

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on February 2, 1995, in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department  
Emalene Correll, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Shirley Higgins, Committee Secretary

Others attending: See attached list

Conferees appearing before the committee:

Don Moler, League of Kansas Municipalities  
Anne Spiess, Kansas Association of Counties  
George P. Sugars, Reno County Engineer and Public Works Director  
Gary L. Haller, Johnson County Park and Recreation District

The Chairman announced that there were requests for the introduction of two bills.

Senator Ranson had a request by the City of Wichita regarding the number of group homes that can be located in one area, specifically, within 1,000 feet of each other.

Senator Ramirez made a motion to introduce the bill, Senator Reynolds seconded, and the motion carried.

The Chairman explained a proposed bill by Senator Burke which would give authority for certain sales along streets subject to the issuance of a permit by the local jurisdiction.

Senator Ramirez made a motion to introduce the bill, Senator Downey seconded, and the motion carried.

The minutes of January 19, 26 and 31 were approved.

Attention was turned to the continued hearing on **SB 82** concerning the Kansas Open Meetings Act. Senator Ramirez asked if written personal testimony from the Editor of the Wichita Eagle recommending that the open meetings law be repealed had been submitted as requested at the time he testified. The Chairman had not received the testimony. It was the consensus of the committee that it be requested again.

The Chairman called attention to written testimony in support of **SB 82** submitted by Gerry Ray on behalf of the Johnson County Board of Commissioners. (Attachment 1)

Don Moler, League of Kansas Municipalities, testified in support of the bill. (Attachment 2)

With regard to Mr. Moler's testimony, Senator Downey observed that any good board will see that their discussion focuses on the qualification of nominees, not on personal information about the nominee, and furthermore, a public setting would help insure this.

Anne Spiess, Kansas Association of Counties, followed with testimony in support of **SB 82**. (Attachment 3)

Further committee discussion began regarding the merit of the bill, and the Chairman stated that it is clear the committee does not support this bill. He informed the committee that there is an open meetings bill which will be coming from the House, therefore, action on **SB 82** will be held until the committee has the opportunity to consider it. If the bill does not come from the House, further consideration will be given to **SB 82**. With

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on February 2, 1995.

this, the hearing on **SB 82** was concluded.

**SB 83--Relating to the services provided by county public works departments.**

Ms. Kiernan explained that currently in counties that have established a public works department, reimbursement for services to subdivisions is limited, but his bill would expand their ability to be reimbursed.

George Sugars, Reno County Engineer and Public Works Director, testified in opposition to **SB 83**. (Attachment 4)

The Chairman commented that there seemed to be a misunderstanding of what the bill does. It is perceived as being more restrictive, but it was intended to broaden the county's ability to be reimbursed. Mr. Sugars responded that this bill originated in Reno County because the issue has been the subject of ongoing discussion there for several years and is an issue of cooperation. The hearing on **SB 83** was concluded.

**SB 84--Concerning Johnson County Park and Recreation District; relating to contracts for improvements.**

Ms. Kiernan explained that the bill applies only to the Johnson County Park and Recreation District. It increases the limitation on purchases of materials from \$1,500 to \$10,000.

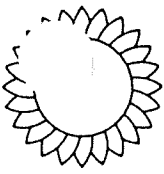
Gary Haller, Director of the Johnson County Park and Recreation District, testified in support of the bill. (Attachment 5)

Senator Ranson felt the bill should clearly state that the increase applies to supplies only and not for services which could affect small contractors who bid. Mr. Haller reiterated that the intent of the bill is to apply to supplies only. The hearing on **SB 84** was concluded.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for February 7, 1995.





JANUARY 31, 1995

SENATE LOCAL GOVERNMENT COMMITTEE

HEARING ON SENATE BILL 82

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR  
JOHNSON COUNTY BOARD OF COMMISSIONERS

The Johnson County Board of Commissioners supports SB 82 because it is a reasonable approach to a problem created by legislation passed in 1994.

The Commissioners support openness in government and genuinely strive to maintain an open communication with both the public and the media. However, under current law local elected officials are put into a position of taking a risk of unintentionally breaking the law in instances when they have no control over the situation. For example, many times the Commissioners are invited to attend the same social events. After they arrive, they can avoid even speaking to one another and yet feel that by just being in the same place they are outside the law.

