

Approved: 3-25-96
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Chairperson David Corbin at 10:00 a.m. on March 18, 1996 in Room 423-S of the Capitol.

All members were present.

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:
Rick Hoffman, CEO, Seaboard Farms, Inc.
Mike Jensen, Kansas Pork Producers Council
Bill Craven, Kansas Natural Resource Council
Ivan Wyatt, Kansas Farmers Union
Sheila Bredding, Morton County, Kansas
Cliff Smedley, Stanton County, Kansas
Mike Smith, Johnson, Kansas
Amy Barber, Stanton County, Kansas
Sandy Snell, Stanton County, Kansas
Jerry Hubbard, Morton County, Kansas
Lyndell Herron, Morton County, Kansas

Others attending: See attached list

SB 744 - concerning agricultural corporations; relating to swine production facilities.

Chairperson opened the hearing on the bill and called on Rick Hoffman. Information from Nina Sipes, Stanton County, Kansas opposing the bill was distributed (Attachment 1). Also, distributed was information from Kansas County Commissioners Association expressing concerns with **SB 744**. They believe county commissioners must retain authority to decide land use issues in their respective counties, and would oppose any loss of that control (Attachment 2).

Rick Hoffman supported the bill. He said it does not reflect everything they would like, but it does clarify what happens if a county wishes to change its mind. It provides some protection to ensure investments that Seaboard and other enterprises made in good faith are secure in Kansas (Attachment 3).

Mike Jensen spoke in support of **SB 744**. It is important to their members that Kansas grandfather in existing projects. He believes that if local governments do not stand behind projects that are under construction and the investment they represent, an economic message is being sent, that Kansas is not a state where you want to do business (Attachment 4).

Bill Craven opposed the legislation. He said to his knowledge no other state statutes had deadlines for rescinding a resolution, and this was an unprecedented attack on local control (Attachment 5).

Ivan Wyatt opposed **SB 744**. He thought the bill was another chip at public confidence in state government (Attachment 6).

Sheila Bredding spoke opposing the bill, if the bill is passed it would be an infringement of home rule and local control (Attachment 7).

Cliff Smedley expressed concern that some hog lagoons were not sealing and they were leaking into the groundwater. He does not think Kansas Department Health and Environment (KDH&E) is protecting them. KDH&E has the technology to detect whether raw animal sewage is escaping from the sewage lagoons, but they are not using it (Attachment 8).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE Room 423-S-Statehouse, at 10:00 a.m. on March 18, 1996.

Mike Smith opposed **SB 744** as it takes away local control (Attachment 9). Also, he spoke for the High Plains Concerned Citizens Coalition from the Southwest corner of Kansas and they requested a no vote on **SB 744** (Attachment 10).

Amy Baker voiced concern that the valuation of land close to the swine facilities is declining. She also expressed concern that the swine production facilities would contaminate their ground water (Attachment 11).

Sandy Snell said she was originally assigned the corporate farm issue as a government class project; eighteen weeks later she is still extremely interested in it. She asks that it not be passed as it takes away local control (Attachment 12). Ms. Snell also, read a statement from Stanton County Natural Resource Committee opposing the bill (Attachment 13).

Jerold Hubbard opposed the bill. He thought it possibly could cause more problems than it solved, and it goes against home rule (Attachment 14).

Lyndell Herron opposed the bill as he thought it would strip local governments of the power to control their own affairs (Attachment 15).

Art Riedel from Pawnee County asked that his written remarks be distributed. His statement suggests it should be the right of the people in counties to rescind resolutions. Home rule is primary to a democracy (Attachment 16).

The hearing on **SB 744** was closed.

Senator Wisdom moved to adopt the minutes of March 13. Senator Steffes seconded the motion. Motion carried.

The meeting adjourned at 11:01 a.m.

No further meetings are planned for 1996.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 3-18-96

NAME	REPRESENTING
Mark Barzelcina	KDOCH
Rick Hoffman	SEA BOARD
Marle Campbell	Seaboard Farmer
David Beler	Seaboard
Dwight Hubbard	Morton County Committee for Responsible Government
Shiela Breen	" "
Amy Barber	Stanton County
Sandy Kay Druel	Stanton County
Landell Monon	Morton County Cons. Dist
Mike Smith	Stanton County
Cliff Smedley	Stanton County
Mary Fund	Ks. Rural Center
Jim Allen	Seaboard
Mike Jensen	KPPC
Art Riedel	Pawnee County Citizen
John W. Wyatt	Ks Farmers Union
Greg Krssek	KS Dept of Ag
Joe Lieber	KS Co-op Council
Marty Vanier	KS Ag Alliance

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 3-18-96

NAME	REPRESENTING
Leslie Kaufman	Ks Farm Bureau
Rich McKee	KS Livestock Assoc
Anne Spiess	Ks. Assoc. of Counties
Craig Volland	Ranza Group Sierra Club
Don Rypre	Rypre Consulting

Senate Bill 744

March 15, 1996

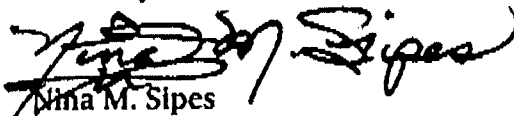
Dear Fellow Concerned Citizens,

In the beginning, if Kansas would just let Confined Swine feeding corporations set up business in this state, Seaboard testified it would only need to raise 1 million hogs here. How? Confined feeding facilities with State of the Art manure processing in lagoons built to do the job properly. There would be new jobs and prosperity for all. Investment in the community. This new industry would be able to support itself with no tax breaks or special favors from the Kansas State Governmental departments. What have we now? A slaughter house nearby needing 4.8 million hogs per year. Seaboard and Superior Farms merging into a much larger, vertically integrated, globe spanning, and pork meat exporting super giant of a business. In the fall of 1995, Seaboard felt it would raise its estimate to over 2 million hogs. Locals think, since the merger has become fact, even more will be raised here. State of the Art lagoons? What is state of the art about pig manure, mixed with water, put in a large hole? New jobs? Seaboard imports from foreign countries most of its labor force. Prosperity? The costs outpace the benefits to the counties on any figures I've run on it. No one seems to have a copy of the prosperous ones. Investments? Most of the money went into lagoon structuring. Those giant pig manure pits. No special favors? It is my understanding that when the company declared the lagoons to be a part of the business that doesn't make a profit they become eligible for Kansas bonds helping them finance the lagoon construction. True, the bonds are only going to save them 500,000 or so in interest, but more cash may be saved if they can get some of their equipment taxed at a lower rate (I believe it is the hog slats at the moment).

Now here comes Senate Bill 744. It seems the hog industry wants special protection from its neighbors out here that only the legislation can provide. Sorry, I feel the industry will just have to take its chances along with all of the rest of us that do business out here. At a time in our country when we are debating whether affirmative action is a good idea for people, I'm pretty sure we don't need it for pigs.

Please let me thank you for the opportunity to express myself on this issue. Please vote no on Senate Bill 744. With Carla Stovall's Opinion behind us, perhaps we can deal with this issue on a more local level.

Sincerely,


Alma M. Sipes
Ergon--The name of my business.

P.S. The economic impact is the part I am most interested in. If any one knows of some positive figures on this, I would be extremely pleased to see them. All I can find in solid figures for Stanton County, Kansas is a resounding, oop's! I and my figures can be reached at (316) 493-4791.

Senate Ag. Co.
3-18-96

Attachment 1



**Kansas County
Commissioners
Association**

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

March 18, 1996

To: Senate Agriculture Committee

Chairman: Senator David Corbin

From: Wes Holt, President
Kansas County Commissioners Association

To the Committee;

The Kansas County Commissioners Association, (KCCA) wishes to express concerns over Senate Bill 744.

This bill was introduced very quickly, the KCCA has not had the opportunity to poll its full membership on the issue. However the issue is one of apparent loss of Home Rule Power resulting in the loss of local control pertaining to the corporate issue.

County Commissioners must retain the authority to determine land use issues in their respective counties and would be oppose to any loss of that control. As we gather more information we will be contacting legislators per this issue.

Thank you for your consideration of our concerns.

Sincerely,

Wes Holt, President
Kansas County Commissioners Association

Senate Ag. Co
3-18-96
Attachment 2

Testimony to the Senate Committee on Agriculture - Senate Bill 744
Rick J. Hoffman, Chief Executive Officer - Seaboard Farms, Inc.

Background

Since the passage of SB 554 in 1994, Seaboard has been developing genetic and commercial farrow-to-finish hog production facilities for approximately 1 million hogs, including a 440,000 ton feedmill and live production management offices. Currently, we are nearly 60% complete with the construction of this integrated operation (Attachment 1).

Purpose of SB 744

Seaboard relied on SB 554 in developing this project. However, the Kansas Attorney General recently rendered an opinion (Attachment 2) which indicates that a county may:

- Rescind approval of corporate farming
- Prohibit further development
- Retroactively rescind corporate farming, ie. shut down existing facilities without providing any compensation

We believe this opinion is wrong. Most, if not all, of the county attorneys in the four counties we operate in have also voiced their concerns about this opinion to the Kansas Attorney General's office.

For Seaboard, we are concerned about the impact of this opinion on our existing and future investment of over \$120 million. For any other corporation or large family farming enterprise looking to make an investment in hog production in Kansas, these issues need to be clarified as soon as possible.

Senate Agr Co
3-18-96
Attachment 3 3-1

Seante Bill 744
Testimony of Rick J. Hoffman, Seaboard Farms, Inc.
March 18, 1996

SB 744

Senate Bill 744 will clarify that:

1. Counties may change their mind about corporate farming.
2. If counties change their mind;
 - Facilities that have KDHE Permits, whether or not construction is complete, are "grandfathered".
 - Expansion is grandfathered, but only to the extent for facilities necessary to grow the animals (ie, offspring) from sow units that are KDHE permitted prior to the time of recision.

Summary

Frankly, SB 744 does not reflect everything we would like, or what I think the legislature intended when SB 554 was passed. As Senator Steffes indicated in this committee, nobody would make an investment in Kansas if corporate farming is allowed to change back and forth. However, this bill accomplishes several important things:

- It does clarify what happens if a county wishes to change its mind.
- It does provide Seaboard and other enterprises protection under the law to ensure investments made in good faith are secure in Kansas.
- It does protect the reputation of Kansas as a good and fair state to conduct business.

Seaboard Farms, Inc.
Project Design Outline
Attachment 1

The following provides a brief outline of the status of our project. To fulfill the integration plan, the genetic and commercial operations are interconnected by people, transportation and livestock to ultimately produce our finished product, a 280 pound hog.

