Approved: March 28, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on March 21, 1996 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department
Laura Howard, Legislative Research Department
Julian Efird, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:
Marlin Rein, University of Kansas

Others attending: See attached list

SB 743: **Exchange of real estate by university of Kansas and the Kansas university endowment association**

Marlin Rein appeared before the Committee and reviewed his written testimony in support of **SB 743** (Attachment 1). He explained that the bill authorizes the exchange of property between KU and the KU Endowment Association and the difference in appraised value will be paid by private monies over a 5 year period. In answer to Senator Karr, he stated that no major maintenance would be necessary and, if the current formula for servicing buildings is used, the fiscal note for servicing this 24,000 square foot building would be $97,000 in FY 97. Chairman Kerr noted that the policy for servicing buildings has not been decided, but it will probably be necessary to provide additional monies for the servicing of this new building.

The Chairman advised members that the Chancellor has indicated that this bill is important to the University and if it is passed out of Committee, he will use a House bill which he has had pulled from general orders as a vehicle to expedite the process. It was moved by Senator Brady and seconded by Senator Karr that **SB 743** be recommended favorably for passage. The motion carried on a roll call vote.

Senator Rock moved, Senator Morris seconded, that bill draft 5 RS 2522 as requested by Senator Bond be introduced. The motion carried on a voice vote.

KPERS Issues (Attachment 2)

Prior to reviewing items in the subcommittee report, the Chairman told members that there is no postretirement COLA included, that nearly every item is of no or low cost, and that many issues address fairness. There was brief discussion on the following items:

1. Jack Hawn, Deputy Executive Director for KPERS, explained that under KPERS & KP&F, there is a line of descendency that is paid to descendants prior to the estate. In the case of judges, the funds go directly to the estate and, so, this recommendation makes the policy for judges consistent with that of KPERS and KP&F.

11. Harry Stephens, Emporia State University, distributed a letter from the Director of the Office of Human Resources which clarified the funding source for salaries and benefits of individuals who became members of the state classified service. (Attachment 3)

15. It was brought to the attention of the Committee that one KPERS Board member has gone inactive in the KPERS system and this recommendation was made to coincide with the spirit of the law. Senator Rock reviewed costs associated with past Board elections and noted that the KPERS staff has indicated that they have the authority to conduct a phone election which would reduce the fiscal note. It was

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

noted that the last election cost approximately $100,000 and the use of a telephone election could cost $30,000. Senator Rock moved, Senator Morris seconded, that this item be amended to reflect that KPERS is planning to use a telephone election when the two KPERS Board of Trustee positions are selected by the membership to reduce costs. The motion carried on a voice vote. Members discussed some of the problems that might be associated with a phone election. Meredith Williams, Director of KPERS, stated that identification will be verified by a live person.

16. It was noted that authorization to refund money that was collected from the employees' last paycheck in 1995 was sought by the Department of Administration. Staff noted that this would be treated as a distribution of collections, would affect approximately 3200 employees, and would carry a fiscal note of approximately $280,000 to $300,000. It was noted that the "overcollection" was not a fault of KPERS but was encountered with the implementation of the SHaRP system. Mr. Williams, in response to Senator Salisbury, stated that because the nonwage payment will be made in 1996, federal taxes will be withheld from it and will have to be reported on federal tax returns for 1996, but it will not be subject to state taxes in 1996 because state taxes were paid in 1995.

Senator Petty inquired whether the subcommittee had considered options other than annuities in items 6 and 7. Chairman Kerr noted that annuity is present law and the subcommittee did not change that but made purchase options more appealing. He noted that annuity is this group's only option.

Senator Petty inquired whether the subcommittee explored the cost to the system if all three options were given. Chairman Kerr reported that the subcommittee did not consider that because of the new audit report which indicated that the system needs $42 million to be at the actuarially recommended rate of contribution. Senator Rock noted that although employees may have been misinformed about which tier in KP&F they belonged to, a legal opinion from the Attorney General indicated that there is no legal liability to the state if employees disseminate false information. However, this opinion does not address the issue of fairness. He informed the Committee that he had received additional information regarding two members of the Highway Patrol and he would offer a floor amendment to address their concerns (Attachment 4). Chairman Kerr urged members to be cautious in recommending adjustments because once an exception is made, others seem to come to the front.

In answer to Senator Vancrum, Chairman Kerr noted that the subcommittee did not price any part of the COLA for retired employees because they dealt almost exclusively with no-cost or low cost issues. Mr. Hawn told members that the cost of **HB 2758** (given the greater of 3%; or , 50 cents per year for each year of service plus 50 cents per year for each year of retirement) would be $3.992 million annually for the state for the next 37 years or a total state liability upfront of $87 million.

Members discussed the cost in FY 97 of increasing the state's employer contribution rate to the actuarial rate for KPERS ($37.5 million SGF) and noted that the Governor had recommended the statutory .2% increase or $6.1 million from the SGF. Chairman Kerr stated that the subcommittee discussed but did not recommend any change in the funding pattern because of state finances, but noted that if the Legislature does not appropriate all the revenues, some consideration ought to be given to accelerating the funding of the liability and the state contribution rate should be increased above .2% by the 1997 Legislature.

Senator Morris inquired whether employee contributions could be increased if they were tied to enhancements. Chairman Kerr answered that the Legislature gets caught in contractual aspects of what is provided for employees versus what is asked of them in regard to contributions. He added that if an increase in COLA is considered, it ought to be tied to employee contributions.

It was moved by Senator Morris and seconded by Senator Rock that the report as amended be adopted. The motion carried on a voice vote.

Chairman Kerr requested that the report as amended be amended into **SB 554** which provides prior service credit for members of the Peace Corps (and is item 12 in the report). It was moved by Senator Karr and seconded by Senator Rock that the approved report be amended in to **SB 554**. The motion carried on a voice vote. The Chairman noted that the bill would be held in Committee in anticipation of receiving a House bill which could be used as a vehicle.

