

Approved: Jan 26, 1995  
Date

## MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on January 25, 1995 in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Martin, Senator Bond, Senator Clark, Senator Feleciano, Jr., Senator Hardenburger, Senator Lee, Senator Ranson, Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department  
Chris Courtwright, Legislative Research Department  
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: Basil Covey, Kansas Retired Teachers Association  
Oscar Albrecht, National Association of Retired Federal Employees  
Craig Grant K-NEA  
Lorina Knoll, AARP and Salina Teachers  
Tom Young, Retired President--K-NEA  
Bettie Sue Schumway, Retired teachers-AARP-Ottawa  
Donna Travis, AARP-Wichita  
Helon King, Retired teachers Association--Wichita  
Scott Stone, General Counsel, KAPE  
Gilbert Green

Others attending: See attached list

### INTRODUCTION OF BILLS

Senator Bond moved to introduce a bill to repeal a local tax on mortgage companies, finance companies and others; it prohibits the levying of taxes for taxable year 1995 and thereafter; and also prohibits the county assessor from auditing or examining prior taxable years. The motion was seconded by Senator Hardenburger. The motion carried.

### SB 39--INCOME TAX ON RETIREMENT BENEFITS (Continued)

#### Opponents

Basil Covey, Kansas Retired Teachers Association, spoke in opposition to **SB 39**. (Attachment 1) He said he represented 20,000 retired teachers in Kansas. He said the average retirement pension under KPERS is \$6,406. There are 2,100 earlier retired teachers with pensions lower than the average. He said those crying discrimination do not see that private and public retirement pensions are not comparable.

Oscar Albrecht, Kansas Federation of National Association of Retired Federal Employees, said he spoke for 7,000 federal retirees. (Attachment 2) He opposes **SB 39** because of its unfairness and illegality. He said the private sector workers received many perks which those in government services did not receive. Where was the fairness then? Mr. Albrecht also questioned the legality of **SB 39** with the Attorney General Opinion No. 94-59. He mentioned particularly page 4, lines 10 through 16 provides for police and firemen to be exempt from taxation. He urged the committee to pass this bill unfavorably.

Staff answered a question from the committee stating all public pensions would be included in Section one and therefore would not be exempt.

Craig Grant, K-NEA, spoke in opposition to **SB 39**. (Attachment 3) Mr. Grant said the sponsor of the bill spoke of the fact that only 21% of the money involved would be coming from KPERS; however, this small amount represents 43,000 people. He said his concept of the 21% by number is large. He said a teacher

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S  
Statehouse, at 11:00 a.m. on January 25, 1995.

retiring after 28 years would have to make \$72 thousand per year when they were teaching to be eligible for a pension of \$3,000 per year when they retired.

Lorina C. Knoll, AARP and Salina teachers, asked the committee not to use the easy way of taxing pensions to fund the veterans tax refund. (Attachment 4) She said they also consider this double taxation.

Tom Young, Retired President--K-NEA, said the improvements in KPERs over the past few years have been appreciated. (Attachment 5) He made some suggestions which would assist KPERs and asked that health care be provided for the retirees if this bill is passed.

Bettie Sue Shumway, Retired Teachers--AARP--from Ottawa, urged the committee to avoid taxing people who are retired and living on pensions. (Attachment 6) She gave reasons for not taxing pensions and also made some observations regarding reducing taxes.

Senator Langworthy asked her if she represented AARP because she thought they stood for fair and equal taxes. Ms. Shumway said she was not speaking for private pensions. It is very hard to know what a private pension is and she did not know how the legislature could make changes in the private pensions. Senator Langworthy said she was just questioning if she was speaking for all members of AARP.

Donna Travis, AARP-Wichita, spoke of the increase in the number of older persons. (Attachment 7) She felt this new tax would be a breach of an informal contract with KPERs members. She said health care costs continue to increase and long term care costs are a continual worry for many elderly Kansans.

Helon King, Wichita Retired Teachers, said they were told when their money was put into the retirement fund, the pension returns would be tax free. (Attachment 8) Their income is fixed and planned. If it is absolutely necessary to impose a tax, it should be phased in on a gradual basis.

Scott Stone, Chief Counsel, Kansas Association of Public Employees, said state employees over the years have been led to believe they would receive little to no pay increases because their retirement benefits would be exempt from taxation. (Attachment 9) He felt that such a revocation of this exemption would be unconstitutional and he spoke of the Attorney General Opinion, 94-59, and also two Kansas Supreme Court decisions that state retirement systems create contracts between the state and its employees who are members of the system. He urged the committee to do the fair and right thing by not penalizing state employees with double taxation.

Senator Langworthy asked staff to clarify this for the committee. This will be done when the Revisor is present.

