

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Chairman Carlos Mayans at 3:30 p.m. on January 26, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. John Toplikar - excused

Committee staff present: Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: Rep. Tom Sloan
Don Moler, League of Kansas Municipalities

Others attending: See Guest List (Attachment 1)

The minutes of January 19, 1999 were distributed and approved.

Chairman Mayans introduced Rep. Tom Sloan who requested that the committee introduce legislation to amend K.S.A. 80-104, 80-105 and 80-301 to allow townships the right to declare eminent domain in certain instances. He described the situation in Lecompton where the township has found it impossible to acquire land to expand or build new facilities because the landowners refuse to sell needed land. After discussion, upon motion of Rep. Shriver, seconded by Rep. Horst, the committee approved introduction of the bill as requested. The motion carried.

Don Moler, General Counsel for the League of Kansas Municipalities, requested the committee to introduce legislation to clarify K.S.A. 12-741 et seq. concerning the voting rights of a mayor in a mayor/council city. (See testimony, Attachment 2.) After discussion, on motion of Rep. O'Connor, seconded by Rep. Horst, the committee approved introduction of the legislation.

Mike Heim, Legislative Research Department, presented a briefing on the recent interim study concerning city/county consolidation. He distributed a review of the report on *City-County Consolidation* (Attachment 3); the Special Committee on Local Government report on *City-County Consolidation* (Attachment 4); and a copy of the resulting proposed legislation (**SB No. 7** - city-county consolidation) with annotated comments on the facets of the bill (see Attachment 5). Theresa Kiernan, Revisor of Statutes Office, discussed **SB No. 7** in detail. Extensive discussion on the bill was held and no conclusions were made on its merits. The Chairman indicated the Senate Bill is in process with no assurance as to its outcome in the Senate.

Chairman Mayans indicated that the following bills have been assigned to the committee: **HB 2043** (Rural water districts; prohibiting certain charges); **HB 2063** (Retailers' sales tax; resolving statutory conflict); **HB 2064** (Powers of board of county commissioners; resolving statutory conflicts); and **HB 2073** (Cities and counties; storm water drainage improvements). He stated that as bills are acted upon, Vice Chairman O'Connor and Rep. Gilbert will assist in writing bill briefs; and fiscal notes will be copied for all committee members as they are received.

The meeting was adjourned at 4:45 p.m.

The next meeting is scheduled for February 2, 1999.



**League
of Kansas
Municipalities**

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LEGISLATIVE TESTIMONY

TO: House Local Government Committee
FROM: Don Moler, General Counsel
RE: Request for Bill Introduction concerning
State Zoning and Planning Law
DATE: January 26, 1999

First I would like to thank the Committee for allowing the League to request the introduction of legislation which will clarify provisions of the state planning and zoning law found at K.S.A. 12-741 *et seq.* Since the act became effective on January 1, 1992, city officials have contacted the League concerning the confusion raised in five specific places in the act where more than a majority vote of the governing body is required to take an action.

The confusion involves two matters. The first is whether the mayor, in a mayor/council city, counts towards the number of votes necessary to achieve a 2/3 or 3/4 vote of the governing body. The second question involves whether the mayor has an original vote on the governing body in these special instances. As we understand it, some cities count the mayor and allow the mayor an original vote, and some cities do not count the mayor nor do they allow the mayor to vote.

In an effort to clarify this very confusing situation, the League is suggesting the following language in which the answers to the above questions are resolved so that there will be no confusion when cities use the planning and zoning law of the State of Kansas. The language is based in large part on the powers of the mayor when voting on an ordinary ordinance as provided in K.S.A. 12-3002. We therefore suggest the following language be added to the statute:

Proposed new section in K.S.A. 12-741, *et seq.*

Whenever more than a majority vote of the governing body is required to take action under this act, the number of votes required to act shall be based on the total number of councilmembers-elect or commissioners-elect: Provided, that in such cases in council cities where the number of favorable votes is one less than required, the mayor shall have the power to cast the deciding vote in favor of the proposed action.

Once again I would like to thank the Committee for the opportunity to appear before you today and offer this proposal for a bill to be introduced by the committee.

HOUSE LOCAL GOVERNMENT
Attachment 2
1-26-99

April 28, 1998

**Unified Government of
Wyandotte County/Kansas City, Kansas**

The 1996 Legislature enacted S.B. 464 which required the Governor to appoint a five-member Consolidation Study Commission for Kansas City, Kansas and Wyandotte County. The Commission was appointed, a study was made, and a consolidation plan was submitted to voters on April 1, 1997. Voters approved the consolidation plan and recently the Kansas Supreme Court upheld the constitutionality of most of the provisions of the 1996 law. Two relatively minor provisions of the law, however, were found to be unconstitutional and were severed by the court. The case represents the first time a Kansas appellate court has interpreted the "urban areas" provision in Article 2, Section 17 of the *Kansas Constitution*. The following is a brief discussion of the consolidation law, the consolidation plan, and the Kansas Supreme Court decision.

1996 City/County Consolidation Legislation

1996 S.B. 464, codified at K.S.A. 12-340 *et seq.*, provided that the Governor shall appoint a five-member Consolidation Study Commission for Kansas City, Kansas and Wyandotte County. The Governor was to appoint members which include persons with experience in accounting, business, management, municipal finance, law, education, political science, or public administration. No elected official or full-time paid employee of the cities of Bonner Springs, Edwardsville, Lake Quivira, or Kansas City, or Wyandotte County nor any person appointed to fill a vacancy in an elected office of those cities or county could serve on the Commission. No more than three members could be from the same political party. The Commission was to make a determination whether the election for the consolidated city-county shall be partisan or nonpartisan. The Governor also was to appoint an executive director of the Commission who shall receive compensation established by the Governor, within the limits of appropriations.

The Consolidation Study Commission was to prepare and adopt a plan addressing the consolidation of the City of Kansas City, Kansas, and Wyandotte County or certain offices, functions, services, and operations. The Commission was required to conduct studies, hold public hearings, and was given subpoena powers.

The Commission was required to prepare a preliminary plan on or before November 29, 1996, addressing the consolidation of the city and county and to hold at least one public hearing to obtain citizen views concerning the proposed plan. The Commission was required to submit its final plan to the Governor and Legislature on or before January 13, 1997. Unless the Legislature, by concurrent resolution adopted on or before February 12, 1997, rejected the plan, the plan was required to be submitted to the qualified electors of the county at the school district general election on April 1, 1997.

The law provides that if a plan was approved by voters providing for the consolidation of the city and county, Wyandotte County then was to be designated an urban area under Section 17 of Article 2 of the *Kansas Constitution*. See K.S.A. 12-345(b). The consolidated city-county was to be subject to the Kansas cash-basis and budget laws. The limitation on bonded indebtedness was to be set at 30 percent of the assessed value of all tangible taxable property within the county, but certain bonds were to be excluded in the computation of the total bonded indebtedness.

The territory of the consolidated city-county was to include all of the territory of the county, when acting as a county and all territory of the county, except the territory of the cities of Bonner Springs, Edwardsville, and Lake Quivira, and the unincorporated area of the county when acting as a city. See K.S.A. 12-345(h). The "voting area" for purposes of Section 1 of Article 5 of the *Kansas Constitution* for the election of the governing body of the consolidated city-county was to include all the territory within Wyandotte County. The consolidated city-county is prohibited from annexing territory located outside the county. The governing body of a consolidated city-county may not initiate annexation of land but may annex land upon petition by owners of any land.

The consolidated city-county is designated a county with statutory home rule powers of counties when acting in that capacity and is eligible for the distribution of any state or federal government funds, governed by a body of county commissioners. See K.S.A. 12-345(l). In addition, the city-county is considered a city of the first class when transacting city business and is empowered to exercise constitutional home rule powers of cities. The governing body of the consolidated entity may create special service districts and levy taxes for services provided in these districts. Changes in the form of government are subject to initiative and referendum under K.S.A. 12-3013 *et seq.*, the city initiative law.

General Information Regarding Kansas City, Kansas and Wyandotte County

Wyandotte County is comprised of 155.7 square miles and has a 1996 estimated population of 153,427. The county is the smallest geographically but has the fourth largest county population in the State of Kansas.