As suggested by a subcommittee report, the Chairman announced the appointment of Senator Morris and Senator Brady to a Hospital Closure subcommittee which he would chair. The subcommittee would study issues regarding employees of the hospitals which are recommended for closure.

The Chairman adjourned the meeting at 12:20 P.M. The next meeting is scheduled for March 22, 1996.

SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: March 21, 1996

NAME	REPRESENTING
Russ Everhart	Emporia State University
Harry Hopkins	Emporia State University
Marlin Rein	KU
Linda McGill	PMA
Mick Allen	Self.
Elaine Frisbie	Div. of the Budget
Mary Lou Maxwell	Kansas NEA
Jack Hawn	KPERS
Meredith Williams	"
Craig Grant	KNEA
Don Rezac	S.E.A.K.
J A Dodd	KSTTA
Jerry Sloan	OJA
Basil Covey	KRTA
Patricia A. Lew	CPRFF
Jon Josserand	KU

TESTIMONY ON SENATE BILL 743
University of Kansas

Senate Bill 743 would authorize the exchange of property between the University of Kansas and the Kansas University Endowment Association.

The Endowment Association currently occupies a facility on the West Campus (Youngberg Hall), which is no longer adequately sized to serve the needs of the Endowment Association. Senate Bill 743 would authorize the University to exchange other property on the West campus with the Endowment Association for the Youngberg Hall site. As required by K.S.A. 75-3043a, the University has obtained a consensus appraisal of the two properties. In January 1996, the Judicial Administrator appointed three local appraisers to determine the value of the two properties. Because these properties will be used only by KU or the Endowment Association, and would not be sold or leased for commercial interest, it was agreed that the properties were held in a captive market.

The captive market value of the 13.9 acres which the University proposes to transfer to the Endowment Association is estimated at $1,604,000. The captive market value of the Youngberg Hall site, 3.2 acres including the building, was estimated to be $2,300,000. Subject to passage of Senate Bill 743, and subject to the approval of the KUEA Executive Committee and the Board of Regents, the University would pay the Endowment Association the difference of approximately $695,000 from private, non-state resources over a five-year period, beginning not later than July 1, 1998. No interest will accrue on this balance.

The University proposes Senate Bill 743 believing it be to the advantage of both the state and the Endowment Association to exchange these properties. A map showing the location of the properties is attached to my testimony. The University, in acquiring the site and the facility of Youngberg Hall, will address some concerns of badly needed space for University programs.

The availability of a building with more than 24,000 sq. ft. of finished space will allow the University to move important programs into this facility. The out-of-pocket cost for acquiring this space, $695,000, makes the acquisition cost per square foot very low. The location of the building, close to other West campus research activities with the availability of parking and finished roadways, is also of significant advantage to the University.

Senate Ways & Means
March 21, 1996
Attachment 1

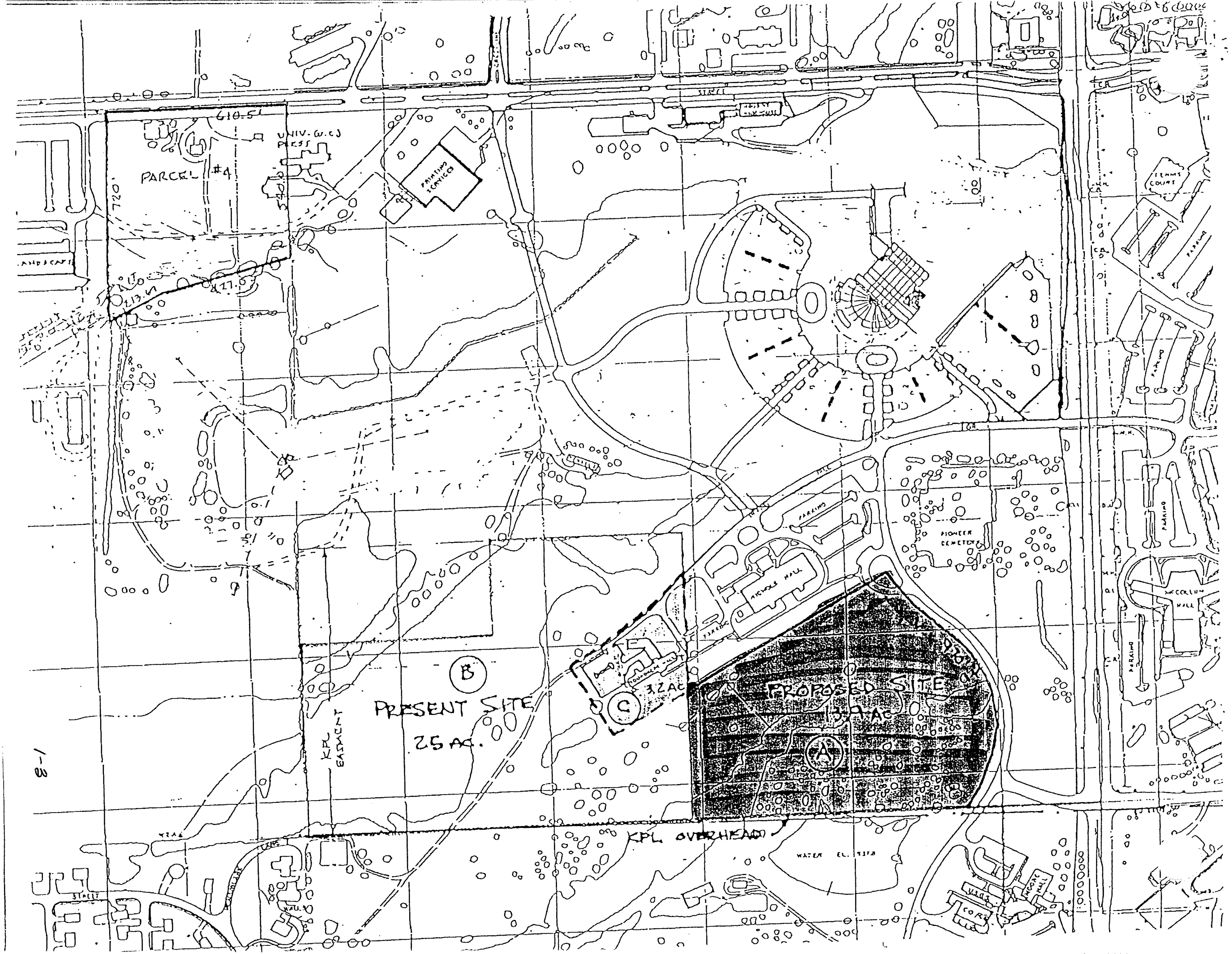
There have been property exchanges between KU and KUEA in the past which have been approved by the Legislature. In 1986 the University and Endowment Association swapped, with legislative approval, various unimproved parcels of land.

