

Approved: 3-2-99
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:10 a.m. on February 23, 1999, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Senator Nick Jordan
Charles Gregor, Jr., Leavenworth-Lansing Area Chamber of
Commerce
Jean Barbee, Kansas Lodging Association
Robert Courtney, Olathe District Schools
Myrna Morrison, Spring Hill U.S.D. 230
David Banks, Wichita Public Schools
Chris McKenzie, League of Kansas Municipalities
Mike Taylor, City of Wichita
Donald Seifert, City of Olathe

Others attending: See attached list.

SB 82—Sales taxation; exempting certain hotel room renting services.

Senator Nick Jordan testified in support of **SB 82**. He noted that the sales tax exemption for governmental employees is an important issue for hotels and motels located near the state line. In Missouri, governmental employees are exempted from paying state sales tax on hotel and motel rooms by simply showing identification and/or signing a form when they check in. Senator Jordan knows of at least one government meeting scheduled in Overland Park that left the state of Kansas and chose to go to the state of Missouri because of Missouri's more lenient policy. He noted that Kansas hotel desk clerks would benefit from the bill as, currently, they are put in the awkward position of questioning a traveler to determine if the traveler does, in fact, qualify for a sales tax exemption as a governmental employee. In summary, Senator Jordan said **SB 82** clarifies the issue in Kansas and makes government travel much easier, makes the tax exemption easier, helps the front desk clerk who generally does not want to battle with a guest, and will make Kansas a more pleasant state for government travel and, thus, increase business for Kansas hotels and motels.

Charles Gregor, Leavenworth-Lansing Area Chamber of Commerce, followed with further testimony in support of **SB 82**. He noted that the Leavenworth area would not be affected by the bill, but he had no objection to the proposed change. He is in agreement with Senator Jordan that the bill would make Kansas hotels and motels, particularly in Johnson County, more competitive with those in Kansas City, Missouri. However, Mr. Gregor asked that extreme care be taken to insure that applicable transient guest taxes be paid as required under current local laws even in those cases where exemption from sales tax is granted. He suggested that specific language be added to the bill to clarify that transient guest taxes are not included in the expansion of sales tax exemptions specified in the bill. (Attachment 1)

Jean Barbee, Kansas Lodging Association, testified in support of **SB 82**. She explained that she requested the introduction of the bill because existing Kansas laws and regulations are causing Kansas hotels to lose business to Missouri hotels. Further, hoteliers statewide have been plagued with the issue of their front desk clerks being put in the position of debating the allowance of a sales tax exemption with a customer. She said

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE, Room 519-S Statehouse, at 11:10 a.m. on February 23, 1999.

the intent of existing federal and state law appears to be that a federal or state government employee on official business should be exempt from state sales tax. The issue comes down to how the payment is forwarded to the Department of Revenue. The bill was originally drafted to apply to state employees, but the Department of Revenue has prepared an amendment to include federal government employees as well. (Attachment 2) With regard to Mr. Gregor's testimony, Ms. Barbee assured the Committee that the intent of the bill is to address the sales tax exemption issue only, not to diminish the transient guest tax.

Ms. Barbee called attention to written testimony in support of **SB 82** by Michael Phipps, Wichita Airport Hilton, who was unable to attend the meeting. (Attachment 3) There being no others wishing to testify on **SB 82**, the hearing was closed.

SB 318--Concerning municipalities; relating to franchises.

Robert Courtney, Energy Manager for the Olathe school district, testified in support of **SB 318**. His school district is divided by I-35 into a east/west utility service area. The electric company that is on the east side of the interstate is exempt from franchise fees; however, the electric company on the west side of the interstate is subject to franchise fees. If there was not an exemption through the east side electric company, the school district would be paying an additional \$70,000 per year in franchise fees. He would like to have the whole district considered as a not-for-profit institution rather than just a portion of it. (Attachment 4)

Myrna Morrison, Business Manager for the Spring Hill school district, expressed her support of **SB 318**. She informed the Committee that Spring Hill is the smallest school district in Johnson County, noting that, even though the Spring Hill school district spends a smaller amount on franchise fees than other districts, the dollars are significant to the district's budget. She feels her school district's tax dollars should go towards the educational needs of the students, not to fund the City of Spring Hill. (Attachment 5)

David Banks, Energy Manager for U.S.D. 259 in Wichita, testified in support of **SB 318** as an appropriate extension of the long established public policy of exempting school districts from paying taxes. He argued that a tax supported organization should not pay taxes to a tax supported municipality. To demonstrate the financial impact of franchise fees in his school district, Mr. Banks called attention to copies of several of his district's utility bills. (Attachment 6)

Chris McKenzie, League of Kansas Municipalities, said **SB 318** raises questions about the legal nature of franchise fees and the relationship cities have with school districts in that regard. He discussed the reasons he questions the effect of **SB 318**. In conclusion, he said the bill, as drafted, may actually conflict with K.S.A. 12-2001 since that statute provides that franchise fees are paid to cities by utility companies--not their customers. The League recommends an alternative approach which would direct the Kansas Corporation Commission not to allow utility companies to collect any part of the expense of franchise fees from school districts and that the expense either be shouldered by the utility or that the company be allowed to pass through the full expense to the other ratepayers. (Attachment 7)

In answer to concerns regarding school districts using funds to pay franchise fees which support cities, Mr. McKenzie said that cities are making substantial commitments to providing the presence of police officers in schools that would have serious problems if the officers were not there. Otherwise, School districts would have to hire private security guards. In addition, cities provide other important services for school districts which defray expenses for the state.

Mike Taylor, City of Wichita, testified in opposition to **SB 318**. He emphasized that the City of Wichita does not impose franchise fees on schools, explaining that a franchise fee is a negotiated, contractual amount utilities agree to pay the city for the use of public right of ways--a business agreement between the city and the utility. In conclusion, he said the cost of educating children and the amount of money a for profit utility company agrees to pay a city for conducting its business on public land have nothing to do with each other. (Attachment 8)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE, Room 519-S Statehouse, at 11:10 a.m. on February 23, 1999.

Donald Seifert, City of Olathe, followed with further testimony in opposition to **SB 318**. He noted that franchise fees are imposed on the franchised utility company, but the company is not required to pass this fee on to its customers, although that is standard practice. He informed the Committee that franchise fees are the third largest revenue source in the city's general fund. In addition to basic city services, the general fund provides a number of specific services directed exclusively to schools. He contended that the value of these services far outweighs the \$60,000 in franchise fee revenue received from public schools. As an alternative to **SB 318**, Mr. Seifert suggested that the Committee consider language to prohibit franchised utilities from passing fees on to public institutions. (Attachment 9) With this, the hearing on **SB 318** was closed.

Senator Langworthy began a discussion of **HCR 5002**, a proposition to amend the *Kansas Constitution* relating to property tax exemptions used for oil and gas development, exploration, and production purposes. She reminded the Committee that when the bill was heard, it was noted that there was a time limit involved if the proposition is to be placed on the April ballot; therefore, there is a need for immediate Committee action.

Senator Hardenburger moved to report **HCR 5002** as favorable for passage, seconded by Senator Steffes.

Committee discussion followed. Senator Bond voiced his concern that a proposition to amend the state constitution would be put on the ballot at a time when the lowest number of persons will be going to the polls. In his opinion, this is a wrong precedent to set for amending the state's constitution. Senator Lee commented that the bill does nothing for the current crisis of keeping marginal wells in production. Senator Langworthy echoed Senator Bond's concern. In addition, she felt there would not be sufficient time to educate the public before they vote on the proposition. Senator Donovan felt that the oil and gas industry understands the risk involved. Even if the amendment does not pass, he felt that passage of the bill will be a positive sign that the Legislature would like to help the oil and gas industry.

