

Approved: 2-7-00
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 2, 2000, in Room 519-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Senator John Vratil
Bob Vancrum, Blue Valley U.S.D. #229
Tom Trigg, Blue Valley U.S.D. #229
Robert J. Watson, City Attorney, Overland Park
Janet Stubbs, Kansas Building Industry Association, Inc.
Representative Don Myers
M.S. Mitchell, Kansas Building Industry Association, Inc.
Richard Standrich, Mayor of Derby

Others attending: See attached list.

The minutes of the February 1, 2000, meeting were approved.

Senator Langworthy told the Committee that she has attended task force meetings on state and local taxation of telecommunication and electronic commerce through the NCSL Executive Committee. That Committee drafted model legislation to authorize the appropriate state authority to participate in discussions with other states to develop the specifics of a voluntary, streamlined multi-state system for sales and use tax collection and administration. She requested that the model legislation be introduced as a means to allow more time to review it.

Senator Bond moved to introduce the proposed bill, seconded by Senator Stephens. The motion carried.

SB 435—An act exempting unified school districts from city or county imposed platting taxes

As sponsor of **SB 435**, Senator John Vratil testified in support. He explained that **SB 435** simply exempts public school districts from a tax levied by a city or county upon the act of platting real property. The purpose of the bill is to ensure that public tax dollars intended for education are actually used for education of children, not for building or repairing infrastructure. In his opinion, infrastructure is the responsibility of a city or county, not the responsibility of a school district. He also pointed out that the excise tax revenue currently collected by cities in Johnson County when land is platted lacks accountability. (Attachment 1)

With regard to cities with more than one school district, Senator Bond commented that, according to the provisions in the bill, an entire city would bear the burden for building a new school in a district in which many of the residents do not live and, therefore, were not part of the ballot process to determine whether or not money is spent for infrastructure related to school expansion. He asked how taxing residents for infrastructure which is not within their own school district can be justified. Senator Vratil responded that the new school is located in the city, and the people who live in the city should bear the burden of providing infrastructure because the infrastructure benefits them as residents of that city. Senator Vratil went on to note that, historically, the policy of the state has been to look to cities and counties to provide infrastructure. Before the excise tax was implemented in 1994, the "special benefits district" system was used. That system

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE
Room 519-S, Statehouse, at 11:10 a.m. on February 2, 2000.

ensured that the land upon which the assessment was levied would benefit from the assessment. The excise tax changed that completely. Now, the land which is platted pays the excise tax, but there is no assurance whatsoever that the land will ever benefit from the excise tax that is paid. Senator Vratil contended that school districts should not be in the business of providing money to build infrastructure. He reiterated that all citizens who live in the city benefit from infrastructure associated with a new school, not just those citizens who bring their children to that school.

Bob Vancrum and Tom Trigg, both representing Blue Valley U.S.D. #229, jointly testified in support of **SB 435**. Mr. Vancrum explained that the Blue Valley school district is located in Johnson County and incorporates parts of the cities of Leawood, Overland Park and Olathe. Several municipalities in Johnson County have begun levying an excise tax for all ground platted in the city's incorporated area and have not exempted their governmental units. The Blue Valley school district has paid approximately \$600,000 in excise taxes to one of the local jurisdictions. **SB 435** would bar any city or county from imposing a general tax on a unified school district. Mr. Trigg explained further that school districts have a statutory ceiling on the amount of revenue that can be expended to operate schools, but cities and municipalities do not have such a statutory ceiling. Mr. Trigg contended that it is fundamentally wrong for one local taxing jurisdiction to impose a general tax on another local taxing jurisdiction, particularly when the imposed upon jurisdiction is limited in its ability to pay the tax. (Attachment 2)

Robert Watson, City Attorney for Overland Park, testified in opposition to **SB 435**. He said the bill appears to be a blatant attempt to limit the home rule power of cities to enact excise taxes. He explained why the City of Overland Park's excise tax is not a new imposition upon school districts. He noted that the City of Overland Park spends all of its excise tax money on thoroughfare improvements. He further noted, of the three school districts in Overland Park, the Blue Valley school district is the only district that is growing and building new schools. With passage of the bill, Overland Park residents who are patrons of the other two school districts would be subsidizing the growth of the Blue Valley district. (Attachment 3)