It is also to the University's advantage for the Endowment Association to have adequate facilities to support and expand its fund-raising activities on behalf of the University. The Association has outgrown its present building and requires a larger and more appropriately designed building. The University regards the Endowment Association as a major asset and its effectiveness is of critical importance to the institution. This exchange is in the best interest of the University of Kansas and the State of Kansas.

This concludes my testimony. I would pleased to answer any questions the committee might have.

Attachment

G:\wp\rdp\96legis.ssn\SB743.tes



PARCEL #4
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PRINTING SERVICES
PARKING
PIONEER CEMETERY
NICHOLS HALL
McCOLLUM HALL
TENNIS COURT
B
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25 AC.
KPL EASMENT
C
3.2 AC
PROPOSED SITE
13.9 AC
A
KPL OVERHEAD
WATER

Senate Ways and Means Committee

SUBCOMMITTEE REPORT ON KPERS MATTERS

March 20, 1996

Dave Kerr

Senator Dave Kerr
Subcommittee Chairperson

Stephen R. Morris

Senator Steven Morris

Senator Richard Rock

Senate Ways & Means
March 21, 1996
Attachment 2

Subcommittee Recommendations on KPERS Matters
Senate Ways and Means Committee

As part of this Session's review of issues, members of the Subcommittee heard the presentation of the findings contained in the Actuarial Audit Report of the Kansas Public Employees Retirement System (KPERS) prepared by Buck Consultants, Inc., under contract to the Legislative Coordinating Council. The Subcommittee notes one recommendation in particular which states:

> Future benefit increases are not advisable without additional funding (*e.g.*, the continuation of ad hoc benefit increases for retirees will exacerbate the shortfall of contributions required and will become increasingly more expensive as the retiree population increases).

The Subcommittee would point out that the cost in FY 1997 or FY 1998 of increasing the State's employer contribution to the actuarial rate for KPERS State/School payments requires an estimated increase from all funds of $45.7 million (FY 1997) or $42.3 million (FY 1998). The State General Fund part of financing these increases would total $37.5 million (FY 1997) or $34.7 million (FY 1998). The actual FY 1995 employer contribution paid by the State totaled $89.5 million for KPERS State/School and is projected to increase in FY 1996 and FY 1997 due to statutory requirements to raise the employer contribution rates in order to address the funding shortfall in the KPERS Fund.

Recommendations of the Senate Subcommittee

The Subcommittee adopts the following recommendations for legislation:

1. Make line of descendency for employees covered by the Judges Retirement System consistent with current KPERS and KP&F laws.

2. Authorize at the KPERS Board of Trustee's discretion contracting for legal representation by outside legal counsel, supplementing current law which requires representation in KPERS matters by the Attorney General.

3. Allow KPERS determination of qualified nonprofit entities as KPERS eligible participating employers. Current law references only IRS determination.

4. Make participating employers responsible for any arrearage in correcting final employee contributions in the case of deaths or withdrawals.

5. Authorize purchase using the modified double or triple deduction method, in addition to the lump sum method (current law), for purchases of 1.75 percent participating service credit for military service.

6. Clarify that purchases of 1 percent annuities for both out-of-state teaching and non-federal public employment service credit by the lump sum method (current law) would be limited to only full-time, permanent prior employment in such areas.

7. Provide that 1 percent annuities for both out-of-state teaching and nonfederal public employment service credit may be purchased by modified double or triple deductions, in addition to lump sum purchases (current law).

8. Make the statutory limitation on the amount of earnings after retirement if returning to work for the same participating employer from which retired applicable to KP&F Tier II members to correct an omission in the 1993 law when only KP&F Tier I members originally were placed under the cap.

9. After 20 years of service for KP&F (the vesting period), if a member dies before attaining retirement age, allow spousal election either to receive the member's contributions (current law) or to select a retirement option, payable when the member first would have been eligible to retire.

10. Make KPERS law consistent with current Kansas School Retirement System (KSRS) law to provide that if a retired member claims additional service credit after retirement, then the benefit is increased when determined justified, but no retroactive payments are made for the period prior to the claim determination.

11. Allow 1 percent prior service credit to be purchased by 16 current state employees for the period during which they were previously employed by the Memorial Union Corporation when it was a separate nonparticipating employer.

12. Provide that 1 percent prior service credit may be purchased for any period of employment in the Peace Corps, using either the lump sum or modified double/triple deduction methods.

13. Allow employees who are members of two different systems to retire under one system and to freeze accrual of additional benefits under the second system until retirement age for that system is reached. Current law requires retirement under both systems.

14. Add the Secretary of Agriculture to the list of state officers and employees in current law who may elect not to participate in KPERS and instead to have the state contribute 8 percent to the state's deferred compensation plan.

15. Modify current law regarding election of two Board members to clarify that only active and retired members are eligible to vote, and that inactive members are not eligible to vote or to serve on the KPERS Board of Trustees.

