

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:05 a.m. on March 5, 1996, in Room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Representative Greg Packer
Representative Becky Hutchins
Robert Newton
Dan Walker
Richard Maginot, Soldier Township
Clayton Bowman, Mission Township Board
Larry Campbell, Mission township
Commissioner Vic Miller, Shawnee County
Senator Alicia Salisbury

Others attending: See attached list

HB 2811: Concerning counties; relating to county commissioner districts.

Staff explained that **HB 2811** applies only to Shawnee County. It requires that county commissioner districts in Shawnee County have an equal number of residents from the unincorporated area of the county. The county home rule law is amended to prohibit counties from exempting themselves from provisions of this law.

Representative Greg Packer testified in support of the bill as a fairness piece of legislation. (Attachment 1)

Senator Downey questioned if Shawnee County should come to the Legislature with a one-county issue. She felt that perhaps the problem could be solved through the court system. Representative Packer responded that a suit had been filed. He noted that a suit would involve a large amount of attorney's fees at the expense of the taxpayers and that a statutory solution would be better.

Senator Gooch suggested that alternate legislation could be passed which would set up a mechanism for Shawnee County to make a decision. Representative Packer responded that this approach would not be the best benefit for the county and would prolong the situation.

Senator Feleciano observed that a trend exists which emphasizes less intrusion of government on citizens. With this in mind, he suggested that an alternative solution for Shawnee County would be to bypass suit in the district court and file with the Court of Appeals or the Kansas Supreme Court. Representative Packer maintained that the easiest and most expedient remedy was **HB 2811**. He explained that if the bill passed, it will stop the suit.

Representative Becky Hutchins testified in support of **HB 2811** as a means to allow equal representation of both incorporated and unincorporated areas of Shawnee County. (Attachment 2)

Robert Newton, a citizen of Shawnee County, followed with further testimony in support of the bill. In response to Senator Downey's suggestion to utilize the court system, Mr. Newton said that, while there is a possibility of winning, there is also the possibility of losing the suit. Furthermore, even if the suit were won, it would not provide an ongoing solution because the commissioners could change the districts again in the future. Mr. Newton had distributed copies of information outlining his position. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on March 5, 1996.

Dan Walker, a Topeka resident, testified in support of **HB 2811**, noting that county home rule is solely a legislative creation, therefore, it is appropriate for the Legislature to pass the bill. Further, the Bill of Rights guarantees every person equal protection, and Shawnee County violated those rights to equality by creating a minority district of county-only residents. (Attachment 4)

Richard Maginot, Business Manager for Soldier Township, testified in support of the bill. He reported that many citizens of the township had expressed their concern about the redistricting as an issue of fairness. With the redistricting, they feel that they have lost the ability to get the attention of their commissioner. With regard to a suit, Mr. Maginot said the legal fees for an expensive legal battle would be recouped from the taxpayers.

Clayton Bowman, Mission Township Board, stood in support of the bill, echoing the thoughts presented by previous conferees.

Larry Campbell, Mission Township, stated his support for the bill. He said all residents of Mission Township opposed the redistricting, and he knew persons living in Topeka who also thought it is unfair. He felt that two city commissioners out of three was not equal representation.

Commissioner Vic Miller of Topeka testified in opposition to **HB 2811**. Commissioner Miller said that the bill in its current form would not accomplish what the proponents wanted and suggested amendments that would accomplish what the proponents intended. He gave several examples of counties which contain commission districts which include a city only such as Riley, Douglas, Harvey and Reno counties. He maintained that the new districting plan was a better representative map. He noted that the fact that the population of Topeka outnumbers the population of the remainder of the county would not change under any redistricting plan. Commissioner Miller charged that special interest politics is involved by those who support the bill. He contended that the new district plan was an attempt to comply with the law and meets the test of compactness. As the bill is presently drafted, there would be no problem with redrawing the map; and citizens still would not be satisfied. Commissioner Miller denied that the new plan was drawn for political reasons but rather was done on behalf of all of Shawnee County. He distributed copies of an affidavit of Kimball Brace, President of Election Data Services, Inc., which concluded that the Commission resolution plan for redistricting did not violate acceptable practices of redistricting and compactness, and a copy of a relevant newspaper article from the "Topeka Capital-Journal." (Attachment 5)

Senator Ramirez asked Commissioner Miller why such a radical change was made when redistricting. Commissioner Miller answered that the purpose was to guarantee that a rural citizen could be elected to the commission. He felt the district was better proportioned and did not abandon rural citizens.

Senator Alicia Salisbury stood in support of **HB 2811**. She distributed copies of data indicating the population figures for the districts prior to redistricting. (Attachment 6) She noted that state law requires a review of the district every three years, not a change. She said she represents Senate districts that include incorporated and unincorporated areas under the redistricting, and she feels citizens do not want to pay taxes for two forms of government. She stressed the importance of acting on the bill as 17,000 persons will not be able to vote for county commissioners this year if the bill is not enacted by June 10.

There being no further time, the meeting was adjourned at 10:06 a.m.

The next meeting is scheduled for March 7, 1996.

LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: March 5, 1996

NAME	REPRESENTING
DAN WALKER	myself
Wes Wedermyer	myself
ROGER MYERS	CAR JOURN
LELAND C. Wood	MYSELF
WANDA Wood	myself
Joe Herald	self
RICHARD MAGINOT	SOLDIER TOWNSHIP
Shinnie K. Momin	Shawnee County Commissioner
Dave Carpenter	self
Ed Carpenter	self
Tom Corcoran	self
^{Rep} Barbey Hutchins	50 th Dist
Nancy Kandelberg	LUV Joseph Shawnee County
Jane Thomas	self
Orville Bobo	self
LARRY CAMPBELL	MY SELF & MISSOURI TOWNSHIP
D. LAIN CASSETT	self
Annis Beamus	self + Schu Lake Township
Judi Nelson	

STATE OF KANSAS

COMMITTEE ASSIGNMENTS
VICE CHAIR: BUSINESS, COMMERCE, AND LABOR
ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON ARTS AND CULTURAL
RESOURCES
SELECT COMMITTEE--TELECOMMUNICATIONS

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TOPEKA
—
HOUSE OF
REPRESENTATIVES

March 5, 1996

Mr. Chairman & members of the committee:

I thank you for this opportunity to appear before your committee on HB 2811.

I believe that HB 2811 is a "fairness" piece of legislation. It pains me to have to introduce this bill. As a taxpaying citizen who lives in the county I am appalled at the latest redistricting policy of the county commissioners. County taxpayers are left at the mercy of a losing proposition on any issues that only affect the county and not the city. As most people can tell, the city has different problems than the county taxpayers have. This is why we in Shawnee County have had a city type government for cities such as Topeka's city council. Now with the new redistricting, the City of Topeka has the majority of the county commissioners; thus, representing only city residents.

*Senate Local Gov't
3-5-96
Attachment 1*

This in my eyes is a duplication. We must have the whole counties interest at heart if we are electing county commissioners. This is where #2811 comes in. You can see on this poster I have exhibited which shows old districts versus new districts.

This bill would require that there be in Shawnee County the same population of county residents in all commissioner's districts as geographically possible. This in my estimation is the only fair way to keep politics out of this issue.

Thank you for your time.

Greg Packer, 51st. District

BECKY HUTCHINS
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ENERGY AND NATURAL RESOURCES
HEALTH AND HUMAN SERVICES

Testimony for Senate Local Government Committee

Re: H.B. # 2811 Hearing: March 5, 1996

Thank you Mr. Chairman and members of the Local Government Committee for allowing me to testify in support of HB 2811. I am Becky Hutchins, State Representative for the 50th District.

Many of my constituents in rural Shawnee County are concerned and opposed to the county commissioners' redistricting plan implemented in December 1995. Because of the new plan, county commissioners from districts 2 and 3 will have constituents from within the city limits of Topeka, while the commissioner from the 1st district will have constituents basically from outside the city limits of Topeka.

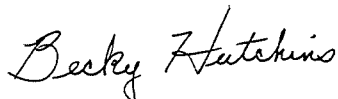
Historically, Shawnee County Commission Districts have had an equal number of residents within the city of Topeka and outside the city limits. This caused the commissioners to be accountable to the interests of voters inside and outside the city limits of Topeka. I feel that it is important that each county commissioner have constituents in their districts who have an interest in major expenditures, such as county roads and bridges, law enforcement, and extension services.

*Senate Local Gov't
3-5-96
Attachment 2*

Rep. Becky Hutchins - Testimony for Senate Local Government Committee

The new county commissioner districts will affect approximately 30,000 voters. Some voters will get to "double up" on their voting, while others will have to wait a total of six years before they get to vote for their county commissioner. Approximately 17,000 people will be denied the right to vote for county commissioner in the 1996 election.

HB 2811 will allow for equal representation of both incorporated and unincorporated areas of Shawnee County.



Representative Becky Hutchins
Fiftieth District

To: Members of the Senate Committee on Local Government

Subject: House Bill 2811

I would like to discuss:

- 1) The impact of the redistricting instituted by Shawnee County Commissioners Miller and Cooper.
- 2) How this arbitrary reshuffling of districts is strictly self serving and not to the citizens benefit as purported.
- 3) How a group of people in the city and county are trying to rectify this onerous act through litigation but should we win our case we will not be guaranteed the county commissioners will not try another radical redistricting.
- 4) Even though this legislation is specific to Shawnee County it can be used as a benchmark for other counties.

Senate Local Gov 4
3-5-96
Attachment 3



THE TOPEKA
CAPITAL-JOURNAL

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EDITORIALS

COUNTY COMMISSION REDISTRICTING

Cynical self-interest

The county commission's odd new redistricting plan is a victory for cynical politics and parochialism and a sad defeat for good government.

The commission must review its districts at least every three years, and normally makes minor alterations to account for population shifts.

Not so this year.

Democrat commissioners Don Cooper and Vic Miller decided they should be elected from districts entirely within the city of Topeka, while Republican commissioner Winnie Kingman's district will be the rest of the county.

It's bizarre and unjustifiable by most tenets of representative government.

Proffered reasons for the new alignment are few and feeble. A chief reason, put forth by Cooper, is that long-suffering rural residents want their "own" county commissioner. Here it is, he says blithely.

Oh, by the way: Your new "rural" commissioner is outweighed by the two "city" commissioners. Tough luck.

If this is a bouquet to rural residents, it is one with more than its share of bees.

Cooper claims the new districts won't have a polarizing effect: It doesn't matter where a commissioner is elected from, he says — all three of us represent the entire county.

Oh? Then why change districts so radically and so neatly at the city limits?

And if commissioners truly represent the entire county, should that fact not be evident in the way their districts are drawn? Shouldn't com-

Two members of the county commission have retreated into the city. How can that be good?

missioners be accountable to a true mix of the county's citizens?

Some believe the two Democrat commissioners have simply drawn up districts more favorable to their agendas and their re-elections.

