

Approved: 3/6/97  
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Janice Hardenburger at 1:30 p.m. on February 24, 1997 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Bonnie Fritts, Committee Secretary

Conferees appearing before the committee: Helen Stephens, Kansas Sheriff's Association  
Ben Vidricksen, State Senator, District 24  
Judy Moler, Kansas Association of Counties  
Nick Jordan, State Senator, District 10  
Tammara Poage, Attorney  
Jim Kaup, City of Topeka

Others attending: See attached list

Chairperson Hardenburger continued the hearing on **SB 268**.

**SB 268**                      **Concerning sheriffs; relating to uniforms**

Helen Stephens appeared before the committee representing the Kansas Sheriff's Association in support of the bill. She testified that over the years, material changes, color differences and the overall availability of the required uniform has become virtually impossible to obtain. The "french blue" is not always the same for different vendors and is no longer available from some vendors. She submitted testimony from the sheriff of Barton County, the sheriff of Lyon County, and the sheriff of Douglas County, urging the committee to pass this bill favorably (Attachments 1, 2 & 3).

Chairperson Hardenburger closed the hearing on the bill and opened the hearing on **SB 323**.

**SB 323**                      **Concerning county clerks and election commissioners; relating to qualifications for office**

Senator Ben Vidricksen addressed the committee in support of the bill. He submitted letters received in regards to an elected official being active in partisan politics (Attachment 4). He stated that county clerks and election commissioners should not in any way be involved in electioneering.

The committee discussed some possible amendments to the bill. It was suggested the words, "nor shall such person be eligible for nomination to the officer of county clerk", should be stricken from lines 26 and 27 of the bill.

Judy Moler, K.A.C., testified as neither an opponent or proponent of the bill. She questioned the need for this bill when there are currently statutory remedies available for official misconduct, and recommended the same changes to the bill as previously discussed (Attachment 5).

Chairperson Hardenburger closed the hearing on the bill. Hearings were opened on **SB 354**.

**SB 354**                      **Concerning zoning; relating to nonconforming uses**

Senator Nick Jordan appeared before the committee in support of the bill. He testified this bill would give communities a tool in regulating adult entertainment businesses. The presence of adult entertainment businesses has caused many communities much frustration and with this bill cities could better regulate those businesses (Attachment 6).

Don Moler addressed the committee in support of the bill. He stated the League believes that giving cities and counties this explicit authority is a step in the right direction of eliminating blight from certain areas of the community in which this type of business should not be allowed (Attachment 7). He testified that cities, today, are gradually eliminating nonconforming uses within their cities through a variety of methods.

Tammara Poage, full time mother, part-time attorney, appeared as a proponent of the bill. Her testimony is included with that of Senator Jordan (Attachment 6). She testified this proposed legislation would affect only existing sexually oriented businesses and would allow local governmental entities to enact ordinances which require all nonconforming uses to come into compliance with the locational restrictions of the ordinance within a fixed period of time. Any new business would automatically be subject to the locational requirements of any existing ordinance.

Jim Kaup appeared in support of the bill and offered an amendment to the bill. He testified that "nonconforming uses" as defined in the bill is limited to "sexually oriented businesses" and recommended legal authority to amortize nonconforming uses. Amortization is most successful and justifiable for nonconforming signs, junkyards, and other "nuisances" (Attachment 8).

Chairperson Hardenburger closed the hearing on the bill and requested committee action on **SB 268**.

Senator Lawrence made a motion to pass the bill out favorably and be placed on the consent calendar. Senator Praeger seconded the motion. The motion passed.

Chairperson Hardenburger requested committee action on **SB 18**.

The amendments adopted in a previous meeting were distributed for final approval (Attachment 9).

Senator Huelskamp moved to have the amendment be consistent throughout the bill. Senator Petty seconded the motion. The motion carried.

Further discussion and action on the bill to be taken up at the next scheduled meeting.

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for 1:30 p.m., February 25, 1997.