Gilbert Green, representing himself, said he opposed **SB 39**. When he worked for the public sector he was told that pensions would not be taxed. The earned income before the pension percentage was deducted was taxed and then put into the retirement fund. He said it is grossly unfair, especially if you make it retroactive, for those who have already paid taxes on the money. He asked the committee to report this bill out unfavorably.

The meeting adjourned at 12:00 noon.

The next meeting is scheduled for January 26, 1995.

# SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: Jan 25, 1995

NAME	REPRESENTING
<i>Jan Primm</i>	MYSELF
JAMES E DODD	NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES NARFE FEDERATION PRESIDENT (IC)
JOHN H + MADELINE ANDERSON	STATE LEGISLATIVE COMMITTEE
<i>Ronald P. Mason</i>	Retired Federal Employee
Roger W. BARR	NATIONAL ASSOC. OF RETIRED AND VETERAN RAILWAY EMPLOYEES
<i>Ed Wallekum</i>	Washington U
<i>Tom Johnson</i>	K-NEA-Retired
<i>Craig Grant</i>	K-NEA
<i>Betty Sue Shumway</i>	AARP RTA
<i>Dorance Garnet</i>	OART KNEA
<i>Anna L Travis</i>	AARP
<i>Belton D King</i>	Wichita Retired Teachers Assoc.
<i>Nona Stevens</i>	Wichita Retired Teachers Assoc.
<i>Janice Decker</i>	Wichita Retired Teachers Assoc.
<i>Kelly Jones</i>	KAPE
<i>Scott Stone</i>	KAPE
<i>Myrlene Kellen</i>	KAPE
<i>Louise C. Knoll</i>	AARP, Leg. Chrb. SARTA
<i>Donald L. Gladky Sr</i>	me & Goodyear retirees

# SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: Jan 25, 1995

NAME	REPRESENTING
Jack Hawn	KIPEERS
Meredith Williams	"
Charren Bell	AARP.
Lynn Drake	SR5
LARRY MARBLE	K-H-O
JAMES SHANNON	NATIONAL ASSOC OF RETIRED FEDERAL EMPLOYEES
Dorothy Green	Civil Service Retiree
Don Albert	NARFE
Don Brown	NARFE
Stewart McCoy	KSTA
Linda McGill	KSTA
William E. Richards	Ks Council of Chpts., TROA
Rail Coney	KRTA
Harold A. Waters	NARFE
Bice Syler	Kansas Farm Bureau
J A Todd	K577A
JERRY MARLATT	KSCFF



# Kansas Retired Teachers Association



"Altogether - We Can Make A Difference"  
1994-1995

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## Members of the Senate Assessment and Taxation Committee

My name is Basil Covey and I represent the Kansas Retired Teachers Association. There are 20,000 retired teachers in Kansas.

We oppose SB 39.

In 1993 the Legislative Research Department reported the average retirement pension for 43,119 members in KPERs state and local systems is \$6,406.

SB 39 exempts \$2,000 of the \$6,406 but taxes the \$4,406, a figure which is lower than the poverty level. There are 2,100 earlier retired teachers with pensions lower than the average.

Compared to private corporate and business pensions for which little is known by the public, KPERs' retirees have less in proportion for living expenses.

Public employees have their salary and benefits, if any, known by the public and that is as it should be. These groups, teachers, state workers, civil service workers and military people, gave up their privacy to earn exemption from taxation. It is an equal trade-off, lose privacy but gain exemption. On the other hand private workers gain privacy but are subject to taxation, again an equal trade-off.

Those who cry discrimination do not see that private and public retirement pensions are not comparable. We can say the game of basketball discriminates against short players, for tall players are in better position to score points.

If SB 39 is voted out we can only reflect what happened last year. The Senate voted 23 to 17 to eliminate the exemption, and the House voted 115 to 8 to retain the exemption. Eighty four House members in the 115 vote returned and 6 of the 8 vote returned. There are 36 new House members to ponder how they will vote.

*Senate Assessment + Tax  
Jan 25, 1995  
attach 1-1*

## APPOINTEE OFFICERS

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TESTIMONY ON SENATE BILL No. 39

Presented To  
Senate Committee On Assessment and Taxation  
Room 519-S, Capitol Building, January 25, 1995

My name is Oscar Albrecht. I am the Legislative Chairman for the Kansas Federation of NARFE (National Association Of Retired Federal Employees) Chapters. The Kansas Federation has 53 NARFE Chapters in Kansas with 7,000 federal retirees and survivors of federal retirees as members. In total, there are over 22,000 federal retirees and survivors residing in the state. This morning I am speaking for the 7,000 NARFE members; however, I am confident my statements also reflect the opinions of all government retirees and survivors, even those who are not members of our organization. Simply stated, we are opposed to S.B. 39 based mainly on two points--its unfairness and illegality.

