Approved: 3/3/00
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson Wagle at 9:00 a.m. on February 23, 2000, in Room 519-S of the Capitol.

All members were present except: Rep. Wilk - excused
Rep. Gregory - excused
Rep. Edmonds - excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes
Shirley Sicilian, Department of Revenue
Ann Deitcher, Committee Secretary
Edith Beaty, Taxation Secretary

Conferees appearing before the committee: Janet Stubbs, Ks Building Industry
Mitch Mitchell - KBIA Legislative Chair
Richard Standrich, Mayor of Derby
Bob Watson, Overland Park City Attorney
Don Moler, League of Municipalities
Becky Swanwick, City of Lenexa

The Chair recognized Representative Minor who told the Committee of a proposed amendment for **HB 2823**. (Attachment 1).

It was moved by Representative Minor and seconded by Representative Gatewood to adopt this amendment to **HB 2823**. The motion passed on a voice vote.

It was moved by Representative Minor and seconded by Representative Sharp to pass as amended **HB 2823.** The motion passed on a voice vote.

HB 2692 - City and county development activity excise tax act.

Appearing in favor of **HB 2692** was Janet Stubbs of the Kansas Building Industry. (Attachment 2).

Mitch Mitchell of KBIA spoke to the Committee in support of **HB 2692**. (Attachment 3).

Richard Standrich, Mayor of Derby, Kansas, offered testimony in support of **HB 2692** (Attachment 4).

Offering written testimony only, in favor of **HB 2692** were: Erik Sartorius, Johnson County Board of Realtors, (Attachment 5); Representative Don Myers, (Attachment 6); Martha Neu Smith of Kansas Manufactured Housing, (Attachment 7) and Rachel Reed Nance of Home Builders Association of Greater Kansas City, (Attachment 8).

Offering testimony in opposition of **HB 2692** was Robert J. Watson, City Attorney of Overland Park, Kansas. (Attachment 9).

Don Moler, Executive Director of League of Kansas Municipalities spoke as an opponent to **HB 2692.** (Attachment 10).

Appearing in opposition of **HB 2692** was Rebecca A. Swanwick, Assistant City Attorney of Lenexa, Kansas. (Attachment 11).

The hearing on **HB 2692** was concluded.

HCR 5057 - Amend article 11 of the constitution of the state of Kansas, relating to the classification of land devoted to recreational use.

Appearing as a proponent of **HCR 5057** was Tom Bruno, representing Kansas Golf Course Owners. (Attachment 12).

Next to appear in support to **HCR 5057** was Meril Vanderpool, owner of a golf course in Ozawkie, Kansas. (Attachment 13).

John Wright of Wichita spoke to the Committee as a proponent to **HCR 5057.** (Attachment 14.)

Kevin Fateley, owner of Wildcat Creek Sports Center of Manhattan, Kansas appeared in support of **HCR 5057.** (Attachment 15).

Copies were passed out of the names of those in attendance who support **HCR 5057** as well as the organizations they represented. (Attachment 16).

The hearing on **HCR** was concluded.

Representative Campbell introduced a bill that would clarify what information the Department of Revenue can give out to local government. The motion to introduce was seconded by Representative Sharp and passed on a voice vote.

Representative Gregory moved for the introduction of **HR 6010**, a resolution urging local units of government to carefully examine budgets supported by property tax. It was seconded by Representative Long and passed on a voice vote.

The meeting adjourned at 10:20 a.m. The next meeting is on the call of the Chair.

PROPOSED AMENDMENT TO HB2823

On page 2, by striking all in lines 2 through 10 and inserting the following:

"(d) In order to clarify and express the intent of the legislature regarding the methodology utilized in the determination of fair market value of producing oil and gas leases for property tax purposes, it is hereby declared that the primary and predominant consideration in such determination is, has been and shall be the actual value of oil and gas production severed from the earth."

House Taxation
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Attachment # 1

KANSAS BUILDING INDUSTRY ASSOCIATION, INC.

LEGISLATIVE TESTIMONY

2300 SW 29th St., Topeka, KS 66611 ◈ 785-267-2936 Fax 785-267-2959 ◈ E-mail: janetstubbs@worldnet.att.net

HOUSE TAXATION COMMITTEE
February 23,2000
HB 2692

Madam Chair and Members of the Committee:

My name is Janet Stubbs appearing today as Executive Officer of the Kansas Building Industry Association asking your support of HB 2692 which is the product of a modification of the Utah impact fee legislation.

HB 2692 was requested in response to events which have occurred in larger cities in Kansas the past 5 or 6 years. The most recent event was in the City of Derby. The City implemented an excise tax of 10 cents per square foot on the area of each lot for residential development, 12 cents per square foot for commercial., and 15 cents per square foot for industrial. The voters of Derby repealed this tax in early January by a vote of 58% to 42% and we have the mayor of Derby with us to speak to you about that specific occurrence.

HB 2692 is not an attempt to prohibit implementation of an Excise Tax by local units of government or to repeal those in effect currently. It is intended to establish guidelines which government must follow to enact a fair and equitable excise tax on one segment of the business community which has the effect of increasing the cost of housing and making it less affordable. The process is complex but possible and should be calculated individually per city due to policies and demands varying from city to city. Municipal revenue sources also vary by city.

