

Approved: \_\_\_\_\_ January 23, 1996 \_\_\_\_\_  
Date

## MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Kent Glasscock at 1:30 p.m.. on January 17, 1996 in Room 521-S of the Capitol.

All members were present except: Representative Broderick Henderson - Excused  
Representative Robert H. Miller - Excused

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

Conferees appearing before the committee:

Others attending: See attached list

Chairperson Kent Glasscock welcomed new committee members, Representative Becker and Representative Pettey. Representative Glasscock said that new member Representative Miller was unable to attend the meeting.

Chairperson Glasscock announced that there were two orders of business. First, the appointment of the expanded subcommittee #1, which is the repealer committee chaired by Representative Bob Tomlinson. The Chairperson appointed Representative Sloan, Representative Welshimer, and Representative Henderson. In addition to these three new members, the subcommittee includes Representative Ott, Representative Weber, Representative Thimesch, and Chairperson Tomlinson.

The second order of business was bill introduction. Chairperson Glasscock announced the request from Representative O'Neal for the bill amending KSA 19-4503 concerning services provided by County Department of Public Works to other political sub-divisions. The motion to introduce Representative O'Neal's bill was made by Representative Mays and seconded by Representative Toplikar. Motion passed.

Chairperson Glasscock recognized Representative Tomlinson who presented a preliminary update on the Repealer Subcommittee Report from the 1995 Session. Representative Tomlinson gave all members a copy of this 1995 Subcommittee Report. (Attachment 1). The Chairperson thanked Representative Tomlinson for all the subcommittee's work to this date.

Chairperson Glasscock announced that Dr. H. Edward Flentje, Professor of Public Administration at Wichita State University, will present a report at the meeting on Thursday, January 25, 1996. He encouraged the Association of Counties and the League of Municipalities to participate in the committee's efforts to study the mandates.

The meeting adjourned at 1:47 p.m.

The next meeting will be Tuesday, January 23, 1996, at which time there will be a hearing on HB 2144.

LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: Wed., January 17, 1996

NAME	REPRESENTING
<i>Anne Spiess</i>	<i>Ks. Assoc of Counties</i>
<i>Gerry Ray</i>	<i>Johnson Co Commission</i>

BOB TOMLINSON  
REPRESENTATIVE 24TH DISTRICT  
STATE CAPITOL  
TOPEKA, KS 66612-1504  
913 296-7640  
5722 BIRCH  
ROELAND PARK, KS 66205  
913 831-1905



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: EDUCATION  
LOCAL GOVERNMENT  
JOINT COMMITTEE ON PLANNING EDUCATION

## 1995 Subcommittee Report

During the 1995 legislative session a subcommittee of Local Government was appointed to study the issue of state mandates on local governments throughout the state of Kansas. The subcommittee was the outgrowth of a request made to then Local Government committee chairperson Nancy Brown (R-Stanley) to recodify local government statutes in 1994.

The attempt to recodify was fueled by two problems. First some statutes had been found to be confusing and at cross purposes with other statutes. Secondly, some statutes were simply outmoded.

At about the same time the Kansas League of Municipalities was conducting a study of laws that places state mandates on county, city and other local units of government. The study done in conjunction with Wichita State University, Dr. Ed Flentje identified 941 different statutes which placed a mandate on local units of government. Such a volume of mandates caught the attention of the new Local Government committee chair Kent Glasscock (R-Manhattan). Rep. Glasscock combined the two initiatives and appointed a subcommittee to study both the recodification of statutes and the removal of mandates.

House Local Government  
1-17-96  
Attachment 1

The subcommittee consisted of: Rep. Robert Tomlinson (R-Roeland Park) (chair), Rep. Belva Ott (R-Wichita), Rep. Shari Weber (R-Herrington), Rep. Daniel Thimesch (D-Cheney) and Rep. Dixie Toelkes (D-Topeka).