**SENATE ELECTIONS AND LOCAL GOVERNMENT  
COMMITTEE COMMITTEE GUEST LIST**

DATE: 2/24/97

NAME	REPRESENTING
Judy Miller	KAC
Tammy Poage	self
Kelly Kuitala	City of Overland Park
Anne Spiess	Peterson Public Affairs Group
<del>Don Moleps</del>	League of KS Muns.
Walter Cox Smith	KIPHA
Ernie Foni	Senate Majority Office
Melissa Wangemann	Sec. of State
Brad Bryant	Sec. of State
Susan Mahoney	Sen. Salisburg
Helen Stephens	KSA



# BARTON COUNTY SHERIFF'S OFFICE

1416 Kansas

GREAT BEND, KANSAS 67530



**JIM DAILY**  
Sheriff

Phone (316) 793-1876  
FAX (316) 793-1885

**DAN SIMPSON**  
Undersheriff

To : Helen Stephens for the Election and Local Government Senate Committee

From : Sheriff Jim Daily

Date : February 21, 1997

Subj : Senate Bill No. 268

Madam Chairman and members of the committee,

Thank you for the opportunity to present this testimony today. In 1970 the Kansas legislature passed a bill that was signed into law pertaining to the uniforms that were to be worn by Sheriff's and their deputies.

At that time the law required the Attorney General to designate the color and design of such uniforms. In the beginning, this law was followed by the Sheriff's across the state because uniform companies were making available the proper color and styles required. Over the years, material changes, color differences and the overall availability of the required uniform has become virtually impossible to obtain

Therefore we, the Kansas Sheriff's, are asking that the current statute be revised allowing the Sheriff's to designate the style and color of the uniforms that they and their deputies wear.

Thank you very much for your time and consideration.

Respectfully submitted,

  
Jim Daily, Sheriff  
Barton County

SENATE ELECTIONS + LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 1  
TOTAL P.01

OFFICE OF

# SHERIFF OF LYON COUNTY

425 MECHANIC STREET

EMPORIA, KANSAS 66801

PHONE (316) 342-5545 • FAX (316) 343-2074

**CLIFFORD F. HACKER**  
SHERIFF

**RANDALL T. THOMAS**  
UNDERSHERIFF

## REFERENCE SENATE BILL 268

Chairperson:

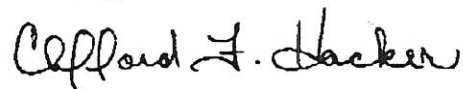
This testimony is in strong support of Senate Bill No. 268

There are currently many difficulties when a Sheriff's Department attempts to comply with the uniform regulations as they now exist. Because of changes in material and styles in the area of clothing manufacturers, it has become impossible to totally comply with the requirements. The attempt to comply has also become very expensive because of the very limited number of suppliers. To keep current with what is available, the uniform requirements would need to be modified at least every other year. It would be far easier to have each department to choose what changes they need to make based on their suppliers than to have the Attorney General's office try to research what is available and decide what is the best change.

I also believe each county should have the opportunity to choose a uniform which is different and distinct to that county. The different counties, because of size of departments, have some different functional needs they should be able to vary the style of their uniform to meet.

Thank you for your consideration of Senate Bill No. 268

Sincerely,



Clifford F. Hacker  
Lyon County Sheriff

SENATE ELECTIONS + LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 2

OFFICE OF THE



LOREN C. ANDERSON  
SHERIFF

DONALD D. DALQUEST  
UNDERSHERIFF

111 EAST 11th  
LAWRENCE, KANSAS 66044  
PHONE (913) 841-0007

February 21, 1997

Madam Chairman:

The Kansas Sheriff's Association has discussed for the past few years problems associated with the current law. Uniform color limitations appear to be of concern. This concern comes from the fact that "french blue" is not always the same for different vendors. Because of this color variance, the impression is that one department or another is in violation of the Attorney General's directive.

