

Approved: 2-16-98
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Janice Hardenburger at 1:30 p.m. on February 12, 1998 in Room 529-S of the Capitol.

All members were present except: Senator Petty

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

Conferee appearing before the committee: Senator Janis Lee
Rhonda Humble, Publisher Gardner News, and Kansas Press Assn.
Chris McKenzie, League of Municipalities
Ed Molitor, Ford County Commissioner
Dean Chestnut, Ford County Engineer
Helen Stephens, Lobbyist, Kansas Society Land Surveyors

Others attending: See attached list

Chairman Hardenburger asked for approval of the minutes of February 10, 1998.

Senator Steineger moved that the minutes of February 10, 1998 be approved, seconded by Senator Huelskamp. Motion carried.

Chairman Hardenburger opened the hearing on SB 556, concerning legal publications, and introduced Senator Lee who made a statement that the bill was introduced at the request of a local newspaper. Her school district chose a Nebraska newspaper to be the official newspaper. Staff advised the Committee that at the present time there are no requirements for counties to be the official paper.

Chairman introduced Rhonda Humble, Publisher of the Gardner News who gave testimony in favor of SB 556. (Attachment#1)

Chairman introduced Chris McKenzie, League of Municipalities, who requested some additional time for the League to study the bill.

Chairman Hardenburger closed the hearing on SB 556 and opened the hearing on SB 562 concerning the resetting of cornerstones. Senator Huelskamp introduced a delegation from Ford County who testified in favor of this bill. First conferee was Ed Molitor, Ford County Commissioner informed the Committee that the bill would require the surveyor to notify the affected governing body and allows the governing body to determine the necessity for resetting the cornerstone or monument. (Attachment#2)

Second Conferee was Dean Chestnut, Ford County Engineer, read testimony which was prepared by Harry L. Hunsley, Retired County Engineer. He testified as a proponent to the bill. (Attachment#3)

The Committee discussion was centered around what was involved in the survey work.

Helen Stephens, lobbyist for the Kansas Society Land Surveyors gave testimony prepared by Michael D. Kelly of the Kansas Society of Land Surveyors stating that resetting a cornerstone or monument whose location has been lost, requires a survey. She further requested for more time to study the bill. (Attachment #4)

Chairman Hardenburger appointed a sub-committee to further study the bill, which will be Chaired by Senator Gooch and includes Senator Huelskamp.

Chairman Hardenburger closed the hearing on SB 562.

Meeting was adjourned at 2:30 p.m.

Next meeting will be at 1:30 p.m. February 16, 1998.



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Testimony on SB 556
Senate Elections and Local Government Committee
Feb. 12, 1998
by Kansas Press Association

Mr. Chairman and members of the committee, I am Rhonda Humble, editor and publisher of the Gardner News. Today I am representing the Kansas Press Association, the trade association of the state's 250 weekly and daily newspapers. I want to thank the committee for this opportunity to testify on Senate Bill 556, concerning the designation of legal publications.

As public policy for an informed electorate and to provide due process, the State of Kansas has provided for the designation of legal publication by cities and counties in order to provide legal notice.

For the most part, the criteria for determining a legal publication are included in KSA 64-101. There are additional provisions in KSA 12-1651. There has been no specific requirement for designating a legal publication for schools boards, although schools often must publish a legal notice in a newspaper of general circulation.

The requirements are inconsistent and as was discovered recently had an oversight that would allow legal notices to be published not just outside the jurisdiction of the governmental entity, but could be published outside the state.

Senators Lee and Umbarger, working with their local newspaper publishers and with the help of the Revisor's staff, have developed a bill that will clarify and provide uniformity to the state's legal publication laws.

Newspaper publishers throughout the state have identified this bill as one of the most critical for the industry.

For example, the bill updates our laws to recognize that the requirement to be entered at the post office as "second" class mailing material should now be "periodical" class mail, which is the term now used by the United States Postal Service.

Most importantly, the bill would require the governing body to designate a publication that serves that community, generally in the county or in the county where a city is located or in the school district.

Elec. & Local Gov.
Date: 2-12-98
Attachment: #1

While every county in Kansas does have a newspaper, some schools boards do not. Provisions are made in the bill, that when a newspaper is not located in a specific jurisdiction, the governing body may select another publication which has a general circulation in the district. However, the newspaper must be published in Kansas.

I have provided as an attachment to my testimony, a mark-up of the bill with a few suggested amendments.

- We are recommending in section (a) that second and third class cities be included in this bill to make the laws uniform. This amendment may require the repeal of 12-1651.