Cooper, for instance, was said to be facing possible opposition in next year's election from Atwain and Lake Sherwood, southwest of Topeka. But now, those areas are in Kingman's district.

So, this redistricting will be polarizing not only along rural-urban lines, but also along Democrat-Republican lines.

The issue of annexing Lake Sherwood also may be underfoot. Cooper has opposed annexation in the past, but without Sherwood in his district, he is freer to approve of annexation without repercussion.

But if Cooper plans a change of heart on annexation, he should have the courage to say so — straight to his Sherwood constituents. Besides, Cooper's political survival should not be the guiding hand in drawing county commission districts.

The commission also is expected to consider controversial new subdivision regulations for rural Shawnee County at some point. Could this have something to do with Cooper's and Miller's retreat into the city?

At bottom, the motivations for this new map appear to be cynical self-interest, not good government.

CONGRESS

March 5, 1996

Testimony In Favor of H.B. 2811 Concerning County Commission Districts

My name is Dan Walker and I appear today as a resident of both Topeka and Shawnee County, and I am deeply concerned by the recent illegal redistricting of Shawnee County commission districts.

In Shawnee County about 2/3 of the people live inside Topeka and about 1/3 live outside. In December 1995, by a vote of 2 -1, the Shawnee County Commission created three new districts. Previously, the three commission districts each had 1/3 of the city and county. Of the three new districts, one is a minority district of county-only residents and two are majority districts of Topekans only. H.B. 2811 would simply return to the historical way of districting in Shawnee County with each district containing parts of both city and county.

I am proud that people in Topeka and their county neighbors have worked together on challenges facing our community. Voters have approved a joint city-county library and a joint city-county law enforcement center. H.B. 2811 would restore that partnership of city and county residents working together.

Two arguments have been used against H.B. 2811. First, it is said this bill violates Home Rule. Please remember that City Home Rule and County Home Rule are completely different in Kansas. City Home Rule was created in 1961 by a constitutional amendment approved by the voters of Kansas. No constitutional amendment was ever passed for counties. The only so-called Home Rule that counties have was created by state law only. The citizens of Kansas have never voted for County Home Rule. Therefore, since County Home Rule is solely a legislative creation it is entirely appropriate for the legislature to pass H.B. 2811.

Another argument used against H.B. 2811 says that if the Shawnee County redistricting is illegal, then let the courts handle it. I disagree. Both the United States and Kansas Constitutions contain Bill of Rights guaranteeing every person equal protection. Shawnee County has violated our rights to equality by creating a minority district of county-only residents.

Every senator present has taken an oath to support and defend our constitutions. Your oath cannot be delegated to a court. You will have to decide whether the people of Shawnee County deserve equality.

I respectfully ask that you support H.B. 2811.

Dan Walker
1824 SW 26th Street
Topeka, Kansas
913-354-4862

*Senate Local Group
3-5-96
Attachment 4*

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

In the Matter of the Redistricting of the)
Shawnee County, Kansas Commission Districts,)
Shawnee County Resolution No. 95-210,)
WINIFRED KINGMAN, GENE CAIN,)
LYLE THOMPSON, CLAYTON BOWMAN,)
CHARLES NICOLAY, ROBERT R. DOMER,)
BETTY BAIRD and GEORGE HERSH, SR.,)
Plaintiffs,)
v.) Case No. 96-CV-44
BOARD OF COUNTY COMMISSIONERS OF)
SHAWNEE COUNTY, KANSAS,)
Defendant.)

Affidavit of Kimball Brace

District of Columbia)

I, Kimball William Brace, of lawful age and being first sworn upon my oath states as follows:

1. My name is Kimball William Brace. I am President of a company called Election Data Services, Inc.(E.D.S., Inc.), a consulting firm whose specialty is reapportionment, redistricting matters, and the Census. E.D.S., Inc., has been retained by the law firm of Wright, Henson, Somers, Sebelius, Clark and Baker of Topeka, Kansas; who themselves have been retained by Shawnee County, Kansas in regards to the matter styled: In the Matter of the Redistricting of Shawnee County, Kansas Commission Districts, Shawnee County Resolution No. 95-210 and Kingman, et al. v. Board of County Commissioners of Shawnee County, Kansas, Shawnee County Case No. 96-CV-44.

2. I started Election Data Services, Inc. in 1977. Since 1979, I personally and the company have been activity involved in many aspects of the redistricting process. I have been a consultant for many state and local governments around the nation, providing strategic advice and consulting on redistricting matters, coordinating the development of extensive databases used in the redistricting process, developed and assisted others to develop districting plans, and analyzed many aspects of

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districts and their configurations. In addition, I have been called upon to provide expert witness testimony, reports and assistance to attorneys in well over 40 different court cases over the past two decades. I frequently give speeches to groups and organizations, and participate in numerous conferences and panels, on various aspects of redistricting. Most recently I was sent by the International Foundation for Electoral Systems and the State Department to the Central Asian country of Kazakstan to present a three day workshop on redistricting. I am regularly called upon by members of the press to provide quotes on the subjects of redistricting, reapportionment, the Census, and general politics. A copy of my vita is attached as Appendix 1. As president of Election Data Services, Inc. I supervise and usually direct all major projects in which the company is involved, including our efforts to evaluate the Shawnee County districting plans outlined in this Affidavit.