16. At the request of the Director of Accounts and Reports, amend current law which authorizes KPERS participating service credit purchases in order to address a problem regarding deductions for service credit purchases made from the December 29, 1995, check in calendar year 1995 and to allow payment of a nonwage adjustment in calendar year 1996. KPERS will adjust each member's account accordingly.

Background

Eight of the first nine items (excluding item 7) were recommended by the KPERS Board of Trustees for legislation this Session. Items 7 and 10 were recommended by the KPERS Study Commission. The other items were suggested by several individuals and groups. Many items were incorporated from previously introduced legislation which is pending before the 1995 Legislature.

EMPORIA STATE UNIVERSITY
1200 COMMERCIAL ST EMPORIA KS 66801-5087 316/341-5379
FAX 316/341-6014

OFFICE OF HUMAN RESOURCES
CAMPUS BOX 4044

March 20, 1996

Senator David Kerr
Room 120-S, State Capitol
300 S.W. 10th Avenue
Topeka, KS 66612-1504

Dear Senator Kerr:

It is my understanding that information has been requested relating to the Memorial Union employees at Emporia State University, to be considered by the Senate Ways and Means committee. I am pleased to provide this information to you.

As of September 18, 1994, employees of the Memorial Union corporation became employees of Emporia State University, many of whom became members of the state classified service. From that date forward, all salaries and benefits of those individuals have been paid from Memorial Union Funds that are held by the University and which are included within the budgetary category of restricted funds. There is no intent to change this arrangement and it is not the intent of the University to use state general funds or tuition proceeds to pay the salaries and benefits for those individuals.

If I can be of any further assistance to you, please do not hesitate to contact me.

Sincerely,

Jackie Scott

Jackie Scott, Director
Office of Human Resources

cc: President Robert E. Glennen
Judith Siminoe, Board of Regents Associate General Counsel

Senate Ways & Means
March 21, 1996
Attachment 2

Memorial Union Employee's
Year of Service

Name	as of Sept. 18, 1994
Wanda Chambers	31
Sharon VanSickle	16
Brenda Carmichael (new employee)	0
Dave Hendricks	4
Deanna Defoor	2
Richard Givens	13
Henry McGregor	13
Mike Seely	8
Sid Conger	4
Oliver Wright	20
Bob Smith	26
Ted Fuller	5
Cheryl Glogowski	3
Robin Crockett	2
Roger Heineken	10
Terri Adkins	14

MAR 1996

MEMO TO: Members of the Senate and House KPERs Sub-committees

From: Lt. Michael Allen, Kansas Highway Patrol

Date: March 21, 1996

Subject: Correcting Retirement Group Membership

August 18, 1989 (ATTACHED) Letter to KP&F Members from KHP personnel director informing them of new legislation affecting their retirement. Tier I & Tier II.

December 31, 1989 (ATTACHED) Annual statement of members account showing no status as Tier I or Tier II. Lt. Allen had been told upon his change of employment from the Topeka Police to Kansas Highway Patrol that he was considered a transfer member and therefore a member of the "old" plan.

July 23, 1990 (ATTACHED) Letter to KP&F Members from KHP personnel director informing them of new benefits available to them.

At this time, Lt. Allen made inquiries regarding what Group in KP&F he was in and was once again told he was considered a transfer member and was in the "old" plan. (50 yrs. of age & 20 yrs. service)

1993 Lt. Allen transferred to headquarters with KHP and at that time inquired about his retirement again. This is when he was informed that KPERs no longer considered these people transfer members and put them in Tier I. Had he been advised of this at the time of his earlier inquiry, he would have elected to become a member of Tier II.

If this is not corrected legislatively, the cost to the State of Kansas will be an additional $250,000 due to the fact that Lt. Allen will be required to work an additional five years before retirement as a member of Tier I rather than Tier II. There is no fiscal note if the correction is made.

Senate Ways & Means
March 21, 1996
Attachment 4

KANSAS HIGHWAY PATROL

Service—Courtesy—Protection

Mike Hayden
Governor

Col. Donald L. Pickert
Superintendent

August 18, 1989

SUBJECT: Election of Coverage - House Bill 2403

TO: KP&F Members

House Bill 2403 (HB2403), 1989 Session, provides that each member who was appointed or employed prior to July 1, 1989, may elect to be covered by the provisions of sections 26 through 30 of HB2403 on the first day of the first payroll period coinciding with or following receipt of such election in the KPERS office. The written election must be received in the Personnel Section (GHQ) not later than October 1, 1989, for review, copies made for personnel files and forwarding to the Kansas Public Employees Retirement System (KPERS) office not later than January 1, 1990. Failure to file an election is presumed to be an election **not** to be covered by these provisions. The election is **irrevocable.**

The following is submitted for your information and as a possible means of assisting you in making your decision:

1. A comparison sheet which lists benefits prior to HB 2403 and the benefits provided by HB 2403.

2. Members who were employed or appointed July 1, 1989, or later are automatically covered by sections 26 through 30 of HB 2403.

3. Special members covered by the provisions of a local plan have no election.

4. HB2403 extends children's benefits to age 23 for full-time students for all members (including special members) regardless of other coverage.

122 SW Seventh Street
Topeka, Kansas 66603-3847 (913) 232-9200

KP&F Members
August 18, 1989

5. Kansas Public Employment Retirement System field representatives are available to visit troop area offices and provide consultation on House Bill 2403:

   a. Mr. Bill Anderson -- Topeka and Northeast Kansas

   b. Mr. Jim Handley -- Southeast and South Central Kansas

   c. Ms. Cora Schulte -- Western Kansas

Troop commanders may make an appointment to have a field representative visit troop offices by calling the Kansas Public Employment Retirement System office in Topeka at (913)232-6665.

Please contact the Personnel Section in General Headquarters if you have questions concerning this matter.