HB 2692 is intended to establish the following guidelines and requirements as indicated on page 3 of the bill.: Broadly explained, our intended requirements are as follows:

1. Identification of specific public infrastructure projects that are needed to support new development. This would include streets, sewer, water, drainage, parks, police, fire protection, and library facilities.
2. Determination of which public improvements listed in item 1 will be paid exclusively by the private sector (developers and homebuilders), thus passed on in the cost of the home paid by the homebuyer. .

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3. Identify the infrastructure improvements which will be paid by the private sector, and the time frame in which these improvements will be built. This would be all of the projects in item 1, less item 2. The most likely projects will include some off-site sewer and water improvements, branch libraries, police substations, fire stations, and possibly some street improvements. (Some people are surprised to find that most infrastructure improvements are paid for by the purchasers of new homes.)
4. For each of the projects identified in item 3 that are paid for by the municipality, thus paid by the homeowner, the next step is to estimate the actual cost to the city for each project. This would be done by consulting the various city agencies.
5. Once the city cost of the project is identified, then an estimate of the size of the area to be benefited by the improvements is estimated, then the number of households to be served by these improvements.
6. Once the cost of the project is determined and the number of households served by the improvements is determined, then the cost per household can be estimated.

At the bottom of page 4, the bill states that the municipality may include a provision that exempts low income housing, and other developments with a "broad public purpose", from an excise tax and establish one or more other sources of funds to pay for that activity. Further, they may impose an excise tax for public facility costs previously incurred to the extent that new growth and development will be served by the previously constructed improvements, and may allow a credit against an excise tax for any dedication of land for improvement to or new construction of, any system improvements provided by the developer if the facilities are identified in the capital improvements plan, and are required by the municipality as a condition of approving the development activity.

Line 3 on page 5 prohibits the imposition of an excise tax to cure deficiencies in public facilities serving existing development.

Section 5, line 6 through 13, mandates the establishment of separate interest bearing accounts for each type facility for which an excise tax is collected and requires end of the fiscal year accounting for each account.

Section 6 provides that no excise tax may be implemented if the system improvement is not in the capital improvement plan. The city must utilize the funds generated within 6 years unless it identifies in writing an "extraordinary and compelling reason" why the funds should be held longer with an absolute date the moneys will be expended.

Section 7 mandates the refund of an excise tax to a developer, plus interest earned, when the developer does not proceed with the development activity and files a written request for the refund, IF no impact has resulted.

The act is to become effective upon publication in the statute book.

Senator Vratil is the sponsor of SB 435 which would exempt school districts from paying excise taxes for development as they are being required to do in Johnson County.

You will hear opponents of this legislation tell you that it is within the police power of units of government to tax. as with an Excise Tax. We certainly acknowledge that this is true and we agree that if new development is not shown to pay its way under this proposed method of calculation, that an IMPACT FEE should be charged by the local unit of government.
An IMPACT FEE , however, must bear a correlation between the cost of providing the amenity or service and the amount charged to the development and must be placed in a fund for that purpose. What the industry opposes is the levying of an EXCISE TAX which is not required to show this same correlation. When levying an EXCISE TAX, any amount can be charged by the governing body and the proceeds may be put into the General Fund and budgeted and spent for any purpose approved by the governing body.

You may hear or read testimony which alleges that proponents of this bill are not knowledgeable as to the difference between IMPACT FEES and EXCISE TAXES. On the contrary, we are very aware of the difference and the reason the units of government choose to levy an "excise tax".

Opponents to this bill will tell you that they spend the revenue from the excise taxes which they levy on thoroughfares which they improve and that it pays for approximately 15% of the total cost. We believe that with the financial analysis being suggested, there would be no problem to continue with their current practices IF the revenue is expended as stated. However, we believe the new home purchaser has a right to know the reason his new residence is costing more. If the increased revenue from property taxes generated is not sufficient to support the budget adopted, the public has the right to understand that the additional amount charged for his "dream home", which may disqualify him for a loan, and certainly requires him to pay more interest and property taxes over the period he owns the home, then charge an IMPACT FEE and justify the amount.

Opponents will say that the Derby issue was resolved in the appropriate manner---politically or at the ballot box. This controversy cost the Derby taxpayers for a special election and the mayor and 4 city councilmen their positions. It cost the opponents to the tax thousands of dollars to mount the campaign to win the "war". How often does a governing body find opponents this determined?

You may hear that because we used the Utah IMPACT FEE law as a pattern for this proposed legislation that Utah case law would be brought to Kansas. Although I have not consulted legal counsel, I question the fact that Kansas courts would not have the ability to make Kansas case law regarding EXCISE TAX guidelines.

REAL ESTATE CENTER

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January 28, 2000

Ms. Janet Stubbs, Executive Officer
Kansas Building Industry Association
Topeka, Kansas

Fax: 316-265-3220

Dear Ms. Stubbs:

As a native Kansan, I am very dismayed to learn that some Kansas cities are imposing excise taxes on land development. For the past twenty-five years, cities have argued that new residential development does not "pay its own way". They argue that the costs of providing services to residents in new subdivisions exceeds the revenues from taxes and fees paid by the developer, builder, and homeowner of each new home. Unfortunately, the cities have offered little real data to support their claims.

In recent years, I have been putting the facts on the table to see whether new development does pay its way. I have done studies in Wichita KS, San Antonio TX, Tyler TX, Colorado Springs, CO and El Paso, TX. In each of these cities, case study analysis of real subdivisions reveals that in most cases the new development more than pays its way for the municipal services they require.