3. Election Data Services, Inc. has been looked upon by clients, the press, academics, and the general public as a research facility and consulting firm dealing with many aspects of the electoral process. The company and it's staff have been hired by state and local governments across the nation to provide software, database development, creation of districting plans, and analysis in many aspects of the redistricting process. In addition, the company provides assistance in the election administration field to state and local jurisdictions in such areas as precinct management, voter registration systems, and voting equipment evaluation. E.D.S., Inc. offers a wide variety of graphical services, from the creation of maps and posters to working with Census Bureau electronic mapping files. A short description of the company's corporate capabilities is attached as Appendix 2.

4. E.D.S., Inc. has been retained to review the various redistricting plans for Shawnee County, Kansas which are at issue in this litigation. Specifically, E.D.S., Inc. reviewed three different plans: Plan No. 1 was Resolution 95-210 (also known as County Clerk Exhibit 7); Plan No. 2 was the plan offered by Commissioner Kingman (also known as County Clerk Exhibit 9); and Plan No. 3 was the Districting Map utilized by the County for the years 1992 through 1995 (also known as County Clerk Exhibit 4).

5. E.D.S., Inc. was asked to generate and review population and demographic data on each of the above plans, including calculating the share of each district represented by residents of the City of Topeka vs. those outside the city limits. In addition, E.D.S., Inc. was requested to perform various compactness calculations on each of the districts in each of the plans.

6. In order to undertake each of these tasks, E.D.S., Inc. was provided electronic equivalency files that equated all Census Blocks with their respective districts in each of the three plans. These equivalency files were produced by the staff of the Topeka-Shawnee County Metropolitan Planning Department. E.D.S., Inc. loaded these files into various computer programs that E.D.S., Inc. has compiled over

the years to do such analysis. E.D.S., Inc. cross checked the assignments provided against paper maps of the district plans that were also provided. E.D.S., Inc. cleaned up small holes discovered in the electronic versions of the plans, which were usually zero populated census blocks that had been unassigned. All updates and corrections to the equivalency files were performed to ensure that all census blocks in the County were assigned to one, and only one, district in each of the plans. In addition, all updates and corrections were checked against the paper maps in order to insure the integrity of the plans. In addition, E.D.S., Inc. was provided a complete copy of the court file in this case. I have reviewed the plaintiffs' Memorandum Brief in support of their position.

7. E.D.S., Inc. was also provided a map of the City of Topeka showing the boundaries of the City in 1990 and the boundaries resulting from post 1990 annexations. Because the post 1990 annexations have not always involved the incorporation of whole census blocks, and that is the only geography I can work with that has population data, I have updated the City boundaries in our system only to the extent that whole census blocks are added to the City. As a result, I would state that our population calculations for the current configuration of the City of Topeka are a "best fit" number, based on whole census block assignments.

8. As E.D.S., Inc. has done numerous times over the past decade, a database was prepared that combined two elements of information compiled by the U.S. Census Bureau: geographic data and demographic data. The geographic data is derived from the Census Bureau's TIGER file, which is an electronic map of the entire nation. This information provides the exact outlines of each census block in Shawnee County. The demographic data includes population and voting age population counts from the 1990 Census for each census block, broken down by race and hispanic origin.

Plan Deviations and Populations

9. The first program E.D.S., Inc. ran on each of the plans was one that generates a "Deviation Report". This report (copies of which are attached as Appendices 3-5), calculates the total population and voting age population data for each district. It also breaks down the population by the various racial and Hispanic origin counts, but it is my understanding these breakdowns are not relevant to the issues in this case. The column titles on these reports which are relevant are as follows:

POP --	Total Population
VAP --	Voting Age Population
TOTAL --	Depending upon which line, the total or voting age population number for each district

DEVIATION -- The raw number of persons each district has differs from the ideal district population (in Shawnee County the ideal district population is 53,659 -- based on dividing the county's total population of 160,976 by the three districts in each plan)

% DEVIATION -- The district's deviation from the ideal district size, expressed as a percentage

10. The bottom two rows of data on each report shows the overall County's total population and voting age population in numeric figures and percentages. Under the "Deviation" and "% Deviation" columns, the bottom population row shows the overall plan's deviation. This is calculated by summing the largest positive and negative deviation numbers (both raw numbers and percentages).

11. As shown on Appendix 3 (deviation report for Commission Resolution 95-210 plan), the adopted plan has a total deviation of 547 persons, or 1.019%. This is slightly larger than the previously adopted plan (Commission 1992-1995 Districts -- Appendix 5), which had a total deviation of 459 persons, or 0.855%. The Kingman proposed plan (Appendix 4) carries the same total deviation as the previously adopted plan. The United States Supreme Court has previously held that local district plans do not require justification for purposes of the one man-one vote rule if their total population deviation is less than 10 percent. All plans in issue in this case satisfy this standard.

12. The Kingman proposal plan turns out to have all populated blocks assigned to the same districts as they had been previously in this decade. The only geographic difference between the Kingman proposal and the Commissioner Districts used in 1992 through 1995 involved zero populated blocks. As a result, the population reports look identical between the two plans. However, the differences in assignments of the zero populated blocks results in differences in the compactness scores, as noted below.

Plan Comparison

13. Another analytical program E.D.S., Inc. utilized allows comparison of two different plans. Appendixes 6 - 9 are "Plan Comparison" reports for different plans E.D.S., Inc. has analyzed, as well as a comparison of the plans against the 1995 limits of the City of Topeka (which includes annexations that have been implemented since the 1990 Census). For demonstration purposes on how to read these reports, I will review Appendix 6, the Plan Comparison report that compares the City of Topeka (Plan A) against the Commission Resolution 95-210 (Plan B). Using the "POP TTL" column (or Total Population), one can see that the total county population is 160,976, with 121,097 (75%) of these residing in the City of Topeka. All 39,882 persons that live outside the city limits of Topeka are contained in District #1 of the Resolution 95-210

plan. However, when one looks at the overall District 1, this non-Topeka, mostly rural population amounts to only 74.58% of the District's population. The other 25.42% of District 1's population (or 13,592 people) are located within the city limits of Topeka.