Written testimony in opposition to **SB 435** was submitted by Rebecca Swanwick, Assistant City Attorney for the City of Lenexa. She notes that exempting schools from the application of this tax would reduce the amount of excise tax funds available to fund several public improvements in Lenexa, including those that benefit schools. (Attachment 4)

SB 474—Enacting the city and county development activity excise tax act

Janet Stubbs, representing the Kansas Building Industry, Inc., testified in support of **SB 474**. She stated that the bill is not an attempt to prohibit implementation of an excise tax by local units of government or to repeal those currently in effect. The intent of the bill is 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 and should be calculated individually per city. Ms. Stubbs outlined each provision in the bill. (Attachment 5)

Representative Don Myers testified in support of **SB 474**. He noted that his home is in Derby where a very contentious balloting process to repeal an excise tax was just completed. He believes the painful balloting process to repeal the tax could have been avoided had the approach outlined in the bill been available and followed by the city. (Attachment 6)

M.S. Mitchell, Legislative Chair for the Kansas Building Industry, Inc., testified in support of **SB 474**. He noted that the issue of whether or not new development pays its way has been under discussion for a long period of time. In the late 1980s and early 1990s, the Wichita Area Builders Association attempted to form an agreement with the City of Wichita whereby a study would be done regarding this issue, but the negotiation was unsuccessful. Therefore, the homebuilders paid the Real Estate Division of Wichita State University to conduct a study. Dr. Mark Dotzour, then with Wichita State, conducted the study and did a marginal cost and revenue analysis of six subdivisions picked at random with the assistance of the metropolitan area planning staff. He determined that each subdivision paid more than the cost to the local government for services in the first ten years. Dr. Dotzour conducted a number of studies across the United States after he conducted the

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study in Wichita. He now resides in Texas. In a letter to the Kansas Building Industry Association dated January 28, 2000, Dr. Dotzour expresses his disappointment that the excise tax issue has come up and asks support for legislation which will require the accountability for excise taxes similar or equal to what would be required for an impact fee. Mr. Mitchell distributed copies of the letter from Dr. Dotzour (Attachment 7). He then introduced the Mayor of Derby, Richard Standrich.

Mayor Standrich gave further testimony in support of **SB 474**. He noted that the voters of Derby voted down the imposition of an excise tax on the privilege of developing or building in the city by a vote of 58 percent to 42 percent. He felt that perhaps the basis for this tax and the manner in which it was imposed by the previously seated city council is the best argument that can be made in support of the bill. He followed with an account of the contention which arose in Derby. In conclusion, Mayor Standrich stated that local units of government ought to be held to a higher standard than they are currently. (Attachment 8)

There being no further time, Senator Langworthy continued the hearing on **SB 474** to February 3.

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

The next meeting is scheduled for February 3, 2000.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 2, 2000

NAME	REPRESENTING
Tom Trigg	Blue Valley Schools
Bob Vancrum	Blue Valley USD 229
DAVE HILL	BLUE VALLEY SCHOOLS
Becky Swenwick	CITY OF LENEXA
Kelly Kuutala	City of Overland Park
Bob Watson	City Attorney of Overland Park
Sen. John Vratil	11 th District
Alex A. Kotlyantz	Ks. Academy of Sciences
GEORGE PETERSEN	KS TAXPAYERS NETWORK
Erik Sartorius	Johnson Co. Board of Realtors
Anne Spiess	Peterson Public Affairs Group
Stacey Farmer	KS Assoc of School Boards
Ashley Shevard	O.P. Chamber of Commerce
BOB DROAN	m.s. my compliance 1st
Brad Smpot	HBA of KC
Rachel Reed Hauer	HBA of KC
Robt Fast	SWBell
Diane Gjerstad	Wichita Public Schools
Wanda Lee Smith	KMHA
Don Moler	LKM
Don Seifert	City of Olathe
Shirley Sullivan	KD of Revenue

