Approved: 2-20-98
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

In the absence of Chairperson Glasscock for the first half of the meeting, he meeting was called to order by Vice Chairperson Ted Powers at 9:00 a.m. on February 17, 1998, in Room 521-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Mike Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Representative Bill Mason
Mr. Kim Quastad, Andover, Kansas
Mr. Chris McKenzie, Executive Director, League of Kansas Municipalities
Representative Eber Phelps
Mr. Hannes Zacharias, City Manager, City of Hays, Kansas
Mr. David P. Calvert, Attorney
Ms. Lou Ann Kibbee, Living Independently in Northwest Kansas
Ms. Michelle Campbell, Independent Connection, Salina, Kansas
Mr. Roger Harsh, Advocacy Development Specialist with Independence, Inc.

Others attending: See attached list

Vice Chairperson Powers opened the Public Hearing on **HB 2759.**

HB 2759 - An Act concerning city elections; relating to qualified electors

Vice Chair Powers welcomed Representative Bill Mason who spoke as a proponent of **HB 2759.** Representative Mason explained that **HB 2759** as amended would give the qualified electors in the three mile area around a city that has instituted building standards the right to put the issue on the ballot. He said that this was an issue of fundamental rights that a person have control of his or her own property, the right to representation, and the freedom to live his or her life without undue government interference. (Attachment 1.)

Representative Long inquired about the written comment on her copy of testimony which referred to seeking input from the State Fire Marshall, and Representative Horst responded that as Subcommittee Chair she had inquired and that there was apparently no real concern because the State Fire Marshall's office did not appear before the subcommittee.

Vice Chair recognized Kim Quastad who spoke as a proponent for **HB 2759** by saying that he represented the majority of residents within the three mile radius of Andover who are directly affected by **HB 2759.** He said that he felt that it is not the responsibility of the city to enforce building codes on people outside the city limits because that is a county issue. He also said that double taxation without representation is something nobody wants enforced upon them. Mr. Quastad's testimony included a representation of the many signatures of persons opposed to implications of this law. (Attachment 2.)

Representative Wells asked Mr. Quastad how he determined that he represented the majority, and Mr. Quastad said that he personally went out and canvassed door to door to receive signatures. Representative Wells also had a question about the fifth paragraph of Mr. Quastad's testimony saying that the Planning Commission of the city of Andover voted not to adopt the three mile territorial boundary last summer and that the council and mayor did not take the advice of the planning commission. He, therefore, concluded that the planning commission thought this was an area the county should have control over and not the city. Representative Wells' question was, " Why did this occur?" Mr. Quastad replied that he was not exactly sure, but perhaps it was because the City Council of Andover tends to vote as it wants.

The Vice Chair welcomed Mr. Chris McKenzie, Executive Director, League of Kansas Municipalities, who spoke as a neutral of **HB 2759**. Mr. McKenzie said that as the subcommittee records show, the League originally opposed **HB 2759** in the form in which it was introduced. He said that after working with Representative Mason, a substitute bill was drafted which better balances the interests of the residents of land

outside the city limits when they are governed by building code regulations of a city with the interest of the city. However, he said that neither the League's Governing Body nor Legislative Policy Committee have had the opportunity to review the substitute version, so the League did not have a specific position on the substitute at this time. Mr. McKenzie said that the League appreciated the hard work Representative Mason had put forth on **HB 2759.** (Attachment 3.)

Vice Chair Powers closed the Public Hearing on **HB 2759.**

Vice Chair Powers opened the Public Hearing on **HB 2814.**

HB 2814 - Public buildings; relating to enforcement of accessibility standards

The Vice Chair introduced Representative Eber Phelps who spoke as a proponent of **HB 2814.** Representative Phelps explained that the purpose of **HB 2814** was to clarify K.S.A. 58-1304 as it related to the enforcement of existing facilities for which no public funds were spent. He said that the proposed amendments to **HB 2814** do not change or alter the enforcement or application of the statute, but merely serve to eliminate any confusion as to what the legislature intended to accomplish through its enactment of and amendments to the statute. (Attachment 4.)

Chairperson Glasscock recognized Mr. Hannes Zacharias, City Manager, City of Hays, Kansas, who spoke in support of **HB 2814**. He said that the bill was drafted with the specific purpose of clarifying the language in K.S.A. 58-1304 (3) dealing with the enforcement of ADA standards on existing facilities which do not ask for a building permit. (Attachment 5.)

The Chair asked Mr. Chris McKenzie and Mr. Jim Kaup if it would be possible for them to return the next day so that the Committee could hear from the people who were from out of tome. Both gentlemen said that would be okay with them.

The Chair called on Mr. David P. Calvert, Attorney who represented the Hays Center for Independent Living known as LINK in a case brought by it against the City of Hays. Mr. Calvert said that he was in opposition to **HB 2814** because he believed it would undo years of progress by this legislature. He also said that this legislation would set Kansas civil rights laws relating to persons with disabilities back 30 years. He stated that as a lawyer and a private citizen who believes that all persons are created equal, he was offended by **HB 2814**. (Attachment 6.)

Chairperson Glasscock recognized Ms. Lou Ann Kibbee who represented LINK, Inc. (Living Independently in Northwest Kansas) who spoke as an opponent to **HB 2814**. Ms. Kibbee said that she was the Systems Change Coordinator for LINK, and that the Center assisted people with disabilities in becoming independent and integrating into society. She also said they are responsible for advocating for the rights of people with disabilities. Ms. Kibbee represented her position at LINK as well as that of a person with a disability who has experienced repeated discrimination for 21 years. She was a plaintiff in the case LINK, Inc., Lou Ann Kibbee, and Brian Atwell vs. City of Hays. (Attachment 7.)

The Chair recognized Ms. Michelle Campbell from Independent Connection , the Independent Living Center of Salina, Kansas. Ms. Campbell said that she was opposed to **HB 2814** because if it is approved, city officials would not have to enforce the accessibility standards under Title III. (Attachment 8.)

The Chair welcomed Mr. Roger Harsh, the Advocacy Development Specialist with Independence, Inc., a Center for Independent Living serving people with disabilities in Douglas, Jefferson, and Franklin counties. Mr. Harsh opposed **HB 2814** because it would eliminate local government and Attorney General enforcement of the KAAA for existing, privately owned facilities. He stressed that he hoped the Committee would not begin to erode the important enforcement mechanisms in the Kansas Architecture; Accessibility Act. He said that the entire community benefits from accessibility. (Attachment 9.)

Due to lack of time, the Chair announced that the Public Hearing on **HB 2814** would continue tomorrow and hopefully a bigger room can be secured. He thanked all the Conferees and asked those who were not able to speak to please come back on Wednesday. The Chair also asked if the Committee could be excused first since they did not have much time to get to the Session.

The meeting adjourned at 10:10 a.m.

The next meeting is scheduled for February 18, 1997.

GOVERNMENTAL ORGANIZATION & ELECTIONS COMMITTEE GUEST LIST

DATE: TUESDAY, FEBRUARY 17, 1998

NAME	REPRESENTING
Gina McDonald	KACIL
Gary Howard	LINK
Jay Arnold	LINK
Jerry Burgess	LINK
JOANN DONELL	TILRC
Rick Knight	LINK
Anthony A. Fadale	KS ADA coordinator
Bob Lyon	LINK
Just Herb	LINK
Jim Magee	Independent Connection/OCCK Inc
Brian McDowell	LINK
Michelle Campbell	Independent Connection/OCCK Inc
Mike Oxford	Topeka Independent Living
Martha Gabehart	KS Com on Disability Concerns
Ann Durkes	DOB
Robin Tropper	LINK, Inc.
Jean Ann Kilbree	LINK, Inc.
Greg Sones	SouthEast Kansas Independent Living

STATE OF KANSAS

WILLIAM G. (BILL) MASON
REPRESENTATIVE, 75TH DISTRICT
BUTLER COUNTY

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
MEMBER: BUSINESS, COMMERCE AND LABOR
FEDERAL AND STATE AFFAIRS
BOARD MEMBER: KANSAS TECHNOLOGY ENTERPRISE CORPORATION

February 17, 1998

Governmental Organization and Elections Committee Testimony

Mr. Chairman and Distinguished Colleagues:

Thank you for the hearing today on HB 2759. I am here in support of that bill. I want to express my appreciation to your sub-committee and their patience in reworking this bill. The end result is a much stronger bill.