Recently, several states have adopted "enabling legislation" that would allow cities to levy impact fees only after they can demonstrate that new growth is truly a cost. They can assess the fees only after they can show that the impact fees will pay only for capital improvements that are required specifically to service new growth. These fees must be "fair and equitable" and reflect the true cost of service for the capital improvements.

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Now it seems that some Kansas municipal governments want to avoid these steps and levy an excise tax on new development without any regard to the issue of fairness and equity. It is my opinion that this would be a terrible precedent for the future of economic growth in the United States. When one municipality can find a new stream of revenue that can be collected on the backs of new home owners, then it spreads rapidly to cities all over the country.

When you increase taxes on new houses, the costs are passed on directly to the consumer. Prices rise and houses become less affordable. This only exacerbates the flight of new homeowners to suburban areas outside of the taxing/regulatory jurisdiction of city governments. It creates the situation that we now have, where most affordable housing is being built outside of the city limits, or in smaller cities that do not charge impact fees.

I would encourage your organization to strongly oppose the concept of excise taxes on new development. Several states now have legislation that has developed procedures to fairly and equitably determine whether impact fees can be assessed against new development. Many years of thought have been spent to get to this point. Now it seems that some taxing entities want to forget the issue of fairness and equity, and substitute an excise tax. No taxes or impact fees on new development should be levied, unless each local municipality can demonstrate clearly that new development doesn't pay its way IN THEIR COMMUNITY. To date, specific evidence like this has rarely been provided.

Sincerely,

Mark Dotz

Dr. Mark G. Dotzour
Chief Economist and Director of Research

Testimony for Richard Standrich regarding Excise Tax Legislation...

Good Morning...

I'm Richard Standrich, Mayor or Derby Kansas.

I am appearing here this morning on behalf of myself and the City of Derby to voice our support of House Bill 2692, which, if enacted into law, would require our City and others in the State to do a comprehensive fiscal impact analysis to justify the imposition of any such tax or fee prior to advancing any proposal that such a tax or fee should be proposed for consideration of the respective governing body.

This issue has been recently dealt with in our City and the voters of Derby voted down the imposition of an excise tax on the privilege of developing or building in the City of Derby by a vote of 58% to 42%. The issue was sent to the voters via a mail-in ballot and 5347 of the 10,300 registered voters voted.

The basis for this tax and the manner in which it was imposed by the previously seated City Council is, perhaps, the best argument that can be made as to why this legislation ought to be supported. The following is what happened in our City and, had the tax not been repealed, I think it is very likely other small cities in Sedgwick County would have followed suit.

The story....

In November of 1996 the Derby City Council began looking for ways to generate more revenue due to the fact that they had passed a budget that included aggressive capital improvement spending, which they later admitted they could not fully fund without finding a source of additional revenues.

The first attempt they made was to impose an "infrastructure equity buy-in fee" on new development. Local developers and business leaders challenged the City as to the "equity" of the proposal that was made at that time and, after much discussion, the proposal was not approved. However, once Pandora's Box was opened, it appeared inevitable that some type of fee or tax was going to be imposed and it was just a matter of time until the Council and staff figured our how to get the money they wanted from the segment of the community that would offer the least resistance. What they ultimately settled on was the imposition of an excise tax on the privileged of developing and building in the City of Derby. After a couple of attempts to impose the tax, the council succeeded as a result of a vote cast by the Derby Mayor on a 5 to 3 split by the Council which was not the super majority. The City Attorney interpreted this split as a tie vote and the Mayor cast the vote necessary to get the super majority. The City was subsequently sued and the court ruled that the Mayor had voted illegally and the action that was taken at this point in time was nullified. When the imposition of the tax was finally approved, the Councils action to impose it took place the night of the general election. It is interesting to note that the

Mayor and Council members who were up for re-election were all defeated for re-election by substantial margins. The following was advanced by the then seated Council members and Mayor as justification for the action they took:

* Approximately $18 million in future planned capital expenditures was purportedly needed to upgrade current infrastructure and accommodate projected future growth and expansion of the city's tax base. (Note: There was not a breakdown ever presented that identified those expenditures that would have to be made solely to accommodate new growth. In fact, there appeared to be no justification for charging new growth any additional fees or taxes in view of an analysis that was done by the Derby City Manager that showed that new residential development, alone, generated approximately 5 1/2 more revenue to the city than it cost to provide needed services. The analysis is attached for your information.)

* The majority of the Council felt that "all newcomers" to the city ought to have to "buy in" to what was already existing and what others who lived in the city prior to them moving there had already paid for. (Note: The costs of building infrastructure improvements necessitated by new residential subdivisions and other such projects are repaid to the city, with interest, in the form of special assessments assessed against the benefiting property. Any investment the city might choose to make when infrastructure is being built, such as paying for the oversizing of pipes for water and sewer lines, are paid for by the city at large. However, the surplus revenues received, as above referenced, are more than enough to pay for any shortfall the city might experience initially over time. Additionally, it was determined that the majority of people who were buying homes in Derby were not newcomers, but already existing residents of the city.)

* The estimated $400,000 per year budget shortfall was actually determined to be $100,000 "at best" when more carefully examined. It was also determined that the shortfall could have been handled via the rescheduling of several capital improvement projects. (Note: During the discussion that was had in this regard, numerous persons who learned that the city has passed a budget that they knew they could not fund and later searched for a way to cover the budgeted deficit, were puzzled as to what motivated them to do it in the first place.)