JOHN VRATIL
 SENATOR, ELEVENTH DISTRICT
 JOHNSON COUNTY
 LEGISLATIVE HOTLINE
 1-800-432-3924



COMMITTEE ASSIGNMENTS
 VICE CHAIRMAN: JUDICIARY
 MEMBER: ENERGY AND NATURAL RESOURCES
 FEDERAL AND STATE AFFAIRS
 SPECIAL CLAIMS AGAINST THE STATE
 STATE/TRIBAL RELATIONS

TOPEKA

SENATE CHAMBER
 STATE CAPITOL
 TOPEKA, KANSAS 66612-1504
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TESTIMONY ON SENATE BILL 435 TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE

Senate Bill 435 is very simple and straightforward. It exempts public school districts from a tax levied by a city or county upon the act of platting real property. The purpose of Senate Bill 435 is to ensure that public tax dollars intended for education are actually used for education of our children and not for building or repairing infrastructure. I appear today in support of Senate Bill 435.

BACKGROUND

In 1994, a city in Johnson County began to impose an excise tax on the act of platting real property. The purpose of that excise tax was to generate revenue for the purpose of constructing new infrastructure, such as streets and roads. The excise tax was substituted for special benefit districts which had been the mechanism used in the past. Initially, the excise tax was levied at the rate of 10 cents per square foot. The tax has since been increased to 14.5 cents per square foot and the city is currently discussing the possibility of raising the excise tax to somewhere between 17 cents and 25 cents per square foot.

Since the excise tax was initially adopted by one city in 1994, at least three other cities in Johnson County have adopted similar excise taxes. Each of the four cities in Johnson County with an excise tax are experiencing significant growth in portions of each city. The excise tax now impacts at least three school districts who are building schools in growth areas.

PURPOSE OF S.B. 435

As I have previously stated, the purpose of this bill is to ensure that money intended for education goes for the educational benefit of our children. We have an obligation to provide quality education for our children and should not allow money intended for that purpose to be siphoned off to build streets, roads, sewer treatment facilities, or other infrastructure. Infrastructure is the responsibility of a city or county, not the responsibility of a school district.

HOME

9534 LEE BLVD.
 LEAWOOD, KS 66206
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DISTRICT OFFICE

1050/40 CORPORATE WOODS
 9401 INDIAN CREEK PKWY.
 OVERLAND PARK, KS 66210
 (913) 451-5100
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STATE OFFICE (JAN-APR)

STATE CAPITOL, ROOM 128-S
 TOPEKA, KANSAS 66612
 (785) 296-7361
 FAX (785) 296-6718

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 2-2-00
 Attachment 1*

It is the public policy of this state that school districts are exempt from taxation. We see that spelled out graphically in statutes which exempt school districts from the payment of property tax and sales tax. They should also be exempt from the payment of an excise tax intended for the purpose of building infrastructure. We expect school districts to be in the business of educating our children, not building infrastructure. It is the responsibility of cities and counties to provide necessary infrastructure.

As a final comment, you should be aware that the excise tax currently in force in four cities in Johnson County lacks accountability. Excise tax revenue is collected by the cities when land is platted, but is not necessarily spent on infrastructure that benefits the platted land. Instead, it is placed in a fund which may be used to construct infrastructure in other parts of the city at some undetermined date in the future. That lack of accountability is a serious defect in the current excise tax structure.

CONCLUSION

In conclusion, I urge you to favorably consider Senate Bill 435 and advance it for consideration by the Senate. This bill will help ensure that our education dollars are used for their intended purpose, to provide a quality education for our children.