14. This same report (Appendix 6) also shows that 100% of both Districts' 2 and 3 population is located within the city limits of Topeka. If one just looks at the overall population of the City of Topeka, one can see that it is split three ways: 44.6% is within District 3, 44.2% is in District 2, and 11.2% is contained within District 1.

15. Appendix 7 compares Topeka's population with the plan that was in effect between 1992 and 1995. This report shows that the residents of the City of Topeka, in essence, controlled all three of the county commissioner districts. In that plan the city's population amounted to 69.3% of the total population in District 1; 76.0% of the total population in District 2; and 80.3% of the total population in District 3. Looked at the other way, the report shows that splitting the city in roughly thirds (30.64% of the city went to District 1; 33.88% of the city's population went into District 2; and 35.48% of the city's population was located in District 3), allowed the city to have a majority control in each district.

16. As noted above, the "Plan Comparison" report works very well when comparing two actual plans. Appendix 8 and 9 is a report that compares the plan that was utilized in 1992-1995 with the plan that was adopted as Commission Resolution 95-210. At the bottom of the report are several rows that show how many people stayed in the same district as they had been before, and how many were moved into different districts. Of the county's 160,976 residents, according to the 1990 Census, 103,359 stayed in the same district after Commission Resolution 95-210 was adopted. This amounted to 64.21% of the city's total population. Therefore, 57,617 people (or 35.79% of the county's population) were moved as a result of the redistricting.

17. The biggest amount of change took place in District #1. Slightly less than half (49.3%) of the district's population stayed in the same district. Approximately 26% of old District #1's residents went to new District #3, while approximately 24% went to new District #2.

18. The other two districts did not see as much change. District #2 retained nearly 70% of it's old residents, while District #3 retained nearly 73% of it's old population.

19. Because the Kingman proposal plan retained the same configuration that had been in place during 1992 through 1995, the "Plan Comparison" report that compares the plan used during 1992 through 1995 against the Kingman proposal shows each district retaining 100% of it's old district's population.

Compactness

20. Compactness of different districts is a long-standing concept in the redistricting field -- dating, in some sense, from the effort in 1812 by Governor Eldridge Gerry to create districts in Massachusetts favorable to the Democrats of his time. In response to that effort, a number of states enacted formal compactness requirements later in the century. By 1885 or before, Kansas required compact commissioner districts. Congress, in 1901 and 1911, added compactness as a requirement for congressional districts (though the provision lapsed a few decades later). The shape of districts seems to have been a major concern in the first part of the nineteenth century, though Griffith (1907, pp. 95ff.) reports that concern diminished somewhat with the "Era of Good Feeling" and with the enactment of various restrictions such as the indivisibility of county boundaries.

21. Compactness as it relates to the districting process is not a unitary concept. To most people it conveys images of square or circular shapes, not of elongated and highly irregular shapes. The "dictionary definition" -- "closely...packed together" (American Heritage) -- also seems appropriate at an intuitive level. In a recent review of the concept, however, Niemi, Grofman, Carlucci, and Hofeller, *Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan in Racial Gerrymandering*, 52 J.Pol. 1155 (1990) identify three distinct characteristics of districts that are considered relevant and that are the basis of most operationalizations of the term.

22. Dispersion refers to "how tightly packed or spread out the geography of a district is." Underlying all dispersion measures is "the notion that a perfect district is a regular, simple shape, usually a circle, but sometimes a hexagon or a square (Niemi, et al., 1990, p. 1160). Different quantitative measures exist because there are multiple ways of measuring deviations from the perfect shape.

23. As Niemi et al. note, a district may be relatively nondispersed and yet show the kind of border irregularities that suggest partisan, racial, or other goals on the part of the designers. Indeed, the 1990s round of redistricting yielded districts in which the border, winding in and out of neighborhoods, creating narrow, "connecting" corridors, and so on, is at least as much of a concern as the overall area covered by the district. Hence, perimeter length is a second component of district compactness.

24. The possibility that certain land areas are included or excluded from districts not because of their geographic location but because of the characteristics of their inhabitants suggested population as a third relevant characteristic. Specific measures have been designed to assess whether districts incorporate or exclude major population concentrations.

25. Having identified these components, Niemi et al. classified most of the roughly two-dozen proposed measures of compactness under the three headings of dispersion, perimeter, and population. Perhaps because of this classification and the better understanding it brings to the concept have been available for only a few years, there is as yet no consensus on whether specific measures in each group are better than others. There is, however, agreement that no one single number can serve as a measure of compactness. In addition, most experts who work with compactness, agree that there is no magic point at which a district is considered compact or not compact. Instead, compactness is best understood when it is used in a comparative sense. For example, District A is more compact than District B.

26. Appendix 10 - 12 are our standard reports showing the results of various compactness tests on each district in the three plans we reviewed. The first four columns of information (District number, Perimeter in miles, Area in square miles, and Total Population) are self explanatory. The five compactness scores are expressed as ratios (or percentages), because the scores themselves are comparative indicators. Each of the five scores show the ratio of some characteristic of the district compared to some other shape. Traditionally, that some other shape is either a circle or a convex figure that completely contains the district. This convex figure can be thought of as if a rubber band was stretched around the district. It is recognized that in reality perfect compactness cannot be obtained both because of irregular borders of counties or states, and because a set of circles cannot border each other and cover all of the area involved.