Therefore, at our last general meeting, it was determined our most effective solution was to ask the legislature to only change the law by allowing the sheriff authority to designate the color and design of the uniform to be worn by each department instead of the Attorney General.

*Loren C. Anderson*

Loren C. Anderson, Chairman  
Kansas Sheriff's Association Legislative Committee

SENATE ELECTIONS + LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 3



COPY

Salina, Kansas  
19 October 1996

Hon. Ron Thorngurgh  
Secretary of State  
State Capitol 2nd Floor  
Topeka, Kansas 66612

Dear Secretary Ron:

Is there anything in Kansas elections law that control the political activity of elected County Clerk's and election officer's?

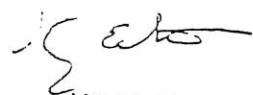
It has come to my attention that Shirly Jacques, Saline County Clerk and election officer, is the campaign manager for Democrat Kansas Senate candidate Allan White. Yesterday I received the enclosed letter. There is no way White could have learned that I asked for an early voter ballot except from the election officer's files. This may be a public record but the fact is the election officer on someone on her staff brought it to his attention. Ms. Jacques is also the Democrat National Committee Woman.

It would appear to me that the elected Election Officer should not, in this way, be active in partisan politics. In case there is no law prohibiting this I think there should be.

If no law it certainly ~~XXXXXX~~ would be unethical for one ~~XXXXXX~~ who runs the County elections to carry on in this fashion.

I would usge you to contact Attorney General Stovall and ask if this activity is prohibited and considered an unethical practice.

My best regards,



W. Keith Weltmer J.D.  
847-B Fairdale Rd.  
Salina, KS 67401

Encl: White letter and political folder

ccE Sen Ben Vidricksen  
¢ Randy Duncan

MR. WELTMER -

FORMER SEC. of Adm. for Ks.

FORMER Adj. Gen. of KANS.

FORMER PROFESSOR AT K.U.

FORMER HUSBAND of Sec. of STATE Elwill Sumanahan

SENATE ELECTIONS & LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 4

13)  
ALLAN WHITE

October 14, 1996

COPY

Keith & Mary Weltmer  
847 Fairdale Rd, #B  
Salina, KS 67401

Dear Keith & Mary,

I would like to commend you on exercising your right to vote by requesting an advance ballot for the November elections. If you have not already received your ballot, you should be receiving it in the next few days.

Voting is a right that we have long been afforded. Many in the past have fought and died to preserve this right for us. Although we at times take it lightly, voting is a tremendous opportunity for us to have a say in what our life is like and in what the future will hold. Thank you for taking the time to assure that you have a say.

Enclosed is a piece of literature that tells a little about myself. I hope that when you fill out your ballot you will consider me for State Senate. If you have any questions about my candidacy, please call or write.

Likewise, if you would like information on my views and have access to the Internet, contact the Vote Smart Web Page (<http://www.vote-smart.org>).

Once again, thank you for participating in the process.

Sincerely,

  
Allan White

E-mail: [bosstone@midusa.net](mailto:bosstone@midusa.net)

112 Neal Ct. Salina, KS 67401

823-6023







"Service to County Government"

**TESTIMONY**

on SB 323

by

Judy Moler

Kansas Association of Counties

February 24, 1997

Thank you, Madam Chair and Members of the Committee. I am Judy Moler, General Counsel and Legislative Services Director for the Kansas Association of Counties.

I am here neither as an opponent or proponent of SB 323.  
I am here today to raise several concerns surrounding SB 323.

The Kansas Association of Counties would like to raise two problems with the wording of the bill. "Official position" needs to be defined. It is vague as it reads now. Secondly, "nor shall such person be eligible for nomination to ...." as it pertains to the election commissioner and to the county clerk reads as an unintended term limitation.

The Kansas Association of Counties would question the need for this bill when there are currently statutory remedies available for official misconduct.

I would answer questions you might have.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (913) 233-2271.