Hearings were held to consider the charges given the subcommittee. The subcommittee recommended to the Local Government committee legislation to repeal the following sections:

KSA 2-116, 2-117  
KSA 3-501  
KSA 19-2414  
KSA 12-832,12-833  
KSA 12-1656  
KSA 12-2115, 12-2118, 12-2121  
KSA 12-2202  
KSA 12-2302,12-2303, 12-2304  
KSA 72-2136, 72-2137  
KSA 68-1124  
KSA 29-502, 29-505, 29-506  
KSA 19-235  
KSA 72-7801, 72-7802

and to amend the following sections:

KSA 17-1102, 17-1103  
KSA 12-1401, 12-1402

and consideration for repealing:

KSA 2-301, 2-302, 2-304  
KSA 3-705, 3-706  
KSA 8-148  
KSA 8-174  
KSA 10-113  
KSA 10-114  
KSA 10-1004  
KSA 10-1203  
KSA 12-1222, 12-1223  
KSA 12-1236, 12-1237, 12-1238

KSA 12-1617c, 12-1618d  
KSA 18-209, 18-210, 18-211, 18-212  
KSA 19-104  
KSA 19-105  
KSA 19-108  
KSA 19-110, 19-111, 19-112, 19-113  
KSA 42-358, 42-359, 42-364, 42-381  
KSA 58-314, 58-320  
KSA 42-366, 42-367, 42-368, 42-369, 42-370

The subcommittee recommendations were adopted and all but one became law. In total the subcommittee's and subsequent legislative actions removed fourteen different mandates on local governments and repealed 48 unnecessary sections.

Similarly, the House Energy and Natural Resources committee completed a project designed to clean up its statutes. This committee chaired by Rep. Carl Holmes (R-Liberal) repealed numerous unnecessary and outdated sections making a total of over 50 sections repealed at the recommendation of both committees. A copy of the preliminary report of the Local Government subcommittee is attached as Appendix A.

During the discussion of mandates it became apparent that most state mandates can be chartered out from under by local governmental units. Home rule exists in Kansas by constitution in the case of cities and by statute in the case of counties. Home rule means local units of government can "charter out" and refuse to obey any state law that is not uniformly directed at all local units of government.

Mr. Karl Peterjohn, of the Kansas Taxpayers Network testified on how the home rule charter works in fact. His testimony is attached as Appendix B.

Mr. Peterjohn's testimony centered around three main points: First, some mandates are good, specifically those protecting citizens against

restrictions to specific taxes and spending lids. Second, non-conformity gives cities and counties great latitude in avoiding state laws and finally, the current patchwork of state laws and home rule charters make it difficult for anyone to follow and obey the law. The subcommittee recommended further research on these points.

Late in the 1995 session the Kansas County Engineers and the Kansas Society of Land Surveyors approached the subcommittee with the idea of recodifying the statutes applicable to their professions. Copies of their letters appear as Appendix C and D. This recodification was to take place with the Kansas Association of Counties. However, do to some administrative difficulties in the Kansas Association of Counties the project has been put off.

During the 1996 legislative session, it is recommended that the subcommittee be continued and that its mandate remain the same. Mandates and home rule both play a large role in the workings of Kansas governments. The simplification of these statutes can only serve to make government less confusing and more responsive to the needs of Kansas citizens.



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COMMITTEE ASSIGNMENTS  
MEMBER: EDUCATION  
LOCAL GOVERNMENT  
JOINT COMMITTEE ON PLANNING EDUCATION

Report to the Local Government Committee  
from  
Subcommittee on Mandates

Section I.

The committee recommends that bills be drafted and introduced to repeal the following sections and the complete acts where applicable:

KSA 2-116, 2-117  
KSA 3-501  
KSA 19-2414  
KSA 12-832, 12-833  
KSA 12-1656  
KSA 12-2115, 12-2118, 12-2121  
KSA 12-2202  
KSA 12-2302, 12-2303, 12-2304  
KSA 72-2136, 72-2137  
KSA 68-1124  
KSA 29-502, 29-505, 29-506  
KSA 19-235  
KSA 72-7801, 72-7802

We further recommend that the committee consider amendments to:

KSA 17-1102, 17-1103  
KSA 12-1401, 12-1402

Section II.