The bill as amended would give the qualified electors in the three mile area around a city that has instituted building standards the right to put the issue on the ballot. A petition of 20 percent of the affected qualified electors could be filed with the county clerk asking for the election to allow the people in the affected area to remove themselves from this provision of the city ordinance. The County Commission would then be required to place the issue on the ballot at the next regular primary or general election. The qualified electors would then vote on the issue and if adopted, the city would be required to pass an ordinance removing the building codes outside the corporate limits of the city.

Across historical times, major battles have been waged on taxation without representation. In this case, we certainly have the issue of control of ones property and double fees without any representation. Many of my constituents who live on the outskirts of Andover must first go to the County, get a permit and pay a fee, then they must go to the city and also get a permit and pay a fee. While they have a vote on their county representatives they have no say with those in city government who also have control over them.

This is an issue of the fundamental rights that we have on control of ones own property, the right to representation, and the freedom to live our lives without undue government interference.

House GO and E
2-17-98

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Attachment 1

There should be negligible costs involved in this process. We asked not for a special election but for the issue to be included on the next primary or general election. The city would be responsible for furnishing a copy of the legal boundaries, but it surely would have those legal descriptions available to allow them to be able to enforce the building standards.

I have included with my testimony a letter signed by several of the affected people in the area plus an amended version of the bill.

Thank you for the hearing. I encourage your favorable action on HB 2759. I would be happy to stand for questions.

February 4, 1998

Representative William G. Mason
State Capital
300 SW 10th Avenue
Room 446N
Topeka, KS 66612

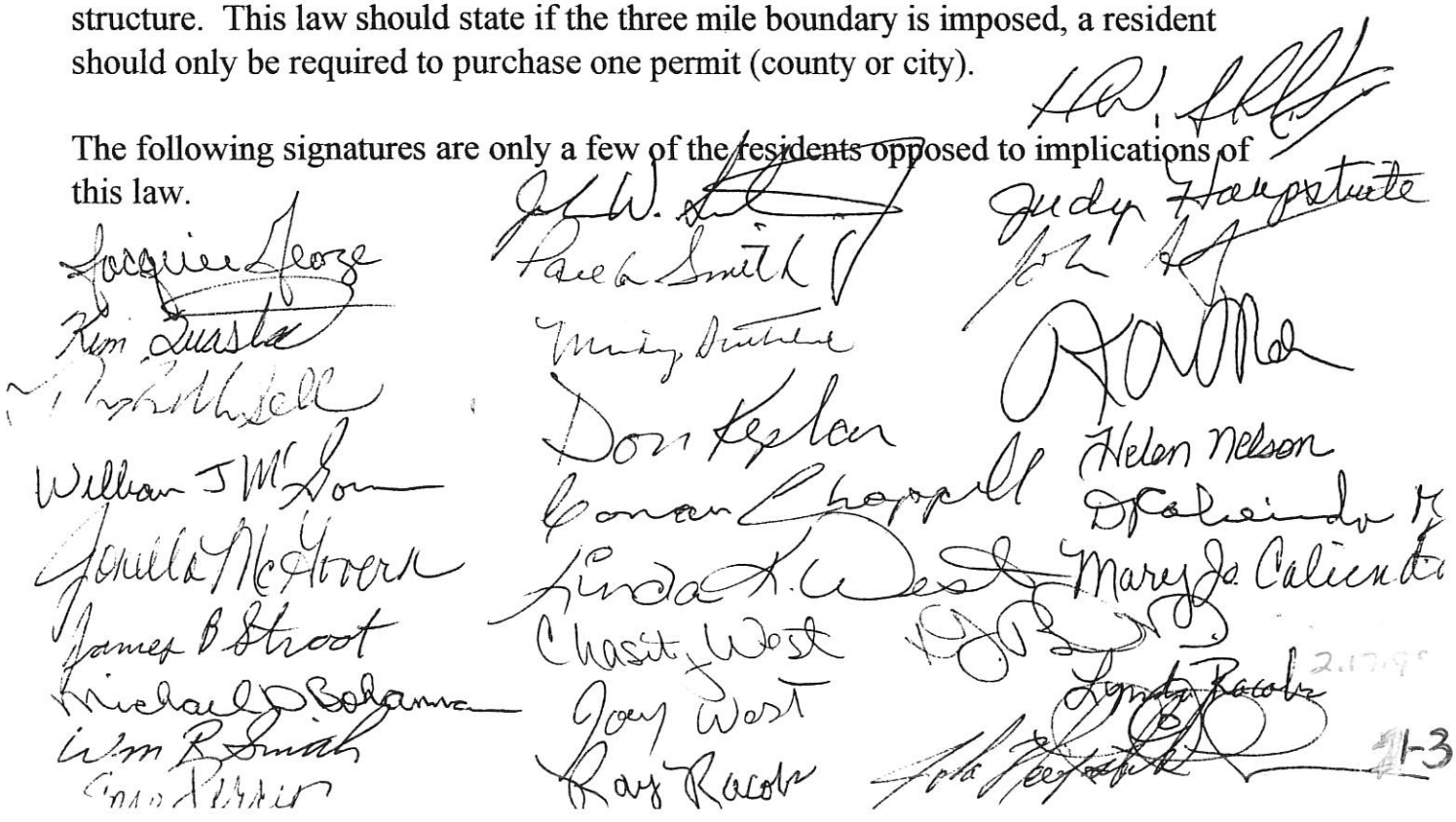
Representative Mason:

This letter is in reference to the three mile territorial boundary in which a city can impose zoning and annexation upon residents outside the city limits. This law is basically double taxation and the residence in the three mile boundary have no voting rights for city council and mayor, therefore, we are unable to vote to remove elected officials. The way an elected official votes on a certain issue may change if he/she is held accountable.

Most residents move to the country to get away from the city rules and regulations. The territorial boundary law gives the city the right to increase our taxes through annexation.

At present time, we are required to purchase permits (city & county) to build a structure. This law should state if the three mile boundary is imposed, a resident should only be required to purchase one permit (county or city).

The following signatures are only a few of the residents opposed to implications of this law.



FAX COVER
2 pages

TO: **Representative William G. Mason**
Room 446N

Date: February 5, 1998

FROM: Kim Quastad

SUBJECT: Three Mile Territorial Boundary Law

##########

The following letter has been signed by several residents outside the city limits that oppose the three mile territorial law. This is just a handful of residents that were more than willing to sign. I felt the response would be greater by collecting signatures rather than sending individual letters.

I am sending the original in the mail. Please do not hesitate to call me for further assistance.

Kim Quastad
1607 N. Singletree Circle
Andover, KS 67002
316-733-2660

February 17, 1998

RE: House Bill 2759

Mr. Chairman and Members of the Committee:

My name is Kim Quastad, and I am here on behalf of the majority of residents within the three mile radius of Andover relating directly to HB2759. I want to thank everyone for giving me the opportunity to speak today.

As a city grows, so do its boundaries, but three miles outside the city is too broad. People move to the country to get away from city rules and regulations. Residents who live in the county but outside city limits can vote for and have an influence on how elected officials vote. In the case of Andover this cannot happen.

The real problem with HB2759 is double taxation without representation. For example, if I wanted to build an additional structure I would be required to buy two identical permits for the same project (city and county). If we live in the rural areas we should be governed by the county. No one is saying building codes are unnecessary, but they should be enforced by the county we live in.