On a call for a vote on Senator Hardenburger's motion, the motion carried.

The meeting was adjourned at 12:05 p.m.

The next meeting is scheduled for March 2, 1999.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 23, 1999

NAME	REPRESENTING
CHARLIE GREGOR	LEAVENWORTH-LANSING AREA CHAMBER OF COMMERCE
Shirley Sicilian	Ks Dept of Revenue
Don Schumke	ICSOGR
Chris McKenzie	League of Ks. Municipalities
Mike Taylor	City of Wichita
Kelly Kuitala	City of Overland Park
Thomas Schaefer	City of Lenexa
David Corbin	City of Lawrence
Larry Keenan	League of KS Municipalities
Don Seifert	City of Olathe
Jacques (Dades)	Olathe USD 233
Pack Slave	Only Work & K N F
George Peterson	Ks TAXPAYERS NETWORK
Shane Gagnelin	Sen. Stephens staff
Rene Hutchinson	Wintersetaurus



Leavenworth-Lansing Area Chamber of Commerce

**TESTIMONY OF CHARLES H. GREGOR, JR.
EXECUTIVE VICE PRESIDENT
LEAVENWORTH-LANSING AREA CHAMBER OF COMMERCE
SENATE ASSESSMENT AND TAXATION COMMITTEE**

February 23, 1999

Madame Chair, members of the committee, thank you for the opportunity to appear before you today on behalf of Senate Bill Nr. 82.

I understand the purpose of S.B. 82 is to exempt federal employees from payment of state sales tax in hotels and motels by changing the requirement that payment of costs be made directly to the hotel or motel by an instrument of the federal government to qualify for such exemption. I understand that with this change to the law any federal employee can make personal payment to the hotel or motel and, with the assurance that the visit is related to official business, be exempt from state sales tax.

We have no objection to this proposed change and understand it would make Kansas hotels and motels, particularly in Johnson County, more competitive with those in Kansas City, Missouri. We ask, however, that extreme care be taken to insure that applicable transient guest taxes be paid as required under current local laws even in those cases where exemption from sales tax is granted and that it be made clear, with specific clarifying language, that transient guest taxes are not included in the expansion of sales tax exemptions specified in the Senate Bill 82. We fear, with good reason, that failure to include such clarifying language will leave the statute open to interpretation and lead to the sort of administrative and legal exercise the Leavenworth-Lansing Area Chamber of Commerce experienced in 1997.

The Leavenworth-Lansing Area Chamber of Commerce, charged with the conduct of conventions and visitors bureau operations on behalf of the cities of Leavenworth and Lansing, has visited the issue of exemption from applicable sales and transient guest tax payment in some detail in the past. This is due primarily to the presence of Fort Leavenworth, several prisons, a large Department of Veterans Affairs facility, and other public sector facilities in the Leavenworth-Lansing area. While there are certainly legitimate exemptions to payment of sales and transient guest taxes, there was sufficient vagueness in the applicable state statutes to raise questions as to who, under what circumstances, should be exempt by law. An erosion in transient guest tax revenue in 1997, despite an excellent fill of local hotel and motel rooms, prompted a close look at the probable causes of this revenue loss. Our focus was on federal, particularly military, personnel using our hotels who were claiming exemption from paying either sales or transient guest taxes. We found that many military personnel, as well as some Department of Defense civilians, were claiming exemption based on orders that transferred them in or out of the Leavenworth-Lansing area or based on other circumstances that did not meet the requirement of Kansas law for such exemption. We also found that our hotels and motels, and particularly our desk clerks, were both unable, and otherwise reluctant, to argue with those guests demanding tax exemptions.

*Senate Assessment + Taxation
2-23-99*

Attachment 1

TESTIMONY OF CHARLES H. GREGOR, JR.
EXECUTIVE VICE PRESIDENT
LEAVENWORTH-LANSING AREA CHAMBER OF COMMERCE
SENATE ASSESSMENT AND TAXATION COMMITTEE
February 23, 1999
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This prompted research on applicable law, to include the seeking of an opinion from the Attorney General, that was used to develop policy on the application of transient guest taxes that could be easily followed by all of our hotels and motels. I have attached copies of the correspondence, to include the opinion rendered by General Stovall, to copies of this testimony. I particularly commend to your attention the "NOTICE" prepared by this Chamber of Commerce for posting at the front desks of our hotels and motels. I bring this history to your attention because the improper loss of transient guest taxes from federal government employees, including military personnel, would have a devastating impact on our Conventions and Visitors Bureau (CVB) budget. Approximately 40% of the budget for our CVB is derived from transient guest tax legitimately paid by federal employees, most of whom are military. We cannot afford to lose that revenue base

It is for this reason that we ask that the language changing the law be clear and specify that transient guest taxes are not included in the expansion of sales tax exemptions specified in Senate Bill 82.

In summary, we support S.B. 82's provisions for elimination of sales tax under certain circumstances for the right reasons -- it will help make Kansas businesses more competitive in border areas. If, in fact, the elimination of transient guest tax collection is critical to enhancing that competitiveness, that tax should be eliminated or reduced by the originating local government or governments. We ask that great care be taken to insure the provisions of current Kansas law for the collection of transient guest taxes be left intact.

Thank you very much. I will stand for any questions.

State of Kansas

KENNY A. WILK
REPRESENTATIVE, 42ND DISTRICT
LEAVENWORTH COUNTY
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LANSING, KANSAS 66043
(913) 727-2453
ROOM 174-W, CAPITOL BLDG.
TOPEKA, KANSAS 66612-1504
(913) 296-7655



TOPEKA

House of Representatives

September 13, 1997

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
SUBCOMMITTEES:
EDUCATION
K-12 SCHOOL FINANCE

Attorney General Carla Stovall
Kansas Judicial Center
Topeka, KS 66612-1597

Dear General Stovall:

This is to request your opinion on the subject of exemption from payment of sales tax and transient guest taxes at motel and hotels by civilian and military Department of Defense (DOD) personnel and by person employed by or affiliated with other governments, agencies, or nonprofit organizations normally exempt from sales taxes.

DOD military and civilian personnel in the Leavenworth-Lansing area have been avoiding payment of sales and transient guest tax at hotels/motels through presentation of military or government orders, use of various federal government forms indicating personnel are traveling on temporary duty, and or an "Exemption Certificate-Tax On Occupancy of Hotel Rooms" (copy attached).

It is the contention of the Leavenworth-Lansing Area Chamber of Commerce that no matter what the documentation offered by the traveler, unless payment for the lodging is made directly to the motel or hotel through the use of a federal instrument, e.g. a federal voucher, a federal check, or a federal credit card, then the traveler is subject to sales and transient guest tax. Similarly, employees or representatives of state and local governments, agencies, or organizations normally exempt from sales taxes, must pay sales tax and transient guest taxes unless payment for the lodging is made directly to the hotel or motel by an instrument of the tax exempt agency or organization.

Clarification is needed for those circumstances where an individual is exempt from state and local sales taxes and local transient taxes for lodging at Kansas hotels and motels. In order to clarify these issues would you please answer the following questions:

1. Do military personnel, DOD civilians, and any other persons who pay for lodging at a motel or hotel in the state of Kansas, regardless of affiliation with the federal, state or local government, or with a nonprofit organization normally exempt from paying sales taxes, pay all applicable sales taxes and transient guest taxes unless payment for that lodging is made directly to the hotel or motel with an instrument of the government or organization with which the person is affiliated? What constitutes a "government instrument of payment?"
2. Does presentation of military orders, federal forms for authorization of temporary duty travel, government contracts, certificates of tax exemption, or other documents, allow for exemption from paying applicable sales taxes and transient guest taxes at Kansas hotels and motels?

