

Approved: 2/12/96
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on February 8, 1996 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

Mr. & Mrs. Karl Winkel - Glen Elder
Vicky Johnson - KDOT
Bob Totten - Kansas Contractors Association, Inc.
Anne Spies - Kansas Association of Counties

Others attending: See attached list

The Chairman welcomed Senator Nick Jordan of Shawnee to the Committee. Senator Jordan is replacing Senator Bud Burke.

SB 502 - MIXING STRIPS; REGULATING THE LOCATION

Karl Winkel spoke to the Committee on this bill which he had requested. He explained that a Mixing Strip had been built near their farm and it was unsightly and noisy and had devaluated his property. He presented pictures of the area and explained that this bill was needed for protection of property owners who live in counties with no zoning. (Attachment 1)

Vicky John spoke in opposition of this bill citing several factors. There are already laws for what constitutes a public or private nuisance, this legislation would make it difficult to locate an acceptable site for a mixing strip, the cost of moving existing strips would be quite expensive and if this legislation is passed 100-200 sites would have to be removed immediately to avoid law suits. (Attachment 2)

Bob Totten also spoke in opposition to the bill explaining that the definition of a "mixing strip" is unclear and it would cause some of their members to set up job sites miles from the project. (Attachment 3)

Anne Spies distributed letters of opposition from Warren Chip Woods, Lyon County Engineer, (Attachment 4); Max Morgan, Director of Public Works, Finney County, (Attachment 5); Norman Bowers, Deputy County Engineer, Johnson County, (Attachment 6); and Darryl Lutz, Butler County Engineer, (Attachment 7).

A motion was made by Senator Jones to introduce a bill which would narrow the period of time for rate increases of the Board of Public Utilities. This was seconded by Senator Papay and the motion carried.

A motion was then made by Senator Rock and seconded by Senator Papay to approve the minutes of the February 7th meeting. Motion carried.

The Chairman announced that the Committee would meet on Monday to take action on **HB 2602 relating to speed limits.**

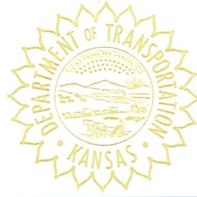
The meeting was then adjourned at 10:00 a.m.

Bill 502 will protect homeowners and farmer's farmsteads from KDOT's bureaucrats. Their use of bad judgment ^{of} and mean ^{Spirituality} ~~spirituality~~ results in placing mixing strips too close to a farm or residence. This can result in the value of the property dropping because of the noise and unsightliness of the mixing strip. Homes are expensive and farmsteads are even more costly. These investments need protection for people who are living in counties with no zoning.

Bill 502 will do that, also considering that one quarter of a mile is really minimal; due to, the beeper noise on their machinery and trucks will carry easily several miles on a still day. This stress factor needs to be considered for humans and livestock.

Mr. & Mrs. Karl Winkel

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KANSAS DEPARTMENT OF TRANSPORTATION

E. Dean Carlson
Secretary of Transportation

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
TTY (913) 296-3585
FAX (913) 296-1095

Bill Graves
Governor of Kansas

**TESTIMONY BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES
Regarding S.B. 502
Regulating the Location of Mixing Strips**

February 8, 1996

Mr. Chairman and Committee Members:

On behalf of the Kansas Department of Transportation, I am here today to provide testimony in opposition to S.B. 502. The proposed legislation would declare any mixing strip located outside the corporate limits of a city and within 1/4 mile of a residential structure or dwelling a public and private nuisance.

This bill was introduced at the request of Mr. Karl Winkel who owns a residence which is located approximately 500 feet southwest of a mixing strip constructed by KDOT in the summer of 1994 in Mitchell County, Kansas. This strip was constructed on land that was already owned by KDOT from a previous acquisition for highway construction, supplemented by a purchase of additional property from an adjoining landowner. The new strip was constructed as a result of an order from the Federal Government to remove the strip that formerly served the same area, but which drained into Glen Elder Lake.