The county is currently looking at ways to slow the growth in rural subdivisions, and the implementation of building codes has been brought up again.

The city of Andover's planning commission voted not to adopt the three mile territorial boundary last summer, but the council and mayor did not take the advise of the planning commission. It was evident the planning commission thought this was an area the county should have control over and not the city.

If cities like Andover want to establish what they perceive to be proper development they need to expand the city limits, within reason, as the city grows.

I think this law was originally designed for cities that could be developed in a very short period of time 1-2 years. In the case of Andover it could take 20 plus years. The economy will always fluctuate and this will determine growth.

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No one is more concerned about safety than I am. I have served as a member of the National Fire Protection Agency to help write new codes on safety issues.

It is not the responsibility of the city to enforce building codes on people outside the city limits. This is a county issue, and I'm sure the county commissioners are committed to enforcing codes on rural Kansans as the people request it.

Double taxation without representation is something nobody wants enforced upon them.

Thank you once again for your time and consideration.

Sincerely,

Kim Quastad

Kim Quastad

League
of Kansas
Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: **House Committee on Governmental Organization and Elections**

FROM: Chris McKenzie, Executive Director

DATE: February 17, 1998

RE: Substitute for HB 2759

Thank you for the opportunity to appear this morning concerning HB 2759. As the record of the subcommittee shows, the League opposed the bill in the form in which it was originally introduced. I appreciated the opportunity to work with the bill's sponsor, Representative Mason, to develop a substitute bill which better balances the interests of the residents of land outside the city limits when they are governed by building code regulations of a city with the interests of the city. I believe the substitute that we crafted is vastly superior to HB 2759, as introduced.

Since neither the League's Governing Body or Legislative Policy Committee have had the opportunity to review the substitute version of this bill, the League does not have a specific position on the substitute at this time. A position should be adopted, however, by the time the bill is considered in the Senate, and we will advise the appropriate committee at that time.

Thank you.

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Attachment 3

STATE OF KANSAS

EBER PHELPS
STATE REPRESENTATIVE, 111TH DISTRICT
ELLIS COUNTY
301 FORT ST.
HAYS, KS 67601
(913) 625-5947

STATE CAPITOL—279-W
TOPEKA, KS 66612-1504
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ENVIRONMENT
TOURISM
FISCAL OVERSIGHT

TESTIMONY
HOUSE GOVERNMENT ORGANIZATION AND ELECTIONS

February 17, 1998

SUBJECT: HB 2814 - Enforcement of Accessibility Standards

Mister Chairman and Members of the Committee, thank you for the opportunity to appear before the committee regarding HB 2814 which was introduced in this committee on February 2, 1998.

The purpose of this bill is to clarify K.S.A. 58-1304 as it relates to the enforcement of existing facilities for which no public funds were spent.

The proposed amendments to HB 2814 do not change or alter the enforcement or application of the statute. Rather, they merely serve to eliminate any confusion as to what the legislature intended to accomplish through its enactment of and amendments to the statute.

In reviewing the history of statute K.S.A. 58-1304, there does not appear to be any dispute that until the 1994-passed amendments to K.S.A. 58-1304, there was no question that the duty of cities and counties to enforce the State's accessibility standards did not extend to existing, privately-owned structures that were open to the public but were not being constructed or undergoing additions or alterations.

I have provided you with an analysis of K.S.A. 58-1304 which dates back to 1968. This information was forwarded to me by Mr. John T. Bird of Glassman, Bird and Braun law firm, Hays, Kansas.

Mister Chairman and Members of the Committee, thank you for your time in consideration this matter. I will stand for questions.

Eber Phelps
State Representative
District 111

House GO and E
2.17.98
Attachment 4

STATE OF KANSAS

EBER PHELPS
STATE REPRESENTATIVE, 111TH DISTRICT
ELLIS COUNTY
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ENVIRONMENT
TOURISM
FISCAL OVERSIGHT

HOUSE GOVERNMENT ORGANIZATION AND ELECTIONS

February 17, 1998

State House, Room 521-S

Representative Kent Glasscock, Chairman
Members of the Committee:

I received information regarding K.S.A. 58-1304 from John T. Bird of Glassman, Bird and Braun Law Firm. The following pages are an analysis of this statute from 1968 to 1994.

Reference to this information should help you understand the legislature's intentions in adopting this statute and the subsequent amendments.

Eber Phelps
State Representative
District 111

GLASSMAN, BIRD & BRAUN, L.L.P.

Robert F. Glassman • John T. Bird
Glenn R. Braun • Todd R. Stramel

February 16, 1998

VIA FACSIMILE (785) 368-6365 & U.P.S.

REPRESENTATIVE EBER PHELPS
State House
Topeka, Kansas 66612

RE: LINK v. CITY OF HAYS/PROPOSED CHANGES TO K.S.A. 58-1304

Dear Representative Phelps:

Thank you for your assistance in helping to get the legislature to clarify K.S.A. 58-1304 as it relates to the enforcement of existing facilities for which no public funds were spent. As I have stated, the proposed amendments do not change or alter the enforcement or application of the statute. Rather, they merely serve to eliminate any confusion as to what the legislature intended to accomplish through its enactment of and amendments to the statute. The following, therefore, will provide you with a brief analysis as to why the proposed amendments will simply clarify the statute.

This analysis should be read with the following question in mind: Is the City required to enforce the ADA as to existing facilities for which no public funds were spent?

Kan. Stat. Ann. 58-1304, as it was first enacted in 1968, read as follows:

> "The responsibility for enforcement of this act shall be as follows: (c) For all construction where funds of counties, municipalities or other political subdivisions are utilized, by the governing bodies thereof."

Without question, cities were responsible for enforcement only with respect to construction for which public funds were spent.

The legislature amended the statute for the first time in 1978. As a result of this amendment, the statute read as follows:

> "The responsibility for enforcement of this act shall be as follows: (c) for all construction or renovation where funds of a county, municipality or other political subdivision are utilized, the governing body thereof or an agency

> thereof designated by the governing body; (d) for all other construction or renovation of buildings or facilities which are subject to the provisions of this act, the county or district attorney of the county in which the building or facility is located."

Again, the legislative intent behind subsection (c) was that the cities enforce the ADA only with respect to those buildings for which public funds were utilized. Even the addition of subsection (d) clearly restricted a city's responsibility to those facilities which were being constructed or renovated.

The statute underwent its second amendment in 1986. Those amendments resulted in the following:

> "The responsibility for enforcement of K.S.A. 58-1301 to 58-1309, inclusive, and amendments thereto, shall be as follows: (c) for all construction or renovation where funds of a county, municipality or other political subdivision are utilized, the governing body thereof or an agency thereof designated by the governing body: (d) for all other construction or renovation of buildings or facilities which are subject to the provisions of K.S.A. 58-1301 to 58-1309, inclusive, and amendments thereto, the building inspector or other agency or person designated by the municipality in which the building or facility is located."

As you can see, nowhere in that statute does it require a city to enforce the ADA with respect to facilities for which no public funds were spent or with respect to existing facilities.

In 1991, the legislature once again amended K.S.A. 58-1304 to read:

> "(a) The responsibility for enforcement of K.S.A. 58-1301 to 58-1309, inclusive, and 58-1311, and amendments thereto, shall be as follows: (3) for all construction or renovation where funds of a county, municipality or other political subdivision are utilized, the governing body thereof or an agency thereof designated by the governing body; (4) for all other construction or renovation of buildings or facilities which are subject to the provisions of K.S.A. 58-1301 to 58-1309, inclusive, and 58-1311, and amendments thereto, the building inspector or other agency or person designated by the municipality in which the building or facility is located.
>
> (b) The Attorney General of the State of Kansas shall oversee the enforcement of this act by the persons listed in paragraphs (1), (2), (3) and (4) of subsection (a)."