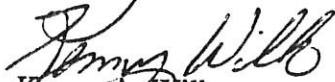
Page 2
Attorney General Stovall
September 13, 1997

3. Do claims, however documented, that payment for lodging made by an individual with personal check, cash, or credit card will be reimbursed to that individual by a tax exempt government, agency, or organization, constitute exemption from paying all applicable sales and transient guest taxes?

During your research and working of the above questions don't hesitate to contact me or Mr. Charles Gregor (phone 913-682-4112). Mr. Gregor is the Executive Director of the Leavenworth/Lansing Area Chamber of Commerce.

Thank you for your consideration of this issue.

Sincerely,



Kenny A. Wilk
State Representative, 42nd District

c.c. Mr. Charles Gregor



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

October 2, 1997

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

The Honorable Kenny A. Wilk
State Representative, 42nd District
701 S. DeSoto Rd.
Lansing, Kansas 66043

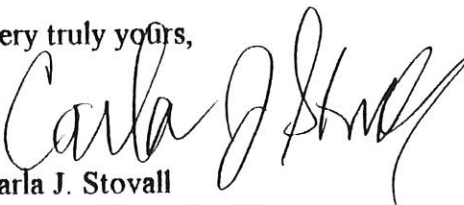
Dear Representative Wilk:

I am in receipt of your request for an opinion dated September 13, 1997, regarding sales and transient guest tax exemptions for government and nonprofit organizations renting hotel rooms.

Enclosed is an administrative regulation, K.A.R. 92-19-52, that appears to address your questions. It provides that the Department of Revenue will not recognize agency relationships for sales tax exemption purposes unless the statute specifically requires otherwise. There is no statute requiring otherwise for purposes of government or nonprofit exemptions from payment of sales tax. Thus, payment must be in the form of the exempt entity's check, warrant or voucher; payment by the individual's credit card, cash, check or otherwise will not suffice even if that individual is to be reimbursed by the exempt entity. Presumably the answer would be the same for transient guest taxes; unless there is a specific exemption for agents of exempt entities or indirect purchases, payment would have to be made by the exempt entity for the exemption to pertain.

I hope this information will be of assistance to you and the Leavenworth-Lansing Area Chamber of Commerce. If my office can be of additional assistance in this or any other matter, please feel free to contact us.

Very truly yours,


Carla J. Stovall
Attorney General of Kansas

CJS:JLM:jm
Enclosure



NOTICE

EXEMPTIONS FROM PAYMENT OF SALES TAX AND TRANSIENT GUEST TAX

All guests must pay applicable sales tax and transient guest tax unless the full payment for lodging is made directly to this motel by a voucher, check, warrant or credit card of the agency or organization exempt from such taxes, e. g., Department of the Army, Department of Defense, or any other government agency, or non profit organization.

PLEASE NOTE THE FOLLOWING

1. No claim of reimbursement to the individual guest, military or civilian, by a tax exempt agency or organization, however supported administratively, constitutes exemption from paying sales tax and transient guest tax.
2. Any credit card used that is claimed to be a credit card of a government agency or other non profit organization must have that agency or organization's name on the credit card in order to be accepted as direct payment from such agency or organization and thereby exempt from payment of sales and transient guest taxes.
3. No official orders, requests for orders, travel documents, authorizations for temporary duty travel, or other forms, certificates, cards, permissions, or any other administrative means, no matter who or what the issuing party, constitutes exemption from payment of sales and transient guest taxes.

 K.A.R. 92-19-52, and
 Opinion of the Kansas Attorney General, 13 Sept 1997

Certificate of Guest Exemption From Tax

1. Are you a government employee staying here on official business?

YES _____ NO _____

2. Is one of the listed organizations paying your bill directly on their check or credit card?

YES _____ NO _____

3. If checked "religious organization" under number (2), is your travel exclusively for a religious purpose?

YES _____ NO _____ NOT APPLICABLE _____

4. Is the federal government paying the bill on an IMPACT credit card or on a similar direct pay credit card, check, or voucher directly to the hotel/motel?

YES _____ NO _____

5. Are you an ambassador or other diplomatic representative of a foreign government with proof of accreditation from the federal government (military orders do not constitute such accreditation)?

YES _____ NO _____

- A. If questions 1 through 5 are answered "no", there are no exemptions.
- B. If question 1 is answered "yes" and question 2 is answered "no", there is no sales tax paid, however, transient guest tax is paid.
- C. If "religious organization" is checked under question 2 and question 3 is answered "yes", there is no sales tax paid, however, transient guest tax is paid.
- D. If question 3 is answered "no", all sales and transient guest taxes are paid.
- E. If question 4 is answered "yes", no sales tax or transient guest tax is paid.
- F. If question 4 is answered "no", no sales tax is paid, however, transient guest tax is paid.
- G. If question 5 is answered "yes", no sales tax or transient guest tax is paid.



TESTIMONY

DATE: February 19, 1997

TO: Senate Committee on Assessment & Taxation

FROM: Jean Barbee
Executive Director

RE: SB-82 (Sales tax exemption on hotel rooms purchased
by government employees)

The Kansas Lodging Association supports the concept of Senate Bill 82 and requests additional amendment to the bill as written.

As you have heard from Senator Jordan, existing Kansas laws and regulations are causing Kansas hotels to lose business to Missouri hotels. According to a bulletin by the Federation of Tax Administrators, Missouri law requires that federal employees should provide either proof of employment or sign a statement that he or she is representing an exempt entity.

Statewide, hoteliers have been plagued with the issue of their front desk personnel being put in the position of debating the allowance of a sales tax exemption with a customer. In many cases there simply is no debate, "the customer is always right". The lodging facility is then faced with assumption of the tax liability.

The premise of our support of SB-82, then, is:

- The intent of existing federal and state law appears to be that a federal or state government employee on official business should be exempt from state sales tax.
- If the purchase would be exempt if purchased directly by a federal or state agency, then the exemption should be allowed regardless of the payment form.
- Front desk personnel of Kansas lodging facilities should not have the responsibility of having to deny a customer an exemption for sales tax, if the customer is willing to sign a form stating that he or she is not liable for the tax.

*Senate Assessment & Taxation
2-23-99*

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Attachment 2

- In other areas of sales tax collection and exemption, these premises have met with legislative approval.

We have worked with the Department of Revenue on this issue. Tom Hatten of that agency wrote the attached memo which includes the procedure he envisions could be implemented by regulation if you amend the retailers' sales tax imposition statute, KSA 79-3603. Our original bill was written to apply to state employees. Mr. Hatten has provided statutory language which would include federal government employees as well.

Office of Policy & Research
Shirley K. Sicilian, Director
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Office of Policy & Research

MEMORANDUM

To: Jean Barbee
Subject: Senate Bill 82: Hotels & Motels
From: Tom Hatten
Date: February 19, 1999

Last Friday, I met with you, members of the Kansas Lodging Association, and Senators Ben Vidricksen and Nick Jordan. At the close of the meeting I agreed to draft possible changes to Senate Bill 82 to address concerns raised at the meeting. The draft is at the end of this discussion.

The Lodging Association's concerns are broader than the problem of state employees mistakenly or unlawfully claiming exemption, which is what the bill now addresses. Within the last three years, Missouri administrative cases and subsequent administrative rulings have extended exemption for hotel rentals to federal employees who use their own credit cards. See e.g. *Drury Supply Co. v. Director of Revenue, Missouri Administrative hearing Commission*, Docket No. 95-000870RV, Oct. 8, 1996. This puts Kansas City and Johnson County hotels that compete with Missouri hotels at a disadvantage when booking federal seminars and other events. In addition, application of the federal exemption is often too complex to be easily understood by hotel desk clerks.