Jayhawk Tower Office  
700 SW Jackson, Suite 805 Topeka, KS 66603  
913/233-2271 FAX 913/233-4830

SENATE ELECTIONS &  
LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 5

NICK JORDAN  
SENATOR, TENTH DISTRICT  
JOHNSON COUNTY  
7013 ALBERVAN  
SHAWNEE, KS 66216

STATE CAPITOL, ROOM 143-N  
TOPEKA, KANSAS 66612-1504  
(913) 296-7362



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN:  
TRANSPORTATION AND TOURISM  
MEMBER: COMMERCE  
ORGANIZATION, CALENDAR  
AND RULES  
WAYS AND MEANS

TESTIMONY  
SENATOR NICK JORDAN  
BEFORE THE SENATE ELECTIONS  
AND LOCAL GOVERNMENT COMMITTEE  
CONCERNING SENATE BILL 354  
February 24, 1997

Madam Chair and members of the Committee. I appreciate your consideration of Senate Bill 354 which gives communities a tool in regulating adult entertainment businesses.

The zoning and presence of adult entertainment businesses has caused many communities much frustration. Currently, the City of Overland Park is dealing with a couple of situations.

Under the provisions of Senate Bill 354, with some zoning changes, cities could better regulate adult entertainment in their cities.

There are others here today who can answer specific questions, so I would like to defer to them. Attached to my testimony is information I received regarding some legal background.

Thank you.

SENATE ELECTIONS +  
LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 6

**TAMMARA K. POAGE  
LOWELL D. RAMSEY***Attorneys at Law*

1406 SW Campbell, Topeka, KS 66604

Phone: (913) 234-9504

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**FAX COVER SHEET**

**TO:** Senator Nick Jordan  
**FROM:** Tammy Poage  
**DATE:** February 13, 1997  
**RE:** Zoning provision for sexually oriented businesses

Number of pages (including cover sheet): 6

**Senator Jordan:**

Enclosed please find additional information regarding amortization clauses. As we discussed, the proposed legislation would affect only existing sexually oriented businesses. The legislation would allow local governmental entities to enact ordinances which require all nonconforming uses to come into compliance with the locational restrictions of the ordinance within a fixed period of time. Any new business would automatically be subject to the locational requirements of any existing ordinance.

Thanks again for your work on this issue. Please call me if you need any further information.

Tammy

*Amortization clause  
in sample sexually  
oriented business  
ordinance.*

(G) Any sexually oriented business lawfully operating on \_\_\_\_\_, 199\_\_\_\_, that is in violation of subsection A through F of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within \_\_\_\_\_ feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is/are nonconforming.

*location  
restrictions*

(H) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection B of this Section within \_\_\_\_\_ feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

**SECTION XIII. ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(B) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

*v. Richland County Board of Adjustment*, 420 S.E.2d 853 (S.C. 1992), *Grand Britain, Inc. v. City of Amarillo*, 27 F.3d 1068 (5th Cir. 1994), and *BBI Enterprises, Inc. v. City of Chicago*, 874 F.Supp. 890 (N.D. Ill. 1995) (SOBs should have checked a map before opening an establishment in violation of 1,000-foot requirement).

## 6.4 AMORTIZATION CLAUSES

One of the most important elements of any SOB zoning ordinance is the requirement that all nonconforming uses come into compliance with the locational restrictions of the ordinance within a fixed period of time. Although the ordinances in *Young* and *Renton* did not include amortization clauses and only applied to prospective SOBs, the use of amortization clauses with SOBs is almost uniformly upheld if reasonable.

A majority of states and the U.S. Constitution permit an ordinance to terminate pre-existing sexually oriented business uses which conflict with the locational or other provisions of a comprehensive SOB ordinance. Over a relatively brief period of time, all "grandfathered" SOBs are eliminated from their current locations and forced to close or move to an appropriate location. Pre-existing SOB status does not guarantee a right to continue such property use when the continuation conflicts with the terms of a new SOB ordinance. Obviously, if the intent of SOB ordinances is to protect the community from negative secondary effects, and an existing establishment is in a location that creates negative secondary effects, the community should have an opportunity to require the establishment to move.