Further study should be considered for repealing the following sections:

KSA 2-301, 2-302, 2-304  
KSA 3-705, 3-706  
KSA 8-148  
KSA 8-174  
KSA 10-113  
KSA 10-114  
KSA 10-1004  
KSA 10-1203  
KSA 12-1222, 12-1223  
KSA 12-1236, 12-1237, 12-1238  
KSA 12-1617c, 12-1618d  
KSA 18-209, 18-210, 18-211, 18-212  
KSA 19-104  
KSA 19-105  
KSA 19-108  
KSA 19-110, 19-111, 19-112, 19-113  
KSA 42-358, 42-359, 42-364, 42-379, 42-381  
KSA 58-314, 58-320  
KSA 42-366, 42-367, 42-368, 42-369, 42-370

Further, we have heard testimony on the following issues which require in-depth study we were not able to give but should be undertaken.

Mandates concerning:

1. State Preemption from Imposing State or Excise Taxes on Cigarettes or Cereal Malt Beverages. KSA 12-142
2. Tax Levy on Vehicles. KSA 12-143-146
3. State Preemption from Levying Excise Taxes. KSA 12-194
4. Group Health Care Benefits for Retired Employees. KSA 5040
5. Veterans Affairs and Related Local Mandates. KSA 73-301, 73-302, 73-303, 73-207, 73-208
6. Abatements of Irrigation Districts. KSA 42-3,107, KSA 42-3,108

These sections reflect mandates which are controversial but need to



be discussed as mandates.

Section III.

The subcommittee also recommends some immediate follow-through and hearings on:

1. Mandate waiver programs and implementation in Kansas.
2. Home rule sections of the Kansas constitution and how it applies to mandates.

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Bob Tomlinson, Chairperson

Reps. Ott *B. Ott*  
Weber *W. Weber*  
Thimesch *E. Thimesch*  
Toelkes *R. Toelkes*

KANSAS TAXPAYERS NETWORK  
P.O. Box 20050  
1081 S. Glendale  
Wichita, KS 67208  
15 March 1995

316-684-0082  
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LOCAL GOVERNMENT SUBCOMMITTEE  
ON HOME RULE IN KANSAS

Chairman Tomlinson and members of this subcommittee, my name is Karl Peterjohn, I am the Executive Director of the Kansas Taxpayers Network (KTN) and a resident of the City of Wichita. I appreciate the opportunity to discuss Kansas home rule on cities and counties. I would also like to provide you with two recent articles from the Wichita Eagle which discuss home rule. One I wrote. The other article is from Professor Flentje, of Wichita State University. Let me add for the record that I am not an attorney.

My expertise on home rule is home grown. I earned it the hard way by circulating two petitions and as a result was sued by the City of Wichita. Over a year was spent in litigation, which ended up in the Kansas Supreme Court, and thousands of dollars spent on our legal expenses, provided me with an expensive education concerning Kansas home rule in general and municipal home rule in particular. I'd like to share this expensive expertise with you. However, I must point out two important facts for this subcommittee and the full Local Government Committee to consider.

First, is your staff. Mike Heim is a tremendous resource for the Local Government Committee. Heim's work on Kansas home rule are regularly used within the Kansas legal community. My attorney who defended me in the City of Wichita's law suit was Bob Frey, who some of you may know as a Kansas legislator or as the husband of the late Rep. Wanda Fuller. I know that Bob Frey carefully examined Mike's home rule research and articles in preparing our case.

Second, is the resource provided by Ed Flentje's recent mandate study which was undertaken on behalf of the League of Kansas Municipalities. There is a lot of valuable information contained within this study. However, this study has significant flaws which invalidate many of the assertions contained in this document's conclusions. Before I go into the key points of Flentje's study, let me discuss my law suit, which was resolved by the Kansas Supreme Court in the case of the City of Wichita (plaintiff) v. Kansas Taxpayers Network and Karl Peterjohn (defendant) 1994. This is how home rule works in Wichita.