The changes to SB 82 set out below will enable the department to create an exemption certificate that contains a checklist to use to determine what hotel charges are subject to sales tax and transient guest tax. The procedure that is discussed incorporates both the current exemptions and the proposed exemptions for government employees.

The exemption certificate would be used at front desks. A hotel desk clerk would simply ask the hotel patron claiming exemption to complete the certificate, which asks four questions: (1) Are you a government employee staying here on official business?, (2) Is one of the listed organizations (which does not include the federal government) paying your bill directly on their check or credit card?, (3) If you checked "religious organization" under number (2), is your travel exclusively for a religious purpose?, and (4) Is the federal government paying the bill on an IMPACT credit card or on a similar direct pay credit card or are you an ambassador or other diplomatic representative of a foreign government with proof of accreditation from the federal government?

There would be no exemptions if questions 1 through 4 are answered no. The room charges would be exempt from sales tax if question 1 is answered yes and question 2 is answered no. However, the room charges would be subject to transient guest tax. If questions 2 and 3 are answered yes, all charges would be exempt from sales tax, but the room charges would be subject to transient guest tax. If question 3 is answered no, all charges would be subject to both sales tax and transient guest tax. If question 4 is checked all charges would be exempt from both sales tax and transient guest tax.

When direct payments to hotels are made by the federal government, all hotel charges are exempt from state taxation because of the supremacy clause of the Constitution. Many representatives of foreign governments are also exempt from both sales and transient guest tax because of federal treaties. The new provision would extend exemption to federal employees who use their own credit cards both for administrative ease and to give Kansas hotels parity when competing with Missouri hotels. The department would probably require a copy of the credit card, check, official military orders that require the military personnel to be present in the community, ID card, proof of diplomatic accreditation, or other similar documentation to be attached to the exemption certificate being completed.

An exemption certificate using this approach would be easy for hotel patrons to understand and complete. Hotels computers could be programmed to tax or exempt line item charges based on how the patron checks the boxes on the exemption certificate. This should provide hotels a much simpler way to determine what taxes are due.

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto, *except that such tax shall not apply to the renting of rooms by ~~or on behalf of the state or its employees~~ the federal government, the state of Kansas and its political subdivisions, and employees of such entities traveling on official government business.*

**Hilton**

Wichita Airport & Executive Conference Center

Tuesday February 23, 1999

The issue of tax exemption has always been complex, misunderstood, tricky and somehow left up to the discretion of a desk clerk and the person claiming tax-exempt status. It has also been an issue of confrontation for the desk clerk who is being told that the guest is tax exempt and will not pay the tax.

Front office personnel working at Hotels and Motels are often put in the position of doing what the guest says. Front office personnel are also taught to believe that the guest is RIGHT and therefore take that word as gospel. Mean while, many of us in the lodging industry have been taught to understand that a guest is tax exempt when they pay with a government credit card or their account is being billed to an organization that is tax exempt and will pay the account by a check from that organization. At the same time, employees working in the lodging industry cannot be expected to determine the credibility of the guest who is stating they are tax exempt. I for one have been audited and subjected to back taxes and penalties due to not collecting tax when guests have said they are tax exempt.

The main issue for the Lodging industry is to take the guesswork out of Tax Exempt status. While part of our job is to collect taxes on the service we provide, I do not believe a desk clerk making between \$6.00 and \$9.00 an hour should have to decide on the credibility of a guest who claims he/she is part of a tax exempt organization. Most employees at the front desk of hotels are not able to discern the difference between transient bed tax and state

Senate Assessment + Taxation

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2698 Airport Road, P.O. Box 12690, Wichita, KS 67277-2690

Tel: +1 316 945 5272

Reservations: www.hilton.com or 1-800-HILTONS

2-23-99

Attachment 3

**Hilton**

Wichita Airport & Executive Conference Center

taxes let alone who should pay or not pay a portion of the recorded tax on the guest folio.

Therefore, we ask that a revised procedure allowing a wider form of payment be applied to put some honest burden back on the representative of the government or tax exempt organization. Tax exempt status applies to the business status of the guest and this would remove any guesswork and also eliminate any potential disagreement between the front desk employee and the guest.

I also believe the lodging Industry should be able to receive payment from guests checking out of a lodging facility without too much unnecessary red tape such as IMPACT credit cards, purchase orders or verification of tax exempt organization checks. Such requirements are also deterring such organizations from booking business in Kansas. These organizations need to do business in an easy manner rather than have their delegates concerned about acceptance of their exempt status. While hotels do not want to be penalized for not having sufficient back up when adjusting off tax from the guest account, I am quite sure that a little tweaking of the present Bill would enable a broader acceptance of Tax exemption by all concerned.

Thank You

Michael J Phipps, CHA
General Manager



Olathe District Schools

OPERATIONS SERVICE CENTER
UNIFIED SCHOOL DISTRICT NO. 233

SENATE COMMITTEE ON ASSESSMENT & TAXATION
SENATOR AUDREY LANGWORTHY, CHAIR
TESTIMONY ON S.B. 318

ROBERT COURTNEY
ENERGY MANAGER
OLATHE SCHOOL DIST.
FEBRUARY 23, 1999

Madam Chair,

My name is Robert Courtney. For the past 6 years, I have been employed by the Olathe School District as their Energy Manager. My job description is to establish accountability for energy consumption at every level in the school district. I am also responsible for developing and monitoring the district's energy management program under Board of Education policy and the superintendent's guidelines for the purpose of transferring dollars from the utility budget into the instructional budget while providing the best educational environment for the students and staff.

The Olathe School District is served by two (2) electric companies, one (1) natural gas company, and two (2) water companies. Of the two (2) electric companies, the one that serves the west half of the district includes a franchise fee with their monthly billing. The other company, serving the east half of the district, has an exemption from franchise fees. This is because City Ordinance #82-67 states in Section 8, Article 2, "gross receipts... shall not include... educational institutions not operating for profit..." This ordinance was put into effect September 21, 1982 for a twenty year term.

During the 1995-1996 school year, the school district paid franchise fees through the electric company serving the west part of the district, the natural gas company, and through telecommunications services at a total cost of \$76,000. Because of natural gas deregulation and the opportunity to transport natural gas through a third party vendor, the total franchise fee cost for 1997-1998 was \$59,000. If it wasn't for the exemption through the east-side electric company, we would be paying an **additional** \$70,000 per year in franchise fees.

Thank you for this opportunity to present information to the committee.



730 NORTH RIDGEVIEW
 OLATHE, KS 66061
 913-764-0530

MAIL ADDRESS:

CUSTOMER NO. 4-0122890-7

METER NO. Y50128

SERVICE ADDRESS:

13820 BROUGHAM

99110.3

USD 233 TOMAHAWK ELE-MAIN
 PO BOX 2000
 OLATHE KS 66063-2000

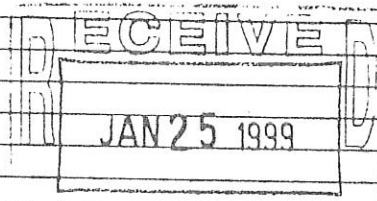
DATE BILLED	RATE CODE
1/21/99	910-5

BILLING PERIOD		METER READING		PRESSURE FACTOR	MULTIPLIER	CCF USED	BTU FACTOR	THERMS USED
FROM	TO	PREVIOUS	PRESENT					
12/10/98	1/14/99	38788	43906			5118	1.00000	5118

MESSAGES

PLEASE USE THE ENVELOPE PROVIDED TO MAIL YOUR PAYMENT. YOUR LOCAL UNITED CITIES OFFICE IS NO LONGER ACCEPTING PAYMENTS. THANK YOU FOR HELPING US TO PROVIDE BETTER CUSTOMER SERVICE.