- We are recommending in paragraph (1) that the required time to be published be changed from five to one year, again to make the laws consistent. This was a policy change the Legislature made in 1994 for cities of the second and third class.

- We are recommending throughout that the provisions requiring “printing” in Kansas be deleted. The operative requirement should be “published” in Kansas.

- We are recommending that the requirement for 50% of the circulation be sold to subscribers be deleted. By virtue of the United States Postal Service’s “periodical” class mail, the 50% requirement is met.

- We are also offering the deletion of the language dealing with World War II.

I would be happy to answer any questions, or refer your questions about specific details to our executive director of the Kansas Press Association.

SENATE BILL No. 556

By Senators Lee and Umbarger

2-2

9 AN ACT concerning legal publications; amending K.S.A. 64-101 and re-
10 pealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 64-101 is hereby amended to read as follows: 64-
14 101. (a) The governing body of each city of the first ~~class~~ *SECOND and third* shall designate
15 by resolution a newspaper to be the official city newspaper. Once desig-
16 nated, the newspaper shall be the official city newspaper until such time
17 as the governing body designates a different newspaper.

18 No legal notice, advertisement or publication of any kind required or
19 provided by any of the laws of the state of Kansas, to be published in a
20 newspaper shall have any force or effect ~~as such~~ unless the same is pub- *delete*
21 lished in a newspaper having the following qualifications which :

22 (1) ~~It must be~~ *is* published at least weekly 50 times a year and ~~have~~ *ONE*
23 *has* been so published for at least ~~five~~ *one* year prior to the publication of
24 any official city publication:

25 (2) ~~it must be~~ *is* entered at the post office of publication as ~~second~~ *delete*
26 *periodical class mail matter:*

27 (3) ~~it shall have~~ *has* general paid circulation on a daily, weekly,
28 monthly or yearly basis in the county *in which the city is located* and ~~shall~~
29 *is not be* a trade, religious or fraternal publication; and

30 (4) ~~it must be~~ *is* printed in the state of Kansas and published in the *delete*
31 county *in which the city publishing the official publication or is located.*

32 If there is no newspaper published in the county, ~~(it shall be)~~ *published*
33 ~~shall be printed~~ in Kansas and ~~having~~ *shall have* general paid circulation
34 in the county.

35 (b) The board of county commissioners of each county shall designate
36 by resolution a newspaper to be the official county newspaper. Once
37 designated the newspaper shall be the official county newspaper until
38 such time as the board designates a different newspaper. The newspaper
39 selected for the official publications of a county shall be ~~one which has~~
40 ~~the following qualifications a newspaper which :~~

41 (1) ~~It must be~~ *is* published at least weekly 50 times each year and
42 ~~have~~ *has* been so published for at least one year prior to the publication
43 of any official county publication:

SB 556

1 (2) ~~it must be entered at the post office of publication as second class~~
2 ~~mail matter is entered at the post office in the county of publication as~~
3 ~~periodical class mail matter, which county shall be located in Kansas :~~

4 ~~(3) *has* more than 50% of the circulation must be sold to the sub~~

5 ~~scribers either on a daily, weekly, monthly or yearly basis; and~~ delete

6 (3) ~~(4)~~ it shall have ~~has~~ general paid circulation on a daily, weekly,
7 monthly or yearly basis in the county and ~~shall is~~ not be a trade, religious
8 or fraternal publication; and

9 (4) ~~(5)~~ is ~~printed in the state of Kansas and published in the county pub-~~ delete
10 ~~lishing the official publication. If there is no newspaper published in the~~
11 ~~county, the newspaper shall be printed in Kansas and have general paid~~
12 ~~circulation in the county.~~

13 ~~Nothing in this subsection shall apply to counties in which no news-~~ delete
14 ~~paper has been published the requisite length of time.~~

15 (c) Whenever the board of education of a school district is required
16 to publish a legal notice, advertisement or other publication in a news-
17 paper having general circulation in the school district, such newspaper
18 shall be one which:

19 (1) Is published at least weekly 50 times each year and has been so
20 published for at least one year prior to the publication of any school
21 district publication;

22 (2) is entered at the post office in the school district of publication as
23 periodical class mail matter;

24 (3) ~~has more than 50% of the circulation sold to the subscribers either~~ delete
25 ~~on a daily, weekly, monthly or yearly basis;~~

26 (3) ~~(4)~~ has general paid circulation on a daily, weekly, monthly or yearly
27 basis in the school district and is not a trade, religious or fraternal pub-
28 lication; and