Proponents of S.B 39 state that it would correct an unfairness existing in the present tax structure because both government and private sector retirees' income would be taxed. We wish to ask: If fairness in retirement is the concern, where was the concern for fairness for public workers during their working years? Most of my working years were in government service at the federal, state and county levels of government. During those years I was constantly aware of the extra benefits received by workers in the private sector. These additional benefits were usually referred to as "perqs." For example, many private companies paid all the employee's share for the company's retirement plan. Health insurance premiums and dental insurance were often provided at no cost. I know of some employees who received free eye examinations and glasses. Uniforms, if needed, were often provided at no cost. There was free use of company vehicles, tools and equipment. Even work shoes were furnished by some companies. Similar unaccountable, non-taxable and non-trackable "perqs" can be cited for the self-employed workers. These kinds of benefits were not and are not available to government employees because they are constantly under scrutiny by the tax-paying public.

*Senate Assessment + Tax  
January 25, 1995  
attach 2-1*

Dr. Shirley King speaking at the Conference on Aging said, "A look at the quality of life of America's elderly might be the gauge of the way of life in general in this country."

A recent survey reported in a book, "Retirement Migration in America", ranks Kansas 33rd with 0.9% with the top state, Florida, with 23.8%. Missouri ranks 17th, Colorado 22nd, Oklahoma 26th and Nebraska lower than Kansas at 41st. As you can see, Kansas is not exactly a haven for retirees. What affect adding more taxes will do is anyone's guess.

Retired teachers have never rated high in retirement pensions. Health problems increase with age, and with loss of revenue reduced by taxes, both the Kansas economy and individual health suffers.

If SB 39 passes, it may be the beginning for further reduction of the exemption. Like a crack in the dike, it gets worse. The camel driver in the desert soon learned not to let the camel stick his head in the tent as protection against severe sand storms. The camel next shoved his first hump in, then he wanted the second hump in--which tore down the tent and all lost the shelter.

We oppose SB 39, it is privacy versus exemption and ~~compassion~~ versus the political process.

Looming in the background is Gov. Graves' expression that the exemption policy should remain the same.

Sincerely,



Basil Covey  
Chairman  
Legislative Committee

January 25, 1995

Fringe benefits to workers in the private sector are usually estimated at 45 to 50 percent of the base salary-- much higher than in the public sector. A recent Congressional Budget Office (CBO) study showed that federal government workers lagged behind private sector employees in health and life insurance benefits, in paid time-off for vacations, in sick leave and in opportunities to participate in deferred compensation and savings/thrift plans. At the hearing on this Bill yesterday it was stated by one proponent yesterday that federal, state, local and military retirees are among the highest paid retirees in the country. That is not true! A recent BLS (Bureau of Labor Statistics) report showed that federal retirees were nearly \$2,000 below the national average retirement income on an annual basis. In 1993, federal retirees residing in Kansas had an average monthly annuity of \$1,493 before taxes (federal retirees pay federal income tax on the full amount of their annuities) and a median income of \$1,368. Survivors had an average monthly income of \$731 with a median income of \$624 per month. If fairness is the intent, as proponents of this Bill suggest, then the inequities in benefits received by public and private sector workers while they were working should be taken into consideration.

The second point of concern we have about S.B. 39 is its legality. During last year's legislative session the Attorney General, in response to a request from a legislator, issued Attorney General Opinion No. 94-59. That Opinion reviewed the constitutionality of Senate Bill NO. 623, which in effect proposed to tax the retirement benefits of government retirees by removing the deduction from the federal adjusted gross income amount. The Attorney General's Opinion in that review was that S.B. 623 "impairs a contractual right of those members having a vested interest in the state retirement system without accompaniment of an offsetting or counterbalancing advantage, the legislation proposed in S.B. 623 violates section 10 of article 1 of the United States Constitution and K.S.A. 74-4923." At this point I would note that S.B. 39 has similar flaws. The language on page 4, lines 10 through 16 provide for annuities, pensions, etc. paid to policemen, firemen, would continue to be exempt from taxation.



Similar exemptions appear on page 10, Section 7, for judges, on page 12, Section 9 for highway patrolmen and on page 13, Section 11 for special members of KPERS retirement system. I believe this discrimination would be illegal because of the United States Supreme Court decision in the 1989 Davis v. Michigan case in which the Court ruled that all public sector retirees must be taxed equally. If the current Legislature imposes the tax proposed by S.B. 39, is it developing another situation similar to what happened recently from taxing the military retirees' pay? Will the taxpayers again be asked to pay the interest on the past due refunds after the Court rules the tax is illegal?