	<u># Of Sites</u>	<u>Stanton</u>	<u>Grant</u>	<u>Morton</u>	<u>Stevens</u>	<u>Status</u>
Genetic Sow Farms	2	2				Completed
Genetic Nurseries	1	1				Completed
Genetic Finishers	3	3				Completed
Commercial Sow Farms	10			7	3	90% Complete
Commercial Nurseries	14		6	7	1	50% Complete
Commercial Finishers	22			10 (est)	12 (est)	40% Complete
Feedmill	1				1	75% Complete
Live Production Offices	1			1		0% Complete



State of Kansas
Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

March 5, 1996

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3261
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 96-21

The Honorable Steve Lloyd
State Representative, 64th District
State Capitol, Room 181-W
Topeka, Kansas 66612

**Re: Corporations--Agricultural Corporations--Definitions; Limitations; Exceptions;
Process for Rescinding County Resolution; Home Rule**

**Counties and County Officers--General Provisions--Home Rule Powers;
Limitations; Restrictions; Rescinding Corporate Farming Resolution**

Synopsis: A county may use K.S.A. 19-101a to rescind a resolution previously adopted pursuant to K.S.A. 17-5907 or 17-5908. It is our opinion that such rescission by a county is an exercise of police power. Thus, while not precluded from grandfathering in existing corporate farming operations that have undertaken substantial property acquisition in light of prior county approval, a county's decision to rescind approval of corporate farming does not rise to the level of an inverse condemnation action or otherwise constitute a taking for which compensation must be paid to the private property owners. If a county chooses to allow a corporation to continue operation while prohibiting new businesses of the same type, the county is not required to allow existing corporations to expand. Cited herein: K.S.A. 12-741; 17-5902; 17-1504; 17-1507; 17-1508; 19-101a; 19-101b; 19-101c; 19-2901; U.S. const., amends. IV, XIV.

Representative Steve Lloyd
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Dear Representative Lloyd:

You request our opinion on four questions involving the provisions of K.S.A. 17-5902 *et seq.*, the agricultural corporations act. The questions concern the ability of a board of county commissioners to rescind a resolution which allows either corporate swine or dairy facilities to be located within the county:

"1) Does a county have the ability to rescind the resolution if a corporate entity has either already purchased land in the county for the purpose of constructing swine or dairy facilities or has purchased land in the county and has begun or completed construction on said facilities?

"2) Since the statute did not specifically allow reversal of this authority, would existing facilities be grand-fathered?

"3) If they are grand-fathered, would they be allowed to expand and what criteria would be imposed on the expansion?

"4) If a county did not have the authority to rescind its previous action, what recourse is available for those affected by the reversal?"

The agricultural corporations act, or corporate farming act, prohibits specified corporations from directly or indirectly owning, acquiring or otherwise obtaining or leasing agricultural land. Some types of corporations may own or lease such land if the corporation falls within one of the enumerated exceptions set forth in K.S.A. 17-1504. *See also* Attorney General Opinion No. 92-148. We will assume, for purposes of this opinion, that the corporations in question fall under the prohibitions set forth in this act. Such corporations may not undertake prohibited activities in Kansas absent approval by a board of county commissioners acting in accordance with the procedures set forth in K.S.A. 17-5902 *et seq.*

K.S.A. 17-5907 provides the procedure for approving corporate dairy production facilities within a county and K.S.A. 17-5908 is the corollary for corporate swine production facilities. Both statutes allow, but do not require, a county to permit corporate farming operations within the county. The statutes provide for electorate ability to block the proposed approval by protest petition. Absent a timely filed protest petition, the act permits a board of county commissioners to proceed with a resolution allowing corporate farming within the county. As you state your question in terms of a *fait accompli* county action, we must assume that the procedures required by the statutes were followed by the county.

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The act in question does not set forth a procedure for rescinding resolutions approving corporate farming. Private counsel for corporate farming companies argue this absence is evidence of legislative intent to prohibit such rescission. However, this is contrary to common law principles concerning the authority of a legislative body to subsequently change or alter public policy:

"Where a county board or court exercises functions which are legislative, administrative or ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action, provided rights of third persons have not become vested thereunder; but this rule does not apply where the time and mode of the exercise of the particular function is prescribed by statute, or where the statute authorizing the action of the board provides that such action may be changed only by general law. . . ."
20 C.J.S. *Counties* § 92 (1990).

Thus, as with the laws enacted by the state legislature, county policies or regulations may generally be subsequently altered or changed in accordance with the general authority vested in the legislative body, subject only to any legal limitations applicable to the specific rescission actions in question. Where there is no specific statutory procedure dictated, counties often utilize home rule authority pursuant to K.S.A. 19-101a.

K.S.A. 19-101c establishes that the home rule power granted counties be liberally construed for the purpose of giving counties the largest measure of self government. See *City of Junction City v. Lee*, 216 Kan. 495 (1975). Home rule power allows a board of county commissioners to transact all county business and perform all powers of local legislation and administration the board deems appropriate, subject to the limitations set forth therein.

K.S.A. 17-1502 *et seq.* declare specific types of corporate ownership of agricultural land to be prohibited in this state, except in counties granting approval to locate therein. The state legislature delegated decision-making authority on such matters to each county. Whether to allow such corporate operations within a county thereby became county business. Thus, the legislature has declared the issue of corporate farming to be a local matter properly decided by county officials and electors.

In *Blevins v. Hiebert*, 247 Kan. 1 (1990), the Kansas Supreme Court held that home rule legislation is prohibited in a field of law in which there is a state statute uniformly applicable to all cities or counties. However, the court recognized that home rule power allows concurrent legislation on police power matters as long as the local legislation does not conflict with uniformly applicable and pertinent provisions of state laws.

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Counsel for several counties believe that the corporate farming act is not uniform and point out that the 1994 amendments to K.S.A. 17-5904 include different provisions for counties. K.S.A. 17-5904 (a)(15) and (a)(16) make the prohibition against corporate farming inapplicable in counties that have approved such farming, pursuant to the terms of K.S.A. 17-5907 or 17-5908. Thus, the language of this statute treats a corporation different if it operates in a county which has acted to approve such businesses within the county. However, it is the action of the county itself which may make the statutory prohibitions inapplicable. Standing on its own, the corporate farming act uniformly applies to every county in the state and to every farming corporation falling under its scope. Thus, we believe the act is uniform. **See Blevins, supra** at 5.

However, we also believe that the matter concerns the use of police power. "The police power is not susceptible of exact definition . . . the power knows no definite limitations, since in its widest sense it is the power 'to govern men and things' and includes all legislation and almost every function of civil government." **6A McQuillin Municipal Corporation** § 24.03 (1988). However, police power is generally recognized in the more limited sense of governmental power over matters affecting the public health, safety and morals, and to regulate use of, or impair right in, property to prevent detriment to public interest. **Dodger's Bar and Grill, Inc. v. Johnson County Board of County Commissioners**, 32 F.3d 1436 (10th Circ. 1994); **See also Small v. Kemp**, 240 Kan. 113 (1986). "[I]t means the power exerted by public authority by restraint or compulsion for the promotion of the public welfare, and to attain this end it restrains the natural or common liberty of the citizen in the use of his personal faculties and his property." **McQuillin** at § 24.04. In K.S.A. 17-5902 *et seq.*, governmental authority is used to prohibit corporate farming. The legislative history of this act shows the desire of the state to protect the public welfare and interest in regulating large farming facilities.

The final home rule issue to be resolved in answering your first question requires a determination of whether the legislature has preempted the field or a conflict exists between the proposed action and state law. Decisions subsequent to **Blevins** evidence the court's return to a more liberal interpretation of home rule authority and provide further guidance in determining whether or not local legislation is preempted or conflicts with state law. In **McCarthy v. City of Leawood**, 257 Kan. 566 (1995), the court held that determining whether a legislative enactment is uniformly applicable to all cities requires clear evidence of legislative intent to preclude local legislation before a right to exercise home rule is denied. In reading the statutes in that case, the court stated that "if the legislature had intended the Main Traffic Way Act to be an exclusive means of financing a street so designated, then it could easily have said so." *Id.* at 578. Thus, as such intent could not be found, the **McCarthy** court sided with the district court and found that no conflict existed between state law and the local legislation. It therefore permitted the

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use of home rule to craft alternative procedures and mechanisms from those set forth in the subject act.

In examining whether local action conflicted with state law, the court has stated:

"In *Blevins*, we explained that '[n]o one questions, a city's power to legislate by ordinary ordinance in the exercise of its police power so long as such ordinance does not conflict with state law, unless a state statute specifically preempts the field.' 247 Kan. at 6, 795 P.2d 325. The fact that the State has enacted legislation dealing with a particular field does not necessarily deprive a city of the power to concurrently regulate an aspect of the subject area, as long as the city's regulation does not conflict with State law. See *Garten Enterprises, Inc. v. City of Kansas City*, 219 Kan. 620, Syl. p 6, 549 P.2d 864 (1976). We have consistently rejected the doctrine of implied preemption, reasoning that legislative intent to reserve exclusive jurisdiction must be clear. *City of Junction City v. Griffin*, 227 Kan. 332, 336, 607 P.2d 459 (1980).

"In *Johnson County Memorial Gardens, Inc. v. City of Overland Park*, 239 Kan. 221 (1986), we considered whether zoning ordinances applied to an application for a permit to build a storage shed on cemetery grounds. The construction and maintenance of cemeteries were extensively regulated by statute. We reasoned that the city zoning laws were not preempted by State laws on cemeteries because the State laws did not specifically prohibit local zoning and land use regulations. 239 Kan. at 227, 718 P.2d 1302." *Water Dist. No. 1 of Johnson County v. City Council of City of Kansas City*, 255 Kan. 183 (1994).

In reviewing these Kansas cases in light of the proposed county home rule rescission of a resolution allowing corporate farming, we find no provision in K.S.A. 17-5902 *et seq.* that clearly evidences legislative intent to preclude such local legislation. On the contrary, the act makes the issue of whether to allow such operations a matter to be decided by county officials. See K.S.A. 17-5907 and 17-5908.

Counsel for a corporation argues that the failure of the legislature to provide for an "opt-out" procedure is evidence of legislative intent to preclude rescission of prior county approval. However, this argument fails to consider that the activity in question, corporate farming, is not legal in any county until or unless a county affirmatively chooses to "opt-in." The act clearly gives counties the decision-making authority whether to allow corporate farming within their boundaries. If a county resolution is passed to allow corporate farming such corporations are granted a privilege not otherwise available to them under Kansas

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law. Neither the language of the statutes nor legislative history clearly evidence legislative intent that those counties choosing to grant such a privilege (*i.e.* those who "opt-in") must forever after allow all corporate farms to operate within their county. We have not located case law, legislative history, or any other authority that evidences a clear intent to require a county to make such a decision permanent. Rather, such a requirement runs counter to historic and common law principles concerning the ability of a municipality to change public policy and repeal a previously enacted ordinance or resolution. **McQuillin** § 7.34.20.

Therefore, in answer to your first question, it is our opinion that a county may use home rule authority to rescind a resolution previously adopted pursuant to K.S.A. 17-5907 or 17-5908. In taking such action, a county ~~should comply with the procedures set forth in the home rule statutes~~. See K.S.A. 19-101a (b) and 19-101b (b).