Chuck Mason
CHUCK MASON
Personnel Director

CM:km

KANSAS POLICE AND FIREMAN'S RETIREMENT SYSTEM
SECOND FLOOR, CAPITOL TOWER, 400 W. 8TH, TOPEKA, KS. 66603-3911
(913) 232-6665

ANNUAL STATEMENT OF MEMBERS ACCOUNT

YEAR ENDED DECEMBER 31, 1989

A. Prior Service MONTHS	B. Calendar Quarters Participating Service	C. 1988 Balance	D. 1989 Contributions	E. 1989 Interest	F. Total Accumulated Contributions
	84	30,927.94	2,261.19	2,474.24	35,663.37

NAME	SOCIAL SECURITY NO.	EMPLOYER'S NO.
MICHAEL R ALLEN	509-48-3465	S280-3-00-53980000

4-4

G. OUR RECORDS INDICATE THE FOLLOWING PERSON OR PERSONS HAVE BEEN NAMED BY YOU AS YOUR BENEFICIARY.

BENEFICIARY NAME	RELATIONSHIP	SEX	BIRTHDATE
PRIMARY			
COLLEEN L ALLEN	WIFE	F	09/14/1948
CONTINGENT			

SEE REVERSE SIDE FOR EXPLANATION OF EACH ITEM.

KANSAS HIGHWAY PATROL

Service—Courtesy—Protection

Mike Hayden
Governor

Laynard L. Shearer
Col. ~~DXXaldXKXPickenX~~
Superintendent

July 23, 1990

SUBJECT: Election of Coverage - House Bill 2405

TO: All Eligible Personnel

1989 Legislation provided a new category of KP&F benefits and persons who were employed prior to July 1, 1989 were afforded an election regarding the new benefits. At that time the new provisions did not include an adjustment to final average salary when a member had been disabled for at least five years. House Bill 2405 (HB 2405) remedies this situation and provides that each member who was appointed or employed prior to July 1, 1989 and who did not elect to be covered by the provisions of K.S.A. 1989 Supp. 74-4955a, may now elect to be covered by the provisions of section 14 of HB 2405 on the first day of the first payroll period coinciding with or following receipt of such election in the Kansas Public Employees Retirement System (KPERS) office.

The written election must be received in the KPERS office no later than September 30, 1990. We are requesting those employees now interested in making an election to be covered under the provisions of House Bill 2405 complete the enclosed KP&F 508B form and return it to Headquarters to the attention of the Personnel Section no later than September 1, 1990. Upon receipt a copy will be made for the employee's personnel file and the original will be forwarded to the Kansas Public Employees Retirement System office. Failure to file such written election shall be presumed to be an election not to be covered by these provisions. The election is irrevocable.

Members who were employed or appointed July 1, 1989 or later are automatically covered by the provision of K.S.A. 1989 Supp. 74-4955a. Members who previously elected coverage may not elect out.

Special members covered by the provisions of a local plan have no election.

Questions concerning the contents of this memorandum can be directed to Chuck Mason or Sally Russell in Headquarters.

Chuck Mason
Chuck Mason
Personnel Director

CM:SR:jh

122 SW Seventh Street
Topeka, Kansas 66603-3847 (913) 296-6800

February 20, 1996

To Whom it May Concern:

During my career with the Kansas Highway Patrol the option to change retirement plans was offered in July 1989.

When the option to move to Tier II was offered, I made several inquiries to the Kansas Highway Patrol Headquarters Personnel Section about what plan I was currently under. They advised at that time I was under the old plan of 50 years old and 20 years service required to retire.

The reason given as to why I was under the 50/20 was the fact I was considered a transfer member. My previous employer was the Topeka Police Department. This later proved to be incorrect. The transferring from one agency to another does not meet the transfer definition. Even until 1994 I was told by Kansas Highway Patrol Headquarters I was a transfer member.

When I inquired with KPERS about my retirement in 1995, I was told that I was a Tier I, which is 55 years of age and 20 years of service. I personally went to KPERS and argued my case. I was advised at that time they were sorry that I had been misinformed, but there was no legal action they could take to correct the problem.

When the option was offered in 1989 I would have selected the Tier II if I had been given the correct information. I acted on what I felt was competent advice from the Highway Patrol Headquarters and KPERS.

The only solution to the problem is through legislative action. Thank you in advance for your consideration in this matter.

Sincerely,

Michael R. Allen

Michael R. Allen
126 Cindy Drive
Russell, Kansas 67665
913-483-5593

MEMORANDUM

DATE: April 27, 1995

TO: Executive Committee
For Distribution as Appropriate

FROM: Joan Hancock

RE: **Estoppel: Incorrect Information to Members / Whether It Binds the System Legal Interpretation / K.S.A. 74-4901 *et seq.***

Question Presented: whether incorrect information from the Retirement System to a member "estops" the System from enforcing the correct statutory benefit or credit.

Brief Answer: No.

DISCUSSION AND ANALYSIS

When incorrect information concerning benefits, service credits or membership status is given to a member by the Retirement System, sometimes the member will assert that the System is bound to honor the incorrect information, and must treat the member as though the information were, in fact, correct. This memorandum concludes that the System is not so bound, and in fact is precluded by statute from paying incorrect benefits.

Definition of Estoppel

The member's argument in a situation as described above is based on the principle of "equitable estoppel," explained in general as follows:

> [E]quitable estoppel . . . is . . . the principle by which **a party who knows or should know the truth** is absolutely precluded . . . from denying, or asserting the contrary of, any material fact which, **by his words or conduct**, affirmative or negative, intentionally or through culpable negligence, he **has induced another**, who was excusably ignorant of the true facts and who had a right to **rely upon** such words or conduct, **to believe <u>and act upon them</u>** thereby, as a consequence reasonably to be anticipated, **<u>changing his position</u> in such a way that he would suffer injury if such denial or contrary assertion was allowed.**

28 American Jurisprudence 2d *Estoppel* § 27.

Disappointed expectations alone do not give rise to a claim based on estoppel. What is required before estoppel becomes an issue is detrimental reliance, such as a material change of position by irrevocably doing something that they would not otherwise have done if they had known the correct information, and some injury or damage suffered thereby.