* The tax was imposed with an "adopted protocol" as to how the monies would be spent. However, the Council was made aware that the protocol could be changed at any time and the monies collected could be spent on any project or program they chose regardless of whether the project or program was related to the tax charged. (Note: Discussion had during the time consideration was being given to imposition of the tax and the basis on which it was charged focused on how the Council might give credibility to their proposal while at the same time considering how and when the protocol in the ordinance could be changed if the Council decided to spend the monies collected for some other non related purpose.

* An impact fee was not imposed because the Council felt that "it would be pretty hard to justify such a fee and the amount of it", and "it was doubtful the city could withstand a legal challenge if one were advanced." (Note: Local developers and builders doing business in the city told the city that "if new growth wasn't paying its way, they would like to know what the actual shortfall was and, if there was a legitimate shortfall, they would support the imposition of an impact fee and the establishment of a program that assured the monies collected would be spent to build the specific improvements the monies were collected for. They wanted to see a plan as to what expenditures would be made and in what time frame. The city was not willing to commit to such a program. In fact, the comment was made by one Council member that the city could probably forego the charging of such a fee, or tax, but felt that it might be needed in future and that the city ought to start charging a tax now while times were good.)

In summary, I would like to point out that we are not questioning governments authority to assess fees and taxes, and this legislation does not do that. What we are suggesting is that we think that our units of government ought to be held to a higher standard than they presently are and that they ought to be expected to justify what they do and fiscally assess the impact of their actions on communities, or segments of it, before they do it. Supporting what this bill requires would make for better and more responsive government for us all.

Thank you.

Johnson County Board of REALTORS®, Inc.
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REALTOR®

EQUAL HOUSING OPPORTUNITY

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Testimony of Erik Sartorius
Governmental Affairs Director
Before the
House Taxation Committee
Regarding
House Bill 2692 Excise Tax Act

February 23, 2000

The Johnson County Board of REALTORS® encourages passage of House Bill 2692. The bill extends onto excise taxes important analysis requirements for demonstrating the necessity of such taxes.

Current governance of excise taxes is lacking in two ways. First, municipalities and counties are not required to conduct the same analysis when levying an excise tax as they are when imposing an impact fee. Consequently, governments are being encouraged to utilize excise taxes, as they are "not subject to the same legal constraints as regulatory financing measures," such as impact fees, to quote an article from the May 1998 *Kansas Government Journal.*

The other area of concern is that funds from excise taxes can be placed in the General Fund of the city or county and do not have to be spent to benefit the people on whom the tax was levied. Impact fees, meanwhile, are spent for a specific purpose to benefit the payers of the fee.

We believe House Bill 2692 offers common sense rules for the imposition of an excise tax, including a comparison of the benefits and costs of current residents and the benefits and costs in new growth areas. Municipalities and counties wishing to impose an excise tax should be able to demonstrate the need for such a tax.

When excise taxes and impact fees are promulgated, the reasoning is almost always that "growth does not pay for itself." The validity of this notion, unfortunately, is often not known. The analysis required in this legislation might show that development needs to pay more toward infrastructure in some localities, or it may show that new development contributes its fair share. The important aspect is that the public will know that costs and benefits were actually considered in reaching any tax levied.

As laid out in the bill, excise taxes could not be used to correct existing deficiencies in an infrastructure system. Collecting funds from new residents who did nothing to create problems in an existing system is not an equitable answer. Unfortunately, we are seeing instances where leaders prefer to demonize growth and development while using the excise taxes levied on development to mask existing deficiencies. Although this route is much easier than raising revenues from all users of infrastructure, it is politics at its worst.

The Johnson County Board of REALTORS® believes excise taxes and impact fees should not hamper or deter development in our communities. Excise taxes not developed through sound analysis, however, do hamper economic activity. Further, they arbitrarily punish individuals seeking to purchase a new home. New housing is made less affordable, without the guarantee that the newer area will receive the benefits of the excise tax levied against it.

We respectfully seek your support of this legislation.

House Taxation
Date 2/23/00
Attachment # 5

STATE OF KANSAS

DON MYERS
REPRESENTATIVE, 82ND DISTRICT
SEDGWICK COUNTY
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DERBY, KANSAS 67037
(316) 788-0014 HOME

STATE CAPITOL BUILDING, ROOM 182-W
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIR: INSURANCE
MEMBER: TOURISM
TRANSPORTATION
UTILITIES

Assessment & Taxation

Testimony on HB 2692

February 23, 2000

Having just completed a very contentious balloting process to repeal excise tax in the city of Derby, I am very much in support of the passage of HB 2692.

Should any municipality or county be considering the implementation of an excise tax to pay for improvements to facilities or infrastructure then that taxing body needs to follow a structured approach.

Had the approach which is outlined in HB 2692 been followed by the City of Derby, we could have avoided the confusion about the need for such a new tax and thus avoided the painful balloting process to repeal that tax.

This bill provides a responsible and disciplined approach through an excise tax analysis and then provides the necessary measures to bring about accountability in the distribution of funds set aside from the excise tax.

I request that this committee pass this bill as favorable.