Your remaining three questions concern the possible impact of such rescission upon a corporate entity which has relied upon prior county approval. We have not been provided with all the facts concerning the exact nature and extent of actions taken by a specific corporation. Moreover, the language and terms of a specific home rule resolution may determine the answer to these issues. It is possible that a county which rescinds prior approval of corporate farms may choose to allow existing facilities to expand, continue, or otherwise grandfather in such entities. It is also possible that a rescission resolution may not so provide. Corporations subject to the prohibitions set forth in K.S.A. 17-5902 *et seq.* may argue that the entire act impermissibly takes away their right to make certain use of property they have already acquired or leased. Thus, corporations who have acquired such property after prior county approval under K.S.A. 17-5907 or 17-5908 may challenge the legality of any county rescission action. Analyzing the merits of such a challenge requires a review of police power and takings law.

The fifth amendment to the United States constitution provides that private property shall not be taken for public use without just compensation. This restriction applies to the states through the fourteenth amendment. **Chicago B. & Q.R. Co. v. Chicago**, 166 U.S. 226, 241, 41 L.Ed. 979, 986 (1897). The fourteenth amendment to the United States constitution and section 18 of the bill of rights of the Kansas constitution give due process rights designed to protect individuals' property from arbitrary regulations. **State ex rel. Stephan v. Smith**, 242 Kan. 336 (1987). The test for determining whether due process has been afforded is whether the legislation has a real and substantial relationship to the objective sought, whether it is reasonable in relation to the subject, and whether it was adopted in the interest of the community. **Joe Self Chevrolet, Inc. v. Board of Sedgwick County Comm'rs**, 257 Kan. 625 (1990). See also **Noel v. Menninger Foundation**, 175 Kan. 751 (1954).

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The Kansas Supreme Court has defined taking to mean "the acquiring of possession as well as the right of possession and control of tangible property to the exclusion of the former owner." *Lone Star Industries, Inc. v. Secretary, Kansas Dept. of Transp.*, 234 Kan. 121, 125 (1983). The requirement that there must be an actual taking of property by the government for an individual to receive compensation has been modified. Where the government has imposed significant restrictions on private property, a taking may be found and the government may be required to pay compensation. While a state has the right to regulate or limit the use of property through its police power, if a regulation goes too far it will be recognized as a taking. *Pennsylvania Coal Co. v Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed.2d 322, 326 (1922). Property owners may challenge governmental action impacting private property as an unconstitutional taking or inverse condemnation. "Inverse condemnation is an action or eminent domain proceeding initiated by a property owner rather than the condemnor and is available when private property has been actually taken for public use without formal condemnation proceedings and where it appears there is no intention or willingness of the taker to bring an action." *Ventures in Property I v. City of Wichita*, 225 Kan. 698 (1979). See also *Wittke v. Kusel*, 215 Kan. 403 (1974).

There is no bright line test for establishing whether legislative actions constitute a use of police power or an eminent domain taking:

"Eminent domain takes property because it is useful to the public, while the police power regulates the use of property or impairs rights in property because the free exercise of these rights is detrimental to public interest; and the police power, although it may take property, does not, as a general rule, appropriate it to another use, but destroys the property, while by eminent domain property is taken from the owner and transferred to a public agency to be enjoyed by the latter as its own. Many statements of the distinction agree to the effect that in the exercise of eminent domain private property is taken for public use and the owner is invariably entitled to compensation, while the police power is usually exerted merely to regulate the use and enjoyment of property by the owner, or, if he is deprived of his property outright, it is not taken for public use, but rather destroyed in order to promote the general welfare, and in neither case is the owner entitled to any compensation for any injury which he may sustain, for the law considers that either the injury is *damnum absque injuria* or the owner is sufficiently compensated by sharing in the general benefits resulting from the exercise of the police power." 29A C.J.S. *Eminent Domain* § 6 (1965).

Statutory and case law authority allow governmental entities to impose restrictions upon some uses of private property. See e.g. K.S.A. 12-741 *et seq.* and K.S.A. 19-2901 *et*

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seq. (city and county zoning authority); *City of Merriam v. Board of Zoning Appeals of City of Merriam*, 242 Kan. 532 (1988); *Water Dist. No. 1 of Johnson County v. City Council of City of Kansas City*, 255 Kan. 183 (1994); *Johnson County Memorial Gardens, Inc. v. City of Overland Park*, 239 Kan. 221, (1986); *Lawrence Preservation Alliance, Inc. v. Allen Realty, Inc.*, 16 Kan.App.2d 93 (1991); *Kimberlin v. City of Topeka*, 238 Kan. 299 (1985); *Robert L. Rieke Bldg. Co., Inc. v. City of Overland Park*, 232 Kan. 634 (1983). Land use restrictions generally qualify as valid exercises of police power.

A state may exercise police power by totally prohibiting persons from engaging in occupations or businesses that are detrimental to the public welfare. 16B C.J.S. *Constitutional Law* § 857 (1985). Police power may be used in a way that adversely affects the entire value of privately owned property. See Attorney General Opinion No. 88-73. Constitutional limitations form no impediment to the exercise of police power land use regulations where the regulation is reasonable and bears a fair relationship to the object sought to be attained. See *Schaake v. Dolley*, 85 Kan. 598 (1911); *Dey v. Knights & Ladies of Security*, 113 Kan. 86 (1923); *McNaughton v. Johnson*, 242 U.S. 344, 37 S.Ct. 178, 61 L.Ed. 352 (1916); *Lindsey v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1910); *Armour & Co. v. State of North Dakota*, 240 U.S. 510, 36 S.Ct. 440, 60 L.Ed. 771 (1915). In *Mugler v. Kansas*, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed. 205 (1887), the United States Supreme Court reviewed a Kansas prohibition against the sale of liquor. The owner of a brewery challenged the prohibition as a taking of private property. The court found that the law was within the police power of the state, that there was no vested property right in carrying on a business that was legislatively declared detrimental to the public, and that the property owner was not entitled to compensation or a stay on the law's application.

In one of the most recent cases involving the issue of police power versus a taking, the 10th circuit upheld a Wyoming state hunting regulation restricting the availability of hunting licenses to out of state residents. *Clajon Production Corp. v. E. Petera et al*, No. 94-8071, WL 686509___F.3rd ___(10th Cir. Nov. 20, 1995). In this case property owners challenged the state regulation under a number of theories, including the takings clause. Plaintiffs argued that the Wyoming restriction was an inappropriate "leveraging of police power" and sought compensation for the state's regulatory taking because it allegedly deprived them of all economically beneficial use of the property. The 10th circuit upheld the regulation as a valid use of police power and stated:

"[I]t is well established that a 'property owner necessarily expects the uses of his property to be restricted, from time to time, by the various measures newly enacted by the State in legitimate exercise of its police power.' Lucas, 112 S.Ct. At 2899. That is, the Takings Clause allows some property owners

Representative Steve Lloyd
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to be more burdened by a challenged governmental regulation than others because '[w]hile each of us is burdened somewhat by restrictions, we, in turn, benefit greatly from the restrictions that we place on others.' *Keystone*, 480 U.S. at 491. See also *Dolan*, 114 S.Ct. At 2316 (acknowledging that 'government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.') (quoting *Mahon*, 260 U.S. at 413)." *Id.* at 9.

Decisions by the Kansas Supreme Court also recognize that the government may properly control the use of private property as an exercise of police power. Constitutional provisions against taking private property for public use without just compensation impose no barrier to the proper exercise of the police power. *Small v. Kemp*, 240 Kan. 113, (1986). Police power is an inherent power of the sovereign and is essential to protect members of the community from injury. It rests upon the fundamental principle that all property is owned subject to the limitation that its use may be regulated for the safety, health, morals, and general welfare of the community in which it is located. *Ray v. State Highway Commission*, 196 Kan. at 22-23, *cert. denied* 385 U.S. 820, 87 S.Ct. 43, 17 L.Ed.2d 57 (1966). See also *Kansas City Power & Light Co. v. Kansas Corporation Comm'n*, 238 Kan. 842, 850 (1986).

In *Hudson v. City of Shawnee*, 246 Kan. 395 (1990), the court found that government imposed regulations are not unconstitutional merely because they operate as a restraint upon private rights of persons or property or will result in a diminution of the property value of individual properties. The infliction of such loss is not automatically a deprivation of property without due process of law. The exertion of the police power upon objects lying within its scope in a proper and lawful manner is due process of law. Hence, the police power may be exerted to restrain land uses by private persons, and where appropriate or necessary, may even be used to prohibit certain uses of property in aid of the public safety and general welfare.

Nevertheless, some governmental restrictions upon land use have been found to result in inverse condemnation. Although the plaintiffs were not successful in the case, the Kansas Supreme Court has discussed the potential for inverse condemnation recovery in situations involving commercial development of property based upon prior governmental approval:

"Had plaintiffs developed their property for commercial uses or even taken any substantial steps toward such development we would have an entirely different lawsuit. It might then be akin to the second Kansas case we find persuasive, *Spurgeon v. Board of Commissioners*, 181 Kan. 1008, 317 P.2d 798. In that case this court upheld a Shawnee county zoning resolution

Representative Steve Lloyd

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which required the removal within two years of auto wrecking yards located in residential zones, even though they were lawful prior nonconforming uses. The two year period was held reasonable in view of the owner's capital investments, and the resolution was held to be a valid exercise of the police power as against the landowners' claim that they were being deprived of their property without due process of law. It appears to us that if a governing body can constitutionally zone an existing business out of existence, it can surely zone against a use which is merely contemplated at some indefinite time in the future. We conclude that plaintiffs had no constitutional right to the continuation of the zoning existing at the time they purchased their land." *Colonial Inv. Co., Inc. v. City of Leawood*, 7 Kan.App.2d 660 (1982).

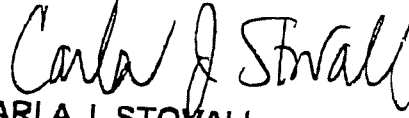
We do not believe that a county's rescission of approval for certain land uses constitutes inverse condemnation especially in those counties that do not yet have any corporate ownership or active corporate farming operation. We have located no authority that recognizes a vested property interest in a law remaining the same. We recognize that in some counties corporations may have undertaken substantial property acquisition based upon the prior action taken under K.S.A. 17-5902 *et seq.* Such reliance and substantial investments might persuade a court that some taking occurs in prohibiting the intended use of specific property. See *Florida Rock Industries v. U.S.*, 18 F.3d 1560 (Fed. Cir. 1994); *Ventures, supra*. However, this area of taking law is not clear and must ultimately be determined by a court reviewing all pertinent facts concerning the economically viable options left after the government action in question. If a county rescinds approval of corporate farming operations within the county, a corporate property owner will not lose possession of their land or any buildings erected thereon. Rather, if a county rescinds prior approval of corporate farming, the status of such operations returns to the general rule set forth in that act. The subject corporation will only lose the opportunity to continue to use the property for a specific line of business. There is no actual loss or taking of real estate or personal property. The corporation may still use the property for all other legal purposes. The corporation remains able to retain control over the property until or unless they choose to sell it. Thus, in keeping with the eminent domain and police power cases cited herein, it appears that the impact of county rescission of approval of corporate farming within the county will not deprive a corporation of all economic benefit of their property rights.