Joint Testimony of Bob Vancrum and Tom Trigg
Blue Valley USD #229
Government Affairs Specialist and Assistant Superintendent
on SB435
Senate Assessment and Taxation Committee

February 2, 2000

Chairman Langworthy and members of the Committee,

As you know, the Blue Valley school district is located in southeast Johnson County and incorporates parts of the cities of Leawood, Overland Park and Olathe, and a significant area of unincorporated Johnson County. In 1994, one of the cities within the Blue Valley School District commenced levying an excise tax for all ground platted in the city's incorporated area. The initial rate was at \$0.10 per square foot. In 1996, it was raised to \$0.13 per square foot and in 1998; it was raised to \$0.145 per square foot, and may shortly be raised to \$0.17 or perhaps even higher. Several other municipalities, primarily in Johnson County, have also started levying such an excise tax. These cities have not exempted their governmental units from this tax and the Blue Valley school district has actually paid nearly \$600,000 in excise taxes to one of the local jurisdictions.

As you are probably aware, the Blue Valley school district has been the fastest growing school district in Kansas over the last 10 years. Schools expected to be developed over the next 10 years would generate at least \$2.6 million in additional excise taxes. When challenged by another educational institution in Johnson County one of the cities responded that, in its opinion, its constitutional home rule authority permitted it to impose an excise tax upon any other unit of local government because there is no specific state exemption for local government entities.

This bill presents to the Legislature a very clear policy decision: Is it appropriate for one governmental unit to impose a tax upon another local governmental unit, especially considering that the tax is not specifically earmarked for improvements that will benefit the property and may in fact be used for any purpose. We are not dealing here with special assessments to pay the cost of public improvements that are borne by all members of a benefit district. The bill before you is very straightforward in its tone and simply would bar any city or county from imposing such a general tax on a unified school district.

As you are aware, school districts have a statutory ceiling on the amount of revenue that can be expended to operate schools. Cities and municipalities do not have such a statutory ceiling. Local developers have the ability to charge more for their products to recover costs. We

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*Senate Assessment & Taxation
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believe it is fundamentally wrong for one local taxing jurisdiction to impose a general tax on another local taxing jurisdiction. This is particularly true when the imposed upon jurisdiction is limited in it's ability to pay the tax.

We have researched a list of nineteen (19) suburban communities across the United States that are comparable in size and growth rate to the cities in Blue Valley. All of them have enacted an excise tax on new development. Of those nineteen (19) cities, thirteen (13) specifically exempt local K-12 school districts from paying their excise tax.

Additionally, the Blue Valley School District consists of parts of three cities in addition to rural Johnson County. When one of the three cities imposes an excise tax on the district all of the patrons of the district are taxed. In our case, from 36% to 96% of the patrons who are taxed, live outside of the city limits of the taxing jurisdiction.

In closing, we believe it is fundamentally wrong for one local taxing jurisdiction to impose a general tax on another local taxing jurisdiction. We are in full support of SB435.

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EXCISE TAX COST IMPACT STATEMENT

Overland Park's Excise Tax was implemented in October 1994. The initial tax rate was for \$0.10/square foot for all ground platted within the City's incorporated area. The only exception to the tax is for land that is donated to the City for the purposed of parkland. The City determines the suitability of a tract of land as parkland and can reject a donation and impose the tax. The land area within street right-of-ways is also subject to this tax, even though public streets are donated to the City after construction.

In January 1996, the Excise Tax was raised to \$0.145/square foot. The City has planned to raise the Excise Tax \$0.17/square foot in January, 2000. Currently, there is discussion among city leaders about raising that rate to \$0.25/square foot.

Year	Sites Platted Under Overland Park's Excise Tax	Excise Tax Paid
1995	Morse Elementary School	\$44,431.20
1995	Blue Valley Middle School/Blue River Elementary School	\$357,192.00
1996	Sunset Ridge Elementary School	\$56,628.00
1997	Lakewood Elementary School	\$139,392.00
	TOTAL	\$597,643.20
Year	Future Sites to be Developed Over Next 10 Years	Est. Excise Tax
2000	Middle School #9 (21.86 acres)	\$161,878.00
2000	Elementary School #20 (19.03 acres)	\$140,920.00
2002	Middle School #10 (+/-40 acres)	\$296,208.00
2003	High School #5 (80 acres)	\$871,200.00
2005	Elementary School #21 (on K-12 Campus – already platted)	\$0.00
2006	Elementary School #22 (15 acres)	\$163,350.00
2006	Middle school #11 (30 acres)	\$326,700.00
2007	Elementary School #23 (15 acres)	\$163,350.00
2009	Middle School #12/Elementary #24 (45 acres)	\$490,050.00
	TOTAL	\$2,613,656.00