Many of the cases discussed in the previous section regarding reasonable alternative avenues of communication involved the successful and noncontroversial use of amortization clauses. See e.g. *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *Alexander v. City of Minneapolis*, 928 F.2d 278 (8th Cir. 1991). In fact, they are a standard feature of most model ordinances considered by municipalities enacting SOB regulations. They are so routinely upheld that attacks on them are becoming rare. *Holmberg v. City of Ramsey*,



12 F.3d 140 (8th Cir. 1994) (amortization clause not challenged although reasonableness of ordinance's other provisions attacked.).

Generally, when amortization clauses are challenged the arguments are based on the Fifth or Fourteenth Amendment protections of private property against takings, or under the First Amendment. In *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858, 865 (8th Cir. 1994), a federal appeals court rejected both contentions regarding a three-year amortization period:

Ambassador contends that the application of the ordinance to its existing businesses denies it due process in violation of the Fourteenth Amendment, and also violated its First Amendment rights. ... Although Ambassador is entitled to protection against arbitrary government action toward its business, it has no absolute right to continue to operate that business at the same location.

Other cases upholding various amortization periods for SOBs include: *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821 (4th Cir. 1979) (upheld ordinance providing a six-month amortization period for pre-existing non-conforming "adult" uses); *Northend Cinema, Inc. v. City of Seattle*, 585 P.2d 1153 (1978) (upheld ordinance providing a 90-day amortization period for pre-existing non-conforming "adult" theaters); *Dumas v. City of Dallas*, 648 F.Supp. 1061, 1171 (N.D. Tex. 1986), *aff'd* 837 F.2d 1298 (5th Cir. 1988) (upheld ordinance regulating sexually oriented businesses providing a three-year amortization period for pre-existing non-conforming "adult" uses; "Such clauses ... are uniformly upheld"); *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211 (9th Cir. 1984) (upheld ordinance regulating sexually oriented businesses providing a five-year amortization period for pre-existing non-conforming uses); *Castner v. City of Oakland*, 129 Cal.App.3d 94, 180 Cal.Rptr. 682 (1982) (upheld ordinance regulating "adult" entertainment activity providing a one-year amortization period under which owner can apply for up to a two-year extension); *City of Vallejo v. Adult Books*, 167



Cal.App.3d 1169, 219 Cal.Rptr. 143 (1985) (upheld ordinance regulating "adult" bookstores and theaters providing a one-year amortization period under which owners could apply for an extra year if they could show extreme hardship); *Cook County v. Renaissance Arcade*, 522 N.E.2d 73 (Ill. 1988) (upheld ordinance regulating "adult" entertainment establishments providing a six month amortization period under which an additional six months is given to any business which applies); *SDJ, Inc. v. City of Houston*, 636 F.Supp. 1359 (S.D. Tex. 1986), *aff'd* 841 F.2d 107 (5th Cir. 1988) (upheld six months amortization of "adult" uses); *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215 (1989) (upheld amortization of "adult" uses over a period of 1 $\frac{1}{4}$  to 5 $\frac{1}{4}$  years); *PA N.W. Distrib. v. Zoning Hearing Bd.*, 555 A.2d 1368 (Pa. Cmwlth. 1989) (upheld amortization of "adult" entertainment establishments in 90 days); *Function Junction, Inc. v. City of Daytona Beach*, 705 F.Supp. 544 (M.D. Fla. 1987) (upheld ordinance amortizing "adult" theaters over 10-and-a-half years); also, see Note, "Using Constitutional Zoning to Neutralize Adult Entertainment - Detroit to New York", 5 *Fordham Urban L.J.* 455, 472-74 (1977) (advocating one-year amortization period).

The argument is sometimes made that an amortization clause cannot apply to a particular "adult" use establishment absent a showing that it, in particular, causes the types of secondary effects sought to be redressed by the statute. This contention is erroneous. There is no constitutional requirement that the legislative body produce a study or other evidence showing that the specific negative secondary effects of "adult" businesses generally apply to an "adult" use in particular. As noted previously, a council can rely on studies conducted in other cities. This is the case even if the ordinance employs an amortization requirement.

