

Approved: 3-27-98
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 March 23, 1998 in Room 529-S of the Capitol.

All members were present:

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: Charlie Smithson, Legal Counsel, Kansas Commission on Governmental Standards and Conduct

Others attending: See attached list

Chairman Hardenburger opened the meeting by asking for approval of the minutes for March 16, 17, 18 and 19, 1998.

Senator Vidricksen moved that the minutes be approved as written, seconded by Senator Becker. Motion carried.

Chairman Hardenburger opened hearing on HB 2654 concerning governmental ethics; relating to certain violations.

Charlie Smithson, Legal Counsel, KCGSC gave testimony in favor of the bill. (Attachment #1)

The Committee discussed the difference between specific intent and general intent as it applied to violations of the law.

Chairman Hardenburger closed the hearing on HB 2654.

Senator Gooch moved that Section 5 be deleted from HB 2654, seconded by Senator Huelskamp. Motion carried.

Senator Praeger moved that HB 2654 be passed out favorably as amended, seconded by Senator Steineger. Motion carried.

Chairman Becker reported that the sub-committee agreed to accept the balloon as amended submitted by the City of Topeka on HB 2729 concerning cities; relating to the abatement of certain nuisances. (Attachment #2)

Senator Becker moved to adopt the balloon on HB 2729, seconded by Senator Gooch. Motion carried.

Senator Becker moved that HB 2729 be passed out favorably with amendments, Seconded by Senator Gooch. Motion carried.

Meeting was adjourned at 2:05 p.m.

Next meeting will be at 1:30 p.m. March 24, 1998.

**KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT****TESTIMONY BEFORE SENATE COMMITTEE ON ELECTIONS
IN SUPPORT OF HB 2654****By W. Charles Smithson, Legal Counsel**

HB 2654 is a bill that encompasses three of the Commission's recommendations concerning the governmental ethics laws. However, the bill was introduced as a "House Bill". Therefore, there is some duplication of other bills that will be explained below. Since the bill does incorporate three Commission recommendations, the Commission is in favor of the bill.

In order to prove a violation of law, it is necessary to show "intent" on the part of the actor. Section 3 amends K.S.A. 46-277 by changing violations of the governmental ethics laws from "specific intent" to "general intent". General intent requires an intent to do a bad act. In addition, the actor's conduct creates an unreasonable risk of harm plus a subjective awareness of the risk. Specific intent requires a bad act plus an actual subjective intent to cause the proscribed result.

Section 4 is the same as SB 455, which the Senate passed out of its chamber on February 24, 1998, by a vote of 40-0.

Section 5 is the same as SB 453 which did not get passed out of this committee.

Section 3 is important because it is extremely difficult for the Commission to enforce the ethics laws by having to show a specific intent. While ignorance of the law is not an excuse, mistake of fact and mistake of law may be raised as a defense to a specific intent violation. A mistake of a specific intent violation does not have to be reasonable. In addition, it is often difficult to prove what is "in someone's mind".

Elec. & Local Gov.
Date: 3-23-98
Attachment: #1

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LEGISLATIVE TESTIMONY

TO: Senator Hardenburger and Members of the Senate Elections and Local Government Committee
FROM: Jim Kaup, on behalf of the City of Topeka
RE: **HB 2729; Abatement of Nuisances by Cities -- City of Topeka Proposed Amendments**
DATE: March 16, 1998

HB 2729 amends two statutes used by cities in the abatement of nuisances. The amendments relate to the manner by which cities are required to provide notice to the affected property owners of (1) the existence of a nuisance condition on their property, and (2) the amount of the costs incurred by the city in abating the nuisance.

The City of Topeka requested introduction of HB 2729 in order to reduce the costs of such notice. In the course of receiving favorable House action on HB 2729 some confusion occurred on the House floor which the City would like to clear up by means of the attached balloon amendments.