<i>FYI</i>	<i>Est. Excise Tax</i>
<i>If K-12 Campus was within Overland Park City limits</i>	<i>\$ 1,184,832.00</i>
<i>If District Office Campus was required to be platted</i>	<i>\$ 348,044.00</i>
<i>If Wilderness Science Center was required to be platted</i>	<i>\$ 266,587.00</i>
<i>If Blue Valley High School was required to be platted</i>	<i>\$ 296,208.00</i>

EXCISE TAX RESEARCH DATA

(11/12/99)

	CITY, STATE	Does your city charge an Excise Tax on development?	Does your city exempt the governmental taxing agencies (such as public school districts) from this tax when they develop land?
1	Arlington, Texas	YES	YES
2	Aurora, Colorado	YES	YES
3	Bellevue, Washington	YES	YES
4	Cherry Hills Village, Colorado	YES	YES
5	Hayward, California	YES	YES
6	Henderson, Nevada	YES	NO
7	Irvine, California	YES	YES
8	Lubbock, Texas	YES	YES
9	Maple Grove, Minnesota	YES	NO
10	Mesquite, Texas	YES	NO
11	Montgomery County, Maryland	YES	YES
12	Naperville, Illinois	YES	YES
13	Ontario, California	YES	YES
14	Plano, Texas	YES	YES
15	Reno, Nevada	YES	NO
16	Salinas, California	YES	NO
17	Scottsdale, Arizona	YES	YES
18	Tempe, Arizona	YES	YES
19	Vallejo, California	YES	NO



The City of

Overland
Park

KANSAS

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Law Department

Robert J. Watson, City Attorney

TESTIMONY IN OPPOSITION TO SENATE BILL NO. 435

TO: The Honorable Audry Langworthy, Chair, and
Members of the Senate Committee on Assessment and Taxation
Room 519-S

DATE: February 2, 2000

RE: Senate Bill No. 435 -- Pertaining to application of excise taxes to school districts.

Ladies and Gentlemen:

The City of Overland Park opposes enactment of Senate Bill No. 435 for the following reasons:

1. Senate Bill No. 435 appears to be a blatant attempt to limit the home rule power of cities to enact excise taxes that was upheld in *HBA v. City of Overland Park*, 22 Kan. App. 2d. 649, 921 P. 2d 234 (1996).
2. In the past in Overland Park school districts contributed to the demand they created for increased thoroughfare capacity by paying their assessments when they were placed into improvement districts for thoroughfare design and construction or by paying monies into escrow prior to the formation of those improvement districts. The City's excise tax is simply a replacement for those improvement districts and escrow accounts and not a new imposition upon the school districts.
3. Excise tax proceeds and other sources of city-at-large funds are used to support the City's Capital Improvement Program (CIP), which is an aggressive program. The City typically spends more than seven times the amount collected annually from the excise tax on its thoroughfare construction program alone. If the school district is concerned that excise tax proceeds are not being spent on thoroughfare projects in close proximity to schools, it is because those projects are not in the CIP. School officials can appear at the CIP hearings to lobby for inclusion of those projects in the CIP if they wish.
4. There are three school districts in the City of Overland Park: The Olathe School District has no facilities in the City and therefore would not be paying an excise tax. The Shawnee Mission School District is not building new schools or platting property. Only the Blue Valley School District is growing, building new schools and developing property. Therefore the effect of this bill would be to have Overland Park residents who are patrons of the Olathe and Shawnee Mission School Districts subsidize the growth of the Blue Valley District.

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5. Even if enacted, this bill would not be effective to prevent cities from applying excise taxes to school districts under their home rule powers because under established case law this 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 Senate Bill No. 435.