27. All five measures vary between 0 (being the least compact) and 1 (that being perfectly compact). In other words, the closer any of the scores are to 1, the more compact the district or the plan.

28. The two dispersion measures and the single perimeter measure each deal with the area encompassed by the district boundaries. These area calculations are expressed in square miles, and are calculated after E.D.S., Inc. generates a polygon boundary using the plan's census block assignments and the Census Bureau's TIGER files. The population measures deal with the 1990 total population reported by the Census Bureau that is in compassed within boundaries of the shapes being analyzed.

29. The "DIS7" measure is the ratio of the district's area compared to the area of the smallest circle that would surround the district. A circle is considered to be perfectly compact, in that is the shape in which the points along a border are most "closely packed together." Using the Dispersion 7 measurement means that all district shapes are measured against that standard. This measure is sometimes called the "Reock" compactness measure, after it's developer Earnest Reock.

30. The "DIS10" measure is the ratio of the district's area compared to the area of a circle that has a diameter equal to the district's longest axis. In most instances this measure will generate a number that is nearly identical to the DIS7 measure noted above. Instances where it would not be identical include a district who's longest axis is not large enough to be circumscribed by a surrounding circle.

31. The "PER2" measure is the ratio of the district's area compared to the area of a circle that has the same perimeter as the district. Because nearly all districts have nooks and dips along their boundaries, the practical effect of this measure would be like taking the district's boundary and straighten it out like a balloon. Quite naturally, the surrounding balloon will occupy much more territory than the district itself, and, as a result, the Perimeter 2 score will tend to be much lower than the Dispersion scores.

32. Since districts are a result of people and the appropriate population, as well as geographic territory, the two population measures in the report look at the second dimension of the districting process.

33. The "POP1" measure is the ratio of the district's population compared to the population of a minimum convex shape that completely contains the district (i.e., the rubber band around the district). This measure is best used to see if a district has narrowly excluded a significant population pocket. Because a rubber band tends to tightly fit around a district, the resulting ratio numbers tend to be on the high side.

34. The "POP2" measure is the ratio of the district's population compared to the population located within the smallest circle that would surround the district. Since the circle will extend further into adjacent territory than the rubber band, this POP2 measure is usually smaller than the POP1 measure.

35. Each of the compactness reports shows these above measures for both the individual districts, as well as the total plan. The total plan's compactness measure are derived from averaging the individual district scores.

36. As with many compactness studies I have reviewed, the measures tend to give somewhat conflicting indicators. When comparing the new plan (Commission Resolution 95-210 - Appendix 10) to the old plan (Current District Map, 1992-1995 - Appendix 12), the dispersion and perimeter plan average scores would indicate a slightly less compact new plan compared to the old plan. However, the population scores would indicate a more compact new plan compared to the old plan as well as the Kingman proposal. It is important to understand what may be causing these numbers to act in this manner. Comparison of individual district scores can provide a clue.

37. For both dispersion scores, the compactness indicators for districts 1 and 2 hardly change at all between the old plan and the new plan. One can observe that nearly all the change between the two plans concerns the scores for district 3, which dropped almost in half (from .48 and .55 in the old plan to .29 in the new plan). A review of the maps provides the reason. District 3 in the old plan has roughly the same north-south distance as east-west distance, therefore a surrounding circle will not include as much additional territory for the measurement. On the other hand, district 3 in the new plan is long and narrow. A surrounding circle is therefore going to encompass more territory that lies outside the district.

38. The perimeter measures for the individual districts indicate that both districts 1 and 3 are less compact in the new plan than in the old plan. District 2's perimeter measure stayed roughly the same in the two plans. Again, explanations for the drop can be found by reviewing the maps and understanding the measurements. Since district 1 in the new plan has a donut hole cut out of the middle, the perimeter of the district would include both the outer edge of the district (i.e., the county boundary), as well as the inner ring. This additional perimeter would, quite naturally, force a much larger circle created with the same perimeter as the overall district. District 3's much lower perimeter score can be explained by observing that the new district's perimeter has many jags and indentures. These cuts and extensions will obviously increase the district's perimeter. While squiggly lines are many times an indication of some alternative motive of the line drawer, the crazy line that makes up much of the new district 3's boundary is actually the city of Topeka's southern boundary. It is obvious that a legitimate desire of the County to conform the district to the city boundary is what caused the PER2 compactness measure to drop. This same principal applies to that portion of district 1's boundary that coincides with district 3's boundary.

39. The greater compactness scores using the population measurements in the new plan compared to the old plan also have a logical explanation. Because the old plan had created pie-wedges coming outward from the divided city of Topeka, any surrounding convex figure (rubber band) or circle will be pulling in large numbers of people into the calculation and lower the score. Concentrating two of the three districts totally within the city in the new plan will place the large population base inside the districts, rather than just on the outside. This is particularly true in the POP1 measure, when the surrounding "rubber band" mostly follows a straight street and therefore generates a much larger compactness score. The lower POP1 score for district 1 can also be explained by remembering the "donut hole" of the city (with its large population base) is actually "outside" the boundary of the district. The same observations could be made using the POP2 measurements.