Don

e-mail: myers@house.state.ks.us
Hotline: 1-800-432-3924

House Taxation
Date 2/23/00
Attachment # 6

KANSAS
MANUFACTURED HOUSING
ASSOCIATION

214 SW 6th St., Suite 206
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TO: HOUSE COMMITTEE ON TAXATION
Representative Susan Wagle, Chairperson
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: February 23, 2000

RE: House Bill 2692, City and County Development Activity Excise Tax

Thank you for the opportunity to present written testimony regarding HB 2692. Kansas Manufactured Housing Association supports the concepts addressed in this proposal.

Kansas Manufactured Housing Association is a statewide trade association representing all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners and operators, finance and insurance companies, suppliers and transporters.) The association is seeing more manufactured home communities being approved in more cities across the state than at any other time in our history. A lot of those new developments have faced and are facing the issue of excise tax assessment. While it is our understanding that HB 2692 does not prevent cities from passing an excise tax ordinance, it would require accountability of those tax dollars collected from the excise tax. We understand that excise tax revenue is an important revenue source for some cities, however, we feel that fees charged should be reasonable and based upon the actual cost of the service directly provided to the new development. The fees should not be used to correct existing problems or subsidize other projects.

KMHA supports the concepts presented in HB 2692, requiring cities to prepare a capital facilities plan and provide accountability for the tax dollars collected from the excise tax. We respectfully request your support of HB 2692.

Thank you for the opportunity to comment.

House Taxation
Date 2/23/00
Attachment # 7

HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY

Affiliated NAHB

600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

Testimony of Rachel Reed Nance
Director of Governmental Affairs

House Taxation
House Bill 2692 Excise Tax Act

February 23, 2000

The Home Builders Association of Greater Kansas City (HBA) encourages passage of HB 2692 – city and county development activity excise tax act. This provides for a more objective and equitable approach when establishing or increasing such taxes.

HBA has spent and continues to spend significant time on excise taxes, whether it is development of new or increasing current excise taxes. Regardless, the tax is not necessarily fair or objective. HBA believes that government accountability is a must in the excise tax equation. However, it is not always regarded. Reason being, excise taxes have no principles to abide by or standards to comply. It is one of the easiest and less threatening political ways for local governments to increase revenue.

As stated in the bill, excise taxes mean payment of money imposed upon development activity as a condition of development approval. These taxes typically cover a portion of the construction costs. This can be abused once the dollars become part of the general fund – they do not then have to be used for the purpose of their collection. But these dollars are REAL dollars with REAL intent – new or improved roads. Because, again, there are no requirements or standards that must be followed in order to impose an excise tax. Perpetuating the widespread use of an easy and unencumbered revenue that dodges any political backlash.

It is important to note that the HBA has never opposed paying our fair share. But currently there is no way to deduce what is or how to calculate a fair share. HB 2692 compensates for the deficiencies in the current practices of excise taxes.

If excise taxes are permitted to continue to be assessed in this current unbridled manner, the future of our communities will be severely hampered. Elected officials never feel any repercussions from the establishment or increase in excise taxes because they are never voted on by the people, forced to answer for the in actions, demonstrate a need, or be efficient with these dollars.

Support this legislation and you support your local community. Thank you.

Do Business With A Member

House Taxation
Date 2/23/00
Attachment # 8

The City of Overland Park KANSAS

Law Department

Robert J. Watson, City Attorney

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Overland Park, Kansas 66212-2899
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E-MAIL watson@opkansas.org

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2692

TO: The Honorable Susan Wagle, Chair, and
Members of the House Committee on Taxation
Room 519-S

DATE: February 23, 2000

RE: House Bill No. 2692 -- Pertaining to a city and county development activity excise tax.

Ladies and Gentlemen:

The City of Overland Park opposes enactment of House Bill No. 2692 for the following reasons:

1. House Bill No. 2692 appears to be a blatant attempt to limit the home rule power of cities to enact excise taxes. That home rule authority of cities to enact excise taxes was upheld in *HBA v. City of Overland Park*, 22 Kan. App. 2d. 649, 921 P. 2d 234 (1996).

2. It confuses taxes and fees by attempting to mandate a proportional basis for determining the excise tax rate. In effect the so-called excise taxes are impact fees in disguise and as such would not meet the test for a tax established by either the Kansas or federal courts.

3. It is a virtual verbatim version of Utah's "Impact Fees Act," (See Section 11-36-102 *et seq.* of the Utah statutes); but instead of calling itself an impact fees act it grafts an impact fee methodology onto what is called an excise tax. Further, it grafts onto Kansas statutes, laws from another state whose cities have no home rule authority and whose cities have to rely on enabling legislation.

4. The Utah statute attempts to codify Utah case law prescribing a methodology for subdivision exactions and regulatory fees but fails to incorporate the flexibility into the process envisioned by the Utah Supreme Court in *Banberry Development Corporation v. South Jordan City*, 631 P. 2d 899 (1981) and its progeny.

5. It would likely wreak havoc on the City of Overland Park's capital improvement program. No fiscal impact on the City of Overland Park or on any other city has been prepared.

6. It is full of imprecise terms that are open to wide interpretation.

7. It is full of ambiguities as to how it applies to existing excise taxes in Johnson County cities.

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8. It is unclear whether the bill would allow cities to recoup consultant and other costs they must incur in crafting new or justifying existing excise taxes using the mandated methodology. The City of Salt Lake City was required to spend approximately $250,000 in order to comply with the mandate of the Utah statute.[1]

9. Even if enacted, the bill would not be effective to prevent cities from enacting excise taxes under their home rule powers because under established case law the bill will not be read in isolation but rather will be read *in pari materia* with K.S.A. 12-194, which is part of a non-uniform enactment.