The Board believes that SB 82 clarifies the section on social functions and would go a long way toward relieving a problematic situation.

In addition, the bill contains a section covering appointments to board and commissions that would relieve a very sensitive predicament. It would provide that consideration and discussion of such appointments would be added to the reasons to hold executive sessions. It is difficult enough to find people who are willing to give many hours of time, without compensation, without subjecting them to their appointment being discussed publicly. This change would eliminate that problem.

Amendments to the Public Meetings Act were adopted in a rather hasty manner in 1994 and in some areas are somewhat severe. SB 82 offers two changes that would greatly assist local officials while protecting the public's "right to know".

The Johnson County Commission urges the Committee to seriously consider these rather minimal changes to the Open Meetings Act and recommend SB 82 favorably for passage.



**League  
of Kansas  
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

**LEGISLATIVE TESTIMONY**

**TO: Senate Local Government Committee**  
**FROM: Don Moler, General Counsel**  
**DATE: February 2, 1995**  
**RE: Support for Senate Bill 82, Concerning Open Meetings**

Thank you very much for the opportunity to appear before you today in support of SB 82, concerning open meetings. This past summer the Special Committee on Open Meetings met to study the range of problems that have been identified with the Kansas Open Meetings Act (KOMA) and possible solutions to those problems. This interim study came on the heels of the 1994 amendments to the KOMA which clearly extended the KOMA to telephone calls and other interactive forms of communication.

SB 82 addresses two of the six concerns raised before the interim committee last interim:

- Should discussion of potential appointees be specifically listed as a proper subject for executive session?
- Should social gatherings, travel and educational gatherings be excluded from the definition of open meeting?

**Discussion of Appointees**

The subject which the KOMA first recognized as appropriate for discussion in executive session was and is "personnel matters of nonelected personnel." (See line 40 of SB 82). This provision has enabled local and state governing bodies to conduct what have to be their most sensitive discussions in private--as long as any binding action is taken in public. In opinions from the Office of the Attorney General over the years, however, it is clear that this provision is not broad enough to include nominees to appointed boards, commissions, councils, etc., including local planning commissions, plumbing boards, aviation advisory boards, etc.

Why is it desirable to conduct these discussions in private? The simple answer is that such discussions are necessary in order to ensure a full exchange of views concerning the qualifications of individuals to serve in these important posts. If the

*Senate Local Gov't  
2-2-95  
Attachment 2*

discussions do not happen because of the KOMA, it would appear that the public interest in having the most qualified persons in these positions is being thwarted. Furthermore, it is important to safeguard the reputation of nominees and avoid any possible damage that may result from a public discussion of a nominee's qualifications.

Mayor Ed Blake of El Dorado explained this in his testimony last Tuesday.

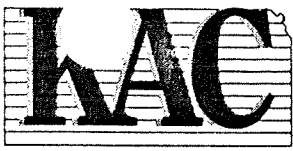
### **Social Gatherings**

This past interim the Special Committee heard considerable testimony from local officials and their representatives that the KOMA is now being interpreted by the public to prohibit even social gatherings by local elected officials on the same governing body. While the law may not literally preclude such social gatherings, the prevailing citizen view in many cities appears to be that social contacts are not allowed.

The League conducts regular training and education seminars for elected city officials during which I frequently preach the importance of teamwork among the governing body and staff, effective communication, consensus building, and effective relations with the electors. I urge the elected officials to get to know each other personally by inviting each other to lunch or dinner. In these sessions I have been told—quite literally and frequently—that in many cities the governing body members not only will not have lunch or dinner with each other, but they also avoid socializing with each other in other ways for fear of being accused of a KOMA violation.

How effective would you be if you could not have even social contact with your colleagues in the legislature? Not very effective, I would submit. In some of our cities, however, I am told that governing body members even try to avoid running into each other in public in order to avoid the appearance of a violation of the law in the mind of the public. Such conduct drives wedges between elected officials who need to get to know each other in order to be effective. The statement in lines 23 - 25 in SB 82 will provide some much needed assurance that socializing with other members of the governing body is acceptable and encouraged.