29 (4) ~~(5)~~ is ~~printed in the state of Kansas and published in the school district~~ delete
30 ~~publishing the official publication. If there is no newspaper published in~~
31 ~~the school district, the newspaper shall be printed in Kansas and shall~~ published
32 ~~have general paid circulation in the school district.~~

33 (e) ~~(d)~~ Nothing contained in this section shall invalidate the publi- delete
34 cation in a newspaper which has resumed publication after having sus-
35 pended publication all or part of the time that the United States has been
36 engaged in war with any foreign nation and six months next following the
37 cessation of hostilities if such newspaper resumes publication in good faith
38 under the same ownership as it had when it suspended publication. Noth-
39 ing in this section shall invalidate the publication in a newspaper which
40 has simply changed its name or moved its place of publication from one
41 part of the county to another part, or suspended publication on account
42 of fire, flood, strikes, shortages of materials or other unavoidable accidents
43 for not to exceed 10 weeks within the year last preceding the first pub-

SB 556

1 lication of the legal notice, advertisement or publication. All legal
2 publications heretofore made which otherwise would be valid, that have
3 been made in a newspaper which, on account of flood, fire, strikes, short-
4 ages of materials or other unavoidable accident, has suspended publica-
5 tion for a period of not exceeding 10 weeks, are hereby legalized.

6 Sec. 2. K.S.A. 64-101 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.
9

In 1997 Ford County spent approximately \$35,000.00 for surveying and equipment use expended pursuant to K.S.A. 19-1432. The expenses were incurred without advance notice, input or approval by the Ford County Board of County Commissioners.

The statute in its present form requires the resetting of cornerstones or monuments when the surveyor receives notice pursuant to K.S.A. 19-1430. The surveyor upon receiving notice is required to reset the cornerstones or monuments. The governing body is then required to pay the costs.

The proposed amendment requires the surveyor notify the affected governing body and allows the governing body to determine the necessity for resetting the cornerstone or monument. We believe the governing body expected to pay for the surveying expense should have the right and has the obligation to its tax paying constituency to have a voice in determining the necessity for the survey before the work is performed and the expense incurred.

The purpose of the requested amendment is not to frustrate the preservation of cornerstones and monuments but to assure a thoughtful consideration as to the necessity for the surveying and resulting expense. Use of taxpayer funds is one of the most important responsibilities of any board of county commissioners or township trustees. The amendment simply allows the affected governing board to carry out the public trust of expending taxpayer dollars in a responsible manner.

We propose two amendments to Senate Bill No. 562. In line 15 K.S.A. 19-1432 should read "K.S.A. 19-1430". It is K.S.A. 19-1430

Elec. & Local Gov.

Date: 2-12-98

Attachment: # 2

which requires notice to the county surveyor in certain situations. Secondly, the sentence in lines 29 and 30 which reads, "It shall not be necessary to notify any interested parties," should be deleted. This sentence is inconsistent with the proposed amendments to Senate Bill No. 562 which requires notice to the affected governing body.

This is an important piece of legislation to the taxpayers of Ford County and other counties in this State. We sincerely appreciate this committee's consideration of Senate Bill No. 562 and encourage you to refer it favorably to the floor of the Kansas State Senate.

To Whom It May Concern;

As a Registered Land Surveyor (#532) and a Professional Engineer (#4418) registered in the State of Kansas, my many years as a Public Works Director and private practice have given me the opportunity to observe some of the pitfalls the present surveying laws seem to have.

Our present law indicates that prior to placing any type of asphalt or concrete surface on a county road, the original corner stones must be located and properly monumented. I fully understand the need to properly locate, identify and monument original government corners. This should have been done a century ago; however, in most rural counties this was not the case. What is the overwhelming need to now locate these corners before any road improvements can be made?

Most roads in Western Kansas were originally laid-out and opened in the late 1800's. These roads have been in the same location for a century and will continue to be in the same location, in all likelihood, forever. The roads have been improved over the years and traffic now dictates that a hard surface be installed. In this case, a base has been constructed over the years and all that remains is to install the hard surface.

To locate the original corner, the base must be penetrated anywhere from a couple of feet to a depth of 6 feet. The size of the hole will range from 6' x 6' (in rare cases) to a hole that covers the entire roadway (26') for a distance of 25'. To properly reconstruct this hole back to original condition will require hand operated compaction equipment and the compaction will need to be placed in shallow lifts for the entire area and depth of the hole if the base strength is to be preserved. This requires an average expenditure of around \$750 per hole when labor, equipment and overhead are considered. Our experience has been around 40% recovery of original corners. This means that about 60% of the time, the original corner was not located and additional excavations in the road must be made so the original corner can be re-established. Each of these excavations requires the same effort if the road is to be returned to original condition.