Thus, after three different sets of amendments and nearly 25 years, the enforcement provisions for cities were clearly and consistently limited to construction or renovation for which local funds have been spent as well as for all other new construction and renovation. Nowhere did it state or imply that cities should enforce the ADA in any other respect. Although the legislature amended the statute once again in 1992, the relevant language remained unchanged.

The confusion arose in 1994 when the legislature amended the statute to reflect its present wording. As a result of those amendments, the statute now reads as follows:

> "(a) The responsibility for enforcement of this act shall be as follows: (3) for all existing facilities, and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized, the governmental entity thereof or an agency thereof designated by the governmental entity; (4) for the design and construction of all other new, additions to and alterations of, facilities which are subject to the provisions of this act, the building inspector or other agency or person designated by the governmental entity in which the facility is located.
>
> (b) The Attorney General of the State of Kansas shall oversee the enforcement of this act."

The Plaintiffs in our litigation claimed that the statute, as a result of the 1994 amendments, places an additional burden of enforcement on cities. They allege that, because of those amendments, cities must now enforce the ADA with respect to existing facilities for which no public funds were ever spent. The testimony before the legislature in enacting those amendments in 1994 directly contradicts the Plaintiffs' position. For instance, the Attorney General's office testified as follows:

> "The changes that you see, although appearing to be numerous, do not change the enforcement role of any governmental entity...."

The State ADA Coordinator echoed this testimony, stating, "there is no fiscal note involved in this bill nor is there any hardship to consider." Even further, the Kansas Association of Centers for Independent Living testified that the Attorney General's office would continue to be the primary enforcement agency for the act. Specifically, KACIL stated, "...enforcement via the Attorney General will enhance compliance...." So you can see that if the clear intent of the legislature prior to the 1994 amendments was that cities enforce the ADA only with respect to buildings for which public funds were spent and with respect to new construction and renovation, and the legislature's intent in 1994 was not to change

the enforcement provisions of the act in any way, then the statute in its present form could not now require cities to assume the additional enforcement. Unfortunately, Judge Madden, who did not have the benefit of the legislative history because of a breakdown in communication by the League of Municipalities and us, ruled that the statute means the opposite of what the Legislature obviously intended.

Given this brief legislative history, it is plain to see why our proposed amendments to the statute do not change the effect or application of the statute, but merely corrects the punctuation so that the statute will read as the legislature has always intended it to read.

Given the legislature's intent, the Kansas act will continue to be enforced, as it relates to existing facilities for which no public funds were spent, via the State Attorney General's office. The State Attorney's General's office, through the above-cited testimony and through its official Opinion Number 92-106, agrees that our cities do not have the responsibility of enforcing the ADA as to existing facilities for which no public funds were spent. Our proposed amendments, then, will keep that enforcement with the State Attorney General's office and prevent our Kansas towns and cities from having to shoulder the enormous financial impact LINK's interpretation of the statute would have.

I hope the above analysis is helpful. If you have any questions about it, then please feel free to give me a call.

Very truly yours,

GLASSMAN, BIRD & BRAUN, L.L.P.

By _____
JOHN T. BIRD
Attorney at Law

JTB/tac
Enclosure
c: Robert J. Watson
Hannes Zacharias

tac\city\link-inc\98-02-16.ep

ISTRATIVE OFFICES
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PENNY POSTOAK, ASSISTANT CITY MANAGER
CAROL SUE GRABBE, CITY CLERK-FIN. DIR.
KENT LAAS, COMMUNITY DEVELOPMENT COORDINATOR
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TESTIMONY IN FAVOR OF
HOUSE BILL 2814
HOUSE GOVERNMENTAL ORGANIZATIONS AND ELECTIONS COMMITTEE

February 17, 1998
Hannes Zacharias, City Manager

Mr. Chairman and Members of the Committee.

I am Hannes Zacharias, City Manager for the City of Hays, Kansas testifying in support of House Bill 2814.

This bill was drafted with the specific purpose of clarifying the language in KSA 58-1304 (3) dealing with the enforcement of ADA standards on existing facilities which do not ask for a building permit. The need for this clarification rises out of a court case filed against the City of Hays by Link, Inc., Lou Ann Kibbe and Brian Atwell. The case filed in March of 1997 alleged basically two things. 1) That the City of Hays was not doing an adequate job of enforcing the ADA on facilities that were requesting a building permit and 2) the City of Hays was not enforcing ADA requirements on existing buildings that were not undergoing some sort of renovation. The first aspect of this case is still pending before the court. The second part of the lawsuit was argued before the court with a decision rendered in December of 1997 stating that cities do as a matter

All-America City 1996

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Attachment 5

of law have the obligation to enforce ADA standards on those facilities undergoing no renovation, i.e. existing facilities.

In 1996 Link Inc. made several complaints to the City of Hays about existing hotels and other businesses that were not in compliance with the Americans with Disabilities Act. We reviewed the complaints and informed Link that these buildings were not undergoing any renovations thus, the City was not the enforcement agent. We then referred the issue on to the Attorney General's Office for their review and consideration.

We made the determination that we were not responsible for enforcement of the ADA on existing facilities based upon a review of an article in the Kansas League of Municipalities magazine, a review of Attorney General Opinion No. 92-106, and discussions with City and League Attorneys. In December of 1997, however, following the arguments before the court, District Court Judge William Madden decided that all government entities are responsible for enforcing the ADA on all existing facilities based upon a reading of existing 1994 amended Kansas Statutes. A complete copy of this ruling can be made available to the Committee's secretary, if members so desire.

A large portion of this debate centers around what the intent was of the Kansas Legislature regarding the enforcement of the ADA on existing facilities. Jim Kaup of Logan, Riley, Carson, and Kaup, L.C. will present a more complete review of the legislative history in just a moment. As a brief background, please know that prior to 1994, interpretations among all parties within and outside of the ADA community was that enforcement of ADA requirements on existing facilities was <u>not</u> the responsibility of local governments. This was codified in Attorney General Opinion 92-106 of August 17, 1992, which answered the question:

"Does KSA 58-1304, as amended, impose any duty upon local public officials to investigate a complaint regarding barriers in "public buildings" which deny accessibility to individuals with disabilities if no one has made application for a permit for any alteration or construction of the buildings?"

Answer "local public building code officials are not required to investigate complaints or do random checks on buildings to see if they are accessible. Even though they are responsible for the enforcement of KSA 58-1301 through 58-1309, their only means of enforcement is to deny an application for a building permit for the construction or renovation of the building."

In 1993 representatives from the Attorney General's Office, the Department of Administration, the Division of Architectural Services, ARC Services, AIA of Kansas, the Kansas Association of Centers for Independent Living, the Commission on Disability Concerns, the Office of the State Fire Marshall, and the Kansas Human Rights Commission all worked together to make what were called "technical amendments" to the State ADA law to be in more compliance with the federal ADA. These amendments were then put into a bill, which passed in 1994, including the revisions to the section we are debating today. The legislative history presented in 1994 is overwhelming that none of the entities ever intended that the "technical changes" proposed would change the responsibility for enforcement, including local governments. In fact the Kansas Attorney General's Office stated "the changes that you see although appearing to be numerous, do not change the enforcement role of any government entity...." In spite of the case presented to the Judge, a ruling was made that the statute is unambiguous thus,

requiring local government entities to be enforcers of the ADA on existing structures. Judge Madden's ruling is now be appealed by the City of Hays.

If the City of Hays is appealing the Judges decision, why is legislative action being pursued now? It is safe to say that both sides in this case are spending thousands of dollars to determine the final verdict of the issue at hand. To avoid both the time and money involved in appealing this ruling it is felt that an easy remedy could be to clarify the State Statue. Given that these modifications were only made two years ago with many of the same members of the Legislature still present, it is felt desirable to pursue this easy remedy to the existing confusion.