All people have a desire for fairness and equity, especially those who have less than others. But fairness and equity are ever elusive goals and never fully achieved. One of the proponents yesterday suggested that the KPERS retirement pay should be increased. While this would be advantageous to state retirees, it would be of no help to those who are not under KPERS, such as federal and military retirees. We know the Legislature is constantly faced with demands by special interest groups for cutting taxes and demands for more funds for social programs. The usual scenario facing the Legislature annually can be described as a "Rob Peter to pay Paul or George" scenario. But given the complexities associated with S.B. 39, we ask that greater inequities not be created by endorsing this Bill. The Kansas Federation of NARFE Chapters urges that this Committee recommend non-adoption. Thank you for this opportunity to express the views of NARFE on S.B. 39.

Oscar W. Albrecht  
Legislative Chairman, NARFE  
828 Buchanan  
Topeka, KS 66606



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony Before  
Senate Assessment & Taxation Committee  
Wednesday, January 25, 1995

Thank you, Madame Chairman. I am Craig Grant and I represent Kansas NEA. I am here to speak to SB 39, the bill which would begin the taxation of retirement benefits for retirees under KPERS as well as other public pension plans.

As you might guess, since I represent teachers, we are not in favor of SB 39. Our school employee members, as well as other public employees, work extremely hard during their service to the state. They often work for fewer wages than the private sector employees. Most of the time their pension benefits are lower than private pension benefits. The one bright spot they have had is that their pension would not be taxed by their employer when they retire. We think that policy should continue.

We understand the desire to treat all pensions, public and private, in a similar way. Also, we are not saying that there would be mass resignations by state employees if this were implemented. We are stating that this is a long-standing policy of giving a small "thank you" to those dedicated public servants.

Kansas NEA opposes SB 39 and asks the committee to not report it favorably. Thank you for listening to our concerns.

*Senate Assess + Tax  
Jan 25, 1995  
attach 3-1*



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Capital City Task Force  
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January 25, 1995

Senator Audrey Langworthy, Chair  
Taxation Committee

Dear Senator Langworthy:

I am speaking to you as a volunteer for these organizations: the Kansas State Legislative Committee of AARP, The Legislative Chair of the Salina Area Retired Teachers Association, and Legislative Chair of AARP Chapter #278, concerning the Funding of Veterans Tax Refund by taxing KPERS Retirees Pensions.

Please do not use the easy way of just taxing KPERS Retirees Pensions but look for wiser alternatives to refund this. Longer ago retired teachers and other public employees and even recently retired KPERS employees need their income to pay increases in Health Care Premiums and bigger Health Care Deductibles. I am especially speaking for Women Employees. We also consider this to be Double Taxation.

The members of your Committee can find other ways - more fair - that could be looked at and adopted for this state wide obligation to pay military retirees.

Thank you for letting me speak!

Sincerely,

Lorina C. Knoll

Senate Assess + Tax  
Jan 25, 1995  
attach 4-1

1/24/95

THOMAS (TOM) YOUNG K-NEA-RETIRED PRESIDENT

SENATORS WE APPRECIATE WHAT YOU HAVE DONE IN THE PAST FOR RECIPIENTS OF KPERS. TWO YEARS AGO YOU INCREASED THE MULTIPLIER FOR THOSE ARE TO RETIRE NOW. YOU GAVE THOSE WHO HAD RETIRED A NICE INCREASE IN BENEFITS. LAST YEAR YOU ALSO INCLUDED A COST OF LIVING INCREASE IN THE OMNIBUS KPERS BILL. ALL THAT IS APPRECIATED.

I KNOW YOU HAVE HEARD THE ARGUMENT THAT TEACHERS AND PUBLIC EMPLOYEES WORK AT A LOWER WAGE THAN THEY COULD HAVE MADE IN THE PUBLIC SECTOR WITH THE ANTICIPATION THAT THEIR RETIREMENT WOULD NOT BE TAXED.

THAT THE STATE HAD MADE A SACRED CONTRACT WITH ITS EMPLOYEES THAT THEIR RETIREMENT WOULD NOT BE TAXED.

THAT ALL PENSIONS ARE NOT EQUAL THAT I AS A RETIRED TEACHER MUST PAY MY OWN HEALTH INSURANCE WHILE OTHERS IN THE PRIVATE SECTOR HAVE HEALTH CARE FURNISHED.

YOU HAVE ALSO HEARD THAT THE PURCHASING POWER OF A RETIREE DECREASES WITH EACH YEAR OF RETIREMENT AND AFTER 10 YEARS IT IS DOWN TO ABOUT 55% OF IT WAS WHEN HE RETIRED.

YOU HAVE HEARD THAT THE GAINS MADE FOR RETIREES THE LAST TWO YEARS WOULD BE WIPED OUT IF YOU START TAXING KPERS NOW.

