

Approved: 3/14/95
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on March 9, 1995 in Room 531-N of the Capitol.

All members were present except: Senator Lee - Excused

Committee staff present: Kathy Porter, Legislative Research Department
Fred Carman, Revisor of Statutes
Jacqueline Breymeyer, Committee Secretary

Conferees appearing before the committee: Senator Gus Bogina
Judge Richard D. Rogers

Others attending: See attached list
Eric Engstrom, Vice-Chair, Kansas State Historical Society
Dr. Gary Thomas, Kansas State Historical Society, Wichita

Chairman Ramirez called the meeting to order at 1:35 p.m.

SB 353 --concerning historical interests of the state

Senator Bogina appeared as a proponent stating that he does not mean to be disparaging to the Historical Society or to any of the members, but believes, philosophically, that it is improper for an entity such as the Historical Society to have total control of the spending of \$12.5 million. The Senator is a member of the Historical Society. He mentioned Tim Colton, Legislative Research, who does the Society budget. Senator Bogina stated that the goals of the Society are not necessarily the goals of the general population. He stated that the employment (hiring, firing, setting of salaries) must be the responsibility of elected officials. Senator Bogina gave history and background on the Society and cited a Supreme Court of the State of Kansas Case Number 70,792, Michael Sedlak, et al, vs. Joe Dick, Secretary of Human Resources et al, which stated "The legislative power of this state is vested in the legislature and the delegation of such power to a private group or association is constitutionally impermissible." Senator Bogina believes Historical Society operations parallel that of the former Board of Agriculture. This entity was removed from the management of the Department of Agriculture by the Court. The Senator told of the dues structure, voting, and selection of employees of the Society and stated that legislative oversight is only through the gross budgetary process. The Society also manages The Heritage Trust Fund and his testimony stated that The Heritage Trust Fund Act allows the Society to use Heritage Trust Fund monies both for grant and for program administration.

SB 353 is patterned after SB 61, the Department of Agriculture bill, except the Division of Historical Interests is placed under the Department of Administration rather than a cabinet level agency. The Senator said that Mr. Powers, the Executive Director of the Historical Society, works for the Board and yet the state pays his salary.

In response to a question from one of the committee, Senator Bogina stated that the capitol, Landon and other state properties are under the Department of Administration. He sees no problem if the Historical Society is placed in some other department, but Administration seems to be the logical place. (Attachment 1)

Senator Bogina replied to the question of, "If it aint broke, why fix it"? by saying that if someone files a court case, we will have to fix it whether we want to or not.

The question of how much is contributed to the Society in private money was asked and also what effect the placement of the Society under the Department of Administration would have on private donations. The Senator said he did not have that answer; possibly a later conferee could answer that question.

The Indian Mission on the Historical grounds was mentioned. It was not known whether the Society went through the Joint Committee on Building and Construction. Senator Vidricksen stated that they did come before the Committee with the Koch plan and it was reviewed and okayed.

Senator Bogina ended his testimony by stating he would welcome friendly amendments to the bill. He reiterated that he is certain a court case will be filed if this situation is not rectified.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION Statehouse, at 1:30 p.m. on March 9, 1995.

Judge Richard D. Rogers made a few brief comments as an opponent of **SB 353**. He stated that this does not parallel the State Board of Agriculture case. He completely agrees with Judge Lungstrum's decision. The Board of Agriculture and the Historical Society are two completely different entities. The Historical Society is a custodial agency. He said not to be motivated by the thought that there is going to be a lawsuit because there will not be one.

Eric Engstrom, Vice-Chair, Kansas State Historical Society Executive Committee, testified in opposition to the bill and stated the Society strongly opposes the transfer into the Department of Administration. He listed six reasons in his testimony that supported the Society's position. (Attachment 2) He stated that the Society is recognized as one of the major historical societies in the country. He ended his testimony by respectfully requesting the bill be recommended adversely.

Mr. Engstrom was asked if he knew anything about an impending lawsuit. He replied that he did not know to what Senator Bogina was alluding.

