

Approved: 1/22/96
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION.

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on January 18, 1996 in room 531--N of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Alice A. Devine, Kansas Secretary of Agriculture
Sharon Patnode, Legislative Post Audit

Others attending: See attached list

The Chairman called the meeting to order at 1:35 p.m. And asked Sharon Patnode, Legislative Post Audit, to begin her presentation on the post audit report entitled "Reviewing the Department of Agriculture's Weights and Measures Enforcement Program. Ms. Patnode introduced Laurel Murdie, member of the post audit team, who was present to help answer questions from the committee.

Ms. Patnode began by directing attention to the Organizational Chart on page 2 which showed that the Weights and Measures program sits within the Division of Inspections and is headed by a person called the State Sealer. The Weights and Measures program has 15 employees, of which 9 are field inspectors. The graph on page 5 showed the types of devices under the programs responsibilities; what they are, how they are used, and the number of those devices in the State of Kansas. Ms. Patnode stated that Kansas is different from just about any other state in the country because it gives private companies the primary responsibility for testing weights and measures devices instead of having state employees carry out that task. The Department still must make sure that private companies are performing their duties completely and adequately in order to insure that weights and measures devices are accurate. The graphics on page 6 shows the responsibilities of those involved in the process. In general, private companies may sell, install and repair devices. These same companies are often the companies who test the devices in order to meet the state's requirement that weights and measures devices must be tested annually. These private companies are required to send a copy of the test results to the Department of Agriculture. This is how, in general the process works in the State of Kansas. Two areas private companies have no involvement in are scanners and packagers. These areas are the responsibility of state employees. Addressing the question on page 7, it was found the program had not been effective in securing the accuracy of measuring devices; a sufficient number of Kansas weights and measures devices are inaccurate. Ms. Patnode discussed the table on page 8 and profile on page 9 and answered several questions. Ms. Patnode commented that privatization isn't necessarily bad, there still has to be regulation, enforcement and checking; that is where some of post audit's recommendations come in.

Continuing on through the audit, Ms. Patnode stated that Kansas requires that the weights and measures devices be checked every year. It was found that devices were not being inspected as often as required. Twenty-eight percent of the state's scales haven't been inspected in the last year and a half. Many companies are testing their own devices. There is an existing potential for inadequate testing. The sealing requirements are not adequate to prevent or detect tampering; there is no accountability for the seals and there needs to be an integrity to the seal process. Another problem Ms. Patnode commented on related to field staff. Field staff is not used very effectively. There is no kind of systematic followup on services companies. Enforcement actions were not always adequate to fix problems it found or became aware of. In response to a question about privatization, Ms. Patnode responded that privatization began in 1985. Continuing, Ms. Patnode stated that state law authorizes but doesn't require the Department of Agriculture to test the quality of petroleum products. Manufacturers, importers, and distributors of gasoline pay the Department of Revenue a one cent per barrel fee to fund the petroleum product inspection program. The State has collected about \$250,000 a year from these fees. This amount was spent on petroleum enforcement activities each year. The Department does do some fuel quality checking. Kansas does not have a laboratory to test samples. Samples are taken and sent to a laboratory in Kansas City. It costs between \$90 and \$160 to have a sample of gasoline checked. The laboratory rejects the sample if the actual octane level of the gasoline varies from the advertised level by a plus or minus half an octane point. The problem is for the consumer who may think he/she is paying for premium gasoline, when in reality they are getting a lower grade of gasoline. An example was shown on page 26 of the audit. Colorado, Missouri and Oklahoma have extensive gasoline quality programs and they have

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Statehouse, at 1:30 p.m. on January 18, 1996.

26 of the audit. Colorado, Missouri and Oklahoma have extensive gasoline quality programs and they have state run laboratories for checking their own samples. The Department bought hand-held octane analyzers in 1994. There are two of those which the field staff can take into the field and try to screen for octane content. It was found that the octane analyzers are not very accurate.

Ms. Patnode read the recommendations on page 27 answered questions and listened to comments.

The Chairman called on Secretary Devine to say a few words in the remaining minutes. The Secretary stated that she would be happy to return on Wednesday, January 24, to continue her audit response.

When the Secretary came on board, numerous employees came to her stating that there were problems. Bob Mead of the governor's transition team came over to the Department and listened to these people. There was general dissatisfaction about what was happening in the administration and the program. At the same time, the Secretary was receiving some information when they were in the process of trying to write some regulations regarding the governor's fuel assurance program. Some of the information she was receiving was inconsistent. At the same time the packers and stock yard administration came to the Department stating their concerns about the scales and the scale program. They had done preliminary tests and found 8 of 14 scales were out of compliance. The particular individual who had done this testing was very familiar with scales and scales operations because he worked in metrology in Colorado. At about the same time the Kansas Oil Marketers Association came to her and said the Board had taken the position that it wanted to return to a public program - it no longer wanted to be in a privatized program.

Secretary Devine stated the basic thing to understand was that this is not a privatized program but a licensing program. The two are not the same. It was called privatized, but it was not. Privatization shifts complete responsibilities to the private sector. The Department allowed people to take up some, but not all of the duties. Services companies were not necessarily trained to do the things the Department was asking them to do; the Department did not put in all the stops it should have.

The Attorney General opened a KBI investigation and this was in the press. At that point the Department tried to secure some documents. The then State Sealer tried to commit suicide. This is some of the history. At the same time, Legislative Post Audit had the Department of Agriculture up for the K-GOAL audit. At the top of post audit's list were weights and measures and fuel quality issues. At that point she asked Post Audit to re-direct the focus on what the Department's internal work had shown to be several problems. Post Audit identified and confirmed what the Department had already found. Late July or the first of August the Secretary asked some of her people to go out and look at some documents and see what these documents showed. An attorney and a person with a public administration degree looked at documents and related to her that they could not make anything out of them. The next thing the Department did was to decide if there was or was not a problem. That is when the Department went to statistical sampling. Within the Department is the Agricultural Statistical Division. Statistical sampling gives a universe of what is happening and shows trends of what is going on. The Secretary needed to know base-line data. It took several months to gather it. On November 28 there were several articles in the Wichita paper about compliance rates. The Secretary had gone to the Agricultural Compliance Advisory Compliance Board and told them what the Department was finding. The first thing that was done was to state that there would be no more gentlemen's agreements; the law will be enforced. Inspectors will not have to notify Topeka before enforcing the law. There were a series of meetings with industry groups to tell them the rules had changed and the laws were going to be enforced. Conferences are ongoing at this time. Data-base work and statistical sampling was done. The Department went to the Institute of Standards and Technology, which is a Department of Commerce agency and asked for their expertise. This agency was very helpful and responsible in telling the Department what needed to be done to help fix the program. Some of the reports are back. Some of the things the Department can do are training and data base cleanup work. There are some statutory problems - inherent problems drafted in the law. Lack of training is the Department's biggest downfall. Secretary Devine directed the committee's attention to page 34 of the audit which shows the statutory changes the Department was to take up. Finally, ways are being explored to do the fuel quantity and fuel quality issues.

Senator Ramirez thanked the Secretary and Ms. Patnode and adjourned the meeting at 2:30 p.m.

The next meeting is scheduled for January 22, 1996.