The county includes four incorporated municipalities, *i.e.*, Kansas City, Edwardsville, Bonner Springs, and Lake Quivira, and a small unincorporated area of 2.7 square miles, the Loring area, which is south of Bonner Springs.

Kansas City is a city of the first class, comprised of 127.85 square miles, and has an estimated population of 142,654. The city is the second largest city in terms of population and the largest city in Kansas in land area, since approximately 82.1 percent of the county is within the geographic boundaries of the city. Bonner Springs is a city of the second class and its boundaries extend into Wyandotte and Johnson Counties. Its estimated population is 6,541, with 6,538 persons residing in Wyandotte County. Bonner Springs' area encompasses 15.8 square miles, with 15.5 square miles in Wyandotte County. Edwardsville is a city of the third class with a 1996 estimated population of 4,097. It covers 9.2 square miles. Lake Quivira is a city of the third class with boundaries extending into Wyandotte and Johnson Counties. Its estimated population is 1,013, of which approximately 40 live in Wyandotte County. It covers 1.3 square miles, with 0.3 square miles in Wyandotte County. The unincorporated Loring area of the county encompasses 2.7 square miles. Its estimated population is 95.

A 1991 annexation of the Piper area by Kansas City prompted certain mergers of organizations and consolidation of functions between Kansas City, Kansas, and Wyandotte County. The Sheriff's deputy patrol, the county road and bridge repair program, and the county zoning function were eliminated. The Joint City-County Board of Health was eliminated and all responsibilities and facilities were transferred to the county. The city transferred all jail responsibilities to the county, by interlocal agreement. Solid waste planning vested totally in the city by interlocal agreement for countywide purposes. The city acquired all remaining water districts in the county and the county sewer district was eliminated.

The Kansas City, Kansas/Wyandotte County Consolidation Plan

A Consolidation Study Report (the "Plan") dated January 13, 1997, was prepared and adopted by the Consolidation Study Commission, appointed by the Governor. This consolidation Plan was a result of over 35 public meetings, the development of a preliminary plan, several additional public meetings, and finally, the development of the report. The Plan was submitted to the Kansas Governor and Legislature on January 13, 1997. Neither the Governor nor the Kansas Legislature acted in any manner on the Plan. The Plan was submitted to voters of Wyandotte County (which included city residents) at the April 1, 1997 election and was approved by nearly 60 percent of the electorate.

The Plan provides for a new consolidated form of government, to be known as the Unified Government of Wyandotte County/Kansas City, Kansas. The existing governments of the city and county are replaced by a governing body composed of a mayor/chief executive and a ten-member unified board of commissioners. Eight Commission members are nominated and elected in eight newly created districts. Two countywide Commission members are nominated from two newly created districts comprised of the four northernmost and four southernmost districts; these Commission members then are elected at-large. The mayor/chief executive has veto power which can be overridden by a two-thirds majority of the unified board of commissioners.

The Plan provides for the appointment of a county administrator by the mayor/chief executive with the consent of the unified board of commissioners. The county administrator is directly responsible for the daily functions of the unified government. The Plan provides for the establishment of an ethics commission, the members to be appointed by the administrative judge of the district court with consent of the sitting judges of the county and appointment of a legislative auditor also appointed by the district court sitting judges.

On August 4, 1997, the governing body of Kansas City, Kansas passed Charter Ordinance No. 114 repealing provisions of Charter Ordinance Nos. 84 and 90, inconsistent with the recommendations of the Commission and establishing procedures for passage of ordinances by the unified government. Charter Ordinance No. 114 was published August 17, 1997, and thus, was not effective until October 24, 1997, 61 days after the final publication thereof, pursuant to the City Home Rule Amendment in Article 12, §5 of the *Kansas Constitution*.

Under the Plan, the elected offices of county clerk, county treasurer, county surveyor, and the public administrator (an elected position unique to Wyandotte County, dealing with probate matters) became appointed positions. All functions performed by these officials will be retained in the newly appointed positions. The county administrator has established positions of unified clerk and unified treasurer in order to consolidate the duties and responsibilities of the

prior county and city clerks and the prior county and city treasurers. The position of county surveyor has been designated as an administrative position to be appointed by the county administrator. The public administrator position and functions were to be transferred to the Judicial Branch under the Plan, with the district court judges determining how such functions will be carried out.

The Plan provides that several offices be retained for countywide elections: sheriff, district attorney, and the register of deeds. The district attorney position is retained as it presently exists. Elections for both the sheriff's position and the register of deeds position are to be nonpartisan and held during the regularly scheduled April election period; prior to consolidation, partisan elections were held for these positions during the regularly scheduled November election period. The terms of office of these two offices will continue to be four years; the terms of office of the present occupants were extended until the election period of April, 2001, pursuant to the Plan. The unified government has merged some city and county departments, including the parks departments, clerks departments, legal departments, and personnel departments, and merged functions of many other departments.

The Kansas Supreme Court Decision

The Kansas Supreme Court in *State ex rel Tomasic v. Unified Government of Wyandotte County/Kansas City, Kansas*, __ Kan __, P.2d __ (1998), decided on March 6, held that most provisions of the 1996 legislation and the consolidation plan were constitutional and that two provisions found unconstitutional could be severed and that the consolidated city/county was properly and legally constituted.

The Court began with a general review of certain basic rules regarding states and their local governments and other basic rules regarding statutory enactments. The Court noted that it is a fundamental rule that state constitutions limit rather than confer powers on state legislatures. The constitutionality of a statute is presumed and all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution. In determining constitutionality, it is the Court's duty to uphold a statute under attack rather than defeat it, and if there is any reasonable way to construe the statute as constitutionally valid, that should be done. The Court then held that the power to consolidate the government of a city and a county is a legislative power.

Delegation of Legislative Power Issues—Article 2, Section 1

Article 2, Section 1 of the *Kansas Constitution* provides: "The legislative power of this state shall be vested in a house of representatives and a senate." Legislative power is the power to make, amend, or repeal laws. Executive power is the power to enforce the law, and judicial power is the power to interpret and apply the law to actual controversy. Courts permit the Legislature to delegate certain powers to administrative agencies. However, the delegation of a power, such as consolidating the governments of a city and a county, to a private group, as opposed to an administrative agency, is improper. Further, when the Legislature delegates power to an administrative agency it must include sufficient standards to guide the exercise of this power.

The Court held that the Consolidation Study Commission was a public administrative agency, created by statute, to which the Legislature properly delegated power. The Commission

was created by the Legislature to do as the Legislature ordered. It was organized for the exclusive legislative purpose of preparing a Plan to consolidate the two governments, with its powers prescribed by statute. It did not exist prior to or independent of legislative authorization. The Court noted the Commission may not have had full accountability to the executive branch, the legislative branch, or to the voters, but it did have some. The Governor had the power, under the Act, to appoint the members of the Commission and the implied power to remove such members. The Legislature could have passed a bill disbanding the Commission. The state provided funds to the Commission, and the Commission was under an implied duty not to misuse these funds. More importantly, the Wyandotte County voters had the opportunity to approve or disapprove of the Plan. The Court said that clearly the Commission was accountable to more than just its own organization and had a connection with other branches of government.

A second, related issue dealt with the argument that there were insufficient standards provided to the Commission regarding the delegation of legislative power. If the Legislature has included specific standards in a delegation, then it has already enacted the law and it is simply delegating the administrative power to administer the law, based on the standards included in the delegation. On the other hand, if the Legislature has not included specific standards within a delegation, then the Legislature has delegated the legislative power to make the law. Such delegation is improper without constitutional authorization.

The district attorney argued that the Act contained only two stated factors to guide the Commission in the exercise of its delegated power. These factors were found in K.S.A. 12-343 and required the Commission to consider, in making a consolidation recommendation:

- (1) . . . the efficiency and effectiveness of the administrative operations of the city and county [and]
- (2) . . . the costs and benefits of consolidating the city and county or certain city and county offices, functions, services and operations.