Anything member commented to Mr. Engstrom that legislators are the money stewards of the people. The state appropriates money for the Historical Society and the Society seems like the benevolent one when it gives to various projects.

It was mentioned that this type of issue is happening with the Smithsonian in Washington, D.C.

It was asked if when an entity such as the Koch Foundation gives money to the Society, is it deducted from the appropriation. The answer to that question was yes.

Dr. Gary Thomas, President of an investment management firm, Wichita, said a few words in opposition to the bill. He stated that he takes the investment management of the peoples affairs very seriously. He said the Society has established a public/private partnership in the best sense of the term. He mentioned the various groups that have supported the Society with monetary gifts such as Koch, Garvey, Millbrook, Ripley and Landon. These groups expect their monies to be well taken care of and he considers himself accountable to the people who give these monies.

Chairman Ramirez stated the hearing would be continued Monday.
The meeting was adjourned.

The next meeting is scheduled for March 13, 1995.

TESTIMONY ON SB 353

March 9, 1995

MISTER CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I requested that Senate Bill 353 be drafted and introduced because I believe, philosophically, that it is improper that a private entity such as the Historical Society have total control of the spending of \$12.5 million (current fiscal year appropriations). I believe public moneys should be controlled and spent under the control of elected representatives of our citizens. Further, the employment (hiring, firing, setting of salaries) must be the responsibility of those elected officials.

The Kansas State Historical Society was founded in 1875 by Kansas newspaper publishers to collect and preserve the documents and artifacts that tell the history of Kansas. In 1879, it became the official trustee for state historical collections. Since that time, the Society has functioned both as a not-for-profit membership organization and as a state agency supported by legislative appropriations. The Executive Director of the Society is elected by the Society's Board of Directors; his salary is assigned by the Governor through the state unclassified service.

*Senate Governmental Organization
Attachment 1
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The Supreme Court of the State of Kansas in Case Number 70,792, *Michael Sedlak, et al, vs. Joe Dick, Secretary of Human Resources, et al.*, stated **"The legislative power of this state is vested in the legislature and the delegation of such power to a private group or association is constitutionally impermissible"**. The Court also found that the operation and functions of the Board of Agriculture was not in compliance with our Constitution. I submit that the Historical Society Board of Directors who are selected by the membership of the Historical Society cannot represent the people of Kansas as our Constitution envisions. The Historical Society operations are, in my opinion, a distinct parallel to that of the former Board of Agriculture which was removed from the management of the Department of Agriculture by the Court.

The Historical Society has an annual and lifetime dues structure that authorizes those members to vote for a Board of Directors who are empowered to act for the Society. That Board selects the employees who in turn operates the museum and our historical sites. The legislative oversight is only through the gross budgetary process, i.e. appropriate money. The responsibility and task of the employees is **"to provide leadership, direction and support services necessary to permit**

other Society programs to accomplish their objectives; to promote the programs of the Society in such a way as to encourage the private sector to participate in funding for the Society and its programs; to handle Society finances; and to maintain the buildings and grounds of the Center for Historical Research and the Museum of History.” The Society also manages the Heritage Trust Fund which is funded by a one cent per \$100 surcharge on mortgage registration fees. “The Heritage Trust Fund Act allows the Society to use Heritage Trust Fund moneys both for grants and for program administration;” Senate Bill 353 is intended to be similar to Senate Bill 61 except the Division of Historical Interests is placed in the Department of Administration in lieu of a cabinet level agency. I am agreeable to consideration of other locations for this part of our state government providing it is under the lineage of control of the chief administrator of the state, the Governor. I believe, given the opportunity, the courts would determine that the operation of the Historical Society and its spending of our tax dollars is as unconstitutional as was the Board of Agriculture and its former responsibilities.

I would welcome friendly amendments that would not damage what I

believe is the repair of the existing constitutional flaw. I respectfully request that all of the people of Kansas be included as an owner and manager of our heritage, rather than the current status of the Society responsibilities.