However, the most prudent course of action may be to prospectively use county home rule authority and grandfather in existing operations. Nevertheless, while a county may wisely choose to grandfather existing corporate farming operations that have undertaken substantial property acquisition in light of prior county approval, we do not believe that rescission of a corporate farming resolution rises to the level of an inverse condemnation taking action. It is our opinion that such rescission takes place as an exercise of police

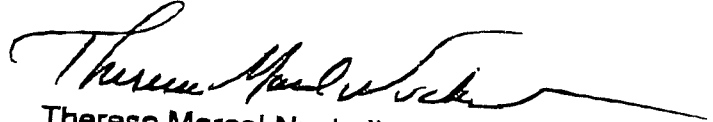
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power. If a county chooses to allow such corporations to continue operating within the county, while prohibiting any new businesses of the same type, we do not find any authority which requires the county to allow such corporations to expand operations in the future.

Very truly yours,



CARLA J. STOVALL
Kansas Attorney General



Theresa Marcel Nuckolls
Assistant Attorney General

CJS:JLM:TMN:jm



744
Senate Bill ~~774~~

Presented by

Mike Jensen

on behalf of the

Kansas Pork Producers Council

Mr. Chairman, and members of the committee, I appear before you today as a qualified proponent of SB 744. While we feel it is against every logical and fair principle to allow counties to take action, reversing their original decision so soon, there is a benefit to “grandfathering” an existing project and allowing it to be completed.

It is important to consider the ramifications, beyond just the pork industry, of offering the carrot of free enterprise in a geographic area and then “pulling the rug out”. If Kansas does not stand behind it’s decisions and protect those that we have deemed to be legal in this state we are verging on sending an economic message to all sectors of business that we are not a state where you want to do business.

As you debate this bill, we would urge you to consider protecting the swine enterprises in those counties which successfully passed an election. Additionally, when you consider any “revoting” in other counties, you take into consideration the fairness of when and how a vote occurs so that we try to settle this issue without any more economic damage to our state’s swine industry.

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Attachment 4*



Kansas Natural Resource Council

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Testimony of Bill Craven
Kansas Natural Resource Council and
Kansas Sierra Club
March 18, 1996
Senate Agriculture Committee
S.B. 744

Thank you for the opportunity to testify as an opponent to this bill. Everybody knows that this bill is Seaboard's response to the opinion of Attorney General Carla Stovall. That opinion said that counties in fact have the power to rescind resolutions authorizing corporate swine operations. The opinion doesn't say counties should rescind, nor does the opinion discuss in great detail what happens to existing facilities if rescission occurs. It simply says that resolutions authorizing corporate swine facilities are like most every other county commission resolution. Counties can pass resolutions, and counties can rescind resolutions.

•This bill says that if counties are considering rescission, they have to do so within one year of the effective date of this act. **No similar deadlines on counties rescinding a resolution exist anywhere else in the Kansas statutes, to the best of my knowledge.**

•This bill says that any county commission rescission must be followed by a public vote. **No other state statute requires a public vote following a rescission of a resolution by a county commission.**

•This bill says that if an election is held which affirms a county commission rescission, that companies holding permits from KDHE can continue to build, even if construction hasn't commenced. **Never before in Kansas has the mere possession of a permit allowed a company to nullify the results of an election.**

•This bill—not once, but twice—strips counties of their rights to protect their natural resources, their water, and their residents by vesting exclusive regulatory control of corporate swine operations in the state. **This is an unprecedented attack on local control.**

•This bill creates a category within the corporate swine statute called "farrowing operations." The proposal is that corporate swine facilities can operate new swine production facilities "as is necessary to nurse, care for, or raise any swine offspring produced at such farrowing operations." The effect of this sentence is forever to grandfather in an endless spiral of expansion, regardless of the desires of the effected county. **This is an unprecedented representation of corporate greed proposed for the Kansas statutes.**

In conclusion, Seaboard has successfully lobbied against consideration of other bills which would have clarified the responsibilities of counties. Those bills, which I thought were reasonable, provided for the grandfathering in of existing facilities and even provided for their expansion. Proponents couldn't even get a committee vote on those bills. The Attorney General's opinion, which isn't even binding on any court, got this company to show its true clout. It got this bill introduced through an exempt committee and now has this hearing.

This bill shows the true battle lines created by the corporate hog debate. The question for the legislature is simple: Who is in charge? A company accountable to no one but its investors, or public officials in counties and in the legislature?

I urge you seriously to consider that question. Thank you for the opportunity to testify.



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Attachment 5

OF
IVAN W. WYATT, PRESIDENT
KANSAS FARMERS UNION
BEFORE
THE SENATE AGRICULTURAL COMMITTEE
ON
SENATE BILL 744
(RIGHTS OF VOTERS)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

RECENTLY IN THIS COMMITTEE THERE WAS DISCUSSION WHETHER PEOPLE WERE QUALIFIED TO VOTE ON CERTAIN ISSUES, SUCH AS SET FORTH IN THIS BILL, BECAUSE THEY MIGHT BECOME "EMOTIONAL" ABOUT THE WELL BEING OF THEIR FAMILY, CHILDREN, HOME, PROPERTY RIGHTS, ECT.

IT APPEARS THE STATE'S ATTORNEY GENERAL'S OPINION HAS COME DOWN ON THE SIDE OF THE PEOPLE AND THEIR RIGHTS AS CITIZENS. I BELIEVE MOST PEOPLE WILL COMMEND HER FOR HER ACTION.

I THINK WE ALL AGREE A CORPORATION IS NOT HUMAN AND SURVIVES INTO PERPETUITY. HOWEVER, CORPORATIONS MAY HAVE EMOTIONS ALSO. CORPORATIONS, UNLIKE HUMANS ARE NOT RESTRAINED IN THEIR ACTIONS BY HUMAN EMOTIONS EXCEPT ONE. THE ONLY EMOTION THAT RULES A CORPORATION IS THE BOTTOM LINE DOLLAR FIGURE. THEY HAVE NO EMOTIONS FOR PEOPLE, CHILDREN, PEOPLE'S HOMES, OR THEIR PROPERTY RIGHTS.

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Attachment 6
6-1*

SENATE BILL NO. 744 IS A RESULT OF THAT SINGLE CORPORATE EMOTION. SENATE BILL NO. 744 EVEN RUNS CONTRARY TO THE HUMAN EMOTION THAT IS PREVALENT ACROSS THIS NATION THAT GOVERNMENT THAT IS THE CLOSEST TO THE PEOPLE IS THE BEST.

ONE EXAMPLE IS SUBSECTION (G) PAGE 7 THAT WOULD PROVIDE THE "STATE" VESTED AND EXCLUSIVE RIGHTS TO RULE NULL AND VOID ANY ACTION BY CITY OR COUNTY GOVERNMENT TO DEAL WITH THE ISSUE OF CORPORATE OR LIMITED LIABILITY COMPANY SWINE FACILITIES THAT MAY LOCATE IN THEIR COMMUNITIES.

THIS LEGISLATION WOULD SEEM TO SUPERSEDE ANY ACTION OF A CITY OR COUNTY UNIT OF GOVERNMENT TO PROTECT PROPERTY RIGHTS OF PEOPLE AS IT WOULD DEAL WITH THE ISSUE OF CONCENTRATED CORPORATE SWINE FACILITIES. EVEN THOUGH THESE LOCAL UNITS OF GOVERNMENT MAY INTERVENE WITH RULES IN BEHALF OF THE VOTING PUBLIC WITH THE OTHER OF THE WORLD'S LARGEST CORPORATIONS.

IT WOULD APPEAR KANSAS CITIES COULD NOT PROHIBIT A "SEABOARD" FROM LOCATING NEXT DOOR, BUT WOULD STILL RETAIN THE RIGHT TO PROHIBIT AN INDIVIDUAL FROM KEEPING A BACKYARD HOG. SB-744 WOULD APPEAR TO STRIKE DOWN LOCAL UNITS OF CITY AND COUNTY GOVERNMENTS TO ESTABLISH LOCAL ZONING LAWS, A MAJOR MOVE TOWARD "BIG DADDY" STATE GOVERNMENT.

IT APPEARS SUBSECTION "F" PAGE 6 IS A "GOLDEN PASS" FOR, IN THIS SITUATION, SEABOARD TO CIRCUMVENT THE STATE'S ATTORNEY GENERAL'S OPINION THAT ALLOWS THEM TO COMPLETE ANY UNFINISHED CONSTRUCTION IF A COUNTY VOTED TO RESCIND BUT PROHIBITS FURTHER EXPANSION.

THIS SUBSECTION COULD ALLOW A NON-ELECTED BUREAUCRAT TO

SUPERCEDE THE WISHES OF THE VOTERS FOR N UNSPECIFIED TIME. SURELY THAT WASN'T THE INTENDED AUTHORITY TO BE GRANTED TO ONE PERSON, OR THE USE OF A PERMIT GRANTED FOR WATER POLLUTION CONTROL.

I BELIEVE THE VALIDITY OF SUBSECTION (E) PAGE 6 HAS TO BE QUESTIONED. THIS SUBSECTION STATES, "AT ANY TIME ONE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS ACT, THE COUNTY COMMISSIONERS BY RESOLUTION, ETC.....VOTE TO RESCIND. ACCORDING TO THE ATTORNEY GENERAL'S OPINION THEY ALREADY HAVE THAT RIGHT, AND SECONDLY, WHY SHOULD THAT RIGHT BE LIMITED TO THE PEOPLE FOR ONLY ONE YEAR, IF THAT IS THE INTENT.

SB-744 IS YET ANOTHER CHIP AT PUBLIC CONFIDENCE IN OUR STATE GOVERNMENT, FOSTERED BY ELECTED OFFICIALS DISTASTE FOR ALLOWING CITIZENS TO VOTED ON SUCH IMPORTANT ISSUES. ALSO THE \$9.5 MILLION DOLLAR SEABOARD BONDS, THAT THROUGH LEGAL RED TAPE ARE MADE UNAVAILABLE FOR THE INDEPENDENT PRODUCER. EVEN MORE RECENTLY, FEBRUARY 28, REPRESENTATIVE ROBERTS (KS) AND BEOHLERT (NY) ADDED AMENDMENTS TO THE ENVIRONMENTAL QUALITY INCENTIVE PROGRAM (EQIP) THAT PROVIDES \$100 MILLION DOLLARS OF "FREE" TAX PAYER MONIES NOT TO BE AVAILABLE FOR EDUCATION, NOT FOR RURAL HOSPITALS BUT FOR CORPORATE MEGA-OPERATIONS SUCH AS SEABOARD TO ASSIST THEM IN BEING MORE COMPETITIVE AGAINST THE INDEPENDENT TAX PAYING PORK PRODUCERS OF THIS COUNTRY.