The Court ruled that standards may be implied from the statutory purpose of the law in question. The Court observed that the modern trend required less detailed standards and guidance to the administrative agencies in order to facilitate the administration of laws in areas of complex social and economic problems. The Court recognized that it was dealing with a complex area of law involving social and economic issues. The Legislature provided for an independent public body (the Commission) to study the issue of consolidation, provided funds for a Commission staff, and gave sufficient power to the Commission to study, draft, and redraft a plan when it delegated the power at issue to the Commission. The Legislature directed the Commission, as an administrative agency, to utilize administrative power and "fill in the details" within the definite outline set forth in the Act. The Court concluded that the Act was not an unconstitutional delegation of legislative power to an administrative agency. It found that the Legislature had included a number of specific standards in addition to those listed by the district attorney.

The Court also rejected the related argument made by the district attorney that the Legislature had unconstitutionally delegated its legislative power—the power to decide if a law will be effective—to the voters of Wyandotte County and unconstitutionally destroyed the state's republican form of government by this delegation.

Enacting Clause Issue—Article 2, Section 20 Violation Alleged

Article 2, Section 20 of the *Kansas Constitution* provides: "The enacting clause of all bills shall be 'Be it enacted by the Legislature of the State of Kansas:' *No law shall be enacted except by bill.*" Article 2, Section 20 of the *Kansas Constitution* is a restriction upon the Legislature's power to make a new law except in the manner prescribed.

The district attorney argued that upon the effective date of the Plan, several current statutory requirements were automatically modified, although the modifications were not directly considered by the Legislature. For instance, at the time that the Plan became effective, K.S.A. 19-301 provided that a county clerk shall be *elected* in each county. K.S.A. 19-501 provided that a county treasurer shall be *elected* in each county. K.S.A. 19-3a01 provided that there shall be *elected* in Wyandotte County a public administrator. K.S.A. 19-1401 provided that there shall be *elected* in Wyandotte County a county surveyor. All of these statutes had previously been enacted in response to a constitutional mandate which provides that the Legislature "shall provide for such county and township officers as may be necessary." (Art. 9, Section 2) However, once the Plan was approved by voters, it converted the Wyandotte County elective offices of county clerk, county treasurer, public administrator, and county surveyor to appointive positions in the Unified Government. This was done without formal amendment to the above-cited statutes. The district attorney argued that such statutory amendments were blatantly unconstitutional because they were never directly considered by the Legislature or approved by the Governor in the form of a bill.

The Court disagreed and held that the Act did not violate Article 2, Section 20 of the *Kansas Constitution* for the failure to include such a provision. The Court said the Act, which authorizes the proposal and adoption of local legislation without first requiring local legislation to be presented to the Legislature in the form of a bill, was similar to several other state laws which have authorized the adoption of "local options."

The Court said the Act did not specifically repeal or amend any prior law. Thus, all prior laws still apply to the Unified Government, unless the prior laws conflict with the Act or the Plan. If such conflict occurs, then the Plan's provisions, as authorized in the Act, prevail because the Act is the more specific and more recent statute.

Urban Areas Issues—Article 2, Section 17

Article 2, Section 17 states: "All laws of a general nature shall have a uniform operation throughout the state: *Provided*, The Legislature may designate areas in counties that have become urban in character as 'urban areas' and enact special laws giving to any one or more of such counties or urban areas such powers of local government and consolidation of local government as the Legislature may deem proper."

K.S.A. 12-345(b) provides that Wyandotte County is designated an urban area as authorized under the provisions of Article 2, Section 17 of the *Kansas Constitution* for the purpose of granting to the county and urban area powers of local government and consolidation of local government. The Act is a law of a general nature but does not have a uniform operation throughout the state. Thus, the Legislature enacted 12-345(b), declaring Wyandotte County to be an urban area, in order to make the Act fit within the proviso of Article 2, Section 17 and avoid its prohibition against nonuniform operation of laws of a general nature.

However, the district attorney argued that the "urban areas" proviso in Article 2, Section 17 did not apply to the Act for the following reasons. First, under Article 2, Section 17, the Legislature may designate areas in counties as urban areas. In the Act, however, the Legislature designated *all* of Wyandotte County as an urban area, rather than designating an area *in* the county as an urban area. Arguing that since the "urban areas" proviso does not apply to the Act, the district attorney asserted that the Act was improper under Article 2, Section 17 because it was a law of a general nature which did not have a uniform operation throughout the state. The Court rejected this argument saying that it made no sense.

Next, the district attorney claimed that the "urban areas" proviso did not apply to the Act because once the Legislature had designated such an area it then may properly enact special laws to grant the urban area the powers of local government. According to the district attorney, this type of grant of power was intended to give urban areas in a county the ability to exercise the power of local government just as if it were an incorporated city, because it is "urban" in character. The district attorney claimed, however, that there was no need for the Legislature to enact a special law granting the "urban area" at issue—Wyandotte County—the power of local government. Since the entirety of the county, but for 2.7 square miles, was already made up of cities. The Court rejected this argument saying the Legislature has never been required to have a need for a law before adopting a law.

Finally, the district attorney argued that under Article 2, Section 17, once the Legislature has delegated an area in a county as an "urban area," then it may properly enact special laws to grant one or more such counties or urban areas the powers of local government and *consolidation of local government*. According to the district attorney, this constitutional provision is intended to permit the Legislature, in a special law, to give two counties or two designated urban areas within a county the power of local government and the power to consolidate their local governments. The district attorney claimed, however, that the Article 2, Section 17 proviso did not authorize the Legislature to enact a special law which provides for the consolidation of a county or urban area and a *city*, which already has the power of local government independent of Article 2, Section 17. According to the district attorney, the Legislature was attempting to allow consolidation of Wyandotte County and Kansas City by a special law, which was improper under Article 2, Section 17, because it requires all laws of a general nature to have a uniform operation throughout the state.

The Court framed the issue as follows: does the proviso create an exemption from the uniformity requirement for special legislation which grants the power for local government consolidation of an urban area/county and a city, or only create an exemption for legislation which grants the power for local government consolidation of two urban area/counties. The Court noted that this was a difficult question because neither the language of the proviso nor the cases analyzing it give any real clue as to the purpose of the proviso regarding this issue. The Court, however, noted that statutes are to be presumed constitutional. Further, the *Kansas Constitution* only prohibits improper legislation; it does not authorize the Legislature to enact laws. Unless the *Kansas Constitution* specifically prohibits legislation, it is allowed. The Court said that in Article 2, Section 17, the proviso does not specifically state that it only applies to special legislation which grants the power of local government consolidation to two urban area/counties, as opposed to one urban area/county and one city.

The Court reasoned that the purpose of allowing special legislation granting consolidation powers is to prevent duplicative services and functions by more than one local government. This purpose is served whether the local governments of two urban areas are consolidated or the local governments of one urban area and one city are consolidated. The Court held that the

proviso creates an exemption from the uniformity requirement for special legislation which grants the power for local government consolidation of an urban area/county and a city.

In summary, the Court held that the Article 2, Section 17 proviso applies to the Act because the Act is special law which gives to one urban area the power to consolidate its local government with a city's local government, as the Legislature deemed proper. Since the proviso applies to the Act, the proviso exempts the Act from the uniformity requirement in Article 2, Section 17. Thus, even though the Act is a law of a general nature that does not have a geographically uniform operation throughout the state, the Act is not prohibited by Article 2, Section 17, because the "urban areas" proviso applies to the Act.

County Home Rule Statute Conflict

Next, the district attorney contended that the Act was inconsistent with the restrictions imposed on county consolidation in the county home rule statute, K.S.A. 1997 19-101a(a)(2). This statute lists limitations, restrictions, and prohibitions on county home rule powers, providing in pertinent part: "The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions, or prohibitions: . . . (2) *Counties may not consolidate or alter county boundaries.*"

The Court held the statute only applies to counties consolidating with one another and does not apply to a county consolidating with a city as authorized in the Act. In any event, the Court said the Legislature was free to adopt subsequent special legislation permitting a city and county to consolidate, and such statute would supersede K.S.A. 19-101a(a)(2).

City Home Rule Amendment Issues—Article 12, Section 5

Article 12, Section 5 is the constitutional provision granting cities home rule power. This section provides in pertinent part: "(a) The legislature shall provide by *general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved*"

Under this provision, in order for a city to merge, *consolidate*, or dissolve, the Legislature must enact a general law "applicable to all cities." However, the Act is not a general law applicable to all cities, but is a law narrowly confined to Kansas City and Wyandotte County. The district attorney claimed that the Act unconstitutionally violated Article 12, Section 5(a).