Amortization provisions contained in SOB zoning ordinances are constitutionally permissible so long as they are content neutral and satisfy the requirements of *Renton* and *Young*. They must be "reasonable" and not "arbitrary and capricious." In determining "reasonableness," the provision is scrutinized as a content-neutral provision of an overall SOB zoning ordinance. This was discussed by New York's highest court in *Town of Islip v. Caviglia*, 540 N.E.2d

215 (N.Y. 1989):

Respondents also claim that amortization applied to uses enjoying constitutional free speech protection amounts to content based regulation and, therefore, legislation regulating them must be prospective or "grandfather-in" existing uses. Since the ordinance is content neutral under both the Federal and State Constitutions, the amortization provisions rest upon the same legal foundation as such provisions generally and, on the facts presented here, are valid (see *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821, supra [six-month period plus discretionary extensions]; see, *Dumas v. City of Dallas*, 648 F.Supp. 1061 [three-year amortization period]; *Cook County v. Renaissance Arcade*, 122 Ill.2d 123, 118 Ill.Dec. 618, 522 N.E.2d 73, supra [six-month period with extensions]; *Northend Cinema v. City of Seattle*, 585 P.2d 1153, supra [90-day period]).

*Id.* at 224. And see *Hart Book Stores, Inc. v. Edmisten*, 861 F.2d 821, 830 (4th Cir. 1979), which upheld a six-month amortization period of an "adult" use zoning ordinance as an inherent part of a content-neutral statute.

Ordinances that provide for shorter amortization periods for SOBs than for other types of nonconforming uses have survived equal protection challenges as well. *Schneider v. City of Ramsey*, 800 F.Supp. 815 (D.Minn. 1992), *aff'd sub nom Holmberg v. City of Ramsey*, 12 F.3d 140 (8th Cir. 1994).

For municipalities already suffering the negative secondary effects of SOBs, enacting an SOB zoning ordinance with an amortization period that is reasonable is an essential step toward improving the quality of life in the community.



League of  
Kansas  
Municipalities

Legal Department  
300 S.W. 8th  
Topeka, Kansas 66603  
Phone: (913) 354-9565/ Fax: (913) 354-4186

**LEGISLATIVE TESTIMONY**

**TO:** Senate Elections and Local Government Committee  
**FROM:** Don Moler, General Counsel  
**RE:** Support for SB 354  
**DATE:** February 24, 1997

First I would like to thank the Committee for allowing the League to testify today in support of SB 354. The League supports the intent of SB 354 to allow a governing body of a city or county to adopt reasonable regulations for the gradual elimination of sexually oriented businesses which constitute non-conforming uses. We believe that giving cities and counties this explicit authority is a step in the right direction of eliminating blight from certain areas of the community in which this type of business should not be allowed. We would like to stress, however, that we do not wish for this piece of legislation to be taken by others for the purpose of arguing that only adult or sexually oriented businesses may be gradually eliminated by city and county governing bodies.

We would suggest a friendly amendment to this legislation which would explicitly state that this legislation would not preempt cities or counties from gradually eliminating other uses which constitute non-conforming uses. It is our concern that once a specific use is enumerated which can be eliminated, that the argument would be that those not mentioned could not be eliminated. Therefore, we would suggest this amendment and continue to support the bill as written with that statement included.

Once again I would like to thank Committee for allowing us to appear today and I'll be happy to answer any questions the Committee may have.

