of Transportation et al, No. 81C3474, Wyandotte County District Court, the plaintiff alleged damages from an accident caused by improper design and construction of the street and street light signalization at the Highway I-635 access ramp at 39th Street and Kansas Avenue. In Deason v. City of Kansas City, KS et al, No. 83C2042, plaintiffs alleged damages from the blasting activities of the contractor in the construction of Highway I-435.

Notwithstanding the State's retention of total direction and control over the project, in each Kansas City, Kansas lawsuit cited above, the State attempted to argue that it should be dismissed because it was merely an "agent" of the City and that all of its actions were "ratified" by the City, as principal. Fortunately, in each of the lawsuits, the District Court Judge recognized that the State's "agency" argument was specious and refused to dismiss the State from the case.

Overland Park is not attempting to shirk responsibility for its own actions and, in fact, is more than willing, to take responsibility for its own actions. But it objects vehemently to taking responsibility for the actions of a party over which it has absolutely no control. The definition of "agency" as contained in the Restatement (Second) of Agency is "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and be *subject to his control*". [Emphasis by italic added.] If a city is to garner the benefit of State or Federal money for street improvement projects, it is required to sign contracts declaring itself the principal and the Secretary of Transportation its agent for whose actions it must contractually take responsibility, although it has no control over the Secretary, his decisions, actions or failures to act.

Complaints regarding the agency language, as well as other exactions in the standard KDOT agreement, have been repeatedly lodged by Overland Park and other Kansas cities. In December of 1991, City Attorneys from Lenexa, Olathe, Overland Park, Wichita, Kansas City, Kansas, Topeka and from the League of Municipalities met with then Secretary of Transportation, Mike Johnston and KDOT legal staff members to discuss the agency language in the

standard agreement. We received some assurances that the process would be reviewed and that KDOT would attempt to be fair in its dealings with cities.

Subsequent agreements with the City drafted by KDOT in 1992 and 1993 contained the same objectionable language, and complaints by the Overland Park Law and Public Works departments led KDOT to request a meeting with the City in January of 1994.

At that meeting we reiterated our objections and from that meeting has come the following guidelines that KDOT under Mr. Johnson began utilizing in drafting City\State agreements:

Agency language will be used in agreements regarding projects where the local entity initiates a request to the Department for funding and/or assistance for a given project. These projects are not improvements to the State Highway System and would not be developed or built by the Department. (City streets and bridges - Type A Project)

In projects initiated by the Department for improvement or construction of Department roadways within a city, where the city is a nominal party in interest, no agency relationship exists and the agreement should so reflect. (Interstates - Type B Project)

Some gain has been made, as both Kraemer cases dealt with Type B projects for which KDOT presumably would not demand agency language, if those agreements were entered today. All of the same problems still exist with respect to Type A projects. KDOT may administer the project, let the bids, issue the notice to proceed, conduct inspections and hold primary control over every aspect of the project, yet because it is a city street or bridge project, the agency language will continue to be inserted.

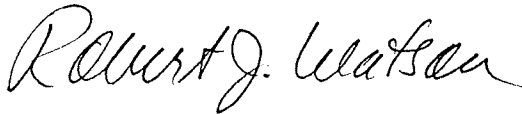
Negotiations with KDOT have proved less than satisfactory, and with changing administrations, gains in one year have dissolved in the next, thus necessitating legislative action. Most cities back down in the face of KDOT's demands that the agency language be included in the agreements because KDOT historically has made the demand on what we perceive to be a "take it or leave it" basis. Overland Park, for example, has never gone to a shown down with KDOT over the issue. The governing body ultimately gives in to the demand for fear of losing the funding altogether, although they consider the language to be extortionate.

KDOT has argued that it is required by the Federal Highway Administration to insert the agency language. Yet Overland Park city attorneys have contacted the regional counsel for the Federal Highway Department who has stated that from the federal perspective, the State is always the responsible party when

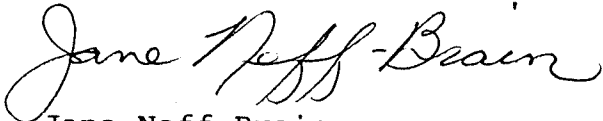
federal funds are involved. She is aware of no federal requirement with regard to state/city relationships. It is her opinion that the agency language utilized by the State is its attempt to contract out of its liability. It is not federally-required, and in fact, the federal government will place responsibility with the State and not with local entities should problems arise on federally-funded projects.

House Bill No. 2451, if enacted by the Legislature, would prohibit KDOT from transferring its liability to cities and counties in contracts involving state highway connecting link work and street and bridge work involving federal pass-through funds and would result in each party being responsibly for its own actions. The City of Overland Park urges your favorable consideration of the same.