The Court noted that the Act does not involve the consolidation of cities. Instead, it concerns the consolidation of a large city with a county that is almost the same size. In fact, the Act contains safeguards to prevent the takeover of nearby smaller cities by Kansas City, Kansas.

The Court held that Article 12, Section 5(a) only applies to statutes which authorize the consolidation of two cities and does not apply to statutes which authorize the consolidation of a city and county, as the Act does. Thus, the Act is not prohibited by Article 12, Section 5(a), even though it is not a general law which is applicable to all cities.

Under Article 12, Section 5(c)4, the Legislature cannot repeal or amend charter ordinances, except by passage of a law applicable to all cities. According to the district attorney, the Act changed Kansas City's form of government, which existed pursuant to Charter Ordinance Nos. 84 and 90. Thus, the Act constituted an attempt to repeal these charter ordinances by a law that only applied to one city and one county. The district attorney claimed that the April 1997 election, in which the voters adopted the local option plan to change their form of government, was a nullity.

After the elections were held, the city tried to comply with Article 12, Section 5(c)4) by adopting Charter Ordinance No. 114 on August 14, 1997, and publishing it on August 17, 1997. Charter Ordinance No. 114 repealed and amended certain sections of Charter Ordinance Nos. 84 and 90.

The district attorney claimed Charter Ordinance No. 114 selectively amended and repealed some of the governmental charter sections but left the remainder of Charter Ordinance Nos. 84 and 90 in place, thereby leaving the city's prior form of government in place.

Second, the district attorney argued that even if Charter Ordinance No. 114 was validly enacted, it was defective because it was not properly implemented. According to Article 12, Section 5(c)3), once a charter ordinance has been adopted, it cannot be effective for 61 days in order to give electors the opportunity to petition for a referendum on the charter. Under this rule, the district attorney pointed out that Charter Ordinance No. 114 was not effective until October 24, 1997, 60 days after its final publication on August 24, 1997 (first publication was August 17, 1997). However, the Commission held a local option election on April 1, 1997. A primary election to elect Unified Government officers was held on July 8, 1997, and a general election to elect Unified Government officers was held on September 9, 1997. The new Unified Government officers were sworn in on October 1, 1997. They adopted two resolutions on October 2, 1997, approving the Plan as the Charter of the Unified Government and establishing rules of procedure—all before the effective date (October 24, 1997) of Charter Ordinance No. 114, which repealed the prior charter ordinances setting out the city's prior form of local government.

According to the district attorney, the Unified Government officers had no authority to take office on October 1 or to adopt resolutions establishing the government on October 2 because the city's old form of government was not repealed until the charter ordinance repealing it, as required by Article 12, Section 5(c)4), became effective on October 24, 1997.

In summary, the district attorney asserted that the Unified Government was an unlawful government which took office, passed unlawful laws, entered into voidable contracts, and convicted persons in court without proper authorization.

The Court analyzed the issue as follows. K.S.A. 12-344(b)4) required the Commission to specify the effective date of consolidation within the Plan. The newly elected officials of the Unified Government were sworn in on October 1, 1997. Thus, the effective date of consolidation occurred on this date, according to the Court.

The electorate of the county adopted the Plan on April 1, 1997. Consolidation of the two governments did not occur immediately upon the voters' approval of the Plan because consolidation was not effective until October 1, 1997, according to the Plan. As such, the voters' approval of the Plan did not constitute a repeal of the city's prior form of local government as set out in Charter Ordinance Nos. 84 and 90.

The Court asserted that the voters' approval of the Plan constituted the voters' adoption of a local option to consolidate, as offered in the law. The voters did not create a new consolidated form of government at the precise time of the election, but approved the implementation of the consolidation process which would become effective on October 1, 1997, the date the new officers were sworn in. Thus, the vote did not constitute a repeal of the city's prior form of local government, as set out in Charter Ordinance Nos. 84 and 90, without utilizing another charter ordinance or a piece of legislation applicable to all cities. As such, the court held that the vote, and the Act which authorized the vote, did not violate Article 12, Section 5(c)(4).

The Court also held that the city's attempt through Charter Ordinance No. 114 to repeal only certain sections of Nos. 84 and 90, the sections that related to the City's prior form of local government, was proper. See *Edgington v. City of Overland Park*, 15 Kan. App. 2d 721, 728, 815 P.2d 1116 (1991) (where the Court approved a charter ordinance which repealed only one section of a previous charter ordinance).

Under Article 12, Section 5(c)(3), Charter Ordinance No. 114 could not take effect until 60 days after its first publication in order to give citizens time to compile a petition for a referendum on the ordinance. This date was 23 days after the consolidated government supposedly became effective under the Plan on October 1, 1997. As a result, the Court held that for 23 days the city apparently had two forms of local government effective at one time. The Court said the question was whether this dilemma permanently destroyed the validity of the consolidated government. The Court rejected that argument and said this dilemma did not destroy the validity of the new consolidated government.

The Court also found that the unified government had validly governed the county since October 1, 1997, the day the officers were sworn in. Resolutions passed by the unified government did not apply to the city on October 1, since the city's prior form of local government still governed the city. However, when the unified government did become effective as to the city, approximately 20 days later, these resolutions, which the Unified Government validly adopted as to the county, also applied to the city at that time. From the record before the Court, the Unified Government did not adopt any ordinances while acting solely as the city during this 23-day time period. All the resolutions the Unified Government adopted during the 23-day time period at issue properly applied to the county. Thus, since these resolutions were not null and void on the date of enactment, they became applicable to the city once the unified government became the city's form of local government on October 24, 1997.

One Subject Rule—Article 2, Section 16

The district attorney claimed that the Unified Government's attempt to adopt all of the former city ordinances and county resolutions as laws in one sweeping resolution violated the one subject rules contained in K.S.A. 12-3004 and Article 2, Section 16 of the *Kansas Constitution*. According to the district attorney, Resolution R-1-97 included a different subject for each and every city ordinance and county resolution it adopted. Further, the district attorney pointed out that the Unified Government did not even utilize an ordinance to adopt hundreds of city ordinances and county resolutions, but attempted to do so in one small paragraph of a resolution. Finally, the district attorney asserted that in adopting all of the city's previously existing ordinances, except for those that were inconsistent with the Unified Government's

charter, the Unified Government violated one of the basic tenets of legislation—notice to the public affected by the laws.

The court noted that Article 2, Section 16 and its requirement that bills cannot contain more than one subject did not apply to city ordinances. Since it does not apply to city ordinances the court noted that it did not apply to county resolutions either. Thus, Article 2, Section 16 and its one subject rule did not apply to §6.01 in Resolution R-1-97 because this was a city/county resolution.

The Court said, however, K.S.A. 12-3004 and its one subject rule did apply to city/county ordinances and resolutions, including R-1-97. However, the Court found that Section 6.01 of R-1-97 did not violate the one subject rule in K.S.A. 12-3004. The subject of Section 6.01 addresses the effect of the new consolidated government on previously existing ordinances and resolutions in the city and the county. Section 6.01 explains that the new consolidated government will have no effect on those ordinances and resolutions, unless they conflict with the charter. The Court held that this constituted only one subject at issue in Section 6.01. The Court noted that Section 6.01 was not adopting all of the city's prior ordinances and the county's prior resolutions. It did not need to do this because, as explained in Section 6.01, these ordinances and resolutions were never repealed. Instead, in Section 6.01 the consolidated government preserved the effectiveness of these ordinances and resolutions. Thus, Section 6.01 does not deal with multiple subjects by adopting each different prior city and county ordinance and resolution. Instead, it dealt with the one subject of how the new government affects prior law—it preserved all nonconflicting law.

The court recognized that it was true that Section 6.01 in Resolution R-1-97 did not specifically state which prior laws would no longer be effective, due to their inconsistency. However, all prior laws which were inconsistent with latter laws were no longer effective or applicable to the extent that the laws were in conflict. The Court said this was so, even if the prior law was not specifically repealed or specifically mentioned as a conflicting law in the latter law. The citizens of the city and the county were put on notice that this would be the manner in which conflicting law would be handled.