SENATE ELECTIONS &  
LOCAL GOVERNMENT  
2-24-97

ATTACHMENT 7



# CITY OF TOPEKA

City Council  
215 E. 7th Street Room 255  
Topeka, Kansas 66603  
Phone 913-~~368~~-3710

## LEGISLATIVE TESTIMONY

TO: Senate Committee on Elections and Local Government  
FROM: Jim Kaup, City of Topeka  
RE: **SB 354; Amortization of Certain Nonconforming Uses**  
DATE: February 24, 1997

The City appears today with the request for a "friendly" amendment to SB 354. The amendment is intended to prevent any negative implications arising from SB 354 -- implications that the ability of a city to amortize nonconforming uses has been limited by the legislature to only those nonconforming uses which meet the bills definition of "sexually oriented businesses".

### LEGAL AUTHORITY TO AMORTIZE NONCONFORMING USES

**A. Generally.** Generally the constitutionality of amortization is well-established. Amortization allows a municipality to require the elimination of land uses which do not conform with adopted zoning regulations within a specified amount of time. No compensation for a "taking" of a protected property interest is due a landowner under proper amortization because the time allowed prior to mandatory termination of the use is a function of the time required to amortize the value of the property. Amortization is most successful and justifiable for nonconforming signs, junkyards, and other "nuisances" where the public interest and integrity of a zoning ordinance outweigh a landowner's property interest in continuing a nonconforming use.

**B. In Kansas.** Although not expressly authorized under the Kansas planning and zoning statutes, K.S.A. 12-741 *et seq.*, amortization of nonconforming uses was upheld by the Supreme Court of Kansas in Spurgeon v. Board of County Comm'rs (181 Kan. 1008 (1957)). In *Spurgeon*, a Shawnee County zoning regulation providing for the termination of auto wrecking businesses within two years from the regulation's effective date was upheld as a reasonable exercise of the police power. Shawnee County acted under a 1955-passed statute which provided that "reasonable regulations may be adopted for the gradual elimination of nonconforming uses." That statute has since been repealed. Under the current Kansas planning and zoning statutes (K.S.A. 12-758), nonconforming uses are required to be protected from the application of subsequently adopted zoning regulations, until it is proposed that the use be altered or the use is damaged by more than 50% of



its fair market value.

Although the Kansas planning and zoning statutes no longer expressly authorize amortization of nonconforming uses, we believe cities may use their Home Rule powers to adopt amortization provisions. Further, many cases across the country have found the authority to amortize to be implied from zoning enabling acts.

### **ACTION REQUESTED**

The City of Topeka believes it has the legal authority under Home Rule to provide for the amortization of nonconforming uses. We understand that passage of SB 354 would resolve any question as to the legal authority of cities and counties to amortize nonconforming uses with respect to the types of businesses covered by SB 354.

As our only concern is the possibility that SB 354 could be used in a legal argument challenging the use of Home Rule in amortization of nonconforming uses which are not "sexually oriented businesses", we request the following amendment:

Section \_\_\_\_\_. Nothing in this act is intended to prevent cities or counties from enforcing local laws, enacted under other legal authority, for the amortization of nonconforming uses.

# SENATE BILL No. 18

By Joint Committee on Economic Development

1-14

9 AN ACT concerning state governmental ethics; relating to financial dis-  
10 closures by state employees engaged in economic development activ-  
11 ities; amending K.S.A. 46-247 and 46-285 and repealing the existing  
12 sections.

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 46-247 is hereby amended to read as follows: 46-  
15 247. The following individuals shall file written statements of substantial  
16 interests, as provided in K.S.A. 46-248 to 46-252, inclusive, and amend-  
17 ments thereto:

18 (a) Legislators and candidates for nomination or election to the leg-  
19 islature;

20 (b) individuals holding an elected office in the executive branch of  
21 this state, and candidates for nomination or election to any such office;

22 (c) state officers, employees and members of boards, councils and  
23 commissions under the jurisdiction of the head of any state agency who  
24 are listed as designees by the head of a state agency pursuant to K.S.A.  
25 46-285, and amendments thereto;

26 (d) individuals whose appointment to office is subject to confirmation  
27 by the senate whether or not such individual is a state officer or employee;

28 (e) general counsels for state agencies irrespective of how compen-  
29 sated;