Thank you for your consideration

Senator August Bogina, Jr.

TESTIMONY ON S.B. 353 PROPOSING TO PLACE THE KANSAS STATE HISTORICAL SOCIETY WITHIN THE DEPARTMENT OF ADMINISTRATION.

Senator Ramirez and members of the committee; I am Eric Engstrom, the Vice-Chair of the Kansas State Historical Society Executive Committee and I am here today to address S/B 353 which proposes to create a division of historical interests within the Department of Administration and transfers the duties of the Kansas State Historical Society to that division.

The Society strongly opposes the transfer of the Kansas State Historical Society into the Department of Administration for many reasons.

First, the Society was created in 1875 and became part of state government in 1879. It has continued since that date as the trustee of the state for the purpose of collecting, preserving, and promoting the history of Kansas and our Kansas heritage. The tradition of authorizing a private corporation to function as a part of government to preserve and promote history is longstanding. At the national level, the Smithsonian is a private corporation that functions as the nation's museum. At the state level, the majority of state historical societies began as private corporations and many of them, particularly in the upper middle west and the plains, became part of state government. Although the exact configuration of the private-state relationship varies from state to state, the fact that state historical societies function as "trustees" of the state has been widely adopted and maintained. At the local level, most county historical societies are private corporations that receive a county levy to support their preservation efforts.

We would add that in no other state that we are aware of is the historical function of state government placed under the equivalent of our Department of Administration.

With a private Society as "trustee" of the state for the purpose of collecting, preserving, and promoting history, how is that organization held accountable? The Society and its activities are fully scrutinized by the executive and legislative branches of government through the submission of our annual budget document. The fiscal office is required to adhere to all of the policies, procedures, and regulations which govern state agencies for any transaction paid from state funds and we are subject to Post Audit review. All state funded employees are hired following the state central personnel regulations. The construction of the new research center, although desired by the Society, was initiated by the executive branch and continually promoted by the legislature, with specific oversight by the Joint Building Committee. The historic sites realignment plan was the direct result of a legislative directive that the Society reduce the number of sites it operates and concentrate resources on the remaining sites. There are many examples of the Society

*Senate Governmental Organization
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responding to Executive and Legislative initiatives. In addition, there are several gubernatorial appointed boards that provide oversight to various activities of the Society, i.e. State Records Board, Historic Sites Board of Review, Unmarked Burial Board, etc.

Second, the issue of the Society's relationship to the state has been raised as a result of the litigation relating to the constitutionality of the Kansas State Board of Agriculture. I have reviewed the Court's opinions in that case, Hellebust vs. Brownback (824 F. Supp. 1511 et seq.) and I am of the firm opinion that the former State Board of Agriculture and the State Historical Society are totally different entities. The Society is not subject to the Constitutional concerns of the Court in the Board of Agriculture case.

The contrast is vivid in the roles and functions of the Ag Board and the Society.

The Court found that the Ag Board was a legislatively created board carrying out general governmental functions and exercising broad powers (and I quote:)

These examples---are not exhaustive of the powers of the Board to regulate for the benefit of the health, safety, and welfare of the general public. Suffice it to say the Board exercises basic, general governmental powers. (p. 1514-15).

The Court noted the Board had the following roles: a significant role in the regulation of the healthfulness of milk and meat sold in grocery stores; commissioners appointed by the Board could issue subpoenas for witnesses and documents; the Board fills a general regulatory role with regard to weights and measures and the application of pesticides, and use and control of water in the State.

It is this exercise of general governmental powers which completely distinguishes the Ag Board from the State Historical Society.

The Society, in contrast, was created as a not-for-profit Kansas corporation and then appointed as trustee and steward of the state for its historical collections and properties in a tradition followed by many other states and historical societies.

The Ag Board was found to be a governmental entity and its governing body's selection process was found to violate the Equal Protection Amendment of the U.S. Constitution because the board's members were elected by delegates from various agricultural organizations, in an indirect, non-representative manner and not by a direct election which the Court found to be required, due to the pervasive powers which the Board possessed over the everyday

lives of Kansans.