Estoppel Against Government Agencies

As a rule, estoppel will not be applied against a governmental agency where public revenues are involved. 28 Am. Jur. 2d *Estoppel* § 122. Estoppel usually will not be applied against a governmental agency unless necessary to prevent fraud or manifest injustice. *Id.*

In Kansas, a governmental entity can be estopped to enforce the law correctly if "positive actions" by government officers induced the other party to take some action they would not otherwise have taken, and if justice requires. *Derby Oil Co. v. City of Oxford*, 134 Kan. 59, 62-63 (1931) (municipality could not prosecute oil company for drilling in violation of ordinance, where validity of ordinance had been formally challenged, and mayor had orally told oil company there would be no prosecution for drilling during pendency of challenge proceedings, and city officials had observed drilling, without attempting to stop it, during interim). On the other hand, however, government officers have no authority to create a contract that is illegal. Doing so is *ultra vires* (beyond their power). Even if the contractor has incurred expense in reliance on the fact that there was a contract, the government cannot be estopped to deny the existence of a contract if it is not authorized by law. In other words, estoppel can not make lawful that which is unlawful. *Blevins v. Board of Douglas County Commissioners*, 251 Kan. 374 Syl.¶ 5 (1992) (a contract entered into by a city, which was beyond the scope of the city's power, or which was not executed in compliance with mandatory conditions prescribed by statute, ordinance or resolution, or which is contrary to public policy, is unlawful; thus, the actions of the city in entering into the contract are void and unenforceable).

Estoppel Against Retirement Plans

In the specific area of retirement benefits, courts find that pension funds and retirement systems are not prohibited from correcting mistakes made by employees in giving information or calculating benefits, even when benefit recipients may be disadvantaged. For example, in *Office of Personnel Management v. Richmond*, 110 S. Ct. 2465 (1990), a disabled civil servant relied on erroneous oral and written information from a Department of Navy employee and proceeded to earn more money than permitted while in receipt of a disability annuity. Because he exceeded the earnings limit, he lost six months of benefits. He appealed to the Merit Systems Protection Board which ruled against him. The Court of Appeals for the Federal Circuit reversed. The Supreme Court of the United States reversed the appeals court, holding that payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice by a government employee to a benefit claimant cannot estop the government from denying benefits not otherwise permitted by law.

Similarly in a private-sector case, in *Miller v. Coastal Corporation*, 978 F.2d 625 (10th Cir. 1992), the Court of Appeals for the Tenth Circuit held that "[a]n employee benefit plan cannot be modified by [mistaken] informal communications . . . regardless of whether those communications are oral or written. . . ." 978 F.2d at 624.

In the Kansas retirement act, K.S.A. 74-4924 specifically requires the system to correct errors. Even if a member has been receiving an erroneous benefit for some time, and retired in reliance upon an incorrect benefit estimate, the law requires KPERS to correct the error and, "as far as practicable, make future payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was entitled shall be paid, and to this end may recover any overpayments." *Id.*

Conclusion

Based on the above analysis, it is the conclusion of this memorandum that incorrect information from the Retirement System to a member does not estop the System from enforcing the correct statutory benefit or credit. To the contrary, if a mistake has been made, the System is required to correct it.

Post-It™ brand fax transmittal memo 7671	# of pages ▸ 1
To Julian Efird	From Jack Hawn
Co.	Co.
Dept.	Phone #
Fax #	Fax #

MAR 1996

MEMO TO: Members of the Senate and House KPERs Sub-committees

From: Master Trooper Charles Kohler, Kansas Highway Patrol

Date: March 21, 1996

Subject: Tier II Membership Request

Please note last page of attachments. You will see that I was contributing to KPERs and not KP&F Retirement System. I was told by Mr. Kelley that if I returned to the KHP I would come back as all other new employees do, to Tier II. (Please reference Mr. Kelley's letter -- third attachment.)

March 19, 1996

To Whom it may Concern

The following enclosures are attached for your information regarding KPERS retirement system. Bert Cantwell, former Superintendent of the Kansas Highway Patrol granted my request for a leave of absence. He instructed me to contact Mr. Kelley at KPERS to obtain the correct information about retirement benefits and procedures for a return to the Highway Patrol.

I addressed several issues prior to obtaining the leave of absence from the Highway Patrol. First I stayed one day longer as a promoted Master Trooper to assure that position if I returned. Second, I made several contacts with KPERS by telephone, written and one full day of personal contact with Mr. Kelley to make sure that prior to leaving the Highway Patrol, I had the correct information about retirement benefits and which system I would fall under if I returned to the Highway Patrol.

Mr. Kelley tabulated my retirement benefits and advised me that upon a return to the Highway Patrol, I would automatically become a Tier II member. My annual KPERS statements show me as a Tier I in the pervious years but the 1993 shows only REGULAR POLICE. This indicated to me that I was in fact a Tier II since Tier I was no longer on the form.

I respectfully request your assistance in this matter as indicated by the letter of April 18, 1995 from KPERS.

Sincerely,

Charles Kohler

THE KANSAS CITY KANSAS KCK AREA CHAMBER OF COMMERCE

913/371-3070
FAX 913/371-3732

March 19, 1996

To Whom It May Concern:

Master Trooper Charles Kohler has made me aware of a problem he is having regarding his KP & F retirement. The problem seems to stem from a leave of absence I granted to him while serving as the Superintendent of the Kansas Highway Patrol in 1992.

The facts, as I remember them, are as follows:

Mr. Kohler was offered the position of Director of Law Enforcement at the Kansas Racing Commission. Being somewhat hesitant to accept the new position without the ability to return the Highway Patrol if the new position did not work out, Trooper Kohler requested a one year leave of absence from the Highway Patrol. I granted his request for the leave of absence.