#### SUGGESTIONS

1. INCREASE THE MULTIPLIER FROM 1.75 TO 2 LIKE MISSOURI DOES FOR TEACHERS.
2. PUT ALL STATE EMPLOYEES AND STATE RETIREES INTO AN HMO OR PPP (PREFERRED PERSONAL PHYSICIAN) PLAN GIVING THAT GROUP THE POWER TO CONTROL COST.
3. ALLOW ALL RETIREES TO DEDUCT THE COST OF HEALTH CARE FROM THEIR STATE INCOME TAX INCLUDING INSURANCE PREMIUMS WHETHER THEY HAD A DEDUCTION ON THEIR FEDERAL TAX OR NOT.
4. ALLOW ANY OF SOCIAL SECURITY WHICH INCLUDED IN STATE INCOME TO BE DEDUCTED OUT.
5. INCREASE THE MULTIPLIER FOR ALL STATE RETIRED PERSONNEL TO THE NEW MULTIPLIER OF 1.75

*Senate Assess + Day  
Jan 25, 1995  
attach 5-1*

January 25, 1995

**TESTIMONY RE SB39**

Sen. Langworthy and other members of the Committee on Assessment and Taxation, thank you for giving me this opportunity to speak before you.

On behalf of myself, the American Association of Retired Persons and the Retired Teachers Association, we urge you to avoid taxing people who are retired and living on pensions.

We do so for the following reasons:

- 1) After a lifetime of gainful employment including the payment of taxes, virtually everyone retires to a much reduced income, most losing benefits such as health care. Imposing a new tax on their pensions is damaging.
- 2) Most pensions tend to be fixed in dollar amounts. This separation from the effects of inflation reduces buying power and puts many closer to dependency on the state. To now impose a new tax burden on pensions is unreasonable.
- 3) In many cases, if not most, pension dollars have already been taxed.
- 4) Elderly retired persons are already feeling the loss of income because of increases in the increased cost of Medicare and other insurance.
- 5) The elderly are already targets at the national level for heavier financial burdens in the search for deficit reduction and the reduction of entitlements.

We also make the following observations:

- 1) A great deal of rhetoric and publicity has been given out indicating that reductions of taxes represents the mood of these times. Any action to impose a new tax on pensions, whatever the reasons given, will correctly be seen as an example of hypocrisy.
- 2) Much publicity has also been given to the governor and many legislators noting their desire to repeal the sales tax on new construction. It appears to observers that such an action benefits Johnson County almost exclusively, and that the existing tax did not slow down the rapid expansion in building going on in that county. Thus to impose a new tax on those least able to afford it while granting relief to affluent taxpayers creates the impression of soaking the poor for the benefit of the rich. Our tax system should be fair.

We urge you to defeat S.B. 39. Thank you,

Bettie Sue Shumway

*Senate Assess + Tax  
Jan 25, 1995  
attach 6-1*

To: The Kansas Senate Assessment and Taxation Committee  
Capitol Building 519S Topeka  
January 25, 1995

From: Donna Travis, Kansas AARP State Legislative Committee  
Chair, 2313 Amarado, Wichita, KS 67205-1519

I speak to you today in opposition to S B 39. This would be a new tax imposed on a selected group of older Kansans who are on fixed incomes.

Monday January 23, 1995 an Associated Press article published in The Wichita Eagle states the number of Americans age 65 and older will swell to 20 per cent of the population in the next half-century. The proportion of people age 85 and older is growing especially fast. From 3 million in 1993 this group is expected to triple by 2030. And life expectancy will climb from 76.3 years to an estimated 82.6 years by 2050 the Census report anticipates.

Already many Kansans have lived beyond their expectations and are finding that their limited resources are not adequate for independent living expenses. Health care costs continue to increase and long term care costs are a continual worry for many elderly Kansans.

Persons who retire under the KPERS retirement system pay state tax on their salaries before they contribute 4% toward their retirement plan. Also, members feel that the proposed new tax would be a breach of an informal contract with KPERS members.

I urge you not to place a new tax burden on older Kansans who already are facing frightening financial times.

*Senate Assess + Tax  
Jan 25, 1995  
attach #1*

I am Al Lowling, retired teacher from Wichita representing Wichita Retired Teachers Association.

I thank you for the opportunity to visit with you today.

Our <sup>KPERS</sup> retirement is a "defined benefit". When our money was put into the Retirement Fund, we were told the returns would be tax free. Our income is fixed and planned.

There are hundreds of teachers in the Wichita Retired Teachers Association who share this same predicament.

We have planned our retirement with long term care in mind, hoping to not be a burden to the state.

If it becomes absolutely necessary to impose a tax, then we feel it should be phased in on a gradual basis; rather than just abruptly forced on us.

Therefore, I am opposed to Senate Bill 39.  
Thank you.