What affect will it have on Hays and other local governments if the existing ruling is sustained? If required to be the "ADA police" for existing facilities for the State of Kansas, limited enforcement could be achieved on a complaint basis. A citizen could complain about an existing structure and force our building inspection department to investigate and insure compliance with the existing property owner. This places an added burden on an already small staff. It is not too hard to envision that additional staff will be needed to handle such complaints which in our case could be an additional $75,000 per year. Expenses to remodel existing facilities, paid for by local property owners, are unknown.

Regardless of the amount of money involved for enforcement, or the method of enforcement, if the State decides to impose an unfunded mandate on local governments for this activity, we will have to comply. We, however, feel that this was not the Legislators intent back in 1994 and appeal for your assistance in clarifying the matter.

The City of Hays is sensitive to ADA concerns. Prior to this lawsuit, we worked very closely with Living Independently in Northwest Kansas in developing our survey of existing City facilities and developing our plan for remodeling these facilities over time. Link assisted in the development of our ADA Advisory Committee and was involved many times in a consulting capacity on the enforcement of the ADA on facilities requesting a building permit. The City is currently spending thousands of dollars in remodeling park spaces, and is involved in a large community debate regarding the City's largest municipal pool, which will be closed after 1998 largely due to ADA concerns. We have also committed thousands of dollars to make curb cuts throughout the City as well as other ADA accessible capital improvements. In plain terms, we are not opposed to the ADA.

We do, however, have strong concerns regarding the large unfunded mandate imposed by this court ruling involving the ambiguous language of KSA 58-1304, (3). We do not feel that this change will "gut" all ADA activities in the State of Kansas. On the contrary, it makes it more clear on whose responsibility it is to enforce ADA on existing facilities. We do not feel that the Legislature intended either in 1992 or in 1994 that local units of government should be the ones enforcing ADA requirements on those facilities which are not being remodeled or renovated. From our perspective the two words being proposed to be inserted with House Bill 2814 clarify the States position on enforcement of existing facilities, eliminating the need for the City of Hays and Link to spend thousands of dollars in legal fees, and avoids potential future confusion about the law.

We strongly urge you to support favorably the passage of House Bill 2814.

Thank you.

Testimony Concerning HB 2814
Before The
Governmental Organization and Elections Committee
By
David P. Calvert
February 17, 1998

My name is David Calvert. I am the attorney who represented the Hays Center for Independent Living--known as LINK--in a case brought by it against the City of Hays. I am here this morning to do my part to prevent the undoing of years of progress by this legislature.

I believed that discrimination against persons with disabilities was eliminated years ago. But today, this Committee is considering legislation that sets Kansas civil rights laws relating to persons with disabilities back 30 years. As a lawyer and a citizen who believes that all persons are created equal, I am offended by this bill. As a human being, I am outraged. If you believe that persons with disabilities should have equal access as guaranteed by the Americans with Disabilities Act, you should be outraged too.

In 1968, this legislature passed an act relating to the elimination of architectural barriers and the introduction to Chapter 216 of the 1968 Session Laws which reads like this:

> WHEREAS, There is an ever increasing number of our population with permanent physical disabilities. Among these are many different causes and manifestations of physical disability and each has its own particular associated problems; and
>
> WHEREAS, The most frustrating of all problems to physically disabled individuals are buildings and facilities, supposedly created for the public, that are designed and constructed in such a manner that they prohibit the full participation of the physically disabled; and
>
> WHEREAS, It is equally frustrating to professional people dedicated to rehabilitation to find that architectural barriers prohibit the disabled individual, however well rehabilitated, from pursuing his aspirations, developing his talents, and exercising his skills. . .

The law has undergone changes over the years to keep up with changing accessibility standards. In 1990, the Congress passed the Americans with Disabilities Act which guaranteed that persons with disabilities would not be discriminated against, and the Kansas legislature incorporated the ADA into Kansas law. That

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further demonstrated the intent of the legislature to guarantee that persons with disabilities will not be discriminated against. In that regard, 58-1303 clearly shows the legislative intent and requires no interpretation:

> **"This act is intended to prohibit discrimination on the basis of disability by Title II and Title III entities. All facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by individuals with a disability."**
>
> **1301(a) provides: "Except as provided in K.S.A. 58-1307 [regarding historic facilities], and amendments thereto, all existing facilities, and the design and construction of all new, additions to and alterations of, facilities in this state shall conform to Title II or Title III, as appropriate. ..."**

Title II entities are governmental entities. Title III entities are public accommodations and commercial facilities other than governmental entities.

So, Kansas has made it against Kansas law to violate the Americans with Disabilities Act. Enforcement of Kansas law is logically divided in 58-1304.

Subsection 1 places the responsibility for existing and new school facilities on the state board of education. Regents institutions are subject to other provisions of the law.

Subsection 2 places the responsibility for existing state government facilities and new government facilities built on state property on the secretary of administration.

Subsection 3 places the responsibility for all existing Title II and Title III facilities on municipal and county government. It also places the responsibility relating to new local government facilities on that local government.

Finally, in subsection 4 the responsibility for all new buildings is on the governmental entity in which the facility is located.

By reading all of the enforcement responsibilities together, one can see that the law assures that the legislative intent will be achieved; that someone has the responsibility to enforce laws against discrimination for all Title II and all Title III entities.

House Bill 2814 repeals a substantial part of that law. It repeals that part of the law which requires local governments to enforce the ADA as it relates to all existing facilities by applying it only to existing local government facilities.

House Bill 2814 eliminates public accommodations and commercial facilities from Kansas law. Stated harshly but quite accurately, this bill makes access discrimination against persons with disabilities legal under Kansas law but not, of course, under Federal law. The reason is that there would be nobody charged with enforcement and private individuals are not permitted to sue under the act.

Since the language of the change was proposed -- according to him, anyway -- by the attorney who represented the City of Hays in litigation concerning existing Title III facilities, it is probably relevant to discuss the outcome of that litigation. Judge William Madden of Ellis County was asked by LINK to direct the City of Hays to comply with its responsibilities and come up with a procedure for handling complaints. He did so and I have attached a copy of his order to this testimony. It is significant to note that he has not directed the City to conduct any survey of existing facilities or to do anything that would require the hiring of any additional people. He has only ordered that the City adopt a method of handling complaints. Further, he suggested that the city may decide to coordinate efforts with other municipalities or perhaps counties to keep costs at a minimum. Rather than do this, the city's response was to seek legislation simply repealing the law. Frankly, the city should be ashamed of itself.

Judge Madden noted that if the city's interpretation of the law--which is the same as the proposed amendment in 2814--were correct that the enforcement relating to the majority of buildings covered by the ADA would not be dealt with by the law.

In his written opinion, Judge Madden found that the statute was not ambiguous and that it is not susceptible to more than one potential interpretation. However, he did note that "the language of this statute is awkward, and it would benefit by rewriting." Given Judge Madden's suggestion, I would suggest that the following change be made:

> (3) for all existing *Title III* facilities, ~~and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized,~~ the *county or municipal* governmental entity ~~thereof or an agency thereof designated by the governmental entity~~ *of the county or city in which the facility is located; provided, however, that a municipal entity that is not required to designate a responsible employee under 28 CFR 35.107 shall not be required to enforce this act and the enforcement for such municipal entity shall be with the county in which the municipal entity is located.*

(5) for all existing local government facilities, and the design and construction of all new, additions to and alterations of facilities where funds of a county, municipality or other political subdivision are utilized, the governmental entity in which the facility is located; provided, however, that a municipal entity that is not required to designate a responsible employee under 28 CFR 35.107 shall not be required to enforce this act and the enforcement for such municipal entity shall be with the county in which the municipal entity is located.