I HAVE HEARD IT SAID IF WE ALLOW THE PEOPLE OF A REGION TO VOTE THIS ISSUE OF THE MEGA HOG CONCENTRATION THEY WILL THEN FOCUS ON THE CATTLE INDUSTRY. THAT IS NONSENSE.

AFTER VISITING WITH HUNDREDS OF PEOPLE AT NUMEROUS MEETINGS,

NOTHING COULD BE FURTHER FROM THE TRUTH. HOWEVER, IF THE STATE KEEPS ALLOWING TREMENDOUS AMOUNTS OF RAW SEWAGE FROM ALL THESE HOGS BEING DUMPED INTO THE RURAL ENVIRONMENT, EVENTUALLY ALL AGRICULTURAL ACTIVITY INCLUDING HOGS, CATTLE, FERTILIZER, ETC. WILL COME UNDER QUESTION AS THE PROBLEM OF WATER AND AIR CONTAMINATION CONTINUES TO REACH HIGHER LEVELS AND RELATED SOCIAL COST INCREASE.

IN CONCLUSION THE KANSAS FARMERS UNION OPPOSES SB-744. YOU THE MEMBERS OF THE SENATE VOTED FOR THE PRESENT CORPORATE HOG LAW, THE GOVERNOR SIGNED IT, THE STATE ATTORNEY GENERAL HAS OKAYED THE LAW. WHAT MORE IS THERE TO SAY?

Testimony Before the
Senate Agricultural Committee
Bill 744

I am Sheila Breeding, a farmer, wife and mother. We live in northeast Morton County. Thank you for this opportunity to express my views on Senate Bill 744.

One of the most important things the founding fathers of our nation gave to us was our system of government. The right to enter a polling booth and cast our vote for representational government has set a standard for which people all over the world have fought and died.

Over the past few decades the American people have watched while our rights have been slowly chipped away. The states decry federal mandates, the counties complain of state mandates and the cities and schools are made to comply with laws and regulations that often times place a great burden on a fragile system. In the 1994 election the first step was taken to correct what the American people see as an abridgement of our rights. It wasn't just Republicans replacing Democrats. We also voted to make the statement that we wanted our elected officials to represent the majority and to cease favoring special interest groups. That is evident by the calls for campaign reforms, term limits and more effective ethic committees.

Senate Bill 744 gives special consideration to the corporate swine industry by amending 19-101a. We believe this bill goes beyond what the legislators intended in 1994. This is an infringement of Home Rule or local control. It would allow a vested right to be given to a single industry. One of the biggest arguments against Senate Bills 600 and 604 along with House Bills 2951 and 2856 was that they singled out the swine industry. This bill singles out this industry, but for favorable consideration.

I was recently elected to the local ASCS committee. At the orientation meeting I attended we were instructed to always be consistent in our rulings. In other words if we ruled in favor of a farmer we should be sure to remember to rule the same way the next time the issue arose.

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Attachment 7 1-1

To allow Bill 744 to proceed beyond this committee would be inconsistent and a takings of local control. It will take away the rights of the 829 people in our county who signed petitions asking for the corporate swine issue to be placed on the ballot. For those that think 829 is not a majority, there were only 792 votes cast in the last election.

The rights of the people to decide their own fate or the direction a locality will progress should be sacred. Governor Graves stated he thinks the gambling issue should be put to the vote of the people of this state. His reason being, to allow a vote would end conflict. To give the corporate swine industry a vested right and then allowing the people to vote would be a side step of the issue at hand - the right to decide locally what we want. It would also lend justification to the fears of the voting population that special interest will take precedence over the wishes of the majority.

If the idea of this bill is to protect the investment made by a corporation in Southwest Kansas, it is also important to remember that any business takes a risk when it opens it's doors. The risk taken by the swine industry was they believed what a few people said, which was that it would be alright to operate on an unlimited basis. This is not the wishes of the majority of the voters in Southwest Kansas.

Twelve out of fourteen counties have defeated the corporate farming issue at the polls. Two counties have rescinded without a vote taking place. Three counties have passed petitions asking to place the issue on the ballot. These three - Morton, Stanton and Stevens' Counties have been denied that opportunity by their commissioners. We want the right to decide how, when and where any industry can operate or expand in our own counties. The passage of Bill 744 would deny that right to commissioners and voters alike.

Testimony of
Cliff Smedley
Against SB 744

**Member: Stanton County Natural Resources Committee in
Stanton County**

State Co-coordinator: Coalition for the Next Generation

Date: March 18, 1996

Phone: 316-492-1329

*Senate Ag Co
3-18-96
Attachment 8
8-1*

We Are Here Because KDH & E Is Wrong About Lysimeters

Although the technology exists to detect whether raw animal sewage is escaping from the sewage lagoons it is not being required. The present-day version of this technology is called a lysimeter. Lyndell Herron can tell more about this technology than I can, but my concern would be that it exists and is required for fuel and chemical storage, so why isn't it being required for the animal sewage lagoons? The only reason that I can figure would be that this industry that we are fighting has bought and manipulated the legislature as well as the bureaucracy which is supposed to protect the public's interest in our groundwater. The reasons that I believe that there should be a concern, just from a common sense point of view, would be:

- A. Residential sewage tanks have leaked and contaminated the groundwater in Kansas; and
- B. We are concerned about chemicals and fuel so that we require lysimeters, so why shouldn't we be concerned about disease-laden animal sewage?

I see a breakdown in the system so that the system is not protecting us with lysimeters in the way that it could and should.

Hogs produce two to four times as much raw wastes, per hog, as the average human. The hogs grown by the mega-hog farms are confined in cages that allow them only to stand and lay down. Therefore, the mega-hog farm operations that are coming into the area must remove the wastes from the hogs with five times the amount of water that the hogs drink for nourishment.

This all adds up to tremendous amounts of raw sewage with no place to go. Currently, the mega-hog farm operations are pumping the hog wastes in open pits called lagoons. The sewage then seeps in the soil. The mega-hog farm operators would like us to believe the lagoons are lined with a liner so that there is no seepage. In fact, any liners that are installed only cover the upper part of the rim so that wave actions don't cause the sewage to break down the sides. The lower part of the rim and the bottom are not lined, but are packed with clay in order to seal the pit. Invariably, these pits still leak through the sides because the raw sewage levels rise and fall over time (due to such things as evaporation and pumping) and cause cracks in the lower portion of the rim. The raw sewage then seeps into the sandy soil of the surrounding area. We have found out recently that even the clay packed bottoms are not being accomplished as required by KDH & E.

Weak Testing In Spite Of Requests To Improve Them

There are extremely weak testing requirements to indicate if the sewage contaminates the water table that we all drink from. The tests that are currently required will only detect contaminants after they have seeped into the groundwater. Although such a seepage may take years to occur it would also take years (or even centuries) to correct itself even if the source were immediately removed. The tests can and should be required to detect contaminants at more shallow levels!! Strict requirements in the event of contamination should be in place for existing hog farms and no more mega-hog farms should be allowed in our county and state!!

No Citizen Recourse To Challenge KDEA Bond Approval

The citizens currently have no recourse to keep our Commissioners from signing the letter which was sent out concerning the tax-free bonds. It is my understanding that a letter was sent to the Commissioners of all of the Counties seeking their consent to grant the bonds and if there was no response then the bonds were granted. We the citizens are currently locked out of that process. We demand to be included!! We want a mechanism whereby we can be informed about this letter and to be able to express our lack of consent. We would need to know what standard we would have to meet, in terms of a level of non-consent, in this process in order to completely deny these bonds to this industry. Apparently, from our legal research there are numerous other avenues that this industry has to acquire public moneys from the citizens of Kansas. In advance, we demand to be included in the process.

Further Evidence That Democratic Principals Not At Work Here

You should know that even when we, and our neighbors in Morton County, have demonstrated strong involvement and concern it has been twisted in an attempt to demonstrate weak support. For example, in Morton County the citizens presented the Commissioners with a petition with ~~846~~⁸²⁹ signatures asking to be allowed to vote to rescind the resolutions which allowed lagoon-style farming. The petition effort was called meaningless because only 43 percent of the people on the petition had actually voted in the last election. What the opponents to the citizens did not mention was that in the last election in Morton County there were only 792 voters who showed up at the polls. So, the petition had a greater number of participants than the last general election!

The dictionary says that the word "autonomy" means the right of self-government, independence, and freedom. Many brave Americans have died in order to preserve our right to govern our own lives. That right is currently being eroded by huge transnational corporations including the ones that are populating Stanton County and Kansas with factory-style farming operations. Internationally, Rob Floyd and William Heffernan of the University of Missouri found that six of the top ten transnational companies are Japanese most of whom have extensive holdings in food production and processing. "The largest firms in the industry are often in a position to dictate prices, limit industry [limit competition] and effectively conceal their profit margins if and when they wish. These same institutions are able to pursue their own interests at the expense of producers from any single country and without regard to national concerns," said Mr. Floyd. One of the transnational companies with a major presence in Stanton County has three pages worth of subsidiaries through which they operate.

The companies that are coming into Stanton County and Kansas are both transnational and domestic, but they are using the transnational gameplan that they have implemented in North Carolina and other states with astounding success. In North Carolina a seven month investigation by the News and Observer found that state agencies aided the influx of the factory farming operations into North Carolina, but were slow to anticipate or respond to the problems related to such drastic changes that were brought about by these factory farms. Their legislative successes and prowess have allowed them to increase hog production by an average of 320% in the affected counties of North Carolina since 1983. The network of formal and informal alliances between the factory farms and the people of power in North Carolina which allowed this tremendous increase has taken the citizens there by surprise. Are these people of power happy with their new friends?

In North Carolina the sewage from the lagoons of the factory farms are polluting the groundwater and the rivers faster than the citizens and the government are able to regulate it. The odor, economic concerns, and other environmental concerns are proving to be unbearable so that the legislators and the governor of North Carolina are beginning to want to regulate the factory farms to whom they had previously given wide-ranging freedoms of operation. Sadly, this beginning of an effort is already too late for them. Let's learn from their experience.

Our supposedly "Democratic" processes have not worked as further evidenced by the fact that the recent bills which were introduced as a result of so many citizens and grassroots efforts wanted them, but they were not fully debated and

enacted. We want the same effort that was put out for the sake of the industry to be put out for us! We want to know who in the legislature is going to introduce legislation to put a moratorium on hog and dairy farms in the State until this issue can be fully debated in the next legislative session?

In another instance we find a news article concerning Carla Stovall's opinion which supports these citizen efforts where Mark Campell, vice president of Seaboard, is quoted as saying that he believes that many county attorneys are extremely upset with her office for this action (Hugoton Hermes 3-14-96). With rumors of Seaboard wining and dining and golfing our community leaders we are groping for some support for the majority of the citizens believe. With the rapid action of this industry, demonstrated by their effectiveness in getting this bill introduced, we need your support before election day and after election day!