Therefore, we respectfully ask you to reject House Bill No. 2692.

The City of Overland Park

Robert J. Watson
City Attorney

cc: Governing Body
John Nachbar, City Manager

[1] Ironically, impact fees paid in Utah have risen following enactment of the Utah statute, in part, because more cities in Utah are enacting impact fee ordinances in response to the codified law than took advantage of the methodology established by the Utah Supreme Court.

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Taxation Committee

From: Don Moler, Executive Director

Date: February 22, 2000

Re: Opposition to HB 2692

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2692. As I know you are all aware, one of the cornerstones of local government in Kansas is constitutional home rule for cities. This power is not taken lightly by cities and we believe it is a very important aspect of the intergovernmental structure in this state. As a result, the League appears regularly whenever we believe there is a piece of legislation which will adversely impact constitutional home rule. Today I appear in opposition to HB 2692, a bill which clearly undermines local control and Constitutional Home Rule. On its face, HB 2692 appears to grant cities the ability to levy an excise tax. Nothing could be further from the truth.

I would point out to the committee that the League believes this piece of legislation to be totally unnecessary. As a result of the case of *Home Builders Association of Greater Kansas City v. City of Overland Park* 22 Kan.App. 2d 649 (1996) it is clear that cities in Kansas have the ability to impose an excise tax on real estate developments in Kansas. Since the time of that case, cities have had the clear authority to impose an excise tax on development within their city boundaries. While HB 2692 appears to be a grant of authority, it is the opinion of the League that it is in fact restricting the ability of cities to operate in this area. If adopted, it would create a "one size fits all statute" which would be very limiting in its nature. It is our belief that the underlying motive for this legislation is to make it virtually impossible for cities to levy excise taxes, in the nature of impact fees, on developers in this state. The old saying "if it isn't broken don't fix it" certainly applies today in the case of HB 2692. We urge the Committee to reject HB 2692 as unnecessary and an assault on the Constitutional Home Rule authority of cities in Kansas.

House Taxation
Date 2/23/00
Attachment # 10

Lenexa
KANSAS

Legal Department

TO: Representative Susan Wagle, Chairperson
Members of the House Taxation Committee

FROM: Rebecca A. Swanwick, Assistant City Attorney

RE: House Bill 2692, enacting the city and county development activity excise tax act

DATE: February 23, 2000

Thank you for giving me the opportunity to appear before you today and to present testimony on House Bill 2692. The City of Lenexa is opposed to this legislation for several reasons.

First, we feel that this legislation is unnecessary as cities are already empowered to enact excise taxes pursuant to Article 12, Section 5 of the Kansas Constitution. Further, enacting statewide legislation on a matter of local concern such as funding public improvements runs contrary to cities' powers of home rule and may lead to confusion for cities, such as Lenexa, that have already enacted an excise tax.

In addition, House Bill 2692, as written, appears to confuse excise taxes with impact fees. This is an important distinction and one that has been heavily litigated. Impact fees are one-time charges against new development for the purpose of raising revenue for new or expanded public facilities necessitated by the new development. The Kansas Supreme Court in a case involving the City of Leawood held that cities were empowered to enact such impact fees pursuant to their home rule powers provided such fees are reasonable. In determining the reasonableness of impact fees, courts will consider several factors, including: (1) spatial factors (the distance between the development paying the fee and the public facilities to be constructed with the fees paid); (2) temporal factors (the length of time elapsing between collection of the impact fee and the construction of the facilities); (3) amount (the amount of the fee in relation to the cost of the public facilities); (4) need (the relationship between the burden created by the development and the increased need for public facilities); (5) benefit (the ability of the public facilities to satisfy the needs resulting from the development); and (6) earmarking (an assurance that the impact fee collected from the development are restricted solely for the provision of public facilities of the type for which the fees were collected and for facilities serving new development.)

Conversely, an excise tax is a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership. The tax is simply levied on one of the many incidents of ownership. To be valid, the excise tax must truly be a tax and *not* a regulatory or impact fee. In considering the validity of excise taxes, courts will consider the following criteria: (1) whether the tax is on the activity of development and not on the property or the property owner; (2) whether the tax is for the purpose of raising revenues and whether the revenues raised are earmarked for a particular purpose (in the case of a true tax, the funds are not

City of Lenexa / 12350 West 87th Street Parkway / Lenexa, Kan
Telephone 913-477-7620 Legal Department / Fax 913-4
http://www.ci.lenexa.ks.us

specifically earmarked for a particular purpose but rather are levied for the purpose of raising general revenues and are deposited in the general fund); (3) whether the amount of the tax is reasonable and not confiscatory (This is not a proportionality test where the amount of the tax is weighed again the impact generated, but rather an overall fairness analysis;) (4) that the tax is not tied to regulatory purposes or imposed as a condition of planning approval; (5) that the tax is not based upon the value of the property and (6) whether the tax is nondiscriminatory in its application.