Concurrent Resolution—Violation of Article 2, Section 14(a)

Article 2, Section 1 of the *Kansas Constitution* provides: "The legislative power of this state shall be vested in a house of representatives and senate." Article 2, Section 14(a) of the *Kansas Constitution* provides in pertinent part: "[E]very bill shall be signed by the presiding officers and presented to the governor."

K.S.A. 12-343(f) provides in pertinent part: "Unless the legislature, by concurrent resolution adopted on or before February 12, 1997, the 30th day of the 1997 regular session, rejects such plan, the plan shall be submitted to the qualified electors of the county at the school district general election on April 1, 1997. The district attorney claimed that K.S.A. 12-343(f) violated Article 2, Sections 1 and 14 of the *Kansas Constitution* and the separation of powers doctrine because it allowed the Legislature the right to reject or veto the Plan by a concurrent resolution. As such, the district attorney claimed that K.S.A. 12-343(f) effectively allowed the Legislature to change or repeal the local option law without having to present such change to the Governor for approval.

The Court agreed with this argument of the district attorney, but found that K.S.A. 12-343(f) could be severed from the rest of the Act so that the entire Act and the resulting Plan did not need to be struck down. The Court held that since the improper legislative veto was irrelevant because it was never exercised and was severable from the rest of the Act, so this issue failed.

Ethics Commission Appointment Process Improper

The Plan which the voters adopted recommended the creation of an Ethics Commission within the unified government to guard against unethical behavior in the Unified Government. The Plan required that the Unified Board of Commissioners draft and adopt a Code of Ethics. Under the Plan, the Ethics Code would apply to all elected officials and any appointed board and committee members as the Unified Legislature would include. If a member of the Unified Government was found to have violated the Ethics Code, the Plan gave the Ethics Commission the power to recommend to the Unified Board of Commissioners the action which should be taken against such violator. The Commission also has the power, under the Plan, to subpoena and swear in witnesses and the power to censure those individuals in violation of the Ethics Code.

Significantly, the Plan set out that members of the Ethics Commission shall be appointed by the administrative judge of the district court, with the consent of the sitting district judges of Wyandotte County. The judges of the district court, through the administrative judge of the county, not only have the power to appoint the members of the Ethics Commission, but also the power to dismiss them.

Courts in Kansas are vested with judicial power, which is the "power to hear, consider and determine controversies between rival litigants." Courts are limited to the exercise of judicial power in interpreting and applying the law and may not usurp the legislative power of determining policy matters or the executive power of implementing such policy. Conversely, while the Legislature may enact laws which confer jurisdiction on the court or impose judicial functions on the court, it cannot impose a legislative or administrative function on the court, except for such functions relating to court administration. To do so would constitute a violation of the separation of powers doctrine by the Legislature because it would be requiring the judicial branch—the courts—to exercise legislative or executive power.

The power of appointment does not exclusively vest in the legislative, executive, or judicial branch. Since the *Constitution* does not assign this power to any particular branch, it falls under the realm of the Legislature. Thus, the Legislature may delegate this power of appointment to the judicial branch without violating the separation of powers doctrine. The Court held, however, the Plan's delegation of appointment power to the court was not proper because it was done through a city-county enactment. However, the Court found the appointment provision was severable from the Plan.

SPECIAL COMMITTEE ON LOCAL GOVERNMENT

CITY-COUNTY CONSOLIDATION*

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends legislation be introduced that would permit city-county consolidation. Any consolidation would require a majority vote in each entity that was subject to the consolidation.

BACKGROUND

The study came about as a result of interest by local government officials from various parts of the state in city-county consolidation generated by the adoption of a consolidated city-county government involving Wyandotte County and Kansas City, Kansas in 1997. Interest also was generated as a result of an amendment added by the House Committee of the Whole to H.B. 2759 in 1998 which would have amended the local government consolidation of functions law to require a separate majority in each taxing subdivision before a consolidation of functions between the local governments could occur. The House floor amendment was removed from the bill in the Senate Elections and Local Government Committee but the Chair agreed to request an interim study of the consolidation laws.

The following is a brief description of several laws dealing with local government consolidation and cooperation which were reviewed by the Committee.

Wyandotte County-Kansas City Consolidation Law. The 1996 Legislature enacted S.B. 464 which required the Governor to appoint a five-member consolidation study commission for Kansas City, Kansas and Wyandotte County. After the Commission was appointed, a study was

made, and a consolidation plan was submitted to voters in the Spring of 1997. A countywide vote approved the consolidation plan by a 60 percent margin. The Kansas Supreme Court upheld the constitutionality of most of the provisions of this law in a March 1998 decision. Two relatively minor provisions of the law, however, were found to be unconstitutional and were severed by the court.

The plan provides for a new consolidated form of government, known as the Unified Government of Wyandotte County/Kansas City, Kansas or the "Unified Government." The then existing governments of the city and the county were replaced by a governing body composed of a Mayor/Chief Executive and a ten-member Unified Board of Commissioners. Eight Commission members were nominated and elected in eight newly-created districts. Two countywide Commission members were nominated from two newly-created districts comprised of the four northern-most and four southern-most districts; these Commission members were elected at-large. The Mayor/Chief Executive has veto power which can be overridden by a two-thirds majority of the Unified Board of Commissioners.

The plan provides for the appointment of a County Administrator by the Mayor/Chief Executive with the consent of the Unified Board

* S.B. 7 was recommended by the Committee.

of Commissioners. The County Administrator is directly responsible for the daily functions of the Unified Government.

Pursuant to the plan, the elected offices of County Clerk, County Treasurer, County Surveyor, and Public Administrator became appointed positions and all functions performed by these officials were retained. The County Administrator has established positions of Unified Clerk and Unified Treasurer in order to consolidate the duties and responsibilities of the prior County and City clerks and the prior County and City treasurers. The position of County Surveyor has been designated as an administrative position within the Executive Branch to be appointed by the County Administrator. The Public Administrator position and functions has been transferred to the Judicial Branch with the district court judges determining how such functions will be carried out.

The plan provides that several offices have been retained for countywide election: Sheriff, District Attorney, and the Register of Deeds. The district attorney position is retained as it presently exists. Elections for both the Sheriff position and the Register of Deeds position will be nonpartisan and held during the regularly scheduled April election period; prior to consolidation, partisan elections were held for these positions during the regularly scheduled November election period. The terms of office of these two offices will continue to be four years; the terms of office of the present occupants were extended until the election period of April 2001 pursuant to the plan.

Interlocal Cooperation Act. The Interlocal Cooperation Act (K.S.A. 12-2901 *et seq.*), permits any public agency of this state to exercise jointly its power with any other public agency of this state, with any private agency, with public agencies of other states, or the United States.

K.S.A. 19-2904(a) lists a number of areas where cooperation is permitted, including but not limited to the following:

- economic development;
- public improvements;
- public utilities;
- police protection;
- libraries;
- data processing services;
- educational services;
- building and related inspection services;
- flood control and stormwater drainage;
- weather modification;
- sewage disposal;
- refuse disposal;
- park and recreational programs and facilities;
- ambulance service;
- fire protection; and
- the Kansas Tort Claims Act or claims for civil rights violations.

The list is nonexclusive since it is preceded by the phrase "including but not limited to" which was added to the Act as a clarification in 1979.

Every agreement as a condition precedent to its entry into force, except for a limited exception, must be submitted to the Kansas Attorney General for determination of whether the agreement is in proper form and compatible with Kansas law. An agreement is deemed approved 90 days after submission to the Attorney General unless disapproved. The Attorney General is required to detail in writing any shortcomings of an agreement disapproved. (See K.S.A. 12-2904(f).) Agreements establishing a council or other organization of local governments for a study of common problems and for the promotion of intergovernmental relations are exempt from the submission requirement to the Attorney General.

City, County, and Township Contract Law. Cities, counties, and townships are authorized to contract with any other city, county, or township to perform any governmental service, activity, or undertaking each has authority by law to perform. The contracts are authorized by the governing body of the city, county, or township and are not regarded as interlocal agreements under K.S.A. 12-2901 *et seq.* (See K.S.A. 12-2908.) The impact of this statute is that these contracts

do not require the approval of the Attorney General and need not comply with any other requirements of the Interlocal Cooperation Act.