Thank you for your consideration of these amendments. In requesting this legislation the League purposely limited the scope of the bill to these two items. These amendments will respond to some significant needs in many communities of the state. Please let me know if you have any questions.



KANSAS ASSOCIATION OF COUNTIES

"Service to County Government"

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Darrell Wilson
Saline County Sheriff
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(913) 826-6500

Executive Director
John T. Torbert, CAE

To: Senator Mark Parkinson, Chairman
Senate Local Government Committee

From: Anne Spiess
Director of Legislation

Date: January 31, 1995

Re: SB 82 - Kansas Open Meetings Act

The Kansas Association of Counties supports requiring meetings of governmental bodies to be held in sessions which are open to the public. However, KAC would urge your support of SB 82 and the changes it makes to the Kansas Open Meetings Act.

It is our contention that the current language of K.S.A. 75-4317a is overbroad, exceeds the original intent of the legislature, and creates unintentional violations of the Kansas Open Meetings Act.

What constitutes a "meeting?"

Under the old statute, a meeting took place if three requirements were met:

- 1. A prearranged gathering or assembly
2. By a majority of a quorum of the membership of the body or agency
3. For the purpose of discussing the business or affairs of the body or agency

The original language was never intended to prevent elected officials from having chance encounters and social gatherings.

HB 2784 was introduced in the 1994 session in response to a ruling by the Supreme Court of Kansas in Stephen v Board of Seward Co. Commissioners 254 Kan. 466 (1994). In this decision the Supreme court ruled that the definition of "meeting" contained in K.S.A. 75-4317a is construed not to include telephone calls.

Senate Local Govly
2-2-95
Attachment 3

The court noted that in 1977, legislation was introduced that would have added the following wording to K.S.A. 75-4317a:

"No chance meeting, social meeting or electronic or written communication shall be used in circumvention of the spirit or requirements of this act."

Because this wording was rejected by the 1977 legislature the court deduced that these four alternative opportunities for communication were **not** contemplated to be within the term "meeting" in K.S.A. 75-4317a.

#### **Protective Language Added in 1977**

It appears, however, that when the 1977 legislature rejected electronic or written communications they also realized the possibility that "chance meetings" and "social meetings" were not official meetings of governmental bodies. Therefore, the following language was added in 1977:

"As used in this act 'meeting' means any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency".

This language became codified as K.S.A. 75-4317a.

The word "prearranged" had never been contained in the original definition. It was clear that the legislature wanted to protect local governments from the possibility that chance meetings and social gatherings could violate KOMA. The addition of the word "prearranged" provided the necessary protection.

Because the legislature had the opportunity to expand the term "meeting" to include telephone calls but instead chose to include only a prearranged gathering or assembly; the court determined that "meeting" requires the gathering or assembly of persons in the physical presence of each other. Clearly, said the court, a telephone call is not a "meeting" as defined by the 1977 legislature.

In the zeal to expand KOMA to telephonic and electronic communications the Attorney General's office totally undid what the 1977 legislature passed. **HB 2784** re-introduced the exact language rejected by the 1977 legislature and eliminated the "prearrangement" language the legislature had thoughtfully included. This language was further modified by the legislature and the result is a chaotic statute that ignores the following stern warning issued by the Kansas Supreme Court.

**In *Stephen v Seward Board of County Commissioners* the Supreme Court urged caution in crafting language to amend KOMA:**

"If the legislature does amend KOMA, hopefully, such amendments will clearly spell out what conduct is to be prohibited by the act. K.S.A. 75-4320a(b) places the burden of proof on the public body or agency to sustain its action...."



"Public officials need to know just what conduct is proscribed by KOMA. Uncertainty is not in the best interest of either the public or public officials subject to KOMA. We note over 50 Attorney General Opinions have been issued to answer various questions raised by KOMA. Considerable confusion obviously exists as to what KOMA requires."