Although this would not change existing law, it would eliminate the awkward language of the statute.

If you believe that I should not have the right of access at the same restaurants where you eat, that I should not have a right to shop at the same stores where you shop, and that I should not have a right to stay at the same motels where you stay or go to the same movies you see, then you should vote for this bill.

When we as a society recognize that persons with disabilities make a contribution to our society, we elevate our personal values. But when we decide to repeal a civil rights law because it is too much trouble to enforce it, we not only set back the civil rights laws this country has worked so hard to create, but we also deny people of diverse backgrounds the opportunity to learn from each other. When we repeal these laws we adopt an elitist attitude that says "only those without disabilities may enter here."

I urge you to vote against this bill in its current form and to clarify the law as I have suggested in my testimony.

IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

LINK, INC., LOU ANN KIBBEE, and BRIAN ATWELL,

FILED
97 NOV 21 PM 12 03
ELLIS COUNTY
DISTRICT COURT

Plaintiffs,

vs.

Case No. 97-C-40

CITY OF HAYS, KANSAS,

Defendant.

MEMORANDUM DECISION

Plaintiffs' basis for seeking relief depends upon the responsibility of the Defendant under state law to enforce the provisions of K.S.A. §58-1301, et seq. In particular, Plaintiffs contend that these statutes are to be enforced by the municipality. Defendants argue that they do not have this responsibility, at least insofar as they apply to existing or "Title III" structures.

K.S.A. §58-1301, et seq., bears the title "Accessibility Standards for Public Buildings". The statute is heavily influenced by the federal Americans with Disabilities Act, or ADA, although some portions of the Kansas statute pre-date the federal law by several years.

In evaluating the Kansas statutes, it is helpful to understand the history of the federal and state laws and how they relate to each other. Kansas first enacted provisions in this area in 1968. See L. 1968, ch. 216. This earliest provision specifically limited its scope to buildings constructed after January 1, 1970, which were built in whole or part with state or local government funds. The statute incorporated by reference the specifications for accessibility approved seventeen years earlier on October 31, 1961, by the American Standards Association, Inc. The 1968 law provided that enforcement of the law was by the state Department of Administration for buildings utilizing state funds, and by the entity providing the funds in the case of counties or municipalities.

In 1978, the Kansas laws were amended. See L. 1978, ch. 212; L. 1978, ch. 213; L. 1978, ch. 336. In pertinent part, these provisions expanded the scope of application of the act to include facilities that were not necessarily built using tax money. See L. 1978, ch. 212, sec. 2. Enforcement delegation was modified to allow enforcement by a political subdivision such as a county or city by designation of an agency of the entity. Presumably, this would allow a city or county to designate an existing agency involved in zoning or related activity to undertake this duty as well. For buildings not involving tax revenue funding, enforcement fell to the county or district attorney.

Again in 1986, the Kansas law was amended. See L. 1986, ch. 208. The county or district attorney's enforcement responsibility was terminated and substituted with the "building inspector or other agency or person designated by the municipality in which the building or facility is located". L. 1986, ch. 208, sec. 2(d).

On July 26, 1990, Congress passed the Americans with Disabilities Act, or ADA, Pub.L. 101-336, July 26, 1990. This was codified at 42 U.S.C.A. §§12101, et seq. The ADA begins with a Congressional finding that 43,000,000 Americans have one or more mental or physical disabilities, and that this number is increasing as the population ages. The statute gives as one stated purpose "to provide a clear and comprehensive mandate for elimination of discrimination against individuals with disabilities". 42 U.S.C.A. §12101(b)(1).

The ADA is very broad in coverage rights of disabled persons in employment and transportation, as well as accessibility of public buildings. However, the ADA does have some "safety-valves", in the form of exclusions of certain groups and requirements of "reasonableness" to mitigate the harshness of application of the act in certain situations. For example, the ADA uses the term "reasonable accommodation" to describe the efforts necessary to bring an existing facility into

legal compliance. 42 U.S.C.A. §12111(9). Similarly, "undue hardship", is defined as an action "requiring significant difficulty or expense", and "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense". See 42 U.S.C.A. §12111; 42 U.S.C.A. §12181. These and similar measures in the ADA are designed to provide some flexibility where the requirements of the act are particularly burdensome. Enforcement of the federal act lies with the Attorney General as well as other governmental entities such as E.E.O.C. There is also authorization for suits by private individuals in the federal courts. The ADA also specifically allows state and local governments to pass measures in this area, so long as these laws are at least as strong in protecting rights of the disabled: "Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. . ." 42 U.S.C.A. §12201(b).

Passage of the ADA was well publicized and accompanied by its share of controversy. In this context, Kansas passed amendments to the state law counterpart, K.S.A. §58-1301, et seq., in 1992 (L. 1992, ch.208) and again in 1994 (L. 1994, ch. 195). The 1992 amendments to K.S.A. §58-1304 added a section giving the attorney general of the state oversight of enforcement of the act by the secretary of administration, county or municipality or their designee agencies. The 1992 amendments also substituted reference to the ADA for the old American National Standards Institute (ANSI) specifications.

The 1994 amendments, L. 1994, ch. 195, effective July 1, 1994, brought the Kansas law to its present form. The Kansas provision is much shorter than the ADA. The Kansas law in its final form was passed two years after the ADA, and it incorporates the ADA into the Kansas law. It is

clear that the legislature had the ADA in mind in drafting the Kansas law, including the requirement of equal or greater protections required by 42 U.S.C.A. §12201(b). The stated intent of the Kansas law is set out in K.S.A. 58-1303:

> This act is intended to prohibit discrimination on the basis of disability by Title II and Title III entities. All facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by individuals with a disability.

There are two definitions of importance in this case that also refer to the ADA, both from K.S.A. §58-1301b:

> (c) "Title II" means 28 CFR Part 35, non-discrimination in state and local government services as required by sections 201 to 205, inclusive, of the Americans with disabilities act of 1990, 42 USCA 12,115 et seq. (d) "Title III" means 28 CFR Part 36, non discrimination on the basis of disability by public accommodations and commercial facilities as required by section 301 et seq of the Americans with disabilities act of 1990, 42 USCA 12,181 et seq.

With these definitions in mind, the Kansas law provides the following as the general rule of accessibility standards for public buildings, set out at K.S.A. §58-1301:

> (a) Except as provided in K.S.A. 58-1307, and amendments thereto, all existing facilities, and the design and construction of all new, additions to and alterations of, facilities in this state shall conform to Title II or Title III as appropriate. The design and construction of new, addition to or alteration of, any facility which receives a building permit or permit extension after the effective date of this act shall be governed by the provisions of this act.

The exception mentioned above, K.S.A. §58-1307, deals with application to historic facilities, which is not an issue in this case. Restated, this provision of state law requires that all new buildings, existing buildings, and modifications of existing buildings must conform with either Title II or Title III of the ADA.

There is no argument by the city concerning Title II property and new construction of Title III property. The city has conceded that they must review buildings for ADA compliance as part of the building permit process, along with the other codes that they presently enforce for plumbing, electric, zoning, etc. Plaintiffs have raised the issue of enforcement, citing examples of permits being granted, but the final result being out of compliance. Because the city does not dispute that they are charged with this responsibility, and the question is instead a factual determination of compliance of particular buildings, the district court will defer resolving this issue until it is presented to the court in that context and including the owners of the property as parties.

The crux of Plaintiffs' case lies with the assertion that the city is responsible for enforcement of accessibility standards for Title III, existing facilities. Stated another way, does the city have the legal responsibility to enforce accessibility standards for privately owned and privately funded buildings built before the standards were required for new construction? It is agreed that if a government entity is the owner of the property, such as a school, courthouse, or city office, the act is clear on the issue of enforcement by the particular entity set out in the statute. It is also agreed that new construction of private facilities must comply, and that this will be enforced along with other codes. The point of contention is the role of the city in ensuring that existing private facilities comply with the law. This would include retail establishments, motels, offices, etc., that have been in existence since before the law was in place. In fact, this probably would include the majority of business buildings in the city.