General Consolidation of Functions Law. The law (K.S.A. 12-3901 *et seq.*), applies to "political and taxing subdivisions of this state" which term includes counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, fire districts, and taxing subdivisions created under Kansas law.

The law permits both intragovernmental or internal consolidation and intergovernmental or external consolidation. Intragovernmental consolidation is permitted if duplication exists in the operations, procedures, or functions of any of the offices or agencies of the political or taxing subdivision. Intergovernmental consolidation is permitted if duplication exists in the operations, procedures, or functions of offices or agencies of any two or more political or taxing subdivisions. These entities may create either a single intergovernmental office or agency or assign the activity to be performed by one of the participating entities.

The consolidation of functions law permits the abolition of elective offices by consolidation but requires certain special procedures to be followed, including an election on the issue. An amendment in 1991 equates the transfer of statutorily mandated duties of an elected office with an elimination of the office and requires an election. A special hearing on the issue of abolishing an elected office must be held prior to the governing body taking action on the proposal with notice of the hearing published in a newspaper for once each week for two consecutive weeks prior to the hearing. The elected official whose office would be eliminated must be given an opportunity to testify at the hearing. Any other interested party also may testify.

COMMITTEE ACTIVITIES

A two-day public hearing was held on the topic at the September meeting where over 20 conferees testified. The Committee heard from

the League of Kansas Municipalities, the Kansas Association of Counties, the Attorney General's Office, professors from the University of Kansas, Kansas State University, Wichita State University, and Fort Hays State University, officials from Douglas, Riley, and Marion counties, the Unified Government of Wyandotte County and Kansas City, Kansas, the cities of Wichita, Kingman, and Salina, a local government consultant, and a former legislator.

In addition, memoranda were presented to the Committee dealing with the Wyandotte County/Kansas City consolidation law, the Interlocal Cooperation Act, and the consolidation of functions law. A copy of the Wyandotte County/Kansas City, Kansas Consolidation Study Commission Report was also provided to the Committee.

Most conferees favored the idea of a general law applying to all counties and cities which would permit cities and counties to consolidate and form one government if a dual majority in the city and the county approved. Several conferees suggested legislation be adopted permitting the consolidation of two or more counties as well. The local government consultant suggested that a local government consolidation committee be required to be formed whenever populations of local governments fell below certain levels. Further, he suggested that the state provide financial incentives to encourage consolidation and provide penalties whenever consolidation is not chosen. A Kansas State University professor who was an agricultural economics teacher and a local government specialist for the Research and Extension Office testified that before any major consolidation took place it should be preceded by a cost benefit analysis which included a service needs assessment, a service delivery plan, and a budget analysis. A representative of the City of Wichita who also is a professor at Wichita State University suggested that members of consolidation study commissions be elected.

Two conferees, one from Douglas County and the other from Salina, expressed enthusiasm for the use of the interlocal cooperation, local contracting, and consolidation of functions laws

and suggested that if existing laws of this nature were utilized there would be less interest in full consolidation of two local government entities. A former legislator testified that smaller units of local government often provide better service to residents than larger units and that dual majorities should be required before any consolidation of services, functions, or governments took place.

The Executive Director of the League of Kansas Municipalities presented a list of policy issues for the Committee to consider as an aid in drafting permissive consolidation legislation.

CONCLUSIONS AND RECOMMENDATIONS

The Committee believes that permissive legislation is needed to allow cities and counties to consolidate into one government if a majority of voters in each entity involved approves the consolidation. The Committee therefore recommends that legislation be introduced for consideration by the 1999 Legislature. The bill authorizes the following.

- Any county and city or cities therein may consolidate and form one local government entity.
- The consolidation process is triggered by the appointment of a consolidation study commission. Voters countywide must approve the appointment or election of a commission. The vote may be initiated either by passage of a joint resolution by the county and city or cities' governing bodies calling for a vote on the issue or by the presentation of a petition signed by 10 percent of the qualified electors of the county. The petition and the ballot must contain an explanatory statement that a proposed consolidation may take place only if approved by a majority of the county electors voting on the issue and by a majority of the ballots cast within each city proposed to be a part of the consolidation.
- The makeup of the consolidations study commission and the method of appointment or election is to be decided in the joint resolution or in the petition. In either case, at least one-third of the commission must reside in the unincorporated area of the county.
- Once appointed or elected, the consolidation study commission may appoint an executive director, employ other staff as needed and must adopt a budget. The commission is required to prepare a plan addressing the consolidation of the city or cities and the county or certain city and county offices, functions, services, and operations. The commission is required to hold public meetings, may administer oaths and subpoena witnesses, and require production of documents and records. Once a preliminary plan has been developed at least two additional public hearings must be held for input from the public.
- Once a final plan has been developed it must be submitted to the qualified electors of the county in the next general election of the county. A majority of those voting must approve the plan as well as a majority within each city proposed to be consolidated with the county.
- The board of county commissioners may levy a tax of not to exceed 1 mill to pay for costs of the commission.
- A plan must include a description of the form, structure, functions, powers, officers and duties of the officers recommended; provide for a method of amendment as well as abandonment of the plan; authorize the election, appointment, or elimination of elected officers; specify the date of the consolidation; and address the situation if the plan is approved by one but not all cities proposed to be consolidated. The plan also must fix the boundaries of the consolidated governing bodies election districts; determine if electors are to be partisan or nonpartisan; and determine the legislative and administrative duties of the officials.
- The consolidated government is subject to the cash basis and budget law; when acting as a city it shall retain city constitutional home rule authority; and when acting as a county it shall retain statutory county home rule powers.

SENATE BILL No. 7

By Special Committee on Local Government

12-16

8 ~~AN ACT concerning cities and counties; relating to the consolidation~~
9 thereof; amending K.S.A. 12-301 and 12-3909 and K.S.A. 1998 Supp.
10 19-205 and repealing the existing sections.

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

13 New Section 1. As used in this act:

14 (a) "Board" means the board of county commissioners.

15 (b) "City" means any city.

16 (c) "Commission" means a consolidation study commission selected
17 pursuant to section 2, and amendments thereto.

18 (d) "County" means any county.

19 New Sec. 2. (a) The board of county commissioners of a county and
20 the governing body of any city or cities located within such county may
21 adopt a joint resolution providing for the establishment of a consolidation
22 study commission to prepare a plan for the consolidation of the county
23 and such city or cities located in such county. Such resolution shall not
24 be effective until the question has been submitted to and approved by a
25 majority of the qualified electors of the county voting at an election
26 thereon. Such election shall be called and held in the manner provided
27 by the general bond law.

28 (b) Upon presentation to the board of county commissioners of a
29 sufficient petition requesting the establishment of a consolidation study
30 commission, the board shall adopt a resolution providing for the estab-
31 lishment of a consolidation study commission to prepare a plan for the
32 consolidation of such county and city or cities located therein. Any such
33 petition shall be signed by at least 10% of the qualified electors of the
34 county. Any such petition shall contain a statement that the creation of a
35 consolidation study commission and any final plan adopted by the com-
36 mission which recommends consolidation shall be subject to approval by
37 the qualified electors of the county. In addition, the petition also shall
38 state that no city shall be consolidated with the county and no offices,
39 functions, services and operations of a city shall be consolidated with the
40 county unless such consolidation plan is approved by a majority of the
41 qualified electors of such city voting at the election held on such plan.
42 Such resolution shall be submitted to the qualified electors of the county

Definitions of terms.

**How the process starts: two alternatives
(a) governing bodies actions**

(b) 10% petition of county electors

Contents of initiative petition

1 at an election called and held in the manner provided by the general bond
2 law.

3 (c) Any resolution or petition authorized to be adopted or submitted
4 by subsection (a) or (b) shall provide for the establishment of a consoli-
5 dation study commission and shall provide either that the members be
6 appointed or that the members be elected by the qualified electors of the
7 county on a nonpartisan basis. If the commission is to be elected, the
8 procedure for holding such election shall be determined by such reso-
9 lution or petition. The laws applicable to the procedure, manner and
10 method provided for the election of county officers shall apply to the
11 election of members of the commission except that such election shall be
12 called in the manner provided by the general bond law.