DESCRIPTION	AMOUNT
CURRENT MONTH CHARGES	
CUSTOMER CHARGE	5.00
GENERAL GAS SERVICE 5118 X .17737	907.78
WHOLESALE GAS COST .29729	1,521.53
OLATHE <u>FRANCHISE FEE</u> .05263	128.12
PAYMENT RECEIVED, THANK YOU 1/13/99 558.37	



CUSTOMER DEPOSIT INFORMATION

METER DEPOSIT
 DATE OF DEPOSIT
 DATE OF REFUND

COMPARATIVE USAGE INFORMATION				
BILLING	DAYS	USAGE	DAILY AVG. USAGE	DEGREE DAYS
CURRENT	35	5118	146.23	
LAST YEAR	34	3226	94.88	

THIS AMOUNT DUE NOW **\$2,562.43**

PAST DUE AFTER THIS DATE **2/05/99**

PAY THIS AMOUNT **\$2,616.38**

DUE DATE DOES NOT EXTEND PAYMENT OF ANY PREVIOUS BALANCE DUE. RETAIN THIS SECTION FOR YOUR RECORDS. FAILURE TO RECEIVE STATEMENT DOES NOT RELIEVE CUSTOMER OF RESPONSIBILITY TO PAY AMOUNT DUE.

DETACH AND RETURN THIS SECTION WITH YOUR PAYMENT. PLEASE DO NOT STAPLE, FOLD OR MUTILATE.

USD 233 TOMAHAWK ELE-MAIN
 PO BOX 2000
 OLATHE KS 66063-2000

CUSTOMER NO. 4-0122890-7

CYCLE NO. 9

MAKE CHECK PAYABLE TO:

UNITED CITIES GAS COMPANY
 P O BOX 650708
 DALLAS, TX 75265-0708

THIS AMOUNT DUE NOW **\$2,562.43**

PAST DUE AFTER THIS DATE **2/05/99**

PAY THIS AMOUNT **\$2,616.38**



099401228907000026163800002562430000256243

PLEASE INDICATE AMOUNT OF YOUR PAYMENT



4-2



QUESTIONS? CALL:
 (913)-764-3500 LOCAL
 1-800-794-4780 TOLL FREE
 PO BOX 37 323 N PARKER
 OLATHE, KS 66051-0037

UNIFIED SCHOOL DISTRICT 1233
 P O BOX 2000
 OLATHE, KS 66051-2000

GROUP BILL NBR: 000022276

SERVICE PERIOD FROM TO	NBR DAYS	METER READINGS PREVIOUS-PRESENT	BILLING CONSTANT	ENERGY USE KWH/MCF/CCF	BILLING CAPACITY	POWER FACTOR	COG/PGA FACTOR	
CUSTOMER CHARGE	ENERGY CHARGE	CAPACITY CHARGE	COG/PGA CHARGE	FRANCHISE FEE	SALES TAX	COUNTY TAX	CITY TAX	CURRENT CHARGES

Total Current Charges 1,260.90

Balance Forward 8.07CR

N WALKER LN Account Nbr: 9760864434 Billing Cycle: 14

SAL# 00074754 09-907-3420
 12/17 - 01/20 34
 6.13 8.68 00 .74 .00 .00 .00 15.55
 Total Current Charges 15.55

Balance Forward 8.07CR

PRAIRIE CENTER ELEM

629 N PERSIMMON DR Account Nbr: 8355838852 Billing Cycle: 11

ELE MTR # 01956049 03-094-3420 100.0% Tax Exempt
 12/14 - 01/15 32 01760 - 0.975 200 43000 164 100.00 .000000
 10.00 2,013.92 .00 00 101.20 .00 .00 .00 2,125.12
 Total Current Charges 2,125.12

Balance Forward 8.07CR

RIDGEVIEW ELEMENTARY

RIDGEVIEW SCHOOL - 1 Account Nbr: 2108278620 Billing Cycle: 15

ELE MTR # 83066982 03-094-3420 100.0% Tax Exempt
 12/18 - 01/21 34 25347 - 26177 40 33200 107 100.00 .000000
 10.00 1,584.88 .00 .00 79.74 .00 .00 .00 1,674.62
 SAL# 00105836 09-915-3420

12/18 - 01/21 34
 3.31 6.73 00 .50 .00 .00 .00 10.54
 Total Current Charges 1,685.16

Balance Forward 8.07CR

RIDGEVIEW SCHOOL - 2 Account Nbr: 2543745742 Billing Cycle: 15

ELE MTR # 63380664 03-094-3420 100.0% Tax Exempt
 12/18 - 01/21 34 20449 - 20527 80 6240 25 100.00 .000000
 10.00 338.77 .00 .00 17.44 .00 .00 .00 366.21
 Total Current Charges 366.21

STATEMENT CONTINUED - SEE PAGE 8

Spring Hill

Unified School District #230



Board of Education Office
101 E. South Street, Spring Hill, KS 66083
phone: 913/592-7200 fax: 913/592-7270
e-mail address: goering@usd230.k12.ks.us

Dr. Barton L. Goering, Superintendent
Dr. Dan Lumley, Assistant Superintendent
Myrna Morrison, Business Manager/Treasurer
Sue Luttrell, Clerk of the Board

SENATE ASSESSMENT & TAXATION COMMITTEE
SENATOR AUDREY LANGWORTH, CHAIR
TESTAMONY S.B. 318

Myrna Morrison
Business Manager
Spring Hill U.S.D. #230
February 23, 1999

Madam Chair, Members of Committee:

I am here today representing Spring Hill School District. Our district is located in southern Johnson County and northern Miami County. Spring Hill has 1,425 students, and is the smallest school district in Johnson County. We are a rural community, with a small commercial tax base. Our General Fund Assessed Valuation is approximately \$36,000,000 and our total mill levy for 1998-99 is 62.64 mills. Last year our district's mill levy was 71.39, the third from the highest in the state. Our Board of Education and administrative staff are very concerned about this high tax burden on our district's patrons, but still tries to offer the best education possible for our students. Therefore, every measure is being taken to stretch each educational dollar to do the most for our students, without increasing the mill levy.

Three of the district's four schools and the district office are located in the City of Spring Hill. The district spends approximately \$325,000 a year on utilities, including gas, electric, telephone, and cable TV for the facilities located within the city. The City of Spring Hill has a franchise fee of 5% on each of these services. This is an annual cost of about \$16,250. Even though this is a smaller amount than the other districts testifying today, the dollars are just as significant to the district's budget. The cost for these franchise fees to district taxpayers is nearly one-half mill. We feel our district tax dollars should go to the educational needs of our students, and not to fund the City of Spring Hill. We also feel this is an unfair assessment, as not all cities in Kansas charge franchise fees to the local school districts.

I am currently serving as president-elect of the Kansas Association of School Business Officials. This association of over 500 members is made up of Superintendents, Assistant Superintendents, Directors of Finance, Business Managers, and other business officials from nearly every school district in the state. At a KASBO Workshop last week, this very subject was a topic of discussion. During a presentation on the deregulation of natural gas and electric wheeling, and the possible savings some districts could see in the future, many members voiced their concerns of district funds being spent on franchise fees, while other districts did not have to pay any. The KASBO membership of financial managers in attendance, representing school districts of all sizes across the state, voiced their support of S.B. 318.

As Business Manager of Spring Hill School District and as a representative of the Kansas Association of School Business Officials, I would like to voice our unified support of S.B. 318. We would like you to know this bill affects both large and small districts alike. Even though the dollars spent for franchise fees varies greatly from district to district, every dollar spent is just as important.

Madam Chair and Committee Members, I would like to thank you for your time today and encourage your serious consideration and support for S.B. 318. In closing, I would like to leave you with this thought -- your support of this bill would be good for kids. Thank you very much.