40. In order to test the observation made above about the impact of the city of Topeka's boundary on the districts, E.D.S., Inc. performed a "coliniarity" study. That type of study compares each district's boundary with some other political or

natural geographic boundary. For example, what percent of a district's boundary coincides with a county or city boundary, or a river.

41. Our study of the Commission Resolution 95-210 plan shows that 67% of district 1's boundary coincides with the county boundary. An additional 20% of district 1's boundary is the same as the City of Topeka's boundary. As a result, more than 87% of district 1's boundary follows a boundary that indicates a legitimate expression of government policy.

42. Since District 2 in the Commission Resolution 95-210 plan is entirely inside the county, there is, of course, no boundary that coincides with a county boundary. On the other hand, nearly 36% of the district boundary follows that of the City of Topeka. Because nearly all the compactness scores for District 2 show it to be the most compact of the plans' three districts, I am not concerned with the low percentage of "coliniarity".

43. District 3 in the Commission Resolution 95-210 plan is also totally interior to the county boundary. Yet, over 61% of District 3's boundary follows that of the City of Topeka. Even though District 3 had some of the lowest compactness scores of the three districts in the plan, one can clearly see that these low scores are due to a legitimate policy decision to follow a municipal boundary.

44. I have also been informed that two of the three incumbent Commissioners actually live very close to each other in the western part of Topeka. As a result, the intrusion of District 1 into the City of Topeka appears to be designed to pick up the house of Commissioner Kingman. Since this area borders with District 3, the resulting twists and turns in District 3's boundary would also indicate a legitimate desire to keep incumbents in their own districts. I have been further informed that Kansas state law requires that incumbents reside within the districts that they represent. As a result of this law, had the line drawers not taken incumbent's homes into account when they created the boundaries, one of the two incumbents would have been excluded from serving in office.

45. In conclusion, I find that all of the seemingly low compactness scores can be explained as a clear expression of legitimate redistricting policy. The apparent desire to provide a district that would reflect the views of the non-Topeka portion of the county's population is also a legitimate redistricting judgement. Following municipal boundaries is also a well established reason for drawing district boundaries along some geography. In addition, there is nothing inherently wrong with districts that have a "donut hole" in the middle, particularly when it follows a municipal boundary and indicates a desire for non-city representation on the Commission. Even the U.S. Supreme Court has recognized that avoiding the paring of incumbents is a valid policy judgement in the redistricting field. Therefore, in my opinion, there is nothing in the Commission Resolution 95-210 plan which would violate acceptable practices of redistricting and compactness.

FURTHER AFFIANT SAITH NOT.

Kimball William Brace
Kimball William Brace

SUBSCRIBE AND SWORN TO before me this 24th day of February, 1996.

Karen J. Scott
Notary Public

My Appointment expires: A-14-99

5-12

—David Eullitt/The Capital-Journal

When she was 68, Patience Kirkwood began two years of service with the Peace Corps in the Caribbean country of Dominica. Now 71, Kirkwood is back home in Topeka. Hanging behind Kirkwood is a decorative banner given to her by Dominican residents.

Kirkwood worked in a hospital clinic, isolated from the other five

Continued on page 2-A, col. 1

Expert: Redrawn districts proper

By BILL BLANKENSHIP
The Capital-Journal

Kimball William Brace, president of Election Data Services Inc., Washington, D.C., has concluded there is nothing in the redistricting adopted Dec. 4 by Commissioners Don Cooper and Vic Miller that "would violate acceptable standards of redistricting and compactness."

Anationally recognized expert who once helped the Legislature to redraw its member districts says Shawnee County commissioners properly created two Topeka-only commission districts.

Kimball William Brace, president of Election Data Services Inc., Washington, D.C., has concluded there is nothing in the redistricting adopted Dec. 4 by Commissioners Don Cooper and Vic Miller that "would violate acceptable standards of redistricting and compactness."

Cooper and Miller altered the boundaries of their commission districts so they lie entirely in Topeka.

The district of Commissioner Winnie Kingman, who voted against the plan, was changed to include a small portion of Topeka, including her neighborhood, and the rest of the county, including the cities

of Auburn, Rossville, Silver Lake and Willard.

Kingman and seven other county residents sued Feb. 29 to have the court overturn the redistricting.

Their attorney, John R. Hamilton, argued the new plan violated a state law that says commission districts must be "as compact and equal in population as possible."

Outside counsel, Anne L. Baker, was appointed to defend the county as the case involved a dispute among the county commissioners, who typically are all represented by county counselor Sandra P. Jacquot.

Baker, in turn, retained EDS Inc. to review the old and new plans. EDS President Brace has acted as an expert consultant to legislative bodies redrawing member district boundaries, including the Kansas Legislature in 1989.

Brace reached his conclusions using accepted statistical measures of compactness. Where compactness scores were

low, it was due to the goal of creating a commission district likely to elect a non-Topekan to the commission.

All three current commissioners live in Topeka.

Baker notes nothing in Kansas law requires commission districts have equal populations of residents in cities and unincorporated territory.

The Kansas House has passed a bill that would impose that requirement on Shawnee County alone. The Senate Local Government Committee will conduct a hearing on that bill at 9 a.m. today in room 531-N of the Statehouse.

Baker warns the court there is great variety among commission districts statewide.

"In some counties, one or more commissioner districts encircle another district. In some counties, one or more commissioner districts include only resi-

Continued on page 2-A, col. 1



7

8

Districts

Continued from page 1-A

dents of the county seat," she wrote.

She included commission district maps of various counties, including Douglas, Riley and Wyandotte counties.