Most violations of K.S.A. 75-4317a are "acts of ignorance" rather than "acts of arrogance". They are unintentional and essentially harmless transgressions which take place at social gatherings, or as a result of uncertainty as to what conduct is proscribed by HB 2784. It is our opinion that KOMA was never intended to apply to unofficial meetings of local officials. This law will continue to have unintended consequences until social gatherings are excluded from KOMA.

We urge you to give this matter the study it deserves. Thank you for your consideration of our concerns.

COMMENTS TO THE SENATE COMMITTEE ON LOCAL GOVERNMENT

MARK PARKINSON, CHAIRMAN

CONCERNING PROPOSAL SENATE BILL NO. 83

FEBRUARY 2, 1995

By: George P. Sugars, P.E. & L.S.  
Reno County Engineer and  
Public Works Director

Senate Local Gov't  
2-2-95  
Attachment 4

Chairman Parkinson and members of the Senate Committee on Local Government

My name is George Sugars, I am the County Engineer and Public Works Director for Reno County in Hutchinson, Kansas, and I have been asked to address the committee concerning counties; relating to services provided by the County Public Works Departments.

KSA 19-4503 authorizes the Board of County Commissioners to provide public works services to political subdivisions within the county by entering into agreement between the two governing bodies. It further authorizes the reimbursement to the county for all direct and indirect cost associated with providing the service to the political subdivision. Senate Bill No. 83 proposed to delete the reimbursement clause.

By implementing the changes as proposed in Senate Bill No. 83 could have a significant impact and long term effect on funding of the county public works departments and the maintenance of the county infrastructure systems within the State of Kansas. If the county public works departments are not able to recoup the cost to provide the services to the various government entities within the county, then this will drain the ever dwindling resources made available to maintain the enormous and vital rural road and bridge infrastructure system. Also, if the county public works departments are not able to receive compensation for services provided, then we may not be able to provide the services. I believe this would have a negative effort on encouraging cooperation and efficiencies with all local governments.

This statute KSA 19-4503 has worked very well over the year to be able to cooperate and coordinate with various political entities within the county, and still be able to receive just compensation for the work performed. I personally have used this statute to provide services to the 31 townships within Reno County, to the cities and towns, and to sewer districts within the county. We have provided services to the townships in the form of right of ways surveying, traffic engineering for blind intersections and speed limits, road and drainage design, mowing of road right of way, snow and ice control, asphalt overlaying and sealing, and installing drainage culverts and entrances on township roads. We have provided services to the cities and towns for biennial bridge inspections, construction engineering inspection of city projects, and asphalt overlaying and sealing of asphalt roads through the cities. As for the sewer districts, we have provided mowing of vegetation around the lagoons.

In summary, as I have previously indicated, this current statute without the proposed changes works very well and the county public works departments have been able to receive compensation as indicated in this statute for services provided to the local government entities.



TESTIMONY  
to  
KANSAS SENATE  
LOCAL GOVERNMENT COMMITTEE

by  
Gary L. Haller, Director  
Johnson County Park and Recreation District  
February 2, 1995

SENATE BILL NO. 84

Honorable Chairperson Parkinson and Committee Members:

Thank you for the opportunity to appear before you today regarding Senate Bill No. 84. I am Gary Haller, Director of the Johnson County Park and Recreation District.

Some of you are familiar with our special district, such as Chairperson Senator Parkinson and Member Senator Langworthy. For those of you who may not be as familiar, we have materials on the general background of the District and the District's 1993 Annual Report.

The Johnson County Park and Recreation District is the only special district for parks and recreation services in the State of Kansas, created by the legislature in 1955. In its wisdom, the legislature provided ample legislation and voter-approval powers for the District, and very few changes have been requested in the original legislation. Accordingly, we do not have the opportunity to appear before you too often and mostly in regard to modernizing the original legislation. The most recent legislative change was made in 1991 to clarify the District's use of the County election office to carry out any public referendum the District might present to the voters of Johnson County.

Our current request is one of purchasing limits. In 1961, the District's purchasing limits were set at \$1,500, meaning that purchase of items that are \$1,500 or more must be competitively bid and awards made by the District Board. The District recognized this limit was too restrictive in 1986; however, chose to expand KS.A. 19-2881, Section (b), as noted, to allow for use of other governmental contracts rather than increase the limit. This has been most helpful, but our operations and facility make up necessitates the need to increase the limits.