Three days before Christmas in 1992 the City of Wichita passed a Charter Ordinance which took the city out of the state's Water Pollution Act, KSA 12-3101 to 3107. The city exercised their Home Rule powers under Article 12 Section 5 of the Kansas

Constitution. No mention was made at this time that any new fees or levies were going to be imposed as a result of this Charter Ordinance and this legislation was quietly approved without news media coverage.

Early in 1993 the City of Wichita passed a regular ordinance, 41-948, establishing their Storm Water Utility using the Charter Ordinance as the legal foundation. This too did not establish a fee or charge for this utility. This ordinance did mention that a fee could be established.

Shortly thereafter a resolution was passed by the city council establishing a fee of approximately \$20 a year for each residence but charged businesses a fee based on their "impervious surfaces" of \$1.66 per month per equivalent residential surface area of approximately 2,000 square feet.

Let me translate this into meaningful English. For businesses with parking lots fees were put in place which in many cases exceeded the total being paid for all city property taxes. In one complaint KTN received from one of our business supporters, they were being charged this fee without having storm sewers and only having a gravel parking lot in their wholesale operation. Gravel is impervious under city rules.

In another case a business owner was outraged paying special assessments for storm and sanitary sewers and now having this fee charged on top of the specials. Currently, the city is raising over \$5 million a year in fees from this utility alone. If the city had not established this home rule Charter Ordinance they could not have raised property taxes enough to raise this much money without violating the property tax lid. This is another way that the property tax lid is voided by local action. The city does charge this new "utility" a franchise fee so a portion of the utility's revenues are diverted in the city's general fund.

An ad hoc citizens group was established to circulate a petition to repeal this storm water utility under the municipal initiative statutes in March or April. This ad hoc group, Wichitans for Good Government, received support from the Kansas Taxpayers Network but was not organized into an entity which could be sued.

When we started the petition drive the city told us to stop petitioning or be sued. Naively, we presumed that the First Amendment still superseded municipal ordinances, along with the state's municipal initiative statute, but we shortly learned that this is not the case under current Kansas home rule.

The two key legal points in our law suit turned on these points. First, was our petition drive to repeal the new storm water utility and a second petition to require voter approval for all new taxes, fees, or rate hikes legal under Kansas municipal initiative statutes?

Second, was the city correct in utilizing their home rule powers to opt out from these state statutes in the Water Pollution Act?

Please let me digress briefly. Our petition drive sought to force a municipal vote on two separate petitions. The first was to create a local tax lid. The second was to repeal the new storm water utility fee. Both petitions were necessary to prevent the repealer from being shifted onto another fee or tax.

Sedgwick County district court heard both cases and sided on all points with the city. With our limited resources we could only pursue one appeal and we were told that municipal initiative repealing petitions have a long history in Kansas case law of being found to be legal. If you'd like the details please see Bob Frey's brief on this case which is across the street and on file in the Supreme Court Library. I urge you to examine both the brief on my behalf and the city's brief.

Rather than go into the overly stringent restrictions which now exist due to the Supreme Court's case law on municipal initiative petitions, I'm going to try and limit the rest of my comments to the home rule issues in my case which went before the Kansas Supreme Court.

Constitutional home rule for cities and counties creates tremendous latitude for opting out of state statutes. In the City of Wichita there are at least 155 charter ordinances which have been enacted since home rule was created in 1960. County home rule was established by statute in the 1970s.

When home rule is exercised it can cover broad areas and statutes which would otherwise be viewed as uniform. For instance 12-3106 on its face is uniform and as a bond statute has a good reason to be. Its current language was enacted separately from the other provisions of the Water Pollution Act. However, another statute, 12-3105 has a subtle phraseology which creates this "non-uniformity" and makes all seven statutes non uniform. This non uniformity states, "...Provided, however, that any city of the first class...may with the consent of the public utilities board..."