Senate Assess + Tax

Jan 25, 1995

attach 8-1



1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

## Testimony of Scott A. Stone

Chief Counsel, Kansas Association of Public Employees

In opposition to

**Senate Bill 39**

Taxation of State Employee Retirement Benefits Bill

January 25, 1995

Distinguished members of the committee, good morning. My name is Scott Stone and I appreciate the opportunity to appear here today on behalf of the Kansas Association of Public Employees

This Bill proposes to extend the taxation of federal employees' retirement benefits to all employees. To accomplish this end, the state employee exemption from taxation provision in K.S.A. 79-4923 is to be revoked.

State employees have been led to believe in certain years that they would receive little to no pay increase because it was supposedly offset by their future retirement benefits being exempt from taxation. It would be highly inequitable to now take a major slice of these employees' retirement.





Such a revocation would also be unconstitutional under Section 10 of Article 1 of the Kansas Constitution which prohibits the impairment of contracts by the state.

Currently, subsection (a) of K.S.A. 74-4923 provides that no alteration of the retirement plan shall negatively affect those who are then members. Only new employees, hired after the alteration may be constrained by the new law.

Subsection (b) specifically states that retirement benefits of state employees are exempt from state tax.

In 1980, the Kansas Supreme Court determined in Brazelton v. Kansas Public Employees Retirement System, 227 Kan. 443, and in Singer v. City of Topeka, 227 Kan. 356, that state retirement systems create contracts between the state and its employees who are members of the system.

The Kansas Attorney General, in opinion 94-59, agreed that a contract right of state retirees would be infringed if the legislature retroactively and negatively altered the retirement system. I have attached this opinion to my testimony.

I represent the largest public employee organization of Kansas with 15,000 employees in our statewide bargaining units. On behalf of those employees and of currently retired state employees, urge you to do the fair and right thing. State employees should be rewarded for their service, not penalized by double taxation of their retirement benefits.

I thank you for your time and the opportunity to appear before your committee.



KANSAS SUPREME COURT

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April 26, 1994

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ATTORNEY GENERAL OPINION NO. 94- 59

The Honorable Tom Bradley  
State Representative, Fifty-Second District  
State Capitol, Room 174-W  
Topeka, Kansas 66612-1504

Re: State Boards, Commissions and Authorities--Public Employees Retirement Systems; Kansas Public Employees Retirement System--Rights of Members and Beneficiaries Not Affected By Change or Repeal of Act, Exception; Benefits and Rights Exempt From Taxes; 1994 Senate Bill No. 623

Synopsis: Because the legislation proposed in 1994 senate bill no. 623 impairs a contractual right of those members having a vested interest in the retirement system without accompaniment of an offsetting or counterbalancing advantage, the bill violates section 10 of article 1 of the United States constitution and K.S.A. 74-4923. Cited herein: K.S.A. 74-4901; 74-4917; 74-4923; 74-4951; 1994 S.B. No. 623; 1994 S.B. No. 624; U.S. Const., art. 1, § 10.

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Dear Representative Bradley:

As representative for the fifty-second district, you request our opinion regarding the legality of 1994 senate bill no. 623 (S.B. 623). Specifically, you ask whether the exemption from taxation of benefits paid by the Kansas public employees retirement system (KPERS) may be repealed under the circumstances presented.

K.S.A. 74-4923 provides:

"(a) No alteration, amendment or repeal of this act shall affect the then existing rights of members and beneficiaries but shall be effective only as to rights which would otherwise accrue under this act as a result of services rendered by an employee after the alteration, amendment or repeal. This subsection shall not apply to any alteration or amendment of this act which provides greater benefits to members or beneficiaries, but any increase of benefits shall only be applicable to benefits payable on the first day of the month coinciding with or following the effective date of the alteration or amendment.

"(b) Any annuity, benefits, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. or 74-4951 et seq., and any acts amendatory thereof or supplemental thereto, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, except such annuity or benefit or any accumulated contributions due and owing from the system to such person are subject to decrees for child support or maintenance, or both, as provided in K.S.A. 60-1610 and amendments thereto. . . ." (Emphasis added.)

Section 10 of article 1 of the United States constitution prohibits the impairment of contracts by a state.

Pursuant to a provision set forth in section 7 of S.B. 623, annuities, benefits, funds, property, or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. would no longer be exempt from taxation by the state and its political subdivisions. Several other sections of S.B. 623 would have a similar effect on other retirement systems administered by the board of trustees for KPERS. For

the sake of convenience, we present our analysis of section 7 of S.B. 623. The analysis, however, is applicable to all sections of the bill affecting vested interests in the various retirement systems set forth in S.B. 623.