Lagoons Do Leak With No Response From KDH & E

Furthermore, some hog lagoons in Stanton County are not sealing and are leaking large amounts of sewage through the ground towards our groundwater. They are not functioning as designed and are not constructed as promised. Pre-construction bore sample records from the Cook site in the Northwest corner of the county do not match the soil removed from the lagoon area. Proper bore samples would have shown the highly permeable type soil and the sand at this site making an earthen lagoon unsuitable by KDH & E standards. A 1.6 million gallon above ground slurry storage would have been the appropriate method of effluent containment. In a meeting on January 26, 1996 between the Kansas Department of Health and Environment, Stanton County Commissioners, and concerned local citizens there was agreement that lagoons in Stanton County may have large leaks. Test samples taken of a new water well drilled near this location confirms that very little clay or shale exists all the way down to the water table. After details of this major leak were known our county commissioners indicated they would have a Seaboard representative attend a meeting and address this problem. Seven weeks have passed and not one Seaboard representative has come forth to address these concerns. This is a result that was almost predictable once you get to know the industry.

There is no evidence additional clay was brought in for a compacted clay seal at any of the lagoon sites in Stanton County. Most sites are located in areas with extremely sandy soil profiles. Monthly reports of lagoon levels are a part of the KDH & E permitting requirements. None of the Southwestern Kansas lagoons are at the required minimum depths of over 10 feet which we know by aerial observation

and can refute anything to the contrary which might be in those monthly reports, if in fact those monthly reports are being filed. Our aerial observations and photographs show that most of the lagoons are not even at the 5 foot level and some don't even reach the bottom of the measuring poles. One lagoon actually grew weeds on its bottom last summer. What do you suppose happened to that compaction layer of clay? KDH & E refuses to officially accept complaints, enforce permits, or stop operations in non-compliance. KDH & E representatives say they are waiting for the lagoons to seal. According to a study by John Zupansic in December 13, 1995, asked for by the Groundwater Management District, the lagoons should have taken only about 6 to 12 weeks to seal after initial filling. A lagoon that leaks is like a toilet running over. So, when do we shut the water off and fix the leak? The Coalition for the Next Generation says NOW!!

Bacterial And Other Dangers Which KDH & E Underestimates

Are you thinking that factory farm wastes will get filtered as it seeps through the sandy soils of Kansas? Think again!!!! Our KDH & E is not telling you that other states have experienced severe problems because of the concentrations of animal wastes resulting from "confined feeding operations," or, factory farms.

Some of the microorganisms found in factory farm wastes that can seep into the groundwater are salmonella, coliform bacteria, fecal coliform, fecal streptococci, listeria, vibrio, brucella, cryptosporidium, coxiella, chlamydia, and microplasma. In Iowa, for example, over 45% of the rural wells tested by the state were contaminated with coliform bacteria. How dangerous are some of these microorganisms? Cryptosporidium was the organism discovered in the water supply and determined to be the cause of an outbreak that left over 400,000 persons sick and over 100 dead in Milwaukee in 1993!!!

Minerals are also a consideration that communities must think about with regard to factory farms. Some, such as copper, are fed to the animals to increase their growth rate. Discharges from factory farm operations can raise the nitrate levels so high that parents of newborns can't use the water in baby formulas for fear of methemoglobinemia (blue baby syndrome). In May 1991 a random sampling of 183 wells in Lancaster, Pennsylvania revealed that 50% of the wells had a nitrate concentration levels that ranged from 10 mg/l to 47 mg/l. The researchers believe that Lancaster's high nitrate levels were related to the county's high animal density. As for copper, a study by Larry A. Kerr and H. Donald McGavin published in 1991 showed that sheep grazing on pastures fertilized with swine, or

chicken, manure experience extremely high death rates due to the copper sulfate that is typically fed to the swine and chickens. In addition to the grazing problems the soil fertility is also reduced, thereby reducing the property value of the land.

All in all, disease-causing microorganisms, nitrate concentrations, potassium concentrations, and salt concentrations from manure have contaminated the ground water in Alabama, Arkansas, California, Colorado, Delaware, Kentucky, Iowa, Maryland, Missouri, Nebraska, New Mexico, Ohio, Oregon, Pennsylvania, South Dakota, Texas, and Wisconsin.

What is a community supposed to do in response to all of this, especially a community such as Stanton County where there are so many well established cattle feedlots in addition to the hog farms? The Stanton County Natural Resources Committee recommends that good monitoring be established/enforced and that no new ones be allowed. The current monitoring guidelines will only detect these contaminations after they have already reached the ground water and various government agencies that have the responsibility of guarding our health and water are understaffed and reluctant to act even when there are obvious problems.

Report of Stanton County Revenue Potentials From Hog Farms **By The Stanton County Natural Resources Committee**

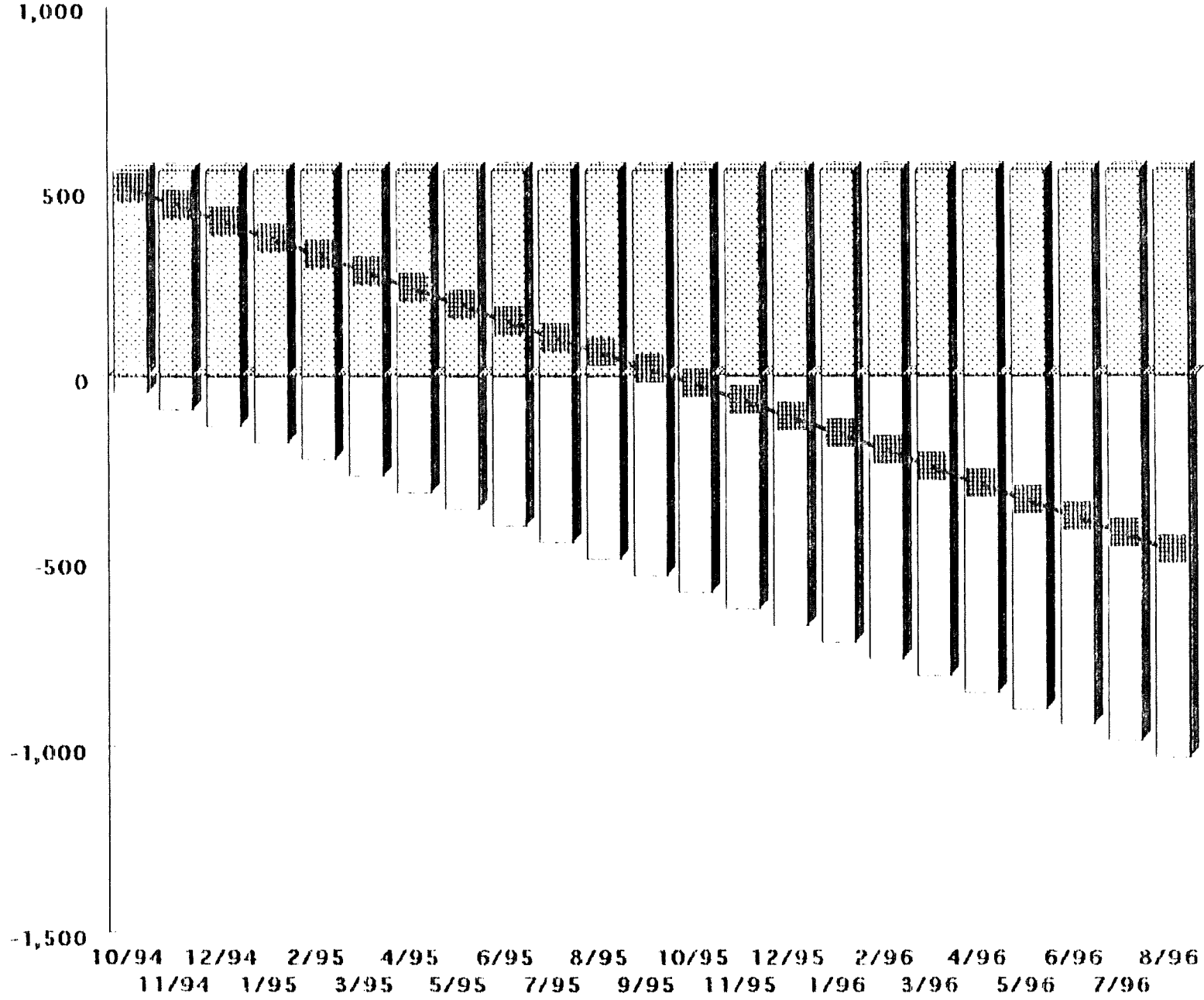
SCNRC has reviewed the revenue potentials from commercial hog farms for Stanton County and has found that these operations are taxed as a regular farm operation would be rather than as an industrial/commercial operation. Therefore, they are not bringing in any more tax revenues than the farming operations that they have replaced. For those locations where the water that is pumped has been diverted from irrigated crop to a commercial swine operation and a dryland crop is still produced there is a substantial drop in the tax rate from \$760 per quarter for irrigated versus \$280 per quarter for dryland.

As for the revenues in the community SCNRC estimates that a water potential equivalent of 8 (eight) circles of irrigated corn have already been converted to swine production with Seaboard intent upon doubling this figure. Assuming

Monthly Assets, Liabilities and Net Worth

\$ in 1,000.00
1,000

Assets 8.8
Liabilities
Net Worth



Graph 1-A

\$86,400 of crop income per acre of irrigated corn versus \$16,000 of crop income per acre of dryland wheat results in a net loss of \$535,983/year to the Stanton County community.

Graph 1-A below extrapolates these dollar amounts with the assumption that the conversion occurred in October 1994 which was the mid-point in the construction of the 40 hog barns (derived from 4-5 barns per site) currently in Stanton County. The graph indicates a devastating trend for the future community revenues of Stanton County. When this figure gets to be a \$1,000,000 loss in August of this year it will represent a per capita loss of \$409 for every man, woman and child in Stanton County per year.

Won't the income from the hog farms be spent in Stanton County? Nope!! The feed grain is bought on the national market at the cheapest possible price and shipped in here. The only chance we have of seeing some money circulate through this community is from the workers' salaries. This would not be net revenues, however, because approximately the same number of workers would have been displaced from the irrigated corn operations.

In light of the fact that Seaboard is only half of the way towards their goal of slaughtering 4.8 million hogs per year in their Guymon, OK plant, Stanton County should begin to do some of the kind of math demonstrated above. It is clear evidence that we need to say, "NO!" to any more confined-feeding-operations. Regulating the ones that we have is proving to be an overwhelming task.

The Industry Is Successfully Thwarting Democracy

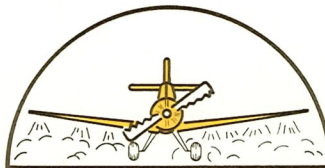
I could not believe what I was reading in recent news article about Seaboard chief, Rick Hoffman, where the article quoted him as saying that, "the legislation would single out corporate swine facilities from all other industries in Kansas, including their largest competitor: family hog farmers." Nothing else in our society, other than motherhood, represents what is good and wholesome about the human race the way that family farming does. Yet his statements were effective in killing a bill that would have kept this industry from getting what smaller family farms deserved from the Kansas treasury. Family farmers are being attacked from all sides as it is and now a huge multi-billion dollar corporation called Seaboard wants to take what rightfully belongs to the family farmer. You would think that a corporation with so many resources could find a more honorable way to make a living.