Mr. Winkel advised KDOT that he did not want the mixing strip located across from his farm. Both he and KDOT representatives investigated many alternative locations for the strip, but none were located that were both suitable and could be acquired without the need to condemn a site. When an alternative site was not located, Mr. Winkel filed with the District Court in Mitchell County for an injunction to stop construction.

The District Court scheduled the matter for a full evidentiary hearing after which the Court found that the mixing strip construction should be allowed to proceed. Mr. Winkel then filed suit against KDOT alleging that the mixing strip constituted a nuisance; that KDOT was trespassing on his property by the invasion of noise, dust and odor; and that KDOT had taken his property without just compensation. KDOT filed a motion for summary judgment, asking the Court to rule as a matter of law that the mixing strip was not a nuisance, that there was no

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trespass and that there had been no taking of Mr. Winkel's property. After considering all of the evidence before him, Judge Tuggle granted KDOT's motion and dismissed Mr. Winkel's case. Mr. Winkel has appealed to the Kansas Court of Appeals asking that Judge Tuggle's order be reversed and that he be allowed a jury trial. This appeal was argued on January 31, 1996, and the parties are awaiting the Court's opinion.

KDOT has approximately 400 mixing strips statewide. Based on a survey done in preparation for Mr. Winkel's hearing, we know that there are approximately 70 strips within 600 feet of residential structures. This survey covered only districts II through VI. If the distance were increased to 1/4 mile and district I was included we are certain that many more strips would fall into the scope of this proposed legislation. Additionally, many of KDOT's maintenance shop facilities have areas used for the mixing and storage of salt and sand and many are located where they would fall within this act. There are, no doubt, many mixing strips owned by counties and townships that would fall within the scope of the bill as well. Also, the bill could be interpreted to include the temporary plant sites used by contractors on construction or substantial maintenance projects. KDOT often allows contractors to use locations on KDOT right-of-way for such operations which saves site and haul costs for the contractors which is passed on to KDOT in lower project costs.

Typically these mixing strips are used for mixing repair materials and storage of raw and mixed materials. KDOT has received less than 10 complaints in the five districts it surveyed in preparation for Mr. Winkel's hearing concerning the location or operation of mixing strips.

KDOT opposes this bill for several reasons. First, there are well settled rules of law for what constitutes a public or private nuisance. They take into account a variety of factors including type of neighborhood, the nature of the thing or wrong complained of, its proximity to those alleging damage, its frequency or continuity, and the nature and extent of the injury. Those rules have been applied to the facts of this case by the District Court and are being reviewed by the Court of Appeals. There is no reason to apply different criteria to a mixing strip than to any number of other activities which the courts have addressed in the nuisance area such as trash dumps, athletic fields, pig farms, cattle feed lots, etc. The mere fact that a person does not like something or that it diminishes his property value does not make it a nuisance.

The appropriate method of precluding uses which the public finds undesirable in certain areas is through local zoning ordinances which some counties in Kansas, including Mitchell County, have not enacted. To enact a law that would designate all mixing strips within 1/4 mile of a residence to be a nuisance would ignore all the criteria except location that have been applied successfully in the regulation of nuisances in the past by the courts.

Second, in many areas the proposed legislation would make it very difficult to locate an acceptable site for a mixing strip at all. Even without this legislation, the selection of an appropriate site for a mixing strip is difficult. They are most generally located on a state highway for ease of access and lowest haul costs. They need to be centrally located in the area to be served to minimize the haul costs. The land must lay fairly flat without crosswise drainage and it cannot be in a location that drains into lakes or other significant bodies of water.

The strips run parallel to the road because it is usually easier to acquire a narrow strip of frontage than a long narrow piece that runs deep into the remaining tract. Additionally this allows access to both ends of the strip from the road where necessary. The strips need to be at least 1000 feet in length. This means that if either end must be at least 1/4 mile from a residence there cannot be a residence for a stretch of almost 3/4 mile on either side of the highway to constitute an appropriate site. In many areas of the state this would severely restrict the number of available sites.

Third, the cost of moving existing strips that would be in violation of the proposed law would be quite high. There would be between one and two hundred KDOT sites that would be affected and the cost per site to remove the old strip, buy land and construct the new strip would range from \$90,000 to \$178,000. Using the more conservative figure, which does not include KDOT manpower and equipment costs, it would cost approximately \$18,000,000 to move the affected strips.