From the stated intent set out above, as well as the definitions, it is clear that the existing Title III buildings anywhere in the state of Kansas must comply with the accessibility standards. The only question is whether the city is responsible for ensuring that existing Title III buildings within the city

limits comply with the law.

Enforcement responsibilities of the Kansas act are covered by K.S.A. §58-1304(a). The first two provisions deal with public schools and government facilities, which are not germane to this case. Enforcement in these areas is assigned to the state board of education and the secretary of administration, respectively. The fourth provision deals with new construction. The statute provides that for new construction, whether a totally new facility or an addition to an existing facility, enforcement falls to "the building inspector or other agency or person designated by the governmental entity in which the facility is located". K.S.A. §58-1304(a)(4). The city acknowledges that it has this responsibility, although Plaintiffs may dispute the effectiveness of the enforcement in particular cases. K.S.A. §58-1304(b) states: "The attorney general of the state of Kansas shall oversee the enforcement of this act."

It is the remaining provision of the enforcement statute that must be interpreted to decide the issue here, i.e., K.S.A. §58-1304(a)(4). In pertinent part it states:

> The responsibility for enforcement of this act shall be as follows: . . . (3) for all existing facilities, and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized, the governmental entity thereof or an agency thereof designated by the governmental entity; . . .

The city has taken the position that this section only deals with local government facilities. Paraphrased, this interpretation could be rewritten as: "For all existing facilities of local government, and design and construction of new and modification of existing facilities of local government". Plaintiffs take the position that this section covers <u>both</u> existing public Title III facilities and local government facilities. This could be paraphrased to be: "For all existing facilities not otherwise covered above and <u>also</u> for all new and modification of existing local government facilities".

In determining the meaning of a statute, certain fundamentals must be kept in mind. First, courts do not make laws. That is a legislative function. If the meaning of a law is not clear from the plain wording of the statute, a court may be called upon to settle the interpretation of the statute. To do this, various rules of construction have developed over the years to assist in determining the meaning of a statute. The appellate courts frequently must decide cases in which the meaning of a statute is in issue. However, the goal in all cases is for the court to determine what the legislature intended by the language in the statute. The court does not pass on the wisdom of a statute or substitute its opinion for that of the legislature.

> When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Martindale v. Tenny, 250 Kan. 621 (1992).
>
> In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law. Todd v. Kelly, 251 Kan. 512 (1992).

In the present case, the court does not find that the statute is ambiguous, i.e. that it is susceptible to more than one potential interpretation. The phrase "for all existing facilities, and the design and construction of all new, additions to and alterations of, any local government facilities where funds of a county, municipality or other political subdivision are utilized" indicates two groups. The first group is all existing facilities. This is not qualified. The second group, separated by ", and", consists of certain local government facilities. The language of this statute is awkward, and it would benefit by rewriting. However, the court finds that the meaning is discernible from the plain language

of the statute.

Even if the meaning were ambiguous, the obvious intent of the legislature would not be met by the city's interpretation. The enforcement of the majority of buildings would not be clearly dealt with by the act.

This action was brought as a mandamus, seeking to compel the city to perform a duty assigned to it by law. In cases where the duty subject to mandamus is clear, case law has allowed a party to be awarded attorney fees. This action also has characteristics of a suit for declaratory and injunctive relief, and arguably that is a more appropriate way of looking at the matter. In any event, the court does not find that the duty of the city was so clear under the act prior to this decision as to require they pay attorney fees. It appears that this is a case of first impression, although the statute in one form or another has been around for nearly twenty years. The enforcement requirement came to the city as what is commonly called an "unfunded mandate" from the state legislature, and indeed ultimately to Congress. The statute is long on responsibility and short on details. Although the attorney general is charged with the duty of "overseeing" the enforcement of this act, the court could find little helpful guidance in the form of regulations or opinions from the attorney general. There are many issues that are left open for Title III existing facilities. It is not clear whether the Kansas act incorporates the ADA concepts of "undue hardship" or "reasonable accommodation" that provide flexibility and might serve to soften the fiscal impact on particular businesses. It is also not clear what administrative steps should be provided to allow for adequate notice and opportunity to be heard by property owners.

The accessibility standards cannot be enforced in a vacuum. There needs to be a governmental process for the orderly implementation of the law. This will require thoughtful action

by the city. They may decide to coordinate effort with other municipalities or perhaps counties to keep costs at a minimum. However, they must take affirmative steps to begin implementing the Title III requirements for existing buildings.

IT IS THEREFORE ORDERED THAT the city with due diligence establish by ordinance or other rule a mechanism for enforcement of accessibility standards pursuant to K.S.A. §58-1304(a)(3).

IT IS FURTHER ORDERED THAT the enforcement procedure contain adequate mechanism for receiving and determining complaints of non-compliance with accessibility standards;

IT IS FURTHER ORDERED THAT the enforcement procedure provide procedural due process for adjudication of claims under the act;

IT IS FURTHER ORDERED THAT the court will retain jurisdiction to monitor and enforce compliance with this order;

IT IS FURTHER ORDERED THAT Plaintiffs' request for attorney fees for proceedings to this point are denied;

IT IS FURTHER ORDERED THAT Plaintiffs are awarded their costs.

IT IS FURTHER ORDERED THAT counsel for Plaintiffs will prepare a Journal Entry in accordance with this decision.

Dated this 21st day of November, 1997.

DISTRICT COURT SEAL ELLIS COUNTY, KANSAS

William J. Madden
District Judge

Copies to: David Calvert
John T. Bird

LINK INC.

Living Independently in Northwest Kansas

2401 E. 13th Street Hays, KS 67601
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Testimony to
Governmental Organization and Elections Committee on HB2814
by
Lou Ann Kibbee
LINK, Inc. (Living Independently in Northwest Kansas)
February 17, 1998

Thank you Chairman Glasscock and Committee members for allowing me to testify today as an opponent of HB2814. My name is Lou Ann Kibbee. I am the Systems Change Coordinator for LINK, Inc.(Living Independently in Northwest Kansas) which is a Center for Independent Living. As an independent living center, we assist people with disabilities in becoming independent and integrating into society as they choose. We are also responsible for advocating for the rights of people with disabilities. Today, I am here not only representing my position at LINK, but I am here as a person with a disability who has experienced repeated discrimination for twenty-one years. I am a plaintiff in the case LINK, Inc., Lou Ann Kibbee, and Brian Atwell vs. City of Hays.

First, I'll briefly describe the background leading up to the case. In February 1994, LINK staff surveyed the Best Western Vagabond Motel and Restaurant in Hays at no cost and provided recommendations for compliance with accessibility guidelines. LINK staff made several attempts to contact this business over the next sixteen months, with no response. In July 1995, I filed a complaint with the Kansas Attorney General's office against this Title III existing facility. The Attorney General's office and the City of Hays have passed the buck back and forth, so enforcement of compliance with K.S.A.58-1301 by this business still hasn't happened.

Filing the lawsuit against the City of Hays was not something myself or Brian Atwell, Director of LINK, did hastily. We felt this was the only way to get accessibility standards enforced on Title III existing facilities. Otherwise, people with disabilities will continue to be discriminated against every day in their communities. People with disabilities have the right to go into Kansas communities for shopping, dining, socializing, and other needs, as any other person.

The decision filed November 21, 1997 by District Judge William Madden ruled that it is the responsibility of the local governmental entity or designated agency to enforce Title III existing facilities. Prior to and since the decision, the City of Hays has stated through the media that the cost of enforcing this ruling would be exorbitant to the cities. The City has said that we, the plaintiffs, expect their staff to be the "ADA police" and survey 1200 businesses in the City of Hays. The cost to businesses, the City also claims, could run into the millions of dollars. I believe these statements are false.