13 (d) If a majority of the qualified electors of the county voting on a
14 resolution submitted pursuant to subsection (a) or (b) vote in favor
15 thereof, the commission shall be elected or appointed as provided by the
16 resolution or petition. The number of members on a consolidation study
17 commission shall be determined by the resolution or petition. At least 1/3
18 of the membership of a consolidation study commission shall be residents
19 of the unincorporated area of the county.

20 New Sec. 3. (a) Within 30 days following the certification of the re-
21 sults of the election or appointment of members of the consolidation
22 study commission, the chairperson of the board of county commissioners,
23 acting as the temporary chairperson of the commission, shall call and hold
24 an organizational meeting of the commission. The commission shall elect
25 a chairperson, vice-chairperson and other officers deemed necessary. The
26 commission may adopt rules governing the conduct of its meetings.

27 (b) The commission shall be subject to the open meetings law and
28 the open records law.

29 (c) Members of the commission shall be reimbursed for the actual
30 and necessary expenses incurred in the performance of their official
31 duties.

32 (d) The commission may appoint an executive director of the com-
33 mission. The executive director shall receive compensation established by
34 the commission. The executive director shall employ other staff and may
35 contract with consultants, as the executive director deems necessary to
36 carry out the functions of the commission. Staff employed by the exec-
37 utive director shall receive compensation established by the executive
38 director and approved by the commission.

39 (e) The commission shall prepare and adopt a budget for the oper-
40 ation and functions of the commission and commission activities.

41 New Sec. 4. (a) The commission shall prepare and adopt a plan ad-
42 dressing the consolidation of the city or cities and county or certain city
43 and county offices, functions, services and operations. The commission

Contents required for either the resolution or petition---whether the consolidation study commission is appointed or elected on a nonpartisan basis is set here

The resolution or petition sets the number of commissioners—Note 1/3 of the membership must be from the unincorporated area

Commission startup

Open meetings and open records

Executive director

Budget required

What the Commission is required to do

1 shall conduct such studies and investigations as it deems appropriate to
2 complete its work. Such studies and investigations shall include, but not
3 be limited to:

4 (1) Studies of the efficiency and effectiveness of the administrative
5 operations of the city or cities and county.

6 (2) Studies of the costs and benefits of consolidating the city or cities
7 and county or certain city or cities and county offices, functions, services
8 and operations.

9 (b) The commission shall hold public hearings for the purpose of
10 receiving information and materials which will aid in the drafting of the
11 plan.

12 (c) For the purposes of performing its studies and investigations, the
13 commission or its executive director may administer oaths and affirma-
14 tions, subpoena witnesses, compel their attendance, take evidence, re-
15 quire the production of any books, papers, correspondence, memoranda,
16 agreements or other documents or records which the commission or ex-
17 ecutive director deems relevant or material to its studies and investigation.

18 (d) The commission shall prepare and adopt a preliminary plan ad-
19 dressing the consolidation of the city or cities and county or certain city
20 and county offices, functions, services and operations it deems advisable.
21 Copies of the preliminary plan shall be filed with the county election
22 officer, city clerk of each city to be consolidated and each public library
23 within the county and shall be available to members of the public for
24 inspection upon request. The commission shall hold at least two public
25 hearings to obtain citizen views concerning the preliminary plan. At least
26 seven days shall elapse between the holding of such hearings. Notice of
27 such hearings shall be published at least once in a newspaper of general
28 circulation within the county. Following the public hearings on the pre-
29 liminary plan, the commission may adopt, or modify and adopt, the pre-
30 liminary plan as the final plan.

31 (e) The final plan shall include the full text and an explanation of the
32 proposed plan, and comments deemed desirable by the commission, a
33 written opinion by an attorney admitted to practice law in the state of
34 Kansas and retained by the executive director for such purpose that the
35 proposed plan is not in conflict with the constitution or the laws of the
36 state, and any minority reports. Copies of the final plan shall be filed with
37 the county election officer, city clerk of each city to be consolidated and
38 each public library within the county and shall be available to members
39 of the public for inspection upon request. The commission shall continue
40 in existence at least 90 days following the submission of the final plan for
41 approval at an election as provided by subsection (f).

42 (f) The final plan shall be submitted to the qualified electors of the
43 county at the next general election of the county held at least 45 days

Conduct studies

Hold hearings

May compel testimony and documents

Preliminary plan required

Where copies of preliminary plan available

At least two public hearings on the preliminary plan

Final plan-written opinion by attorney required

Where copies of final plan available

Final plan to a vote at next county general election

1 following the adoption of the final plan by the commission. Such election
2 shall be called and held by the county election officer in the manner
3 provided by the general election law. A summary of the final plan shall
4 be prepared by the commission and shall be published at least once each
5 week for two consecutive weeks in a newspaper of general circulation
6 within the county.

Summary of final plan must be published

7 If a majority of the qualified electors of the county voting on the plan
8 vote in favor thereof, the consolidation plan shall be implemented in the
9 manner provided by the plan except that no city shall be consolidated
10 with the county and no offices, functions, services or operations of a city
11 shall be consolidated with the county unless such consolidation plan is
12 approved by a majority of the qualified electors of such city voting at the
13 election held on such plan.

14 There shall be printed on the ballots at any election called to approve
15 the final plan the following statement:

Statement on ballot required

16 "If the majority of the qualified electors of a county and the majority
17 of the qualified electors of a city voting at the election to approve the
18 final plan vote in favor of such plan, such city shall be included within
19 and subject to the provisions of such plan.

20 If the majority of the qualified electors of a city voting at the election
21 to approve the final plan, do not vote in favor of such plan, such city shall
22 not be included within nor subject to the provisions of such plan in regard
23 to the status of such city as a separate entity from the county."

**No city included if city voters don't
approve**

24 If such a majority of the electors vote against such plan, the proposed
25 consolidation plan shall not be implemented.

26 If the commission submits a final plan which does not recommend the
27 consolidation of the city or cities and county or certain city and county
28 offices, functions, services and operations, the provisions of this subsec-
29 tion shall not apply.

30 New Sec. 5. (a) Any plan submitted by the commission shall provide
31 for the exercise of powers of local legislation and administration not in-
32 consistent with the constitution or other laws of this state.

33 (b) If the commission submits a plan providing for the consolidation
34 of certain city and county offices, functions, services and operations, the
35 plan shall:

**Requirements for a plan which does not
involve full consolidation**

36 (1) Include a description of the form, structure, functions, powers
37 and officers and the duties of such officers recommended in the plan.

38 (2) Provide for the method of amendment or abandonment of the
39 plan.

40 (3) Authorize the election, appointment or elimination of elective of-
41 ficials and offices.

42 (4) Specify the effective date of the consolidation.

43 (5) In the case of multi-city consolidation with a county, the plan shall

1 include provisions addressing the situation if the plan is approved by the
2 electors of one, but not all cities to be consolidated under the plan.

3 (6) Include other provisions determined necessary by the
4 commission.

5 (c) If the plan provides for the consolidation of the city or cities and
6 county, in addition to the requirements of subsection (b) the plan shall:

7 (1) Fix the boundaries of the governing body's election districts, pro-
8 vide a method for changing the boundaries from time-to-time, any at-
9 large positions on the governing body, fix the number, term and initial
10 compensation of the governing body of the consolidated city-county and
11 the method of election.

12 (2) Determine whether elections of the governing body of the con-
13 solidated city-county shall be partisan or nonpartisan elections and the
14 time at which such elections shall be held.

15 (3) Determine the distribution of legislative and administrative duties
16 of the consolidated city-county officials, provide for consolidation or ex-
17 pansion of services as necessary, authorize the appointment of a consol-
18 idated city-county administrator or a city-county manager, if deemed ad-
19 visable, and prescribe the general structure of the consolidated
20 city-county government.

21 (4) Provide for the official name of the consolidated city-county.

22 (5) Provide for the transfer or other disposition of property and other
23 rights, claims and assets of the county and city.