As a preliminary matter, it must be determined whether repeal of the exemption from taxation has the effect of impairing a contractual obligation of the state. See United States Trust Co. v. New Jersey, 431 U.S. 1, 17, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977). A finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question whether that impairment is permitted under the United States constitution. United States Trust Co. 431 U.S. at 21. If the impairment involves an obligation of the state pursuant to its own contract, the reserved-powers doctrine requires a determination of the state's power to create irrevocable contract rights in the first place. United States Trust Co., 431 U.S. at 23. If the reserved-powers doctrine does not preclude contracting away the reserved power, it must be determined whether there exists a significant and legitimate public purpose behind the regulation, and the adjustment of "the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." Energy Reserves Group, Inc. v. Kansas Power & Light, 459 U.S. 400, 412, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983).

Three states have reviewed the constitutionality of state legislation which resulted in the taxation of retirement pensions which previously were exempt from state taxation. Two of the states enacted their legislation in an attempt to comply with the decision of the United States Supreme Court in Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989). All three cases, however, were limited to review under state constitutional provisions rather than under section 10 of article 1 of the United States constitution, and two were based on additional distinctions which limit their persuasiveness regarding the review of the legislation herein. See Herrick v. Lindley, 391 N.E.2d 729 (Ohio 1979) (no vested right in tax exemption; right to tax exemption not clearly expressed by appropriate language; legislation does not result in impairment of vested right nor constitute a retroactive tax; legislation upheld); Hughes v. State of Oregon, 838 P.2d 1018 (Or. 1992) (accrued and accruing pension benefits protected by state law; tax exemption is a term of the PERS contract and an obligation of the state; legislation impairs contract without consent of

beneficiaries; legislation unconstitutional); Sheehy v. Public Employees Retirement Division, 864 P.2d 762 (Mont. 1993) (statutes fixing terms and conditions of public employment, including exemption of benefits from taxation, do not create contractual rights but merely declare policy to be pursued by legislature until declared otherwise; tax exemption separate from state retirement programs; state constitution prohibits the state from surrendering or contracting away power to tax; legislation upheld).

State retirement systems create contracts between the state and its employees who are members of the systems. Brazelton v. Kansas Public Employees Retirement System, 227 Kan. 443, Syl. ¶ 1 (1980); Singer v. City of Topeka, 227 Kan. 356, 363 (1980); Shapiro v. Kansas Public Employees Retirement System, 216 Kan. 353, Syl. ¶ 1 (1975). A public employee, who over a period of years contributes a portion of his or her salary to a retirement fund created by legislative enactment, who has membership in the plan, and who performs substantial services for the employer, acquires a right or interest in the plan which cannot be whisked away by the stroke of a legislative or executive pen, regardless whether the employee's contribution is voluntary or mandatory. Singer, 227 Kan. at 363. Continued employment over a reasonable period of time during which substantial services are furnished to the employer, plan membership is maintained, and regular contributions into the fund are made cause the employee to acquire a contract right in the pension plan. Singer, 227 Kan. at 365. If the member has completed 10 years of credited service at the date of termination of employment with a participating employer, the member is automatically granted a vested retirement benefit in the system. K.S.A. 1993 Supp. 74-4917. The rights are substantial and are vested and subject to the protection afforded by the contract clause of section 10 of article 1 of the United States constitution, Singer, 227 Kan. at 365; Brazelton, 227 Kan. at 451. The retroactive change of vested retirement benefits under an employment contract in a substantial manner unilaterally by a governmental employer to the disadvantage or detriment of its employees violates the contract clause of the United States constitution and the provisions of K.S.A. 74-4923. Brazelton, 227 Kan. at 451.

Contained within the provisions of K.S.A. 74-4923 is an exemption of the annuity, benefits, funds, property or rights created by or accruing to any person under the provisions of K.S.A. 74-4901 et seq. or 74-4951 et seq. from taxation by the state of Kansas. The courts in Herrick v. Lihdley, 391 N.E.2d at 733, and Hughes v. State of Oregon, 838 P.2d at 1032,

placed emphasis upon the placement of the statutory provision regarding exemption of the retirement benefits from taxation. The exemption from taxation of benefits payable by KPERS is contained within the act regarding the retirement system and within the statute precluding alteration, amendment or repeal of vested rights of members and beneficiaries. Thus, the exemption from taxation constitutes a provision of the contract between the state and its employees who are members of the retirement systems. Repeal of the exemption from taxation has the effect of impairing a contractual obligation of the state.

The police power and the power of eminent domain are among those reserved-powers that may not be contracted away, but the state may bind itself in the future exercise of taxing and spending powers. United States Trust Co., 431 U.S. at 23-24. Tax exemptions are constitutionally permissible and the legislature may provide statutory exemptions if such exemptions have a public purpose and promote the general welfare. State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 412 (1981). A state may, by contract, exempt property rights or franchises from taxation, and subsequent legislation which impairs the obligation of such contract is void. 16A C.J.S. Constitutional Law § 286 (1984). The legislature had the authority to enact the exemption from taxation provided in K.S.A. 74-4923, and to contract away its taxing power.