-more-

**1995 BOARD OF COMMISSIONERS**

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An Equal Opportunity Employer. Gary L. Haller, *Director*

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*Senate Local Gov't  
2-2-95*

*Attachment 5*

TESTIMONY TO SENATE  
LOCAL GOVERNMENT COMMITTEE  
February 2, 1995  
Page No. 2

The District maintains major concessions for football, soccer, and softball that have walk-in freezers and major air and heating units in which replacement cost could easily exceed a \$5,000 limit, let alone the current \$1,500 limitation. The same is true for sewage pump and major irrigation needs for golf course operations. We are also relying more on in-house construction projects for renovation and small restroom construction projects, where the costs of preparing detail plans and specifications would cost almost as much as the total project cost just to bid the materials competitively. There is also a time-line restriction in that projects must fit between winter, spring, and fall start-up and close-down times, as summer operations do not allow time for construction jobs. Thus, the obtaining of supplies within short time frames is essential.

The Board of County Commissioners supports our recommendations as shown in Exhibit A of their legislative agenda. The County also has a \$25,000 limitation. I have also provided a letter from Gloria Timmer, Director of Budget for the State of Kansas, indicating no fiscal impact on the state. (5-6)

Your favorable consideration of the District's request is appreciated, and I would be pleased to answer any questions you may have.

## STATUTORY REVISION REQUEST

Under the current Johnson County Park and Recreation District statute K.S.A. 19-2881 (b), the District is required to conduct a formal bidding process for purchase items of a \$1,5000 or higher value. This statute has been in existence since the early 1960s.

The District operations have reached the level where a system computer terminal, a sewage pump replacement, major vehicle repair, building renovation, standard office equipment purchase, etc., can easily be over the \$1,500 limit. Yet, due to purchas-

ing delays, major operation problems and customer service inconvenience area created.

The District Board's legislation recommendation is to change the amount from \$1,500 to \$10,000. In addition, the Board would develop purchasing review guidelines for purchasing under the \$10,000 limit. The \$10,000 limit is also within current guidelines for many city and county governments. Johnson County, for example, has a \$25,000 limit with purchase guidelines approved by the County Commission for purchases under \$25,000.

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*Session of 1995*

### SENATE BILL No. 84

By Committee on Local Government

1-19

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9 AN ACT concerning Johnson county parks and recreation district; relating  
10 to contracts for improvements; amending K.S.A. 19-2881 and repeal-  
11 ing the existing section.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 19-2881 is hereby amended to read as follows: 19-  
15 2881. (a) Before the board of any park district created under K.S.A. 19-  
16 2859 to 19-2880, inclusive, and amendments thereto, shall let any contract  
17 for any improvement which is estimated to exceed ~~\$1,500~~, ~~or~~ \$10,000, the  
18 board shall cause accurate detailed plans and specifications therefor, to-  
19 gether with a detailed estimate, of the cost of same, to be made and filed  
20 in the office of the secretary of such board; ~~and thereafter, and~~. Before  
21 letting such contract, the board shall advertise for bids to do such work  
22 in accordance with such plans and specifications for at least one week in  
23 a newspaper of general circulation in such district. Except as provided by  
24 subsection (b), the purchase of materials, contracts for purchase or sale,  
25 lease contracts and other contractual services which are estimated to ex-  
26 ceed ~~\$1,500~~ \$10,000, shall be made upon competitive bids. All bids shall  
27 be made in writing and signed by the bidder, and presented by the bidder,  
28 or the bidder's agent or attorney, to the board, at a meeting thereof, and  
29 all bids shall be considered and accepted or rejected immediately after  
30 their submission. The board may reject any bids and shall not accept a  
31 bid in excess of the estimated cost of the work, and a contract let at a  
32 price in excess of the estimated cost of the work shall be void.

33 (b) The district may enter into agreements with any public agency  
34 for the purchase of materials, contracts for purchase or sale, lease con-  
35 tracts and other contractual services through such governmental units  
36 using the bidding procedure of such public agency. When used in this  
37 section, "public agency" means any state or a political or taxing subdivi-  
38 sion thereof.