It is time for citizens to stand up to these big corporations who have more money, and sometimes more power, than a third-world country. Money and power that they are fully willing to use to target grassroots America.

Now, we have Senate Bill 744 which wants to undo everything that Carla Stovall was trying to do for us. When we finally get a voice in the system that wants to speak on our behalf we find our own legislature bending over backwards to introduce Senate Bill 744 in order to undo what Carla Stovall is trying to do for us. Senate Bill 744 will:

1. transfer the power for deciding these issues from the Counties to the State (The Bill reads, "...all aspects of corporate or limited liability company ownership of agricultural land for the purpose of swine production facilities is vested exclusively in the state...Any action by a city or county in conflict or contrary to D.S.A. 17-5902 through 17-5908, and amendments thereto, shall be null and void." This is clearly not in the interests of the citizenry or of democratic principals!
2. allow hog farms to continue to expand any farrowing operations in the event that the resolution permitting hog farms is rescinded. This aspect of the bill would clearly nullify all of the citizens efforts to limit this industry.
3. allow any sites which already have a permit to be built and operated. We have a right to protect what we have with the authority with which the permits were granted, unless this Committee and this Legislature take it away from us.
4. in the event that the resolution permitting hog farms is rescinded by the County Commissioners then it must also, in addition, be voted on by the citizens in a general election. We would prefer that the resolution be rescinded either by the vote of the Commissioners, or by the vote of the citizens. This would give us a democratic choice rather than a legislative hurdle.

We want the legislature to prove that they are working hard for us, the citizens, or hard for mega-swine interests. It was a month after we were organized, and requesting legislative help, before the members of the legislature introduced any legislation to help our cause. The pro-mega-swine interests, however, have received legislative within one week after Carla Stovall's opinion was released. We smell a fish, or something porkier!



MID-AMERICA

Sprayers

SENATE BILL 744-TESTIMONY

SENATE AGRICULTURE COMMITTEE

March 18, 1996

P.O. Box 430 / Johnson, Kansas 67855 / (316) 492-6633

Mr. Chairman and Members of the Committee:

I very much appreciate the opportunity to express to you my opposition to Senate Bill 744. My name is Mike Smith and I am a commercial agriculture spray pilot from Stanton County, KS. I represent the majority of Stanton voters who want you to know they could not be here today due to the short notice. It is a very busy time of the year for our farmers as they are again preparing to plant new crops.

We were eternally grateful to see Attorney General Stovall's ruling which provides local control on many issues. We are gravely concerned that our only source of water, the Ogallala aquifer, must be protected from pollution to sustain life. Senate Bill 744 takes that control away.

We have always felt the freedom to be in control of our local affairs without fear of reprisal is vitally important to our local citizens. Liberty for all is what America stands for! Please do not close our only window of opportunity for local control.

The most important component of our democracy is letting people speak on important issues which affect their livelihood, their community, and their environment.

Therefore, please vote no on Senate Bill 744!

Thank You,

Mike Smith

Senate Ag Co
3-18-96

Attachment 99-1

High Plains Concerned Citizens Coalition

(farmers, stockmen, and townspeople)

P.O. BOX 538

JOHNSON, KANSAS 67855

Fax (316) 492-6221 Fax (316) 493-4700

Mike Smith

March 17, 1996

Honorable Senators:

As a coalition of citizens from different counties in the Southwest corner of Kansas, we request that you vote against Senate Bill 744. Government is of the people, by the people, and for the people. Without the ability to rescind decisions that with time have proven unwise for the greater good of the state, community, or individuals, we become slaves or victims of past decisions and become unable to govern ourselves.

Last year many local citizen groups took petitions to their commissioners asking for rescision on the Corporate Swine question. Local citizens recognized that the factory farm system had unforeseen consequences needing dealt with. The Corporate Swine companies took a dim view of any restraints and intimidated our commissioners and citizens by threatening lawsuits if local controls were attempted on their businesses. Our counties have small populations (2443 in Stanton County and 3480 in Morton County) and limited county budgets (such as \$5.9 million for Stanton County and \$7.7 million for Morton County). Fear of lawsuit has kept some citizens from signing petitions, county commissioners from officially taking any action, whether rescision or enforcing existing regulations or making desperately needed new ones. Knowing we were fiscally unable to sustain legal defense of our county elected officials or their decisions, the counties pooled their county attorneys and requested an Attorney General's Opinion.

At the same time, this coalition and other groups of local citizens approached the legislature for assistance covering a range of problems from uncovered pig burial pits to rescision. We asked our representatives to make positive legislation on rescision to lessen the possibility of unaffordable lawsuits. When Attorney General Stovall's Opinion was released, Southwest Kansas breathed a sigh of relief. Now, we *know* we can take action and it looks like the Factory farm people know it too.

Senate bill 744 would remove local control over a corporate swine facility. This bill has four basic points. First; it insists power for deciding any swine issues be transferred from lesser powers to the State. Second; it redefines farrowing operations to include a swine production facility which houses breeding stock, sows and boars, to produce offspring to be raised for slaughter or to be utilized as breeding stock. Third; it demands the right to expand or operate new facilities as is necessary to raise any swine offspring produced at farrowing operations. Forth; without restraints, it demands the ability to utilize any sites which have entered the permitting process.

*Senate Ag Co
3-18-96
Attachment 10 10-1*

This new legislation seems to be a very extreme reaction to an opinion that merely states: *Local people can govern themselves on issues not specifically governed by the state or federal government, an example: a town with a noise ordinance.* Why doesn't the swine industry think people who live by agriculture cannot be trusted to deal fairly with them? Wouldn't local citizens be better suited to know if the confined swine feeding facilities are good neighbors better than the State government?

Now that the Attorney General has been made it clear that local governing bodies have the authority to handle this issue, please allow us to retain that right. Other industries have prospered in Kansas, we are sure the Swine industry can also.

Sincerely,

HPCCC Representative

March 18, 1996

Mr. Chairman and members of the Committee:

My name is Amy Barber and I am a concerned citizen in the Stanton County area.

Hog farms are here, can we control the damage?

Supporting the opposition of the hog production facilities placed in Southwest Kansas by the Seaboard Corporation, my points are as followed:

We're always talking about lobbyists, Commissioners, and committees, but this is a very real problem and we have very real individuals trying to go on with their lives.

Max and Pauline Probasco from the Lincoln clava Township lived on a farmstead that lies 3/4 mile from the hog farm located at the Whitetail site and only 1/4 mile from Land Premium Standard Farms plans to irrigate with effluent from the lagoon. Max said, "He'll have to put off his retirement as a mail carrier to pay for the house they bought in town. Due to the closeness of the hog farms his land value plummeted."

Senate Ag Co
3-18-96

attachment 11-1

Fred Torry, another man from the Lincoln Township lives $\frac{1}{2}$ mile from the 80,000-hog grow-finish facility. Premium Standard Farms says no site is closer than $\frac{3}{4}$ mile from a residence. Fred said, "Some days the odor will make you sick."

Charlie Arnot, Premium Standard Farms director of public affairs said, "The company believes odors will lessen after lagoons mature, which takes about two years."

My question now is, do feedyards smell after about two years?

I'm going to talk about cattle for just a moment. Cattle have four stomachs, when cattle drink water with nitrates, bacteria present in the Rumen convert nitrates to toxic nitrates; whereas swine, chickens, and humans have no Rumen and most of the nitrates are rapidly eliminated in the urine. Although we can drink water with nitrates it is also a known cancer causing agent. What I'm trying to point out is all species are at risk.

on Kansas farmsteads a study was done on private wells. 37% contained inorganic chemicals above safe drinking water standards. Nitrates were the most common found contaminate. From 1988-1990 data was collected from over 1500 private wells the results were tabulated, nitrates were once again the major contamination along with bacteria. 40% of the wells had one or both contaminates. We already have a problem, why add to it?

Melvin Winger, one of Stanton Counties Commissioners, came and spoke with our Government class a while back. He made a statement that got me to thinking. He said, "By the time the water is contaminated, we'll all be dead so we don't have to worry about it." Of course he doesn't have to worry about it, but what about the rest of us. If we're planning for a future, death doesn't sound like much of a future. Let's take for instance, Jim Sipes, one of Stanton Counties residence. He is the 4th

generation farmer in our area. At what point did melvin expect people to abandon the area? In other words does he actually think we're going to let this fly? Obviously not or else we wouldn't be here.

Lacking industry, land is our largest resource we have. All of our economic value is based on the land. All of the land in Southwest Kansas is in some way being used. Crops grown on the land bring in needed cash. Any damage done to cropland damages our ability to engage in trade.

Virgil Morris, a Stanton County farmer, was willing to let me look at some land he once raised hogs on. He hasn't had hogs on it for over 2 years. It is so polluted with excess potassium it won't even grow a weed, let alone a crop.

It is by some unlucky chance Murphy's Law that states, if something can go wrong, it will go wrong, then Stanton County

will be hit at all levels. That is why our county needs to decide whether or not we need these pollutant pigs in our area.

Thank You

Amy Barber

March 18, 1996

To the Concerned: \$ maybe the brave--

My name is Sandy Shell, and I'm a Senior at Stanton County. As part of a Government project, I researched the corporate hog farms, and to tell you the truth was amazed at what I found. Would you think an 18 yr. old, like me, would still be interested in this 18 weeks later? NO- but I am!!

I'm here to ask you to vote no to bill #744.

Quality of life is a major factor. I dream of lovely roses and walks in the park; however, I fear the stench of pig manure consuming me. I sited in many places where the smell alone caused depression, headaches, crankiness, and much worse death! I've seen pictures of pig farms close to schools, home and other places where the stench would seem overwhelming. *

Water, one of our most valuable resources is threatened by these operations. At no time should manure and other waste be dumped directly into a lagoon. They even dispose of their medical syringes in these lagoons. If that were to get into our water,

could you imagine the contamination!

Corporate hog farms must find a way to save our water, like the farmers.

Senate Ag Co
3-18-96

12-1

attachment 12

* Do you know that when I visited a pig farm in ~~the~~ Derrment, I saw a lagoon half empty, yet manure was gushing into it. The manager even went as far as to tell me that when the farm ~~was~~ began the lagoon was only ankle deep. I later found that they should ~~have~~ ^{have} 85% of fresh water before so that the lagoon would function properly. Did you hear that "properly." Do they understand that would. I was disgusted!

The operation manager had no idea how much water he used, how much leeching occurred or how much business was brought to the neighboring towns.

I work at the grocery store and we cash checks from Seaboard employees. When we ask for I.D.'s 95% say they have none, their from Mexico and haven't had time or money to get some in America.

My main concern is the water. Will there be water for me when I'm ~~needed~~ so. I'm sure you have none of these worries but please think of my classmates, me, ^{our} ~~our~~ children!