So the entire enactment, even the portions which were enacted prior to home rule or in a uniform statute enacted later was found to be "non-uniform" and home rule applied (KSA 12-3101 to 3107). The Supreme Court has ruled in the Junction City v. Griffin case in 1980 that the most subtle non uniformity is grounds for exercising home rule over a large number of statutes. The Griffin case covers a large number of criminal statutes, from KSA 12-4101 through 12-4701. Any uniform bill you enact on let me suggest Water Pollution which leaves 12-3105 unchanged, will allow cities to continue to opt out under their home rule powers. My understanding is that if you repeal 12-3105 and do not replace

it, that the charter ordinances already on the books will continue in full force and effect.

In an opinion from Justice Davis a unanimous Kansas Supreme Court ruled in favor of the City of Wichita on all points in my case. A municipality can successfully sue to stop a municipal initiative petition drive under Kansas law. Home rule allows the city to create this utility. This is only one example of the power and scope of the current home rule provisions for cities and counties.

I provide this information not to dwell on the loss suffered in this law suit. I provide this information so you will have a better understanding of the range of powers and scope these powers can be exercised under using current Kansas law. Let me close by bringing this back to the League of Municipalities study from Ed Flentje. Flentje's work simply listed 941 state mandates onto cities and counties. It did not, as the press misleadingly reported, identify 941 unfunded state mandates. No effort was made to separate mandates into funded or unfunded.

I would strongly assert that certain unfunded mandates are actually good. Specifically, the state mandate that any local sales tax must receive voter approval is good. This is an unfunded mandate onto local government. The local body must pick up the cost of the election.

The same is true for the statutory unfunded mandate which is the property tax lid on cities and counties. Staff resources are needed by the local units to comply with this mandate. However, over 100 cities and counties have opted out from the property tax lid utilizing their home rule powers.

Having a report which lists 941 mandates is not useful by itself. The most important fact which must be considered and is totally overlooked in the Flentje study is, of these state mandates onto local units, how many can be avoided by the local units utilizing their existing home rule powers? This is the critical question which this study ignores. Without an answer, I don't believe that you can meaningfully determine the extent to which the state restricts the activities of either cities or counties. I do believe there is substantial range of understanding concerning what can and can't be done under home rule by local units. The City of Wichita and most larger cities with large, full time legal staffs are much better prepared to exercise home rule powers than a third class city with a part-time city attorney. That is why large cities like Wichita, Overland Park, and Topeka were among the first to enact storm water fees under home rule.

Let me point out another significant advantage for local units exercising home rule. Both city and county home rule provisions contain "liberal construction" language which requires the court's to favor cities and counties interpretation of their home

rule powers. This was an impossible obstacle for Bob Frey and myself to overcome.

I personally believe there are more statutes under municipal home rule where the cities may opt out than there are uniform statutes. I can not document this assertion but I would love to see the document proving this assertion wrong. Let me cite another reason why this occurs.

KSA 25-901 to 25-905 is part of the state statutes for election expenditure reporting. Non uniform provisions are in place which exclude expenditures for first class cities, including the City of Wichita and large school districts in this state from these reporting provisions. This non-uniformity not only allows all cities to exercise home rule on this specific statute, but this will extend to cover many other provisions which appear uniform on the surface. This home rule effect allows every other city in Kansas to also opt out through the home rule process. Chapter 25 is not a part of Kansas statutes normally dealing with cities or counties. This provision wasn't included among Flentje's 941 state mandates.

A large amount of the legislation your committee will consider will have provisions excluding certain classes of cities or saying "a city of the first (or second or third) class may (or may not) enact...". To the degree this committee and your Senate counterparts enact non uniform statutes is the degree you allow local units complete authority to go outside state law using their home rule powers. The only exception to this is the roughly 22 exceptions to county home rule powers which are contained in KSA 19-101a.

Another problem home rule provides is non uniform statutes in Kansas. The average citizen has a hard time obeying all the state statutes, city ordinances, and county resolutions. Ignorance of the law is no excuse for non compliance, but the current patch work system of home rule in Kansas creates a place where the average citizen will not be able to obey knowing about state and the wide variety of home rule authorized local laws.