Board of Education

Jim Robinson, President • Bill Meek, Vice President
Craig Drummond, Member • Carmen Ellis, Member • Joann Harry, Member • Bob Metcalf, Member • Dr. Bill Whitesell, Member

Senate Assessment & Taxation
2-23-99
Attachment 5



Energy Management/Education

Telephone - (316) 833-2004
Fax - (316) 833-2150

**Senate Assessment and Taxation Committee
Senator Audrey Langworthy, chair
Testimony on S.B. 318**

David Banks
Energy manager
February 23, 1999

Madame Chair, members of the committee:

Thank you for hearing Senate Bill 318.

USD 259 is the 83rd largest school district in the nation serving over 48,000 students in 106 facilities. Our district requires a significant amount of energy to sustain its operations. We use approximately 350,000mcf of natural gas and 30,000,000 kilowatt hours of electricity annually.

The school district pays the city franchise fees of 5% on electricity, natural gas, distribution services on transport natural gas, and cable television. In addition we pay \$1.81 per access line for telephone service and \$0.119 per Mcf of natural gas used by our transport sites. The total annual expenditure for franchise fees paid by the school district exceeds \$320,000.

SB 318 would exempt school districts from paying franchise fees to cities. We believe this is an appropriate extension of the long established public policy of exempting school districts from paying taxes. Or in other words, should a tax-supported organization pay taxes to a tax-supported municipality?

Following are examples I feel are germane to this discussion:

- School districts are provided city and county services, such as fire and police protection, yet are exempt from property taxes.
- School districts do not pay state or federal fuel tax, but are allowed access to roads and highways supported by that tax.
- Equity – franchise fees apply only to districts within a city that assesses the fee. Districts' fortunate enough to be in the county, or within a city that does not assess a franchise fee, are already exempt.

About 52% of the state general funds are allocated for K-12 education. Does the legislature expect some school districts to pass through the tax dollars to another taxing entity? SB 318 would give a modest amount of financial relief to those school districts. Attached are copies of several of our utility bills, which demonstrate the financial impact of franchise fees.

Wichita Public Schools encourages your favorable action on SB 318. Thank you for granting us your time and attention.

Senate Assessment & Taxation



FEB 16 1999

FEBRUARY 12, 1999

ACCOUNT NO: 34284

USD 259 WICHITA
% KATE MORELAND
3850 N HYDRAULIC ST
WICHITA, KS 67219-3304

CITY OF WICHITA, KANSAS
NATURAL GAS VOLUMETRIC TRANSPORTATION FRANCHISE FEE

TRANSPORTATION DELIVERIES	20,161 MCF
VOLUMETRIC RATE	\$.119 / MCF
VOLUMETRIC TRANSPORTATION FRANCHISE FEE	\$2,399.16
PREVIOUSLY BILLED FRANCHISE NOT YET PAID	\$0.00
TOTAL FRANCHISE FEES CURRENTLY DUE	\$2,399.16
AMOUNT DUE ON THIS MONTH'S BILLING INVOICE SUMMARY	\$7,134.58
TOTAL AMOUNT DUE	\$9,533.74

UNDER AN ORDANCE PASSED BY THE CITY OF WICHITA ON SEPTEMBER 29, 1998
A FRANCHISE FEE IS IMPOSED UPON ALL TRANSPORTATION VOLUMES EFFECTIVE
WITH BILLS RENDERED AFTER JANUARY 1, 1999. THIS STATEMENT INCLUDES THE
AMOUNT OF THOSE VOLUMETRIC FRANCHISE FEES AND ADDS THAT TO YOUR
REGULAR MONTHLY BILLING FROM KANSAS GAS SERVICE

WK32

Amount Due By: MARCH 2, 1999 \$9,533.74

If Paying After: MARCH 2, 1999 \$9,724.45

**** PLEASE RETURN THIS STUB WITH YOUR PAYMENT ** THANK YOU ****

Statement Date: FEBRUARY 12, 1999

USD 259 WICHITA
% KATE MORELAND
3850 N HYDRAULIC ST
WICHITA, KS 67219-3304

ACCOUNT NO: 34284

Amount Due: \$9,533.74

Amount Due After
MARCH 2, 1999 \$9,724.45

MAKE CHECKS PAYABLE TO: **KANSAS GAS SERVICE**
AND MAIL PAYMENT TO: **P.O. BOX 758000**
TOPEKA, KS 66675-8000

JAN 5, 1999

ENERGY STATEMENT BILLING SUMMARY



QUESTIONS? CALL:
(316)-383-8600 LOCAL
1-800-794-6101 TOLL FREE
300 S MAIN
WICHITA, KS 67202-3718

USD 259
% KATE MORELAND
3850 N HYDRAULIC ST
WICHITA, KS 67219-3304

ACCOUNT NUMBER: 7270925773

48/SYS

TOTAL KWH	ELEC SUBTOTAL	TOTAL MCF	GAS SUBTOTAL	TOTAL CHARGES
348286	25,132.13	0	.00	25,132.13

Previous Balance 25,924.16
 Payments Received ** THANK YOU 25,924.16CR
 Electric Rebate Credit 8.07CR
 Balance Forward 8.07
 Total Current Charges 25,132.13

SSC 273,586 \$ 19,735.48

FPC xx 74,700 \$ 5,388.58

~~SSC~~ WK 28

AMOUNT DUE \$	25,124.06
BY JAN 26, 1999	
AMOUNT DUE	
AFTER JAN 26, 1999 \$	25,626.54

*****PLEASE RETURN THIS PORTION WITH YOUR PAYMENT**THANK YOU!*****

STATEMENT DATE: JAN 5, 1999
USD 259
% KATE MORELAND
3850 N HYDRAULIC ST
WICHITA, KS 67219-3304

ACCOUNT NUMBER:
7270925773
03/08133/48

MAIL PAYMENT TO: KGE
P.O. BOX 758500
TOPEKA, KS 66675-8500

AMOUNT DUE	
BY JAN 26, 1999	
\$	25,124.06
AMOUNT DUE	
AFTER JAN 26, 1999	
\$	25,626.54
AMOUNT ENCLOSED	
\$	_____

72709257730025132130025124060025626549



QUESTIONS? CALL:
 (316)-383-8600 LOCAL
 1-800-794-6101 TOLL FREE
 300 S MAIN
 WICHITA, KS 67202-3718

USD 259
 % KATE MORELAND
 3850 N HYDRAULIC ST
 WICHITA, KS 67219-3304

ACCOUNT NUMBER: 7270925773

SERVICE PERIOD FROM TO		NBR DAYS	METER READINGS PREVIOUS-PRESENT		BILLING CONSTANT	ENERGY USE KWH/HCF/CCF	BILLING CAPACITY	POWER FACTOR	COG/PG FACTOR
CUSTOMER CHARGE	ENERGY CHARGE	CAPACITY CHARGE	COG/PGA CHARGE	FRANCHISE FEE	SALES TAX	COUNTY TAX	CITY TAX	CURRENT CHARGES	
ELE MTR # 01258158									
	12/03 - 01/05	33	33582 - 34258	400	348286			.00	.0000
.00	23,935.36	.00	.00	1,196.77	.00	.00	.00	.00	25,132.00
ELE MTR # 15661237									
	12/10 - 01/05	26	00000 - 02520	1	2520			.00	.0000
.00	.00	.00	.00	.00	.00	.00	.00	.00	.00
ELE MTR # 68088925									
	12/03 - 12/10	7	18810 - 18884	9	666			.00	.0000
.00	.00	.00	.00	.00	.00	.00	.00	.00	.00
ELE MTR # 01258157									
	12/03 - 01/05	33	10162 - 10411	300	74700			.00	.0000
.00	.00	.00	.00	.00	.00	.00	.00	.00	.00

END OF STATEMENT

6-4



**League
of Kansas
Municipalities**

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

TO: Senate Committee on Assessment and Taxation
FROM: *CM* Chris McKenzie, Executive Director
DATE: February 23, 1999
SUBJECT: Senate Bill 318, Concerning Franchise Fees

EXECUTIVE SUMMARY: Under state law, franchise fees are a mandatory condition of a franchise agreement between a city and a utility for the right to use public rights-of-way. The KCC, not cities, determines from which ratepayers, if any, the utility may recover the expense of the franchise fee. If the Committee desires to exempt school districts from responsibility for reimbursing the franchised utility for this expense, the League recommends that the KCC be directed to do so.