"Based upon examination of the forgoing maps, if this court were to adopt the plaintiffs' positions regarding the interpretation of the Kansas compactness standard, Shawnee County would not be the only county having non-compact districts," Baker wrote.

Baker also responds to the argument the new districts unconstitutionally pack all non-Topekans into one district, thereby reducing their influence on commission decisions.

"Race, ethnicity and political party affiliation are the only three categories of voters which the Supreme Court of the United States has considered with reference to allegations of equal protection violation when districts have equal population," she wrote.

Baker notes several redistricting plans could be drawn in Shawnee County that would satisfy state law as interpreted by the courts.

"The fact that the selection from among these possible plans by the commissioners then in office involves political considerations does not render the plan selected invalid or even suspect," Baker wrote.

The Legislature granted county commissions the discretion to redraw their member district boundaries.

"The function of courts is not to replace the judgment of commissioners, but only to restrain that discretion when it oversteps constitutional and statutory bounds. This is not such a case," she concluded.

A date for Shawnee County District Judge Franklin R. Theis to decide the case hasn't been set, although both sides want a decision in advance of the June 10 deadline to file as a candidate for commissioner. Both Cooper and Miller face re-election this year.

Dates and Times

■ **The Topeka High School** vocal music department, directed by Steve Eubank, will present a concert at 7:30 p.m. today at Grace Episcopal Cathedral, 701 S.W. 8th. Admission is free. For information, call 232-0483.

■ **The Washburn Rural High School** vocal department, directed by Ken Forsyth, will present a concert at 7:30 p.m. today at the WRHS auditorium. All choirs and This Generation will perform. The show will feature a variety of selections, including state music contest numbers. Admission is free. For information, call 862-0958.

Heartland Park Topeka reports the theft of a tow truck.

...to break down door by backing in

Weather -
Courtesy of



Capitol Federal
Savings

WEATHER

Forecasts

■ TOPEKA

Northeasterly winds are expected to bring cooler temperatures today. Highs in the upper 40s are forecast as skies remain mostly cloudy.

■ KANSAS

Colby	.....	.38	Cloudy
Kansas City	.....	.46	Cloudy
Liberal	.....	.56	PtClody
Pittsburg	.....	.64	PtClody
Salina	.....	.46	Cloudy
Wichita	.....	.61	PtClody

Rainfall

For 24 hours to 7 p.m. Monday

■ TOPEKA AREA

■ Total for 24 hours	.....	none
■ Total for March to date	.....	trace
Normal	.....	.024
Deficiency	.....	.024
■ Total for year to date	.....	0.95
Normal	.....	2.23
Excess	.....	1.28

Almanac

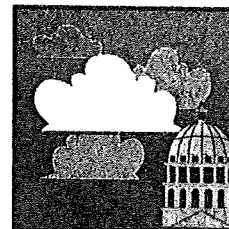
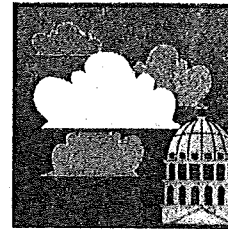
Kansas River stage, 5 p.m. at Sardou Ave. bridge 6.1 ft.
 Sunrise today 6:49
 Sunset 6:19
 Moonrise today 6:57 p.m.
 Moonset 6:44 a.m.
 Peak wind gust to 5 p.m. S. 29 mph

KANSAS ROAD CONDITION HOTLINE
1-800-585-ROAD

Call the above number for conditions on Kansas highways. In Topeka, call 291-3000.

WEATHER INFORMATION

Back into winter



TODAY
Colder;
northeast
winds.

48
28

WEDNESDAY
Colder;
chance for
snow.

35
20

Temperatures

For 24 hours to 7 p.m. Monday

■ TOPEKA

8 p.m. ....	.30	8 a.m. ....	.30
9 p.m. ....	.28	9 a.m. ....	.35
10 p.m. ....	.27	10 a.m. ....	.41
11 p.m. ....	.26	11 a.m. ....	.48
midnight ....	.25	noon ....	.56
1 a.m. ....	.25	1 p.m. ....	.60
2 a.m. ....	.24	2 p.m. ....	.62
3 a.m. ....	.23	3 p.m. ....	.64
4 a.m. ....	.23	4 p.m. ....	.64
5 a.m. ....	.25	5 p.m. ....	.64
6 a.m. ....	.25	6 p.m. ....	.64
7 a.m. ....	.26	7 p.m. ....	.63

■ High 65 ... at 3:54 p.m.
 ■ Low 23 ... at 4:19 a.m.



Your lucky
radio number
is 106.9 FM.

LUCKY numbers

Pick 3,

1-0-4

THE TOPEKA CAPITAL-JOURNAL

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D. Scott McKibben

Publisher

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5-13



FRONTS:
COLD
Pressure
H L
HIGH LOW

Two storm

3. The resulting population figures for the districts are as follows:

Commissioner District One:	53,552	(33.27%)
Commissioner District Two:	53,929	(33.50%)
Commissioner District Three:	53,495	(33.23%)
	<u>160,976</u>	<u>(100.00%)</u>

BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

Winifred Kingman
Winifred Kingman, Chairman

Velma Paris
Velma Paris, Vice-Chair

Eric K. Rucker
Eric K. Rucker, Member

ATTEST:

Patsy A. McDonald
Patsy A. McDonald, County Clerk

TJD042892

Approved As To
Legality/Form

L.P. Jeffrey
L. P. Jeffrey
Co. Counselor
Date - 4/28/92

3
Senate Local Gov't
3-5-96
Attachment 6