First of all, we do not want cities to serve as "ADA police" or to survey all Title III existing facilities. Those of us involved in the case only asked that cities enforce compliance of a Title III existing facility when there is a complaint filed. Our attorney, Dave Calvert, and myself have both made this clear in our statements to the media. If cities are already complying with their Title II obligations and are already enforcing compliance with Title III for new construction and alterations according to the Kansas Accessibility Standards for Public Buildings and the Americans with Disabilities Act, then enforcement of complaints concerning Title III existing facilities will not be much of an additional cost at all. Building inspection departments should already have the knowledge and experience they need to enforce the guidelines. There is some concern in reference to small communities that do not have building inspection departments. Those communities could contract their duties out, as they probably do to enforce other federal and state building codes.

Secondly, the costs for compliance of Title III existing facilities will not be nearly as high as the City of Hays claims. The City of Hays has reached its goal of making business owners upset and panicked by their exaggerated projections. The fact of the matter is that, in order to comply, Title III existing facilities only have to make modifications to the point that is "readily achievable" and does not cause an "undue burden". The law does not require any business to spend more than it can afford on increasing accessibility.

The City of Hays has stated that it wants K.S.A.58-1304 clarified. In my opinion, after Judge Madden's decision, the City wants the law changed because it just does not <u>want</u> to enforce compliance by Title III existing facilities at all.

From talking with other people in the disability movement in Kansas, I believe that only a small number of complaints have been filed to date with the Attorney General's office on Title III existing facilities. Yet there are many communities in Kansas where most businesses are considered Title III existing facilities. If these facilities do not comply with accessibility standards, then people with disabilities have no options available to them as people without disabilities do. For example, in the City of Hays there are eleven motel/hotel businesses. One of these is newly constructed and is not in compliance. The other ten motels are considered Title III existing facilities, none of which fulfill their "readily achievable" obligations to provide access. So what options for lodging are available in Hays for people with disabilities? This problem will escalate when Fort Hays State University's new Sternberg Museum of Natural History opens next spring. It is estimated that 150,000additional tourists in the first year will visit Hays to enjoy this new

attraction. I think it is safe to say that some of these visitors will have disabilities. The problem is that these individuals are going to have a great deal of difficulty finding accessible lodging.

There are laws in place to prohibit discrimination against people with disabilities. The attorneys for the City of Hays stated during the trial that the plaintiffs were "playing on the sympathies of the courts". They succeeded in offending every person with a disability and our supporters in the courtroom that day. I guarantee you that I am not playing on the sympathy of the courts or anyone else. I don't want sympathy. I, like all people with disabilities, only want equal access and opportunity as people without disabilities do. Not being able to use the restroom when I go out for dinner with my husband and children is not equal access. People with disabilities, their families and friends are potential customers, but not if a business is inaccessible. We are tax paying citizens whose rights are being violated. People with disabilities are integrating into the communities of Kansas every day. Without enforcement of the laws that guarantee our civil rights, true integration will never occur. If HB2814 is passed, enforcement of compliance of complaints involving Title III existing facilities will fall through the cracks.

Thank you very much for your time. If you have questions, I would be glad to answer them at this time.

TESTIMONY FOR HB 2814 **2-17-98**

Thank you for this opportunity to speak with you.
My name is Michelle Campbell. I am from Independent Connection, the Independent Living Center of Salina, Kansas.

I am opposed to HB 2814 because if it is approved, city officials would not have to enforce the accessibility standards under Title III.

I am not asking for city officials to become the ADA police. I just want them to enforce Title III for existing facilities when a complaint has been filed. Existing facilities only have to do what is "readily achievable" and what would not cause an undue burden to them.

In the past and to this present time, I have a good working relationship with city officials of Salina. We have worked together to assist existing facilities to meet Title III accessibility standards. I hope this working relationship will continue.

Again, I am opposed of HB 2814. If this bill gets passed, we will have no local enforcement available for Title III.

Thank you.

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Attachment 8

Testimony to the House Committee on Governmental Organizations & Elections
Regarding House Bill 2814
By Roger Harsh
February 17, 1998

I am Roger Harsh, the Advocacy / Development Specialist with Independence, Inc., a Center for Independent Living serving people with disabilities in Douglas, Jefferson and Franklin counties. I am here today to testify in opposition to House Bill 2814.

Since 1989 Independence, Inc. has had an advocacy group called the Access Task Force. A major part of our activities has been to provide education and technical assistance to existing facilities (privately owned places of public accommodation) to facilitate needed accessibility improvements. The technical assistance we provide is at no cost and our recommendations are consistent with the requirement in the Americans With Disabilities Act (ADA) and the Kansas Architectural Accessibility Act (KAAA: KSA 58-1301 et seq.) that existing facilities remove architectural barriers where it is readily achievable to do so.

The most frequent response has been cooperation, many businesses have followed-through with changes that are readily achievable. Examples of accessibility improvements that have been made in existing facilities appear on the following page. As you know, there are both state and federal tax credits for accessibility that make it easier for businesses to make the needed changes. The state credit has existed since 1978.

Since 1992 the Access Task Force has only filed two complaints against existing facilities. One in 1997 against a local restaurant, after a 1 1/2 year education/advocacy effort to obtain one van accessible parking space and improvements in the restroom. As a result, the owner agreed the changes were readily achievable and made the needed improvements.

In 1998 the task force filed a complaint against a shopping center that had failed to respond to written requests made over a two year period to re-stripe 6 accessible parking spaces according to ADA Accessibility Guidelines (they were too narrow) and install upright, accessible parking signs. As a result, the owner made the changes within three weeks.

From our experience, resolution of complaints concerning lack of access does not involve a lot of time and expense. But the complaint process and local government investigation and involvement is sometimes necessary in order to get the owner to address the issue.

Due to their enforcement of the new construction and alteration requirements in the KAAA, local government already has the knowledge of how to enforce KAAA requirements for existing facilities; it is also the most cost effective and efficient means of enforcement. Being in the same geographic area, it is much easier for local government to respond to a complaint than for the Department of Justice to travel to some city in Kansas to investigate an accessibility

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complaint. During ADA training we have attended, the Department of Justice (DOJ) has stated that many accessibility complaints are not accepted and investigated by DOJ. Within the scope of their jurisdiction, a lack of curb ramps and accessible parking are not high priorities. It makes more sense to accomplish such changes through enforcement at the local level.

We ask that you not pass House Bill 2814 as written, since it would eliminate local government and Attorney General enforcement of the KAAA for existing, privately owned facilities. Please do not begin to erode the important enforcement mechanisms in the Kansas Architectural Accessibility Act. The entire community benefits from accessibility.

Thank you.

Existing Facilities in Lawrence, Kansas Who Have Made Readily Achievable Accessibility Improvements

• Alvin's IGA	Accessible parking (all parking listed includes at least one van accessible space), lower bakery counter, lower & wider check-out counter
• American Family Insurance	Restroom improvements
• Border Bandido	Restroom improvements
• Camera America	Accessible parking and curb ramp
• Checkers Grocery	Accessible parking
• Coastal Mart	Rearranged ice machine to provide an accessible route inside
• Community Mercantile	Accessible signage
• Hillcrest Shopping Center	Accessible parking and additional curb ramps
• Hillcrest Theaters	Accessible parking, reduced force required to open entrance door, wheelchair seating spaces
• Liberty Hall	Film rotation between the upstairs & ground level theaters
• Natural Way Clothing	Portable entrance ramp
• Orchards Corner's	Accessible parking
• Paradise Café	More accessible entrance and restrooms
• Plum Tree Restaurant	Accessible parking
• Sirloin Stockade	Restroom improvements and accessible parking
• KFC Restaurant	Accessible parking, restroom improvements

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