Thank you for the opportunity to appear today in connection with Senate Bill 318, which requires that cities exempt school districts and school district property from the payment of franchise fees. While listed as an opponent to the bill, we still have some questions about the effect of this legislation. The reason for this confusion may become clearer after reviewing some of the following background information on municipal franchise agreements.

1. History and Legal Basis of Franchise Agreements. Since 1905 cities have had the clear statutory authority to control the use of public streets, alleys and rights of way by companies providing a range of public services, including the provision of electricity and gas. Three major enactments govern this activity: (1) K.S.A. 12-848, enacted in 1905, applying only to cities of the 2nd and 3rd class; (2) K.S.A. 12-824, enacted in 1915, applying to all cities; and (3) K.S.A. 12-2001, enacted in 1945, applying to all cities. These statutes all authorize the exercise of such control through the approval of ordinances granting companies the privilege or "franchise" to use city-owned right-of-way to provide electricity, natural gas, railway and bus service, telephone or telegraph service, steam heat, water, etc .

In the last few decades, K.S.A. 12-2001 has been used most commonly as the legal basis for the granting of franchises by cities. This extraordinary statute authorizes cities to grant a franchise for up to 20 years after three public readings of the ordinance granting the franchise. The franchise granted also is subject to a public referendum if a sufficient petition is filed. In many respects, the granting of franchises was one of our earliest forms of "privatization" of public services in the cities that chose not to create municipal utilities (currently operated by 121 cities). In such cases, the franchise ordinance contains the terms under which private companies can supply these public services in any city.

2. What Rights Are Granted And Duties Created Under A Franchise? It is clear from a recent Kansas Supreme Court decision that cities, acting in accordance with state statutes, actually do grant a "franchise" to persons, firms or corporations that request to use the public right-of-way and provide public services within city limits. The franchise also comprises a legal contract between

*Senate Assessment & Taxation
2-23-99
Attachment 7*

the city and the company, conferring valuable rights. In fact, many franchise ordinances read like contracts, specifying the respective privileges and duties of the parties, and providing remedies for nonperformance. Both federal and state courts have recognized that franchise ordinances/agreements are contracts which confer specific property rights. See, e.g., *Kansas Gas & Electric v. City of Independence*, 79 F.2d 32, 35 (1935); and *City of Liberal v. Teleprompter Cable Service, Inc.*, 218 Kan. 289 (1975).

3. Franchise Compensation or Fees. K.S.A. 12-2001 requires companies which receive a franchise from a city to provide “adequate compensation or consideration therefor” and to pay a fixed charge for the right regardless of whether or not other or additional compensation is provided. The statute goes on to say:

Such fixed charge may consist of a percentage of the gross receipts derived from the service permitted by the grant, right, privilege or franchise from consumers or recipients of such service located within the corporate boundaries of such city. [Emphasis added].

The franchise fee may be based on any agreed-upon terms, but it is most commonly based on a percentage of the gross receipts derived by the company from its services in the city. While the League has not done a recent survey of city franchise fee rates, our franchise files contain ordinances with fee provisions ranging from 2% - 5% of gross receipts derived from electric service in the city. Consider this provision from a 1994 franchise ordinance of Yates Center:

As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or revenue taxes, the Company shall pay to the City during the term of this franchise two percent (2%) of its gross revenue from the sale of electric energy within the corporate limits of said City, such payment to be made monthly for the preceding monthly period.

The first underlined passage demonstrates a common feature in such provisions; i.e., the franchise fee is the exclusive payment made by the Company and the Company is exempt from other payments. The second passage also is common in these agreements. Franchise payments are typically computed based on sales within the city only. While it may be computed based on a percentage of gross receipts, the franchise fee is not a tax. It is a fee paid by a private company for the long-term privilege of using the public rights-of-way to deliver electricity to the residents of a city. By order of the KCC it now appears on ratepayers’ bills in a way that it appears to be a tax, but it most closely resembles a payment for the use or rental of the rights-of-way in delivering a public service. This is extremely valuable property which, in many instances, the city purchased from private landowners. Recent studies in other states have demonstrated that franchise fees in those states were usually substantially less than the franchisee would pay in fair market rent or for the purchase of comparable property.

4. The Relative Importance of Franchise Fees As A Revenue Source. Franchise fees can comprise a significant component of a city’s revenues--easily three times what it derives from its 1% sales tax from the sale of electricity if the franchise fee rate is 3%. A recent League survey revealed that statewide cities receiving electric franchise fees receive an amount which on the average equals 11% of their property tax revenues from all sources, and it would require an average mill levy of 3.8

mills to replace all electric franchise revenues. In cities with populations between 299 - 499, the average mill levy increase to replace the franchise fees would be 10.7 mills.

The 1997 tax and fee payments reported to an interim legislative committee last year by Western Resources to cities within its utilities service territories provide a compelling illustration of the relative significance of electric franchise fees to city budgets and as a way of avoiding reliance on the property tax. Western Resources reported it paid the following amounts to cities in 1997:

Payment Type	Amount	Percent Total
City Franchise Fees	\$27,881,643	(81.8%)
City Property Tax	2,890,304	(8.5%)
City Sales Tax	<u>3,278,883</u>	(9.6%)
	\$34,050,830	

5. Utility Companies (Not Customers) Are Required by Cities to Pay Franchise Fees.

As mentioned above, franchise agreements voluntarily entered into by private companies and cities impose the burden of the franchise fee on the company. In fact, K.S.A. 12-2001 requires that such agreements contain a requirement that the company provide “adequate compensation” to the city in exchange for the franchise. When companies take franchise agreements to the KCC for review as part of their rate filings, they request, and the KCC approves, the direct pass through of the burden of the franchise fee to all customers. This is how school districts end up paying franchise fees to cities.

RECOMMENDATION: The League respectfully submits that the bill, as drafted, may actually conflict with K.S.A. 12-2001 since that statute provides that franchise fees are paid to cities by utility companies--not their customers. If it is the intention of the Committee to exempt school districts from payment of any of the cost of the franchise fee expense imposed on utility companies in connection with franchise agreements, we recommend an alternative approach. We recommend that the bill direct the KCC not to allow utility companies to collect any part of this expense of franchise fees from school districts and that the expense either be shouldered by the utility or that the company be allowed to pass through the full expense to the other ratepayers.

Attachment: Excerpt from City of Lawrence Ordinance No. 7034
Sample Electric Bill With Franchise Fee

ORDINANCE NO. 7034**AN ORDINANCE OF THE CITY OF LAWRENCE,
KANSAS AMENDING PROVISIONS OF THE FRANCHISE
ORDINANCE PROVIDING A NON-EXCLUSIVE FRANCHISE
TO WESTERN RESOURCES, INC.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE,
KANSAS:**

Section 1. Sections of Ordinance No. 6450 is hereby amended to read as follows:

Section 2. Placement of Company Equipment.