Finally, under the terms of this proposed legislation, 100 to 200 sites would have to be removed immediately to avoid the award of damages or issuance of abatement notices by courts which could issue immediately upon publication of this statute. This would place an immense burden on the Department to construct that many new strips in one year and would leave about half the state with inadequate facilities to mix and store repair aggregate in the interim period. This would result in the need to purchase repair materials from private suppliers at a higher cost, inability to maintain surface in a desirable condition, or excessive haul costs in terms of manpower and equipment as well as fuel and other operating costs to use the remaining strips to serve all areas.

If, in fact, the mixing strip close to Mr. Winkel's property does constitute a nuisance by the well-established rules of the law, there is adequate remedy available to him through the courts. We respectfully request that legislative action that will affect 100-200 KDOT facilities as well as an unknown number of county facilities not be reported out favorably by this committee in an effort to solve a disputed problem at one location.

THE KANSAS CONTRACTORS ASSOCIATION, INC.



316 SW 33RD ST PO BOX 5061
TOPEKA KS 66605-0061
PHONE (913) 266-4152
FAX (913) 266-6191

TESTIMONY BY

THE KANSAS CONTRACTORS ASSOCIATION

REGARDING SENATE BILL 502

BEFORE THE SENATE TRANSPORTATION COMMITTEE

February 8, 1996

Mr. Chairman and members of the Senate Transportation Committee, thank you for the opportunity to appear before you today to provide input on Senate Bill 502.

I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our association represents over 350 heavy, highway, utility and municipal utility contractor and associate members in the Kansas Construction Industry.

This morning, I want to let you know we oppose Senate Bill 502. In the bill, it refers to a "mixing strip". We are unclear what a mixing strip is in this measure. It also states that the it would be used for any highway project. Does this apply to an temporary asphalt plant or just a strip where gravel is stored?

We believe that if this measure were passed, it would cause some of our members to have to set up job sites miles from the project. This would create more costs to KDOT projects through additional hauling and transportation matters.

This bill also refers to residential dwellings. What if the dwelling was uninhabited. Would the bill still be in effect?

Also what if the mixing strip..whatever that is, is within a 1/4 mile of the owner's house however the contractor who wants the strip has negotiated with the owner to allow the mixing strip to be in existence. Does this bill still apply?

There seems to be a lot of unanswered questions. Due to this unclarity and some of the other concerns I have mentioned, we are in opposition.

Thank you for your time and I will be glad to answer any of your questions at this time..

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LYON COUNTY ROAD & BRIDGE
OFFICE OF COUNTY ENGINEER
500 SOUTH PRAIRIE
EMPORIA, KS 66801-9478
(316) 342-2295

February 7, 1996

To: Anne Spiess

RE: Senate Bill No. 502: Mixing Strips

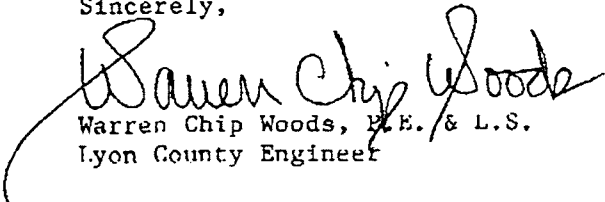
Dear Anne;

I would like to go on record as strongly opposing Senate Bill No. 502. This bill concerns "mixing strips", but does not define what a "mixing strip" means. The bill requires that a mixing strip shall be located at least 1/4 of a mile from any existing residential structure or dwelling, used and occupied for human habitation or intended to be so used.

If this bill is passed it would place an economic burden on counties in general, and in Lyon County specifically. Two of the three places that we currently mix or store asphalt would be prohibited by this bill, including our main storage yard. If the county was required to move these two areas, it would cost the county a considerable amount of taxpayers funds. Since the county is under the tax lid, such an unnecessary expense is not justified as far as I am concerned.

Please contact me if you need any additional information to oppose this bill.