The City of Overland Park



Robert J. Watson
City Attorney

cc: Governing Body



TO: Senator Audrey Langworthy, Chairperson
Members of the Senate Assessment and Taxation Committee

FROM: Rebecca A. Swanwick, Assistant City Attorney

RE: Senate Bill 435, exempting unified school districts from city or county imposed platting taxes

DATE: February 2, 2000

Thank you for giving me the opportunity to appear before you today and to present testimony on Senate Bill 435. The City of Lenexa is opposed to this legislation.

A city's ability to adequately fund public improvements is central to the city's responsibility to protect the public health, safety and welfare through the provision of adequate public facilities and public infrastructure. In the City of Lenexa, the excise tax on platting is one of several important mechanisms utilized to fund these critical public improvements. Exempting schools from the application of this tax reduces the amount of excise tax funds available to fund these improvements.

Schools benefit greatly from adequate, well-maintained public infrastructure. In addition, they generate a substantial amount of traffic and demand for public improvements and other city services. The City of Lenexa believes that exempting schools from this tax sets bad precedent and will make it difficult to distinguish this requested exemption from other non-profit uses that may request exemptions in the future.

On behalf of the City of Lenexa, I would respectfully urge the Committee to decline to enact this legislation. Thank you for your consideration.

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Attachment 4

LEGISLATIVE



TESTIMONY



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SENATE ASSESSMENT & TAXATION COMMITTEE

February 2, 2000

SB474

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 SB 474.

SB 474 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 for residential development and 14 cents per square foot for commercial. The voters of Derby repealed this tax in early January by a vote of 58% to 42%.

SB 474 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.

SB 474 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. .
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

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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, 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. It 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 and 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.

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



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIR INSURANCE
MEMBER TOURISM
TRANSPORTATION
UTILITIES

STATE CAPITOL BUILDING, ROOM 182-W
TOPEKA, KANSAS 66612-1504
(785) 296-7696

Assessment & Taxation

Testimony on SB 474

February 2, 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 SB 474.

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 SB 474 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.

*Senate Assessment & Taxation
2-2-00
Attachment 6*

REAL ESTATE CENTER

Texas A&M University, College Station, Texas 77843-2115

Voice: (409) 862-6292 Fax: (409) 845-0460 e-mail: dotzour@tamu.edu

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.

Solutions Through Research

Senate Assessment & Taxation

2-2-00

Attachment 7

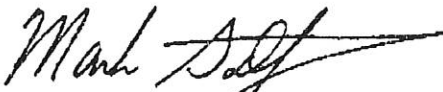
01/28/00 FRI 10:55 FAX 409 545 5400 REAL ESTATE CENTER TAMU @002
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Now it seems that some Kansas municipal governments want to avoid these steps and levy an excise tax on new development without any regard to the issue of fairness and equity. It is my 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,



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

Good Morning...

2-2-2000

I'm Richard Standrich, Mayor of Derby Kansas.

I am appearing here this morning on behalf of myself and the City of Derby to voice our support of Senate Bill 474, which, if enacted into law, would require our City and others in the State to (what is the purpose of the bill) as justification for and prior to imposing any such tax or fee.

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 *FALL OF 1997* 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 out 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 via 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 at this point in time was nullified. When the imposition of the tax was finally approved, the Council's action to impose it took place the night of the general election. The Mayor and Council members who were up for re-election we all defeated for re-election by substantial margins.

Senate Assessment & Taxation
2-2-00 Attachment 8

- * 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 property. Any investment the city might choose to make when infrastructure is being built, such as paying for the oversizing of pipe 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 and it was determined that that 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 this issue focused on how the council might give credibility to their proposal while discussion was being had as to how and when the protocol in the ordinance could be changed if the Council decided to spend the monies collected for some other 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 probable 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 economically justify what they do and fiscally assess the impact of their actions on communities before they do it. This will make for better government and more responsive government for us all.

Thank you. I would be glad to stand for any questions you might have.