They have learned techniques such as lowering sprinkler heads closer to the ground. They took action to get a result. & that's what you must do. Vote no!

I feel it is our ~~a~~ right to have local control. Our county commissioners know how we feel, they know what we want, they know what to do.

Please give them the handle.

Don't let Bill #744 remove local control. It allows all issues concerning Swine corporation to be transferred directly to the State.

Please help us, help the county, the water, the air, and most of all the future!

Please vote no!

Thank* you for your time!

Sandy Shull

STANTON COUNTY NATURAL RESOURCE COMMITTEE

(farmers, stockmen, and townspeople)

P.O. BOX 362

JOHNSON, KANSAS 67855

Sandy Snell

March 17, 1996

Testimony on Senate bill 744

Mr. Chairman, Honorable Committee Members and Fellow Kansans:

The Stanton County Natural Resource Committee is extremely concerned about Senate bill 744. Many of you have been told it was about the same subject as Senate Bill 600. They are opposite answers to the same question. The people want local control. The corporate swine industry with factory farms do not want us to have it.

Citizens in Southwest Kansas are concerned about the massive influx of large concentrated swine feeding operations into our area. Yes, one of the largest cattle feedyards in the world is next door in Grant County. It holds 105 **thousand** head of beef with a lagoon of about 17 acres. The confined swine feeding facilities are planning 4.8 **million** hogs to come out of here yearly. One of many swine lagoons in our area is 14 acres. While Stanton county has, by resolution, allowed corporate farming, we feel that our corner of the state was terribly unprepared for the magnitude and hazardous potential of these operations. We are knowledgeable of our area and the pit falls that exist with our regional resources. For example, there are many natural and man-made conduits which rapidly increase the rate of contamination of our groundwater. Among these are abandoned wells, seismograph test holes, animal burrows, and oil exploration holes. Locations of many of these conduits are unknown to people outside of the area, are uncharted officially and are not available for consideration in lagoon or construction site selection. We have recently learned that one of the active confined feeding facilities in Morton County has been placed atop an uncapped, abandoned water well which is probably mapped officially, but was overlooked or ignored in site selection. The potential for rapid contamination of our water supply is tremendous.

Although SCNRC has been waiting for clarification on our options, we have not been sitting still. Our new neighbors will find us now very knowledgeable on confined swine feeding facilities and their industry as a whole. The recent Attorney General's Opinion explained in simple terms what kind of local control we have. The confined feeding facilities in our area should be compelled to work with local citizens as any local business would.

The Stanton County Natural Resource Committee believes **responsible individual behavior is the solution to collective well-being**. Counties should keep the right to enforce responsible behavior. Thank you for your time. Please vote "no" on Senate bill 744.

Sincerely,

SCNRC Representative

Sandy Snell
Senate Ag. Co
3-18-96
Attachment 13

TESTIMONY AGAINST SENATE BILL 744 by Jerold Hubbard

I am protesting against this bill because I believe it will actually cause more problems than it will fix, open the door for more law suits, and it goes against the home rules law 19-101 by undermining the authority of the county to PROTECT their local interests and governmnet authorized under the provisions of K.S.A. 19-101a.

1. Why is it fair to give special protection for corporate swine facilities that is not extended to other corporations. Is not this bill built upon special interest? There were several bills proposed or introduced earlier which were defeated upon the basis that they showed special interest. If this were a legitimate reason for defeating other bills why isn't now?

2. In northeast Morton County, there is a 25,000 sow cell in operation. This cell is capable of producing 500,000 pigs. For right now the nurseries and finishing houses for these pigs are mainly in other counties. If this bill were to pass, this corporate swine entity could say this bill gives them the right to potentially build enough sites to produce all of these pigs within Morton County even though they were not doing it originally. In other words, this particular corporation could be building sites within Morton County for many years even though this county may have voted to stop ALL new corporate swine facilities.

This bill would just give special priviledges to those Corporate Swine facilities already in place while greatly restricting their potential competitors. This bill would be perfect protection for those corporate swine facilities already in place. It would allow them to Control markets with monopolistic practices. One point should be made clear, "Is the ability to establish enough sites to finish out any pigs born within a particular county" transferable to another corporation which may have bought out the original corporation? How long could this go on?

3. It appears this bill is not about stopping controversies or law suits (because it will not) but it is about protecting the corporate swine facilities while leaving the host counties wide open for exploitation, exploitation of the local residents as well as their life supporting resources.

*Senate Ag Co
3-18-96
Attachment 14 14-1*

It is not the local county governments which have hired lobbyist continually looking out for their own special interests within several states as well as in Washington D. C. It is not the local counties who have a fleet of top notch lawyers with unlimited funds and time, hired ready to defend their interests at the slightest hint of someone or something blocking their plans.

The Attorney General's opinion was an interpretation of the law as it now exists. It was not based upon an opinion poll, and it was not based upon pressure from lobbyist or special interest groups.

There were certain protections offered to large corporate swine facilities within this opinion. For instance, it was made quite clear that no real property of any corporate swine facility could be confiscated by the local county; nor could any sites already under construction be stopped. One can rest assured that if these corporate swine facilities feel they have any real, legal grievances, they will not hesitate to take their case to trial because they certainly are not lacking the funds or lawyers to defend themselves.

I know of one case where a farmstead located in the middle of one the newly constructed corporate swine facilities was devaluated in worth because of the strong odors coming from the waste lagoons. The owner approached the Vice-Chairman of the large corporate swine facility with her grievance, this is the same corporation which has moved into Morton county Kansas, and she told him her problem. He did not try to deny her charge, and in fact he almost begged her to sue the corporation. Why? They knew they had the funds, knowledge, and personnel to out maneuver her in court acting as a corporation. And, if they did lose a partial settlement, they would not even miss it; but if she lost, it could mean her farm.

This is why the individuals, or privately owned businesses, must have some legislated protection from the mega, limited liability corporations because they cannot compete with the funds or personnel of the mega corporations in courts. Private citizens do not usually have the influence to protect their own interests like mega corporations do. Mega corporations can more easily find the "LOOPHOLES" within the law or literally change the law whenever the INTERPRETATION of the law goes against their own interests. This bill is trying to protect the wrong, stronger party

SENATE BILL 744 - TESTIMONY
SENATE AGRICULTURE COMMITTEE
March 18, 1996

Mr. Chairman and members of the committee:

I appreciate the opportunity to express to you my opposition to Senate Bill 744. My name is Lyndell Herron, I live and farm in Morton County, KS.

A quick review of history and a few important definitions taken from Webster's dictionary.

America -- Was founded on a plight of freedom from the heavy control and taxation in the Old Country.

Kansas -- One of the States that make up the United States of America and was founded with the same principals and for the same reasons.

Democracy -- Government by the people, either directly or through elected representatives; rule by the ruled.

-- The acceptance and practice of the principle of equality of rights; opportunity, and treatment; lack of snobbery

Snobbery -- Snobbish behavior or character, or an instance of this

Snob -- A person who regards himself as better than others in some way and behaves undemocratically.

Dictatorial -- Characteristic of a dictator

Syn. -- Arbitrary suggests the unreasoned, unpredictable use of one's power or authority in accord only with one's own will or desire (an arbitrary decision)

Dictator -- A ruler with absolute power and authority.

The hierarchy of American Government has always given the local unit of Government the power to make laws more stringent than the Federal and State laws. This gave the people local control, not forcing them to be subjects of Big Government. Who better knows the desires and future dreams of a local area than the people who live there and why deny them this power? As time passes, with it changes in the resources and dreams of the people. The right to change laws and regulations to achieve these goals for our lives and land must be preserved.

Lyndell Herron

*Senate Ag Co
3-18-96
Attachment 15*

SB 744

3/18/96

MR CHAIRMAN, COMMITTEE MEMBERS:

MY NAME IS ART RIEDEL AND I'M FROM PAWNEE COUNTY. IN JUNE OF '94 OUR COUNTY COMMISSIONERS ADOPTED A RESOLUTION ALLOWING CORPORATE SWINE FARMS IN THE COUNTY. SOME OF US BELIEVED THAT WAS NOT THE WILL OF THE PEOPLE BUT WAS INSTEAD THE WISH OF SPECIAL INTERESTS. WE CIRCULATED PETITIONS, IN ACCORDANCE WITH PROCEDURE AND BROUGHT THE ISSUE TO A VOTE OF THE PEOPLE. CORPORATE SWINE FACILITIES WERE DENIED BY A VOTE OF APPROXIMATELY 2 TO 1.

WE WERE FORTUNATE IN THAT WE HAD PEOPLE AWARE OF WHAT WAS HAPPENING AND KNEW HOW TO ACT. SOME COUNTIES WERE LESS FORTUNATE. COMMISSIONS PASSED RESOLUTIONS AND NO ONE KNEW WHAT WAS HAPPENING AND WHAT IT MEANT UNTIL IT WAS TOO LATE TO PETITION A VOTE. SINCE THEN, MANY COUNTIES HAVE EXPRESSED AN INTEREST IN RESCINDING THE RESOLUTIONS PASSED. THIS SHOULD BE THE RIGHT OF THE PEOPLE IN THOSE COUNTIES.

MY FAMILY HAS LIVED IN WESTERN KANSAS FOR WELL OVER 100 YEARS. IT IS FAMILIES LIKE MINE THAT MADE WESTERN KANSAS WHAT IT IS. WE BUILT THE CHURCHES AND THE SCHOOLS; THE HOSPITALS, LIBRARIES AND COURT HOUSES. WE STARTED THE BUSINESSES. IT IS WE THAT HAVE THE RIGHT TO DETERMINE THE PRESENT³⁻¹⁸⁻⁹⁶
Senate Ag Co. attachment 16 16-1

AND FUTURE OF WESTERN KANSAS.

HOME RULE IS PRIMARY TO A DEMOCRACY. THE VOTERS IN JOHNSON, KANSAS OR STANTON COUNTY SHOULD NOT DETERMINE THE FUTURE OF THE PEOPLE ON STANTON DRIVE IN JOHNSON COUNTY. NOR SHOULD JOHNSON COUNTY VOTERS DECIDE THE FUTURE OF WESTERN KANSAS.

WHEN SPEAKING OF INVESTMENT IT IS WE WHO HAVE MADE THE INVESTMENT IN WESTERN KANSAS. FOR OVER 100 YEARS NOW WE HAVE INVESTED - IN OUR HOMES, OUR FARMS, OUR TOWNS. IT IS WE WHO HAVE INVESTED IN OUR WAY OF LIFE AND OUR QUALITY OF LIFE. NOT ONLY HAVE WE INVESTED BILLIONS OF DOLLARS BUT ALSO OUR SWEAT, OUR TEARS, AND YES, EVEN OUR BLOOD.

THE ONLY ONES WITH THE RIGHT TO DETERMINE THE FUTURE OF WESTERN KANSAS ARE THOSE OF US WHO ACTUALLY LIVE THERE. SB 744 SHOULD BE REJECTED.

THANK YOU
Art Riedel