Sincerely,


Warren Chip Woods, P.E. & L.S.
Lyon County Engineer

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*Memo to: Ann Spiess
From: Max A. Morgan, Director of Public Works
Finney County
Date: February 8, 1996
Subject: Senate Bill No. 502
Committee on Transportation and Utilities Hearing*

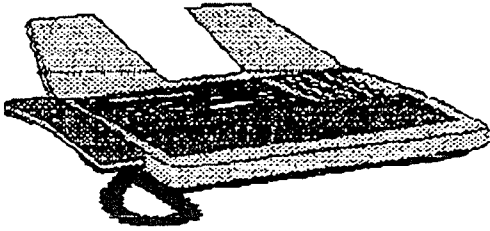
Finney County has been contacted by Lue Lowry, President, Kansas County Highway Association about Senate Bill No. 502.

Finney County Public Works wishes to speak in opposition of this Senate Bill. We anticipate that this bill will generate unnecessary expense in our highway construction and maintenance work. We also anticipate that the bill would cause the closing of our existing mixing strip, and the need to build new strips.

Senate Bill No. 502 would also limit our flexibility in using mix strips that may be in close proximity to highway projects.

Public Works believes that the locating of mix strips are adequately controlled by existing zoning rules and regulations.

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**Johnson County Public
Works FAX**

Transmittal

Date: February 8, 1996

To: Ann S.

FAX #: 1-913-234-5544

FROM: Norman L. Bowers, L.S. & P.E.
Deputy County Engineer

Norm Bowers


Subject: Senate Bill No. 502 - Mixing Strips

Page(s) including cover sheet: 1

I understand that there is a hearing this morning on a surprise item of banning mixing strips within 1/4 mile of a residence. I have been in the highway maintenance business since 1971, and have only heard one complaint about a mixing strip. They are only used in the day time during warm weather, and are much less disruptive than a quarry, service station, a high school or a Walmart.

I am not aware of a problem, but some regulation may be needed for new mixing strips in county's that do not have zoning. With zoning surrounding property owners are given an opportunity to have their opinions consider.

Any new regulation should apply only to new mixing strips. It would be unfair and costly to KDOT and the counties to establish a statewide ban on existing mixing strips just based on one arbitrary distance.



BUTLER COUNTY
DEPARTMENT OF PUBLIC WORKS
OFFICE OF COUNTY ENGINEER

February 8, 1996

Ms. Ann Spies
Kansas Association of Counties
Jayhawk Tower Office
700 SW Jackson, Suite 805
Topeka, Kansas 66603

RE: S.B. 502

Dear Ann:

I was informed at a late hour yesterday of Senate Bill 502 (S.B. 502) which is to be heard by the Senate Transportation Committee this morning at 9:00a.m. I am opposed to this bill.

S.B. 502 will prevent counties from being able to set up mixing strips, either temporary or permanent, along county asphalt roads. Virtually all hard surfaced county roads in Kansas are asphalt roads. These roads are maintained primarily with cold mix asphalt which often times require temporary mixing strips.

My concerns are as follows:

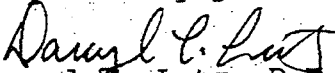
Many asphalt surfaced county roads have housing spacings of 1/4 mile per residential dwelling/structure or less. Temporary mixing strips would have to be located away from roads for which the mixing strip is to serve. Maintenance costs for asphalt roads would increase due to greater haul distances from the mixing strip to the road being maintained.

Many times counties will locate mixing strips close to dwellings with the owner's consent simply to prevent vandalism of equipment or theft of materials. This bill would not allow counties to locate mixing strips next to a farmstead or home even if the landowner gives his/her approval.

These mixing strips are used to stockpile surfacing materials for sealing these same asphalt roads. It is not clear whether this bill will also affect these material stockpiles.

This bill will disrupt a county's ability to maintain their respective roads in an efficient and cost effective manner. This bill will restrict Butler County on an issue that has not been a problem in the past. Thank you for considering our concerns.

Respectfully yours,



Darryl C. Lutz, P.E.
County Engineer

Darryl C. Lutz, P.E., County Engineer

Butler County Courthouse, 205 W. Central, El Dorado, Kansas 67042-2195 • 316-322-4101

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