By contrast, the Society does not have any broad governmental regulatory function. Indeed it has a very limited role of an administrative and curatorial role without regulatory power. Its' mandate is to be a Trustee of State historic property both real and personal and to carry out such other programs in the area of history and historic preservation as is assigned it by the legislature and subject to legislative or gubernatorial oversight as is shown by K.S.A. 75-2715, K.S.A. 75-2719, K.S.A.75-2726, K.S.A.75-2744.

Even if it is argued that the limited functions of the Society are construed to be "general governmental functions" like the Board of Agriculture, there is a recognized exception to the Constitutional equal protection requirement for a governmental entity with a limited role.

The Supreme Court has recognized an exception to the Reynolds line of cases under which the Judge Lungstrum decided the Board of Agriculture case.

That exception under the Supreme Court cases of Salyer and Ball state that the equal protection requirement of "one person, one vote" does not apply when the governmental entity meets two requirements:

1. A special limited purpose and
2. The activities of the unit of government have a disproportionate effect on those who may vote for its officials.

I believe it is hard to argue that being trustee and agent for the state for certain matters of history and historical preservation is anything but a very limited purpose.

The second prong of the test is fulfilled by the open to everyone membership of the State Society, the membership consists primarily of those interested in the history of the State and is certainly the group most affected by the actions of the governing boards of the Society as it fulfills its several roles.

Third, the Society is seriously concerned that the proposed change would politicize history in Kansas. For 120 years, the Society has operated independently of partisan political considerations, and we have successfully resisted efforts to make any staffing appointment based on political considerations.

Fourth, the benefits of the Society operating as a private organization are substantial. The Society has the capability to solicit private funds to support the purposes of the

organization. That is most evident in the recent \$550,000 gift from Koch Industries to rehabilitate the Potawatomi Mission. In our discussions with Koch Industries officials it was clear that they were not interested in providing the gift to state government. In numerous cases, individuals bequeath money to the Society for the purpose of endowing certain activities that facilitate the mission of the Society. The flexibility provided the Society as a private corporation allows us to accomplish goals not easily achieved within state government. Additionally, when private funds are used, we can often secure lower bids on items needed for our activities.

Fifth, at a time when government is seeking to become more flexible and operate more aggressively, we feel that the Society as presently constituted provides an ideal vehicle for managing the historical functions of state government: We continue to solicit funds to enhance the programs of the Society, we actively expand our promotion of Kansas history and heritage, and we seek innovative ways to make the past a part of our living present.

The Society's board and executive committee act as advisory in setting policy for the organization along with the Governor and the Legislature. This occurs through program initiatives by the staff which are reviewed with the Governor's office, the Joint Committee on Arts and Cultural Resources, and individual legislative committees. As an example, the development of the State Records Center was the result of an initiative that we undertook with the Governor who supported the idea before we submitted it to the legislature. Another program initiative was the Unmarked Burial legislation.

Finally, over the past six to seven years the Society has made giant strides. Society programs now impact over 600,000 people annually from Kansas and around the world. During the past year, visitation at the Kansas Museum of History reached nearly 150,000; education and outreach programs were provided to over 250,000 adults and children throughout the state; and visitors at our historic sites numbered 200,000. Further, the new research center is nearing completion; the Koch Industries Education Center in the Potawatomi Mission has been rehabilitated for educational use; a Native American Cultural Center near Highland will be completed later this year; and Constitution Hall at Lecompton will open in June. In light of these achievements, it is difficult to understand why it is now necessary to relegate the Society's principal functions to a division within the Department of Administration and give up the balanced control by the Society's board and executive committee to a single person, reporting only to the Secretary of Administration. Such a move would drastically diminish the image and role of the Society. At present, the Kansas State Historical Society is recognized as one of the major historical societies in the country.

We respectfully request that the Committee recommend this bill adversely.

March 9, 1995