As the reserved-powers doctrine does not preclude contracting away the power of taxation, we must proceed to determine whether the adjustment of the rights and responsibilities of the state and its employees who are members of KPERS is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. In applying this standard, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the state's self-interest is at stake. United States Trust Co., 431 U.S. at 25-26. The state may make reasonable changes or modifications in pension plans in which employees hold vested contract rights, but changes which result in disadvantages to employees must be accompanied by offsetting or counterbalancing advantages. Singer, 227 Kan. at 367. The reasonableness of legislative changes is to be measured by the advantage or disadvantage to the affected employees as a group or groups; validity of change is not dependent upon the effect upon each employee. Singer, 227 Kan. at 367.

The Kansas Supreme Court has twice reviewed whether amendments to retirement systems administered by KPERS has impaired the contractual rights of members of the systems. In Singer, supra, the legislature attempted to equalize the rate of contribution of all members of the Kansas police and firemen's retirement system (KP&F). The effect of the amendments was to raise the contribution rate of certain members from 3% to 7%. No additional benefits were granted the members, except for a modification of the outside income allowed to pensioners. The court recognized that reasonable modifications prior to retirement for the purpose of keeping the system flexible and accomodating changing conditions are allowed. Singer, 227 Kan. at 367. However, amendments which more than double member contributions without increasing benefits impose a substantial detriment without correlative benefit. Id. The amendments as applied resulted in a violation of section 10 of article 1 of the United States constitution. Id. at 369.

In Brazelton, supra, the Kansas Supreme Court reviewed amendments which attempted to end the interlocking of social security and KP&F. Prior to the effective date of the amendments, members' contributions to KP&F were reduced by the amount of contributions to social security, such that no more than 7% of a member's salary went to pay for retirement in one form or another. Brazelton, 227 Kan. at 444-45. KP&F benefits were reduced by one-half the amount received in social security benefits. Id. at 445. Following the effective date of the amendments, members were required to contribute 7% of their salary to KP&F and were eligible to receive full retirement benefits from KP&F. Id. Members were also required to make up a contribution shortfall. Id. at 446-47. The members were given no options regarding their participation under the amendments. The court determined that the amendments were:

"[A]n unconstitutional violation of the contract clause . . . and . . . contrary to the express provisions of K.S.A. [ ] 74-4923. Absent any option for members of plaintiffs' class to retain their old position in the system or accept the new provisions, the rights of the members of the class have been substantially impaired unilaterally and retroactively without offsetting advantages." Id. at 455.

The fiscal note prepared by the division of the budget states that enactment of S.B. 623 will result in annual income to the

state general fund of approximately \$27.5 million. Fiscal Note, 1994 Senate Bill No. 623, February 7, 1994. No offsetting benefit is provided within the provisions of S.B. 623. 1994 senate bill no. 624 (S.B. 624) does include a benefit for members of KPERS who retire before July 1, 1994. Pursuant to the provisions of S.B. 624, a single lump-sum payment equal to \$8.25 per year of credited service under KPERS or \$100, whichever is greater, would be dispersed to each member of KPERS who retires before July 1, 1994. The fiscal note for S.B. 624 states that "passage of S.B. 624 would require a transfer of approximately \$8.0 million from state monies to the Kansas Public Employees Retirement Fund to make the single payment to retirees." Fiscal Note, 1994 Senate Bill No. 624, February 28, 1994. S.B. 623 and S.B. 624 do not appear to be tied together in any fashion, and passage of one would not necessarily guarantee passage of the other. If both bills are enacted by the legislature, those members who have a vested right to the tax exemption but who have not retired by July 1, 1994, receive no offsetting benefit. The repeal of the exemption from taxation is not accompanied by offsetting or counterbalancing advantages. See Brazelton, 227 Kan. at 455; Singer, 227 Kan. at 367-69. The legislation is not proposed for the purpose of preserving or protecting the retirement system. See Brazelton, 227 Kan. at 453-54. Therefore, the modification proposed in S.B. 623 is not based upon reasonable conditions with a sufficient public purpose justifying the legislation's adoption.

Because the legislation proposed in S.B. 623 impairs a contractual right of those members having a vested interest in the retirement system without accompaniment of an offsetting or counterbalancing advantage, the legislation proposed in S.B. 623 violates section 10 of article 1 of the United States constitution and K.S.A. 74-4923.

Very truly yours,



Robert T. Stephan  
Attorney General of Kansas



Richard D. Smith  
Assistant Attorney General

RTS:JLM:RDS:jm