I recall that Mr. Kohler was on the promotional list for Master Trooper and his leave of absence did not start until he officially became a Master Trooper. I also recall he and I discussing his concerns about his future retirement and I recommended that he meet with Dean Kelley of the KPERS staff. Mr. Kohler's primary concern was if he would return to the Highway Patrol as a Tier II member of the retirement system if the new position did not work out. After meeting with Mr. Kelley, Mr. Kohler informed me that he had learned that he would indeed return as a Tier II member should he decide to return to the Highway Patrol.

I hope this information is helpful and if there is anything further you need me to provide please let me know.

Sincerely,

Bert Cantwell

Bert Cantwell
President & CEO

P.O. Box 171337, Kansas City, Kansas 66117-0337 • 727 Minnesota Avenue 66101

ACCREDITED

4-12

Ka.. .s Public Employees Retirement System

April 8, 1992

CL Kohler
1313 N. 76th St.
Kansas City, KS 66112

RE: Retirement Estimates
SS# 515-54-8554

Dear Mr. Kohler:

This is a follow-up to your letter and request for information concerning your benefits with this system. The Director's position with the Kansas Racing Commission is a KPERS position and could only be changed to KP&F by an act of legislation. If a member transfers from KPERS to KP&F, there is not a one year waiting period to become a member of that system. If a KP&F member transfers to the KPERS system, the active death benefits and coverage for a KPERS member would be paid.

I estimate if you continue under the KP&F system and retire 10-1-2003 and based on the salary you provided, the monthly benefit would be, $2685.92. If you take a one year leave of absence, it would be approximately $83.90 less per month. If you retire at age 55 with 13 years under KPERS and 21 years under KP&F and do not accept the Director's position, the total of both benefits would be $1774.79. If you do accept the position and based on the salary increases you requested, the monthly benefit for age 57 would be $2552.78.

If you should have any questions, please feel free to contact our office.

Very truly yours,

Dean Kelley

Dean Kelley
Asst. Chief of Member

Capitol Tower ■ 2nd Floor ■ 400 W. 8th ■ Topeka, Kansas 66603-3911 ■ Phone (913) 232-6665
KPERS Telephone Facsimile (913) 296-2422
In Kansas, Call Toll Free 1-800-228-0366

Kansas Public Employees Retirement System

April 18, 1995

Charles Kohler
1313 N 76th St
Kansas City, Ks 66612

SS# 515-54-8554

Dear Mr. Kohler:

After reviewing your file, we find you are a Tier I member.

You were employed with the Kansas Highway Patrol beginning January 1, 1972 at which time you were a Tier I member. You did not withdrawal your contributions you had accumulated with the Kansas Police & Firemen's Retirement System when you left the Kansas Highway Patrol in 1992. When you returned to work in 1993 with the Kansas Highway Patrol you continued to make contributions under the Kansas Police & Firemen's Retirement System, therefore you remain a Tier I member.

Had you withdrawn your contributions you had accumulated with the Kansas Highway Patrol in 1992, and started contributing again with the Kansas Police & Firemen's Retirement System as a new member, you would have been a Tier II member.

Legislative action would be needed to allow another election opportunity.

I apologize for any erroneous information you may have received previously.

If you have any questions, please contact our office at 296-6666.

Sincerely,

Dianna Berry

Dianna Berry
Retirement Analyst

Capitol Tower ■ Suite 200 ■ 400 S.W. 8th Ave. ■ Topeka, Kansas 66603-3925 ■ Phone (913) 296-6666
KPERS Telephone Facsimile (913) 296-2422
Call Toll Free 1-800-228-0366

A. Prior Service MONTHS	B. Calendar Quarters Participating Service	C. 1989 Balance	D. 1990 Contributions	E. 1990 Interest	F. ...al ...ated ...tions
	76	34,699.97	2,572.95	2,776.00	40,048.92

CHARLES L KOHLER — NAME
515-54-8554 — SOCIAL SECURITY NO.
S280-3-00-52980000 — EMPLOYER'S NO.

POLICE-REGULAR KPF GROUP 1

G. OUR RECORDS INDICATE THE FOLLOWING PERSON OR PERSONS HAVE BEEN NAMED BY YOU AS YOUR BENEFICIARY.

KANSAS POLICE AND FIREMAN'S RETIREMENT SYSTEM

SECOND FLOOR, CAPITOL TOWER, 400 W. 8TH, TOPEKA, KS. 66603-3911
(913) 232-6665
In Kansas, Call Toll Free 1-800-228-0366

ANNUAL STATEMENT OF MEMBERS ACCOUNT

YEAR ENDED DECEMBER 31, 1991

A. Prior Service MONTHS	B. Calendar Quarters Participating Service	C. 1990 Balance	D. 1991 Contributions	E. 1991 Interest	F. Total Accumulated Contributions
	80	40,048.92	2,686.22	3,203.91	45,939.05

CHARLES L KOHLER — NAME
515-54-8554 — SOCIAL SECURITY NO.
S280-3-00-52980000 — EMPLOYER'S NO

POLICE-REGULAR KPF GROUP 1

G. OUR RECORDS INDICATE THE FOLLOWING PERSON OR PERSONS HAVE BEEN NAMED BY YOU AS YOUR BENEFICIARY.

BENEFICIARY NAME	RELATIONSHIP	SEX	BIRTHDATE
PRIMARY			
KATHERINE D KOHLER		F	05/17/1972

Rene

KANSAS POLICE AND FIREMAN'S RETIREMENT SYSTEM

SECOND FLOOR, CAPITOL TOWER, 400 S.W. 8TH, TOPEKA, KS. 66603-3925
PHONE 913-296-6666 • In Kansas Toll Free 1-800-228-0366

ANNUAL STATEMENT OF MEMBERS ACCOUNT

YEAR ENDED DECEMBER 31, 1993

A. Prior Service MONTHS	B. Calendar Quarters Participating Service	C. 1992 Balance	D. 1993 Contributions	E. 1993 Interest	F. Total Accumulated Contributions
	4		~~2,215.58~~		~~2,215.58~~

CHARLES L KOHLER — NAME
~~515-54-8554~~ — SOCIAL SECURITY NO.
~~5230-3-00-51930000~~ — EMPLOYER'S NO.