The following paragraphs explain the situation:

- (1) Current Law. K.S.A. 12-1617e requires a city to provide notice of the existence of a nuisance by restricted mail or by personal service. The statute goes on to provide that if the property owner has not abated the nuisance, as directed in the notice of violation, the city may so abate and then assess the costs incurred by the city against the property. Supp. 12-1617f is a comparable statute relating only to the abatement of weed nuisances. This statute has similar restricted mail notice requirements.

- (2) HB 2729, as requested for introduction by the City. Rather than restricted mail notice, under either statute, first class mail notification would be allowed. Under HB 2729, as introduced, this first class mail notice would apply both to the initial notice of a nuisance violation and to the notification of the costs of abatement which could be assessed against the property.
- (3) HB 2729 as passed by the House with floor amendments. On February 19 the House passed HB 2729 with Committee of the Whole amendments. Those amendments were intended to substitute the current law's restricted mail notice to certified mail notice, rather than the first class mail notice as requested by the City and as passed out of the House Committee. In the course of floor debate in the House, it was represented that the certified mail notice requirement would be placed in the bill in all instances where the House Committee had recommended changing restricted mail to first class mail notice.

However, in two places in the bill, once under K.S.A. 12-1617e and once under Supp. 12-1617f, the wording as to certified mail notice was not added, and the reference to first class mail notice remains.

- (4) While the bill that has passed the House is very close to what the City originally requested, we cannot come before the Legislature and take advantage of a misunderstanding on the House floor. We offer the attached balloon amendments to page 1, line 35 and page 2, line 39 to make HB 2729 consistent with our understanding as to what the House believed it had passed on February 19. In short, HB 2729 as amended by the Topeka amendments would require cities to give notice by certified mail or personal service when notifying a property owner as to the existence of a nuisance condition and would require certified mail notice of property owners as to the cost incurred by the city in abating the nuisance and advising the property owner that such costs will be assessed against the property if not paid by the property owner.

HOUSE BILL No. 2729

By Committee on Governmental Organization and Elections

1-27

10 AN ACT concerning cities; relating to the abatement of certain nuisances;
11 amending K.S.A. 12-1617e and K.S.A. 1997 Supp. 12-1617f and re-
12 pealing the existing sections.

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

15 Section 1. K.S.A. 12-1617e is hereby amended to read as follows: 12-
16 1617e. (a) The governing body of any city shall have the power to have
17 removed or abated from any lot or parcel of ground within the city any
18 and all nuisances, including rank grass, weeds or other vegetation and
19 shall have the power to cause to be drained any pond or ponds of water,
20 at the cost and expense of the owner of the property on which the nui-
21 sance is located, whenever the city, county or joint board of health or
22 other agency as may be designated by the governing body of the city files
23 with the clerk of such city its statement in writing that such nuisance,
24 rank vegetation, or pond of water, describing the same and where located,
25 is a menace and dangerous to the health of the inhabitants of the city, or
26 of any neighborhood, family or resident of the city. The governing body
27 of the city, by resolution, also may make such determination.

28 The city clerk shall issue notice requiring the owner or agent of the
29 owner of the premises to remove and abate from the premises the thing
30 or things therein described as a nuisance within a time, not exceeding 10
31 days, to be specified in the notice. The notice shall state that before the
32 expiration of the waiting period, the recipient thereof may request a hear-
33 ing before the governing body or its designated representative. The notice
34 shall be served on the owner or agent of such property by ~~restricted mail~~
35 ~~first class mail, postage prepaid, or by personal service,~~ or if the same is
36 unoccupied and the owner is a nonresident, then by mailing a notice by
37 ~~restricted mail first class mail, postage prepaid~~ [certified mail, return
38 receipt requested], to the last known address of the owner. If the owner
39 or agent fails to comply with the requirement of the notice for a period
40 longer than that named in the notice, then the city shall proceed to have
41 the things described in the notice removed and abated from the lot or
42 parcel of ground. The city shall give notice to the owner or agent by
43 ~~restricted mail first class mail, postage prepaid~~ [certified mail, return

Amendments proposed by the City of Topeka
to Senate Committee on Elections and Local
Government, March 12, 1998

Intent of amendments is to make HB 2729
consistent with what House believed it passed
on February 19.