Let us assume that this is a 5 mile project some 20 miles out in the rural area. At least 11 corners must be located. It will take an estimated week to locate these, if we are lucky. Two weeks and additional locations is the norm. So the county has now spent somewhere in the range of \$10,000 to to \$18,000 to dig these locations, which does not include the time and cost of the surveyor. At the conclusion of this work, the county now has a permanent record of the original government corners on file.

What useful immediate purpose has been served that is of benefit to the local taxpayer? In rural areas of Kansas, I find it difficult to believe that even one of these 11 corners will be investigated or required within any ten year period.

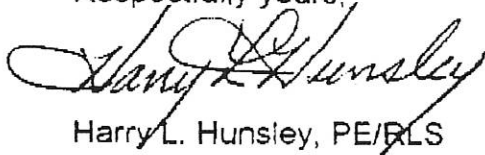
Elec. & Local Gov.
Date: 2-12-98
Attachment: # 3

My contention is the public would be better served when the original government corner is located AS NEEDED and not because some road improvements will be made. Yes, it will be necessary to dig for the corner when it is needed. Yes, it will require the same amount of work and expense. BUT, all 11 corners will probably not be needed at one time and the county will not have to spend all the time and money to find all the corners.

I am sure part of the intent is to eliminate the need to excavate through hard surface roads for corners. From the standpoint of the county highway department, it is no more difficult to dig through the hard surface and the only additional expense is the patching of the hard surface.

It is my opinion that counties should be encouraged to properly locate and document original government corners prior to any construction; however, the final decision should remain with the Board of County Commissioners since they are responsible to the taxpayer for expenditures. Unfortunately, most counties do not have a surveyor on staff so most of the work of relocation and preservation falls to private industry.

Respectfully yours,

A handwritten signature in cursive script that reads "Harry L. Hunsley". The signature is written in black ink and is positioned above the printed name.

Harry L. Hunsley, PE/PLS

11 February 1998

Testimony of Michael D. Kelly, L.S. before the Senate Committee on Elections and Local Governmental

February 12, 1998

The current version of SB 562 raises several issues that should be understood before it's passage.

Definition of the word "reset" as it pertains to cornerstones or monuments

The language in this bill refers to two different situations while, on first glance, appearing to only address one situation. The sentence found in lines 21 to 23, "If the appropriate governing body determines the cornerstone or monument needs to be reset..." refers to the situation described in lines 16 and 17, "...that a cornerstone or monument projects above the usual grade of a roadbed,..." while the sentence found in lines 30 and 31, "if the appropriate governing body determines a cornerstone or monument needs to be reset..." can be construed to pertain to lost corners.

The difference between the two situations is extremely critical when considering the cost to "reset" a cornerstone or monument.

When resetting a cornerstone or monument that projects above the usual grade of a roadbed, the location of the cornerstone is already known. It is a very simple task to "reset" an existing cornerstone or monument below the grade of a roadbed.

The task of resetting a cornerstone or monument whose location has been lost requires a survey. The cost to reset a lost cornerstone or monument can be quite large depending on the complexity of the required survey.

The language of the bill should be changed to refer only to cornerstones or monuments projecting above the usual grade of the roadbed.

Elec. & Local Gov.

Date: 2-12-98

Attachment: # 4

Governing body determining the need for a corner to be reset --- liability

The proposed duty of the governing body to determine the need for a cornerstone or monument to be reset could expose them to unnecessary liability. Landowners needing the property surveyed for title transfers or mortgages must have the government corners in place before the land can be surveyed. If the governing body decides not to reset the cornerstone or monument, then the landowner can sue the governing body for the losses that they could suffer by not having the survey performed.

The governing body should not be placed in the position of appearing to approve the resetting of certain landowner's section corners while not approving others.

Applies only to county surveyor

The statute this bill seeks to alter is found within the "county surveyor" group. Some persons interpret the existing language in K.S.A. 19-1432 as authorization for surveyors in private practice to submit bills to governing bodies for resetting corners. Others interpret the language as pertaining only to the county surveyor.

The following is suggested as an amendment to SB 562: "Nothing in this act shall be construed as prohibiting the resetting of cornerstones or monuments by any land surveyor during the course of a survey paid for by the landowner requesting such."

Thank you for your consideration of these issues.

Michael D. Kelly, L.S.
Legislative Committee Chair, Kansas Society of Land Surveyors

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