Defenders of the current home rule from the League of Kansas Municipalities and Kansas Association of Counties will point out the option of citizen petitioning to force a referendum to stop Charter Ordinances under home rule. These provisions do exist and occasionally are exercised. However, the petition provisions require a large number of signatures in a short, 60 day time period. In smaller counties and cities this may not be as large a problem as it is in Sedgwick County. In a populous county like Sedgwick, this sort of petition effort is extremely difficult in a short time period. I doubt that this has been exercised in more than one percent of the ordinances enacted in Sedgwick County. In the 17 years I've lived in Wichita, we have never had a charter ordinance referendum at either the Wichita City or Sedgwick County level.

Kansas state government has been excessively accommodative to local units in creating the large number of non uniform statutes. Currently, the legislature does not have adequate information available on the number, the size, the scope of the non uniform Kansas statutes. You should. The League of Kansas Municipalities state mandates study, conducted by Professor Flentje, is not a document to use to modify state mandates without extensive further study which fully considers existing home rule policies and the large number of non uniform Kansas statutes.

I have been told by several lawyers knowledgeable about home that this legislature, under Article 12, Section 5b of the Kansas Constitution, that the state is authorized under this home rule amendment to set up four classes of cities for purposes of the state providing explicit provisions of what may or may not be done by various categories of municipal corporations. This goes beyond the various classes provided in current Kansas law. This is constitutional authority which the legislature has never exercised.

In closing I would like to thank this committee for their patience on this extended testimony and I welcome any questions.

**TESTIMONY OF  
DAN HARDEN, P.E.  
BEFORE  
THE HOUSE LOCAL GOVERNMENT  
COMMITTEE  
KENT GLASSCOCK  
CHAIRMAN**

**Kansas County Engineers wish to clear up the considerable statutory confusion that surrounds the practice of County Engineering. County Engineers work in 8 basic areas. These are:**

- **roads**
- **bridges**
- **surveying**
- **wastewater collection and treatment**
- **potable water production**
- **drainage**
- **solid waste management**

**The statutes that govern these activities are randomly dispersed through out the statutes. The statutes in one chapter will violate the statutes in another chapter or an administrative regulation. Several statues are obsolete in that they do not address situations that any longer exist in modern day Kansas. The situation is certainly confusing to both the public and practitioners.**

**Kansas County Engineers among themselves have begun the Herculean task of attempting to sort out this mess.**



**We see the undertaking to be beyond our immediate resources. We therefore will be working on this project for several years to come. As the years pass we will be bring to the legislature various suggestions as to how the various statutes can be in essence be codified to make the County Engineer situation more understandable and predictable for both the public and for the practitioners. There is always more confidence in local government when everyone involved, both citizens and local government staff, have understandable and realistic expectations of what local government is to do.**

HELEN STEPHENS & ASSOCIATES, INC.

LEGISLATIVE LIAISON

7722 CHADWICK

PRAIRIE VILLAGE, KANSAS 66208

913/381-9826

July 29, 1995

Rep. Bob Tomlinson  
5722 Birch  
Roeland Park, Kansas 66205

SUBJECT: Surveying/Engineering Statutes

Dear Bob:

Thank you for your help in obtaining the subject statutes. The purpose of this letter is to advise you of our actions and a tentative timeline. As you know, it is the goal of the Kansas Society of Land Surveyors (KSLS) to work with the Kansas Association of Counties (KAC) to review these statutes for needed changes and/or repeal.

KSLS has appointed a committee of seven for this purpose. This committee has met and the statutes distributed among the seven according to their expertise. This committee will meet again on September 15 to review their findings; and a third time on October 6. We will then meet with KAC for their input and review.

It is our plan to have our proposals to you around November 1. When a firm date is known, we would like to meet with you to review our suggestions and to receive your comments.

In reviewing the above, we found three chapters that should be reviewed that were not pulled by the word search, these are Chapters 29, 61, and 67. We would appreciate your help in requesting these three chapters from the revisor's office. Upon receipt, I will forward them to the assigned person.

If you have any questions or need additional information, please do not hesitate to call me. Again, thank you for your help in obtaining these statutes.

Sincerely,



Helen Stephens