certified mail, return receipt requested,

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1 receipt requested], of the total cost of such abatement or removal in-
 2 curred by the city. Such notice also shall state that payment of such cost
 3 is due and payable within 30 days following receipt of such notice. The
 4 city also may recover the cost of providing notice, including any postage,
 5 required by this section. If the cost of such removal or abatement and
 6 notice is not paid within the thirty-day period, the cost shall be collected
 7 in the manner provided by K.S.A. 12-1,115, and amendments thereto, or
 8 shall be assessed and charged against the lot or parcel of ground on which
 9 the nuisance was located. If the cost is to be assessed, the city clerk, at
 10 the time of certifying other city taxes to the county clerk, shall certify the
 11 ~~aforsaid~~ such costs, and the county clerk shall extend the same on the
 12 tax roll of the county against the lot or parcel of ground, and it shall be
 13 collected by the county treasurer and paid to the city as other city taxes
 14 are collected and paid. The city may pursue collection both by levying a
 15 special assessment and in the manner provided by K.S.A. 12-1,115, and
 16 amendments thereto, but only until the full cost and any applicable in-
 17 terest has been paid in full.

18 (b) Any city may remove and abate from property other than public
 19 property or property open to use by the public a motor vehicle deter-
 20 mined to be a nuisance. Disposition of such vehicle shall be in compliance
 21 with the procedures for impoundment, notice and public auction pro-
 22 vided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amend-
 23 ments thereto. Following any sale by public auction of a vehicle deter-
 24 mined to be a nuisance, the purchaser may file proof thereof with the
 25 division of vehicles, and the division shall issue a certificate of title to the
 26 purchaser of such motor vehicle. If a public auction is conducted, but no
 27 responsible bid received, the city may file proof thereof with the division
 28 of vehicles, and the division shall issue a certificate of title of such motor
 29 vehicle to the city. Any person whose motor vehicle has been disposed of
 30 pursuant to this subsection shall be eligible for a refund of the tax imposed
 31 pursuant to K.S.A. 79-5101 *et seq.*, and amendments thereto. The amount
 32 of such refund shall be determined in the manner provided by K.S.A. 79-
 33 5107, and amendments thereto.

34 Sec. 2. K.S.A. 1997 Supp. 12-1617f is hereby amended to read as
 35 follows: 12-1617f. (a) The governing body of any city is hereby authorized
 36 to provide for and require the cutting or destruction of all weeds on lots
 37 or pieces of land within the city. Except as provided by subsection (b),
 38 the city clerk shall issue a notice to the owner, occupant or agent by
 39 ~~restricted mail first class mail, postage prepaid,~~ or by personal service to
 40 cut or destroy such weeds. [If the property is unoccupied and the
 41 owner is a nonresident, such notice shall be sent by certified mail,
 42 return receipt requested, to the last known address of the owner.]
 43 The notice shall state that before the expiration of the waiting period

certified mail, return receipt requested,

provided herein the recipient thereof may request a hearing before the governing body or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds, after five days' notice by the city clerk, or in cases where the owner is unknown or is a nonresident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city paper, the city shall cut or destroy such weeds and shall keep an account of the cost of same and report to the city clerk. Except as provided by subsection (b), the city shall give notice to the owner, occupant or agent by ~~restricted mail first class mail, postage prepaid,~~ **[certified mail, return receipt requested,]** of the total cost of such cutting or removal incurred by the city. The city also may recover the cost of providing notice, including postage, required by this section. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost of such removal or abatement is not paid within the thirty-day period, the city may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in K.S.A. 12-1617e, and amendments thereto, or the city may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(b) In lieu of giving notice as provided by subsection (a), a city may give notice as provided by this subsection. The governing body shall adopt an ordinance which states its weed removal policy and notification procedure. Such procedure shall provide for a minimum one-time yearly written notification by mail or personal service to the owner, occupant or agent. Such notice shall include the same information required by subsection (a). In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds.

If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this section.

Sec. 3. K.S.A. 12-1617e and K.S.A. 1997 Supp. 12-1617f are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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