The poles, wires, cables, conduits, pipes and other equipment and facilities (hereinafter "equipment") of the Company shall be laid, installed and maintained by the Company so as to not obstruct or interfere with any public drain, sanitary sewer, water pipe, storm sewer, or other public improvement already installed. The equipment of the Company located in or on the right-of-way or easement of streets, highways, alleys, avenues, roads, bridges, and utility easement in the City shall be relocated without expense to the City when necessary for City purposes. The equipment of the Company shall be installed and maintained in accordance with the current rules and regulations of the State Corporation Commission and all applicable electric codes and ordinances adopted by the City. The placement and siting of the equipment of the Company shall conform to Chapter 5, Article 4A, of the Code of the City of Lawrence, Kansas, and amendments thereto. In no event shall the Company be required to place facilities underground other than as required by City ordinances, include Chapter 5, Article 4A, of the Code of the City of Lawrence, Kansas, and amendments thereto.

Section 2. Section 5 of Ordinance No. 6483 is hereby amended to read as follows:

Section 5. Franchise Fee.

(a) In consideration of the grant of this franchise and the premises herein, the Company agrees to pay and the City of Lawrence, Kansas agrees to accept as adequate compensation and consideration for the franchise hereby granted in lieu of any occupation, license, or privilege tax or any lease or easement charge, four percent (4%) of the total gross receipts from the sale of electrical energy during the term of this franchise to all consumers within the corporate limits of the City. The City may by ordinance modify the franchise fee, without approval of the Company, to an amount not to exceed five percent (5%) of the total gross receipts from the sale of electrical energy during the term of this franchise to all consumers within the corporate limits of the City, such ordinance shall take effect not earlier than ninety (90) days after publication. Total gross receipts shall include all sources of income generated, directly or indirectly, by the use of City property, right-of-way, and utility easements granted by this franchise. Gross receipts shall not include other operating revenues received by the Company, which are not related to the "sale of electrical energy." These other operating revenues include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges.

7-4



CITY OF
WICHITA

TESTIMONY

to

Senate Assessment and Taxation Committee
February 23, 1999

Senate Bill 318

Franchise Fee Exemption for School Districts

The City of Wichita opposes Senate Bill 318 which would exempt school districts from paying franchise fees. The bill it seems, may be based on a basic misunderstanding of what franchise fees are and why they exist. The first point which needs to be made is that the City of Wichita does not impose franchise fees on schools.

A franchise fee is a negotiated, contractual amount utilities agree to pay the City for the use of public rights of way. Franchise fees are a business arrangement between the City and the utility. The fact that utilities are allowed to pass on that cost of doing business directly to the end customer, doesn't mean the City is "taxing utility bills" as many people like to claim. But, because utilities are allowed to split out that one small part of their cost of doing business and itemize it on the customer bill, it creates the perception that a franchise fee is some kind of special city tax.

Franchise fees are a user fee negotiated with and agreed to by the utility as a cost of doing private business in the public rights of way. Certainly if the utility had to go out and buy all of the land it needs for poles and wires, the cost of those land purchases would be built into the rate or otherwise rolled into the cost of the final customer bill. Instead, the utility "leases" the land it needs from the citizens and pays them an agreed upon fee for use of that land. In Wichita, there are 1,700 miles of public rights away along city streets. If the utility had to buy and assemble that much land from

Senate Assessment + Taxation
2-23-99
Attachment 8

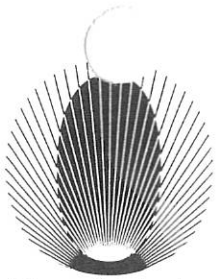
private property owners, the costs would surely be much higher than the negotiated fee the utility pays the City for using public land.

Here's another way to look at it this idea of exempting schools from paying part of the utilities cost of doing business. If electricity, for example, could be delivered to schools by truck, the utility would not need to pass along the cost of a franchise fee, but it would pass along the cost of vehicle taxes, registration fees and motor fuel taxes paid for those trucks to operate. Would the Legislature propose exempting schools from paying the portion of the electric bill identified to recover those costs of doing business?

Another issue in this discussion of exempting certain customers from franchise fees is where do you draw the line? If public schools are exempted, why not private schools, home schools or church schools? In fact, why not exempt all churches? What about non-profit groups? Again, if you keep in mind that franchise fees are not a tax on customers, but a negotiated, contractual fee paid by the utility to the City for the cost of doing business, it makes no sense to exempt anyone.

In closing, I want to touch on one other aspect of this discussion dealing with the perception that franchise fees somehow force the schools to pay the City money for which they get nothing in exchange. The City pays \$133,200 for the electricity and maintenance of more than 100 school signals. The City of Wichita also spends \$375,000 for nine Wichita police officers who form a special school liaison group and another \$296,000 for six police officers who form a school resource group which carries community policing into the public schools. These are successful, special efforts done in cooperation with the schools at City expense. And just yesterday, the City Council discussed a \$40,000 grant to USD259 to help launch an innovative program to better equip teachers to deal with children in inner city schools. These programs demonstrate a strong cooperative effort between school and city officials. And the dollars spent far exceed the amount of franchise fees the City receives from utilities which can be attributed to school buildings.

Senate Bill 318 which proposes exempting school districts from paying franchise fees is a bad idea. The cost of educating children and the amount of money a for profit utility company agrees to pay a City for conducting its private business on public land, have nothing to do with each other.



City of Olathe

MEMORANDUM

TO: Members of the Senate Assessment and Taxation Committee
FROM: Donald R. Seifert, Management Services Director *DRS*
SUBJECT: **SB 318** – Franchise Fee Exemption for Schools
DATE: February 23, 1999

Thank you for the opportunity to appear today on this bill which exempts school districts and school district property from payment of local franchise fees. It is uncomfortable and highly unusual for the city to oppose a bill that helps our local school district. The city of Olathe and the Olathe School District are partners in a great many local programs and initiatives that enhance the quality of life in our community. However, the city has a standing policy position to oppose legislation that erodes municipal revenue sources. In a growing community with increasing demands for public services, the inevitable result of a decline in one revenue source is a shift to other taxpayers.

As the committee knows, under Kansas law franchise fees are imposed on utility companies as compensation for use of public right-of-way in delivering their services. Franchise fees are a very important part of our local government budget. In 1999, franchise fees are estimated at \$4.7 million, or 12.5% of the total resources for the city's general fund. This makes franchise fees the third largest revenue source in the general fund. In addition to basic city services like streets, police, and fire protection, the general fund provides a number of specific services directed exclusively to schools. These include school resource officers, DARE officers, school crossing guards, and ball field maintenance at elementary schools. The city and district also cooperate in development of neighborhood parkland and in providing space for community recreation programs. The value of these services far outweighs the \$60,000 in franchise fee revenue received from public schools. Franchise fees are the only mechanism for public institutions to help defray the cost of basic municipal services.

From a broad perspective, one could easily argue that the fiscal impact to the city of **SB 318** is relatively insignificant. However, it starts cities down a slippery slope of other potential franchise fee exemptions. Why not exempt schools from utility payments altogether? If desired, cities have the ability to negotiate franchise agreements that contain provisions similar to **SB 318**. Indeed, our nearly 20 year old electric franchise agreement between the city of Olathe and KCP&L does exempt school properties or our fiscal note would be higher. Some communities also vary franchise fees between certain classes of customers as an economic development tool. We believe all these provisions should be local decisions.

As noted earlier, franchise fees are imposed on the franchised utility company. The company is not required to pass this fee on to its customers although that is standard practice. As an alternative to **SB 318**, the committee might consider language to prohibit franchised utilities from passing these fees on to public institutions.

Thank you again for the opportunity to comment on this bill. We appreciate efforts to help local school districts, and regret being on opposite sides on this issue.

rc

*Senate Assessment & Taxation
2-23-99
Attachment 9*