30 (f) the administrator or executive director of the education commis-  
31 sion of the states, the interstate compact on agricultural grain marketing,  
32 the Mo-Kan metropolitan development district and agency compact, the  
33 Kansas City area transportation district and authority compact, the mid-  
34 west nuclear compact, the central interstate low-level radioactive waste  
35 compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river  
36 basin compact, the Kansas-Nebraska Big Blue river compact, and the  
37 multistate lottery;

38 (g) private consultants under contract with any agency of the state of  
39 Kansas to evaluate bids for public contracts or to award public contracts;

40 (h) *officers and employees of the department of commerce and hous-*  
41 *ing and officers, employees and board members of Kansas, Inc., and the*  
42 *Kansas technology enterprise corporation; and*  
43

SENATE ELECTIONS +  
LOCAL GOVERNMENT  
2-24-97  
ATTACHMENT 9



9-7

1 (i) ~~Employees of regent's institutions who are involved in economic~~  
2 ~~development activities.~~

3 Sec. 2. K.S.A. 46-285 is hereby amended to read as follows: 46-285.

4 (a) The head of every state agency shall submit a list of designees under  
5 the agency head's jurisdiction, identifying the positions, names and home  
6 mailing addresses of all designees of that agency to the commission an-  
7 nually between March 15 and March 31, inclusive. The agency head may  
8 prepare and submit a separate list for each department, division, bureau  
9 or other unit within the agency head's jurisdiction. The agency head shall  
10 attach to each list an organizational chart for the agency, department or  
11 division to which that list corresponds and shall certify the list to be cor-  
12 rect. The agency head shall notify the commission of the name, home  
13 address and position of any new designee under the agency head's juris-  
14 diction within 10 days of appointment. The commission may request the  
15 head of a state agency to make additions to or deletions from the list.

16 (b) ~~Annually between March 15 and March 31, the president of each~~  
17 ~~institution governed by the board of regents shall submit to the commis-~~  
18 ~~sion a list of the employees of such institution which are engaged in eco-~~  
19 ~~nomic development activities for purposes of subsection (i) of K.S.A. 46-~~  
20 ~~247 and amendments thereto. The list shall include the home addresses~~  
21 ~~of such employees. The president shall notify the commission of any new~~  
22 ~~employees engaging in economic development activities within 10 days of~~  
23 ~~that individual's employment.~~

24 (b) (c) The commission shall transmit promptly copies of all lists re-  
25 ceived under this section to the secretary of state.

26 New Sec. 3. ~~No officer or employee of the department of commerce~~  
27 ~~and housing, Kansas, Inc. or the Kansas technology enterprise corporation~~  
28 ~~may have any financial interest, employment or other similar interest in~~  
29 ~~any business with which such employee's agency does business. Such~~  
30 ~~prohibition shall not apply to members of the board of directors of Kansas,~~  
31 ~~Inc. or the Kansas technology enterprise corporation who serve without~~  
32 ~~compensation.~~

33 Sec. 4. K.S.A. 46-247 and 46-285 are hereby repealed.

34 Sec. 5. This act shall take effect and be in force from and after its  
35 publication in the statute book.

unclassified faculty and staff who are  
associated with centers of excellence in  
regents institutions, or unclassified faculty  
and staff whose research endeavors are supported  
by funds committed to those centers

subject to

subject to subsection (i)

The provisions of K.S.A. 46-233 shall apply to officers and employees of Kansas, Inc. and the Kansas technology enterprise corporation. Officers or employees of the department of commerce and housing, Kansas, Inc., and Kansas technology enterprise corporation shall not in the capacity as such officer or employee be involved in the preparation of or participate in the making of a contract, grant, loan or equity investment with any person or business by which such officer or employee has a financial interest or is employed or in whose business any member of such officer's or employee's immediate family is employed or has a financial interest. Financial interest shall not be defined as to include passive investments in pension systems, annuities, mutual funds, or brokerage accounts by an officer or employee or a member of such officer's or employee's immediate family.