A review of House Bill 2692, which purports to create an excise tax, reveals many of the characteristics of an impact fee. The "excise tax" proposed in this Bill requires, among other things, the establishment of service areas (which appears to ensure spatial connection between the "tax" and the public improvement); calculation of the amount of the "tax" in relation to the cost of the improvements; adjustment of the "fee" in "unusual circumstances" and a refund after six years if not used (which appears to ensure temporal connection between the collection of "tax" and the construction of the public improvement.) In fact, at one point in the bill, the tax is actually referred to as a "fee." The Bill, as proposed, blurs the line between excise taxes and impact fees and will, at a minimum, create confusion on the matter and invite unnecessary, expensive litigation.

The proposed Bill would require cities and counties to undergo an extensive financial analysis comparing the cost of public facilities to the demand generated by new development in justifying the "tax" imposed. I can only assume that the purpose of this provision is to ensure that developers do not pay more than their fair share of public improvement costs. While this is a legitimate consideration, requiring such calculations is completely unnecessary. Any excise tax imposed by a city or county must be "reasonable" or it will be found confiscatory and struck down in a court challenge. Furthermore, the competitive nature of development and cities' desire to remain competitive in attracting such development necessitate that excise tax rates are set as low as they possibly can be, while still ensuring that sufficient revenues are raised. While financial analyses like those proposed by HB 2692 are not required, the City of Lenexa, as well as many other local cities, have conducted their own extensive financial analyses in arriving at excise tax rates which ensure that developers pay their fair share of the cost of the public improvements that will serve their developments while not overburdening the property with a confiscatory tax. In fact, excise tax revenues in the City of Lenexa have been pledged to transportation improvements, but this is just one of many funding sources for these improvements and represents only a fraction of the total monies spent on capital improvements in the City.

On behalf of the City of Lenexa, I would respectfully urge the Committee to decline to enact this proposed statewide legislation affecting what is essentially a matter of purely local concern and to leave such decisions to the local elected officials. Kansas courts have already spoke on this issue and have set forth the framework within which excise taxes must be developed and evaluated. Thank you for your consideration.

Memorandum

Date: 2/23/2000

To: House Taxation Committee

From: Tom Bruno

RE: HCR 5057

Madam Chairman and Members of the committee:

I am Tom Bruno, representing the Kansas Golf Course Owners Association. Currently, there is a disparity in the way golf courses are taxed in Kansas. The current law is the result of a 1992 constitutional amendment to the Kansas Constitution, and legislation that was passed in 1994.

Privately owned golf courses in Kansas are assessed at different rates. Not-for-profit courses, generally country clubs that are member owned, are assessed at a 12% rate for "green space". For-profit courses, which are generally small mom and pop operations, are assessed at 30% for "green space". Buildings for both groups are assessed at 30%.

The for-profit courses are asking to be treated fairly. They want to level property tax playing field for all privately held golf courses.

What we are asking for is a constitutional amendment to equalize the assessment rate on the "green space", and the implementing legislation that would be necessary.

I appreciate your time on this subject. If you have any questions, please feel free to contact me anytime. (785) 233-4512 or E-mail at tbruno@cjnetworks.com.

Thank you,

Tom Bruno

House Taxation
Date 2/23/00
Attachment # 12

The House Committee on Taxation

2/23/2000

Madam Chairman and Members of the Committee:

Thank you for the opportunity to testify today in favor of HCR 5057. My name is Meril Vanderpool. I own a small golf course in Ozawkie, Kansas.

Golf courses are classified into three categories:

1) Municipal, owned by the cities and counties
2) 501(c), owned by non-profit organizations, operating as country clubs
3) Privately owned by individuals or corporations.

We have determined from information furnished by the Kansas Golf Association courses in Kansas are:

Municipal Courses 78
Non-profit Courses 113
Privately Owned 52
There are approximately 9 sand green courses not classified.