POLICE-REGULAR

G. OUR RECORDS INDICATE THE FOLLOWING PERSON OR PERSONS HAVE BEEN NAMED BY YOU AS YOUR BENEFICIARY.

BENEFICIARY NAME	RELATIONSHIP	SEX	BIRTHDATE
PRIMARY			
KATHERINE D KOHLER	DAUGHTER	F	05/17/1972
KIMBERLEY D KOHLER	DAUGHTER	F	05/17/1972

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KANSAS POLICE AND FIREMAN'S RETIREMENT SYSTEM
SECOND FLOOR, CAPITOL TOWER, 400 W. 8TH, TOPEKA, KS. [illegible]-3811
(913) 232-[illegible]
In Kansas, Call Toll Free 1-800-22[illegible]-03[illegible]

ANNUAL STATEMENT OF MEMBERS ACCOUNT

YEAR ENDED DECEMBER 31, 1993

A. Prior Service MONTHS	B. CALENDAR QUARTERS PARTICIPATING SERVICE	C. 1992 BALANCE	D. 1993 CONTRIBUTIONS	E. 1993 INTEREST	F. TOTAL ACCUMULATED CONTRIBUTIONS
	4		2,215.58		2,215.58

CHARLES L KOHLER — NAME
515-54-8554 — SOCIAL SECURITY NO.
8280-3-00-51980000 — EMPLOYER'S NO.

POLICE-REGULAR

G. OUR RECORDS INDICATE THE FOLLOWING PERSON OR PERSONS HAVE BEEN NAMED BY YOU AS YOUR BENEFICIARY.

BENEFICIARY NAME	RELATIONSHIP	SEX	BIRTHDATE
PRIMARY			
KATHERINE D KOHLER	DAUGHTER	F	05/17/1972
KIMBERLEY D KOHLER	DAUGHTER	F	05/17/1972
CONTINGENT			
EVA M KOHLER	MOTHER	F	00/00/1900

STATEMENT DOES NOT INCLUDE SERVICE CREDIT IN OTHER RETIREMENT SYSTEMS

SEE REVERSE SIDE FOR EXPLANATION OF EACH ITEM

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KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM
ANNUAL STATEMENT OF MEMBERS ACCOUNT
PHONE [illegible], IN KANSAS TOLL FREE 1-800-[illegible]

CHARLES L KOHLER
SSN 515-54-8554
BIRTH DATE: 09-06-1940
MEMBERSHIP DATE: 06-19-1992

YEAR ENDED DECEMBER 31,1993
AGENCY: 9280-3-00-51980000
EARLIEST RETIREMENT DATE: **01

YOUR FIELD REPRESENTATIVE IS:
YOUR DESIGNATED AGENT IS:
**02

PRIMARY BENEFICIARY(IES)	CONTINGENT BENEFICIARY(IES)
KATHERINE D KOHLER KIMBERLEY D KOHLER	EVA M KOHLER

	ACCUMULATED CONTRIBUTIONS		
	CONTRIBUTIONS	INTEREST	TOTAL
BALANCE DEC 31 1992	736.64		736.64
1993 CREDITS	260.12	58.93	319.05
BALANCE DEC 31 1993	996.76	58.93	1,055.69

SERVICE CREDIT IN YEARS			
PRIOR	OTHER	PARTICIPATING	TOTAL
1% 3/4%		1.75%	
		.50	.50
		.25	.25
		.75	.75

**03

AMOUNT PREVIOUSLY SUBJECT TO FEDERAL INCOME TAX:

ALL BENEFIT ESTIMATES ARE BASED ON A FINAL AVERAGE SALARY OF 33,225.33

RETIREMENT BENEFIT ESTIMATES

RETIREMENT AT AGE	REDUCTION FACTOR	**04	**04	**04	**04	**04	**04	**04	**04	**04	**04	**04
MAXIMUM/NO OPTION JOINT/ 1/2 JOINT/ 3/4 JOINT/ SAME LIFE/ 5 YEARS LIFE/10 YEARS LIFE/15 YEARS												
EACH ADDITIONAL YEAR ADDS APPROXIMATELY THIS AMOUNT TO YOUR MONTHLY BENEFIT WITH NO OPTION												

OTHER BENEFITS

IN CASE OF DEATH, THE APPROXIMATE LUMP SUM LIFE INSURANCE PAYABLE TO BENEFICIARY(IES) WOULD BE **05
IF TOTALLY DISABLED, THE APPROXIMATE MONTHLY BENEFIT (SUBJECT TO OFFSETS EXPLAINED ON INSTRUCTION SHEET) WOULD BE **05
FOR ON THE JOB ACCIDENTAL DEATH, THE APPROXIMATE MONTHLY BENEFIT (SUBJECT TO OFFSETS EXPLAINED ON INSTRUCTION SHEET) WOULD BE. **05
FOR ON THE JOB ACCIDENTAL DEATH, THE LUMP SUM BENEFIT PAYABLE TO ELIGIBLE DEPENDENTS WOULD BE **05

MESSAGES

01 EARLY RETIREMENT REQUIRES A COMBINED TOTAL OF 10 YEARS OF SERVICE
02 NOT APPLICABLE FOR INACTIVE MEMBERS.
03 STATEMENT DOES NOT INCLUDE SERVICE CREDIT IN OTHER RETIREMENT SYSTEMS.
04 NO ESTIMATES PROVIDED INACTIVE MEMBERS.
05 NO COVERAGE PROVIDED INACTIVE MEMBERS.

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