24 New Sec. 6. (a) If the voters approve a plan which provides for the
25 consolidation of the city or cities and county, such consolidated city-
26 county shall be subject to the provisions of this section.

27 (b) The consolidated city-county shall be subject to the cash-basis and
28 budget laws of the state of Kansas.

29 (c) Except as provided in subsection (d), and in any other statute
30 which specifically exempts bonds from the statutory limitations on bonded
31 indebtedness, the limitation on bonded indebtedness of a consolidated
32 city-county under this act shall be determined by the commission in the
33 plan, but shall not exceed 30% of the assessed value of all tangible taxable
34 property within such county on the preceding August 25.

35 (d) The following shall not be included in computing the total bonded
36 indebtedness of the consolidated city-county for the purposes of deter-
37 mining the limitations on bonded indebtedness:

38 (1) Bonds issued for the purpose of refunding outstanding debt, in-
39 cluding outstanding bonds and matured coupons thereof, or judgments
40 thereon.

41 (2) Bonds issued pursuant to the provisions of article 46 of chapter
42 19 of the Kansas Statutes Annotated, and amendments thereto.

43 (3) Bonds issued for the purpose of financing the construction or

**Requirements of a plan where full city-
county consolidation is proposed**

**If city-county consolidation is approved by
voters the following rules apply**

Cash basis and budget laws

Bonded debt

1 remodeling of a courthouse, jail or law enforcement center facility, which
2 bonds are payable from the proceeds of a retailers' sales tax.

3 (4) Bonds issued for the purpose of acquiring, enlarging, extending
4 or improving any storm or sanitary sewer system.

5 (5) Bonds issued for the purpose of acquiring, enlarging, extending
6 or improving any municipal utility.

7 (6) Bonds issued to pay the cost of improvements to intersections of
8 streets and alleys or that portion of any street immediately in front of city
9 or school district property.

10 (e) Any bonded indebtedness and interest thereon incurred by the
11 city or cities or county prior to consolidation or refunded thereafter shall
12 remain an obligation of the property subject to taxation for the payment
13 thereof prior to such consolidation.

14 (f) Upon the effective date of the consolidation of the city or cities
15 and county, any retailers' sales tax levied by the city or cities or county in
16 accordance with K.S.A. 12-187 *et seq.*, and amendments thereto, prior to
17 such date shall remain in full force and effect, except that part of the rate
18 attributable to the city or cities to be consolidated shall not apply to retail
19 sales in the cities which are not consolidated with the county. The con-
20 solidated city-county shall be a class A, B, C or D city as determined by
21 the commission in the plan.

22 (g) Upon the effective date of the consolidation of the city or cities
23 and county, the territory of the consolidated city-county shall include:

24 (1) All of the territory of the county for purposes of exercising the
25 powers, duties and functions of a county.

26 (2) All of the territory of the county, except the territory of the cities
27 which are not consolidated with the county and the unincorporated area
28 of the county, for purposes of exercising the powers, duties and functions
29 of a city.

30 (h) For the purposes of section 1 of article 5 of the constitution of
31 the state of Kansas, the "voting area" for the governing body of the con-
32 solidated city-county shall include all the territory within the county.

33 (i) Except for the consolidated city-county and unless otherwise pro-
34 vided by law, other political subdivisions of the county shall not be af-
35 fected by consolidation of the city or cities and county. Such other political
36 subdivisions shall continue in existence and operation.

37 (j) Unless otherwise provided by law, the consolidated city-county
38 shall be eligible for the distribution of any funds from the state and federal
39 government as if no consolidation had occurred. Except as provided in
40 this subsection, the population and assessed valuation of the territory of
41 the consolidated city-county shall be considered its population and as-
42 sessed valuation for purposes of the distribution of moneys from the state
43 or federal government.

Local retailers' sales tax rates

Territory

Voting area

State and federal funds

1 (k) The consolidated city-county shall be a county. The governing
 2 body of the consolidated city-county shall be considered county commis-
 3 sioners for the purposes of section 2 of article 4 of the constitution of the
 4 state of Kansas and shall have all the powers, functions and duties of a
 5 county and may exercise home rule powers in the manner and subject to
 6 the limitations provided by K.S.A. 19-101a, and amendments thereto, and
 7 other laws of this state.

Considered a county

8 The governing body of the consolidated city-county shall be responsible
 9 for any duties or functions imposed by the constitution of the state of
 10 Kansas and other laws of this state upon any county office abolished by
 11 the consolidation plan. Such duties may be delegated by the governing
 12 body or as provided in the consolidation plan.

Considered a city

13 (l) The consolidated city-county shall be a city of the first, second or
 14 third class as determined by the commission in the plan. The governing
 15 body of the consolidated city-county shall have all the powers, functions
 16 and duties of a city of such class and may exercise home rule powers in
 17 the manner and subject to the limitations provided by article 12 of section
 18 5 of the constitution of the state of Kansas and other laws of this state.

Special service tax districts

19 (m) The governing body of the consolidated city-county may create
 20 special service districts within the city-county and may levy taxes for serv-
 21 ices provided in such districts.

Initiative and referendum apply

22 (n) Changes in the form of government approved by the voters in
 23 accordance with the consolidation plan are hereby declared to be legis-
 24 lative matters and subject to initiative and referendum in accordance with
 25 K.S.A. 12-3013 *et seq.*, and amendments thereto.

**Tax levy--not to exceed one mill--
authorized to pay costs of commission**

26 New Sec. 7. The board of county commissioners may levy a tax not
 27 to exceed one mill on all taxable tangible property of the county for the
 28 purpose of financing the costs incurred by the consolidation study com-
 29 mission while executing the powers, duties and functions of such com-
 30 mission. After the payment of such costs incurred by the commission any
 31 remaining moneys derived from such tax levy shall be transferred to the
 32 county general fund in the manner provided by K.S.A. 79-2958, and
 33 amendments thereto.

City-city consolidation clarification

34 Sec. 8. K.S.A. 12-301 is hereby amended to read as follows: 12-301.

35 (a) Whenever two or more cities organized under the laws of the state of
 36 Kansas, which are adjacent to each other, desire to ~~form but one city~~
 37 *consolidate*, such consolidation may be made under the provisions of this
 38 act. ~~Provided~~, That if any one of said. *If one of such* cities shall have
 39 adopted the commission form of government, the word "council," as
 40 hereinafter used, shall be construed literally, or shall be held to mean
 41 mayor and commissioners, or board of commissioners as the sense shall
 42 justify.

43 (b) *The provisions of K.S.A. 12-301 through 12-331a, and amend-*

1 *ments thereto, shall not apply to cities consolidated pursuant to this act,*
2 *and amendments thereto.*

3 Sec. 9. K.S.A. 12-3909 is hereby amended to read as follows: 12-
4 3909. ~~Nothing in this act shall be construed as authorizing the consoli-~~
5 ~~ation of any political or taxing subdivision with any other political or~~
6 ~~taxing subdivision. Nothing in this act K.S.A. 12-3901 through 12-3908,~~
7 *and amendments thereto, shall be construed to authorize the closing or*
8 *the change of use of any school or attendance facility.*

9 Sec. 10. K.S.A. 1998 Supp. 19-205 is hereby amended to read as
10 follows: 19-205. Except as provided by K.S.A. 1998 Supp. 12-344 ~~and,~~
11 12-345, *sections 5 and 6, and amendments thereto,* no person holding any
12 state, county, township or city office shall be eligible to the office of
13 county commissioner in any county in this state.

14 Nothing in this section shall prohibit the appointment of any county
15 commissioner to any state board, committee, council, commission or sim-
16 ilar body which is established pursuant to statutory authority, so long as
17 any county commissioner so appointed is not entitled to receive any pay,
18 compensation, subsistence, mileage or expenses for serving on such body
19 other than that which is provided by law to be paid in accordance with
20 the provisions of K.S.A. 75-3223, and amendments thereto.

21 Sec. 11. K.S.A. 12-301 and 12-3909 and K.S.A. 1998 Supp. 19-205
22 are hereby repealed.

23 Sec. 12. This act shall take effect and be in force from and after its
24 publication in the statute book.

**Consolidation of functions law
clarification or change**

**Eligibility requirements for office of
county commissioner clarification**