39 Sec. 2. K.S.A. 19-2881 is hereby repealed.

40 Sec. 3. This act shall take effect and be in force from and after its  
41 publication in the statute book.



JOHNSON COUNTY, KANSAS  
PURCHASING PROCEDURES

Procedure  
No.: 210

Effective  
Date: (12/30/94)

Authority to Purchase, Contract

Supersedes  
Date: January 1, 1987

A. Any and all dollar limits noted in these Purchasing Procedures are aggregate (cumulative) totals for any like goods and/or services purchased within any calendar year.

B. The splitting of any aggregate purchase requirement to lower the individual portions of the purchase below the limits where a more restrictive level of competitive bidding (informal or formal) is required (e.g., to keep the portions of the requirement below the \$2,000 or \$25,000 levels of competition) is prohibited.

C. Purchases of less than \$2,000.00 may be made, without competition, on the open market upon the authorization of the appropriate agency, department or office director. Such purchases do not require the issuance of a County purchase order.

D. Purchases of professional services in an amount less than \$25,000.00 may be negotiated and contracted for by the appropriate agency, department or office director. The Legal Department will assist user departments in drafting the contracts and will approve the contracts as to form.

E. Purchases of goods and services in an amount of \$2,000.00 or more, but less than \$25,000.00 shall require documentation of the appropriate method of competition and approval by the Purchasing Director; provided, however, that construction, renovation, and road and bridge projects shall be procured in accordance with the limitations imposed by applicable state or federal law.

F. Purchases of goods and services in an amount of \$25,000.00 or more shall require formal, publicly advertised competition and approval by the Board of County Commissioners or the appropriate governing board.



# JOHNSON COUNTY 1995 LEGISLATIVE PROGRAM

## STATE FUNDING (Con't)

ISSUE: MENTAL RETARDATION FUNDING

POSITION: SUPPORT

RATIONALE: The State should retain the responsibility for funding the care needed by the people coming from State institutions that have been closed rather than passing it on to the counties. Further the State should fund cost of living adjustments in all programs that are run by the County and funded by the State.

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ISSUE: MANDATED LEVEL OF COUNTY FUNDING

POSITION: OPPOSE

RATIONALE: The County opposes the State setting a mandated level of County funding for Mental Retardation Programs. Such decisions should remain at the county level.

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## INFORMATION SYSTEMS

ISSUE: ACCESS TO COMPUTERIZED INFORMATION SYSTEMS

POSITION: SUPPORT

RATIONALE: In 1993 and 1994, the County requested legislation to grant authority to local governments to charge for large blocks of information requested from the Geographical Information System (GIS). Under the proposal, the public would retain access to all public records but, would not be forced to subsidize businesses that exact large amounts of information from the system to use for profit making endeavors.

Appendix D

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## PARK AND RECREATION

ISSUE: INCREASED COMPETITIVE BID REQUIREMENT

POSITION: SUPPORT

RATIONALE: Increase the requirement for competitive bids from the current amount of \$1,500 to \$10,000. Such a change would allow the Park and Recreation department the flexibility needed to operate a major agency in an up-to-date manner.



DIVISION OF THE BUDGET  
Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1504  
(913) 296-2436  
FAX (913) 296-0231

Bill Graves  
Governor

Gloria M. Timmer  
Director

January 24, 1995

The Honorable Mark Parkinson, Chairperson  
Senate Committee on Local Government  
Statehouse, Room 128-S  
Topeka, Kansas 66612

Dear Senator Parkinson:

SUBJECT: Fiscal Note for SB 84 by Senate Committee on Local Government

In accordance with KSA 75-3715a, the following fiscal note concerning SB 84 is respectfully submitted to your committee.

SB 84 would require that the Johnson County Parks and Recreation District solicit bids for contracts on any project that is estimated to exceed \$10,000. The amount in current law is \$1,500.

The bill would have no fiscal impact on the state. According to officials at the Johnson County Parks and Recreation District, the fiscal impact of the bill would be negligible.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer  
Director of the Budget

cc: Gary Haller