Yours very truly,



Robert J. Watson
City Attorney



Jane Neff-Brain
Senior Assistant City Attorney

KANSAS DEPARTMENT OF TRANSPORTATION

E. Dean Carlson
Secretary of Transportation

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
TTY (913) 296-3585
FAX (913) 296-1095

Bill Graves
Governor of Kansas

WRITTEN TESTIMONY
By the Kansas Department of Transportation

HOUSE BILL 2451
BEFORE THE HOUSE COMMITTEE ON LOCAL GOVERNMENT
February 21, 1995

There is nothing new or unique about the legal relationship referred to as agency. It has been part of American jurisprudence since early common law. Regarding the status it is said:

An agency has been defined as a contract, either express or implied, by which one of the parties confides to the other the management of some business to be transacted in his name, or on his account, by which that other assumes to do the business and to render an account of it.

The fundamental idea of agency has its conception as something lawful that a person may do and a delegation by such person to another of the power lawfully to do that thing. As a result, one of the prime elements of an agency relationship is the existence of some degree of control by the principal over the conduct and activities of the agent.

The Department has historically utilized the agency relationship in its dealings with other units of government. In principle it is appropriate and equitable that it has done so.

It is believed that the impetus for HB 2451 was a project undertaken by the Department for the reconstruction of I-35 and 75th Street in Johnson County. The most significant work occurred on I-35. A portion of the mainline was reconstructed along with the 75th Street ramps. Work was also performed on 75th Street to

House Local Government
2-21-95
Attachment 8

HOUSE BILL 2451

Page 2

permit its intersection with the newly aligned I-35. The 75th Street reconstruction occurred in both Merriam and Overland Park.

The "project" was governed by City-State agreements that contained agency language. To have used this language for all the work was an error. Taken in isolation the use of the agency language would have been appropriate for the 75th Street work. The I-35 project, however, was a KDOT project and it should have been prosecuted in the Department's name alone.

In the contractor instigated litigation that ensued over this project the cities, as principals in the agreements, were named as defendants. The Department's attempts to assume the defense were defeated due to its agency status. Nevertheless, KDOT was heavily involved in the lawsuit. Time does not permit an item by item account of the efforts made by KDOT but at no time did the Department attempt or suggest that the defendant cities should assume the burden alone. After trial, a verdict of \$750,000 was entered against the cities. After an unsuccessful appeal the Department paid the judgment.

The aftermath of the I-35/75th Street brought legitimate complaint to the Department concerning its use of the agency provision. In response the Department undertook a critical self analysis of its contracting practices.

Prior to this review the Department had adopted the policy of utilizing agency language in all contracts with local governments where the work was to be performed within a city or in a county but off system. While this approach was legitimate in many instances in others it was not. The Department promised a review of this practice and adjustments where warranted.

Since 1992 if KDOT is involved in project, located within a city, paid for with state, or state controlled funds, where the road can be considered on system, the Department assumes full responsibility for the work. Conversely, if the project is city initiated, paid for by "pass through" funds and involves a city street or bridge, the Department considers itself the agent for the

HOUSE BILL 2451

Page 3

city and the agreements reflect this status. Agreements with local units of government since the revised policy are shown below:

AGREEMENTS CITY/STATE

<u>1992</u>	AGENCY:	FED.AID	LOCAL PART.	S.E.P.	OTHER
		40	15	2	3
	NON-AGENCY:	KDOT	KLINK 1R		
		49	23		
<u>1993</u>	AGENCY:	FED.AID	LOCAL PART.	S.E.P.	OTHER
		76	15	3	0
	NON-AGENCY:	KDOT	KLINK 1R		
		57	23		
<u>1994</u>	AGENCY:	FED.AID	LOCAL PART.	S.E.P.	OTHER
		69	16	0	3
	NON-AGENCY:	KDOT	KLINK 1R		
		32	24		

<u>TOTAL</u>	AGENCY:	FED.AID	LOCAL PART.	S.E.P.	OTHER
92-94		185	46	5	6
	NON-AGENCY:	KDOT	KLINK 1R		
		138	70		

The above establishes the significant change that has occurred. Where prior to 1992 agency language would most probably have been used in all agreements during the period 1992 through 1994 it was used in 242 out of 450. In each case where utilized it has been done so by individual assessment as to its propriety.

It is also necessary to reflect on the effect of the proposed legislation. Should H.B. 2451 be enacted a prohibition against use of the agency provision will result. However, some form of legal relationship will still be present. This relationship will presumably be determined by the individual agreements under which projects are undertaken. As of the present time City-State agreements are brief, relatively informal documents designed to secure required funding and allow the project work to commence. If the Department is to be considered a contracting party, in the same position as the city who requested the project, then the Department will in its own interest seek to draft contract provisions designed

HOUSE BILL 2451

Page 4

to limit its exposure. This will most probably lead to more and more complex agreements driven not so much by a desire to complete the work but by the need to limit liabilities. Contract administration, up to now undertaken by engineers and administrators, will likely become the province of lawyers seeking to protect against, or shift, liabilities. A proven and reasonably efficient system will become subject to intricacies and nuances of legal draftsmanship the members of the legal profession.