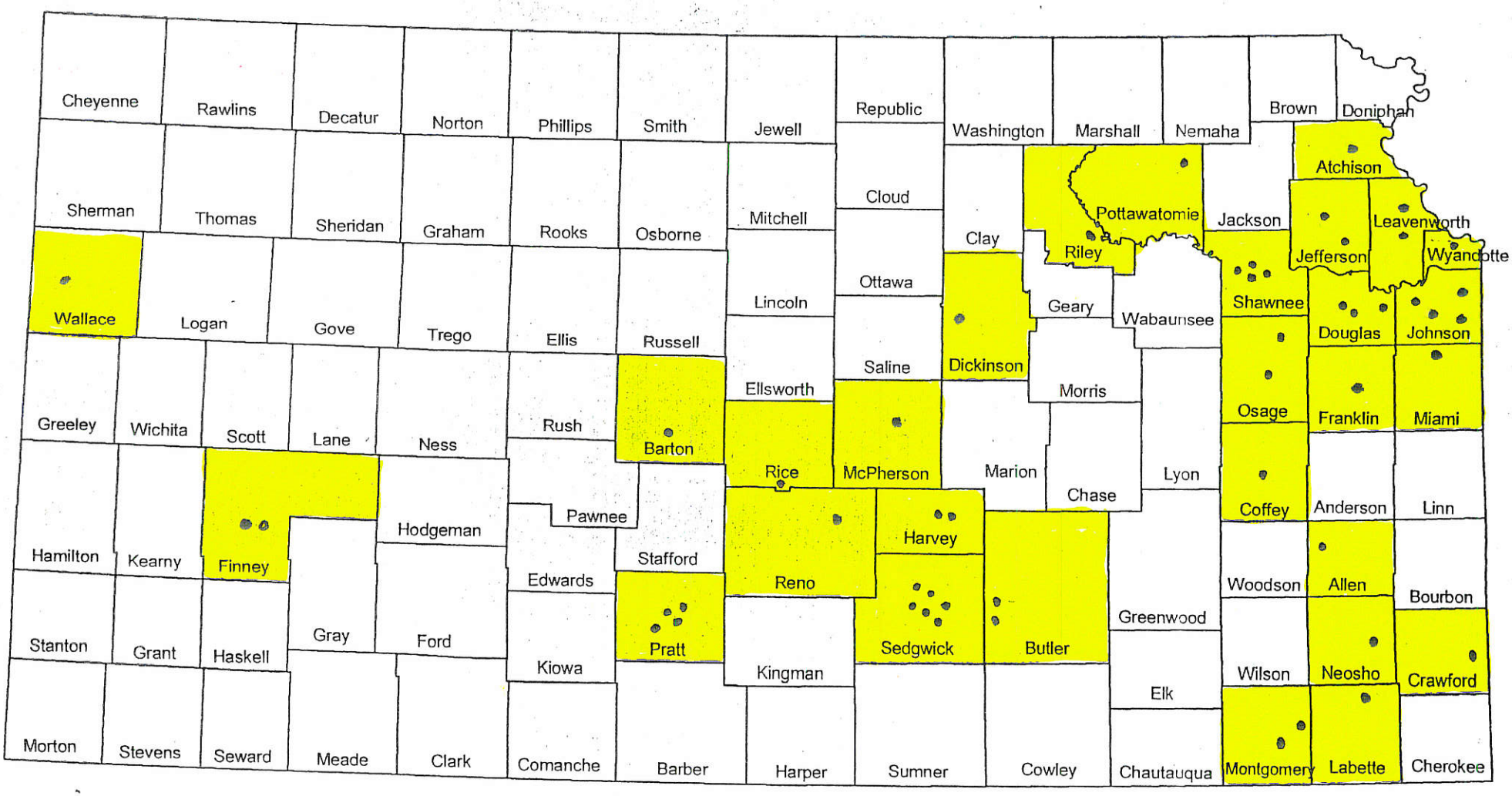
Municipal courses do not pay property tax and do not collect sales tax on dues or memberships. Non-profit (501c) courses pay 12% of assessed value as tax on green space, whereas privately owned courses are taxed 30% of assessed value on green space.

Privately owned clubs must collect sales tax on fees, dues and memberships. Some courses operate as private or semi-private courses. They too are required to collect sales tax on fees, dues and memberships.

We as privately owned courses pay more than our fair share of taxes. We are asking you to approve this bill and equalize the property tax situation on privately owned golf courses.

House Taxation
Date 2/23/00
Attachment # 13-1

STATE OF KANSAS



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November 19, 1999
Kansas Department of Revenue
Property Valuation Division
Cartography Section

House Taxation Committee

February 23, 2000

Chairman Wagle and committee members,

Thank you for the opportunity to testify on House Concurrent Resolution 5057. I am John Wright from Wichita.

Currently, private for-profit golf courses in Kansas are assessed at 30% of valuation on the green space. Non-profit private country clubs are assessed 12% on green space. Municipal golf courses pay no property taxes, since they are owned by local units of government. HCR 5057 would equalize the assessment rates for all privately owned courses at the 12% assessment rate.

Thank you for the opportunity to testify today on HCR 5057. I would be happy to stand for questions.

House Taxation
Date 2/23/00
Attachment # 14

WILDCAT CREEK
sports center

Committee members thank you for allowing us to speak and comment today.

Golf courses owned by private individuals offer reasonably priced golf for people who want to learn and enjoy a lifetime sport. Many times this occurs in communities that could not afford to build a municipally owned course or a Country Club.

In those areas of high-end golf courses, public accessible golf courses have an additional burden to bear, being higher property taxes. We pay the same prices for expenses (i.e. labor, machines, construction cost).

As mentioned earlier we as a group collect sales tax on all sales where as municipal or 501(c) courses collect no sales tax or partial sales tax.

Kansas ranks 48th or 49th in the US for average green fees. With that said I am proud to be a Kansas golf course owner and a third generation golfer who is also proud to provide affordable golf to my children and the children of my community. Please help us on the property tax equity situation.

Thank you,

Kevin and Beth Fateley
Owners
Wildcat Creek Sports Center
3639 Anderson Ave.
Manhattan, KS 66503-2510

House Taxation
Date 2/23/00
Attachment # 15

Kansas Golf Courses Owners Present at the House Taxation Committee Hearing on HCR 5057

Meril Vanderpool	Village Greens G.C.	Ozawkie, KS
Torrey Head	Western Hills G.C.	Topeka, KS
Dennis Tull	Smiley's Golf	Lenexa, KS
Rick Farrant	Lake Perry C.C.	Perry, KS
	Berkshire C.C.	Topeka, KS
	Prairie View G.C.	Topeka, KS
John Wright	Reflection Ridge G.C.	Wichita, KS
Mark Bryant	Sycamore Valley G.C.	Independence, KS
Bill & Mike Brown	Newton Public G.C.	Newton, KS
Kevin Fateley	Wildcat Creek Sports	Manhattan, KS
Jon Thayer	Chisholm G.C.	Abilene, KS
Chris & Vicki Flattery	Cool Springs G.C.	Onaga, KS

House Taxation

Date: 2/23/00

Attachment # 16