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* Cost Comparison
New Development
Revenue vs Expenditure

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total	Annual Average
Revenue Source	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year		
Additional Homes	10	10	10	10	10	10	10	10	10	10	100.00	
Persons Per Household	3.06	3.06	3.06	3.06	3.06	3.06	3.06	3.06	3.06	3.06	30.60	
Additional People	30.6	61.2	91.8	122.4	153	183.6	214.2	244.8	275.4	306	1,683.00	
Est. Add. School Age Children	8	16	24	32	40	48	56	64	72	80	440.00	
Base Year Est. Population-17,100	17,131	17,192	17,284	17,406	17,559	17,743	17,957	18,202	18,477	18,783		
Real Property Tax*	\$4,600	\$9,200	\$13,800	\$18,400	\$23,000	\$27,600	\$32,200	\$36,800	\$41,400	\$46,000	\$253,000	\$25,300
Personal Prop. Tax	\$885	\$1,770	\$2,655	\$3,540	\$4,425	\$5,310	\$6,195	\$7,080	\$7,965	\$8,850	\$48,675	\$4,868
Sales Tax (per capita Est)	\$982	\$1,964	\$2,946	\$3,928	\$4,910	\$5,892	\$6,874	\$7,856	\$8,838	\$9,820	\$54,015	\$5,401
Permits	\$176	\$176	\$176	\$176	\$176	\$176	\$176	\$176	\$176	\$176	\$1,756	\$176
Fines & Fees	\$510	\$1,020	\$1,530	\$2,040	\$2,550	\$3,060	\$3,570	\$4,080	\$4,590	\$5,100	\$28,050	\$2,805
Franchise Fees	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010	\$10,100	\$1,010
Sewer Connection Fees	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$85,000	\$8,500
Gasoline Tax	\$1,175	\$2,350	\$3,525	\$4,700	\$5,875	\$7,050	\$8,225	\$9,400	\$10,575	\$11,750	\$64,625	\$6,463
Wastewater Surcharge Rev.	\$1,080	\$2,160	\$3,240	\$4,320	\$5,400	\$6,480	\$7,560	\$8,640	\$9,720	\$10,800	\$59,400	\$5,940
Estimated Revenue per Year	\$18,918	\$28,150	\$37,382	\$46,614	\$55,846	\$65,078	\$74,310	\$83,542	\$92,774	\$102,006	\$604,621	\$60,462

* Calculated on \$100,000 @ 11.5% assessment ratio @ 40 mills

Expenditure Source	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total	Annual Average
	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year	10 homes per year		
Additional Police Officers											\$31,250	
Additional Public Works Emp.											\$40,312	
Additional Clerical Workers											\$9,000	
Additional Technical Employees											\$20,312	
Additional Street Maint.	\$29	\$59	\$88	\$117	\$147	\$176	\$368	\$235	\$265	\$295	\$1,779	\$178
Additional Police Service (hrs)	91.25	182.50	273.75	365.00	456.25	547.50	638.75	730.00	821.25	912.50	5018.75	\$502
Estimated Cost Per Service Hour	\$44	\$88	\$132	\$176	\$220	\$264	\$308	\$351	\$395	\$439	\$2,416	\$242
Additional Fire Service (calls)	0.30	0.60	0.90	1.20	1.50	1.80	2.10	2.40	2.70	3.00	16.50	1.65
Estimated Cost Fire Service	\$8	\$17	\$25	\$33	\$42	\$50	\$58	\$67	\$75	\$83	\$458	\$46
Additional Public Works Maint	\$74	\$148	\$222	\$296	\$370	\$444	\$518	\$592	\$666	\$740	\$4,065	\$407
WW Coll. System Maint.	\$103	\$207	\$310	\$414	\$517	\$620	\$724	\$827	\$931	\$1,034	\$5,687	\$569
WW Treatment Expense	\$70	\$140	\$211	\$281	\$351	\$421	\$491	\$561	\$632	\$702	\$3,860	\$386
Estimated Expenditures	\$420	\$841	\$1,262	\$1,682	\$2,103	\$2,524	\$3,107	\$3,366	\$3,787	\$4,208	\$124,174	\$12,417

5 1/2 times