

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on January 26, 2000, in Room 529-S of the Capitol.

All members were present except: Senator Praeger

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Judy Moler, Kansas Association of Counties
Sandy Jacquot, League of Kansas Municipalities
Brad Bryant, Deputy Assistant Secretary of State
Vera Gannaway, General Counsel, KGEC
John Houlihan, Director of Purchasing, Dept of Adm.

Others attending: See attached list

Chairman Hardenburger opened the meeting by asking for introduction of bills. Judy Moler, Kansas Association of Counties, requested a bill be introduced that would afford counties constitutional home rule. She informed the Committee that the counties now have statutory home rule, while cities enjoy constitutional home rule. (Attachment #1)

Senator Gooch moved that the bill be introduced, seconded by Senator Steineger. Motion carried.

Sandy Jacquot, League of Kansas Municipalities, requested a bill be introduced concerning unpaid property taxes; relating to the judicial foreclosure and sale of real estate.

Senator Vidricksen moved that the bill be introduced, seconded by Senator Steineger. Motion carried.

Brad Bryant, Deputy Assistant Secretary of State requested introduction of three bills, the first bill would be a technical cleanup bill; the second bill would amend statute so that persons appointed to fill vacancies in township offices would face a midterm election if appointed during the first half of the term, and, the third bill is requested at the recommendation of the Legislative Coordinating Council which would reduce the number of Permanent House and Senate Journals stored by the Secretary of State after the initial distribution of the volumes. (Attachment #2)

Senator Becker moved that the three (3) bills be introduced, seconded by Senator Steineger. Motion carried.

Vera Gannaway, General Counsel, Kansas Governmental Ethics Commission, requested the Committee discuss competitive bid contracts versus negotiated bid contracts as they applied to governmental ethics law of conflict of interest. (Attachment #3)

The Committee discussed State negotiated versus competitive State contracts regarding conflict of interest as it would apply to the bidding process. John Houlihan, Director of Purchasing, Department of Administration answered questions presented by the Committee regarding the State Contracting System..

Chairman Hardenburger requested staff to draft a bill with changes to the ethics laws as suggested by the conferees.

Meeting was adjourned at 2:30 p.m. Next meeting is scheduled for February 1, 2000.

ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: January 26, 2000

NAME	REPRESENTING
Judy Miller	Ks. Assn. of Counties
Ron Appletoft	Water Dist. No 1 of Jo Co
[Signature]	[Signature]
Randy Allen	Kansas Association of Counties
Petruck Mueler	Anderson Consulting
Linette Toffy	Ks Dept. of SRS
Kay Woodall, CMPSM, CPM	Ks Dept. of Human Resources
Larry Kleeman	League of KS Municipalities
Gandy Jacquot	League of Kansas Municipalities
Carl Williams	Gov Ethier
Vera Gannaway	Gov Ethier
Brad Bryant	Sec. State
Led Hofner	LPA
John Houlihan	Dept of Admin
Danielle Hoe	Governor's Office
Whitney Dameron	KS Securities Dealers Assn.
Tom Day	KCC
JUDITH MCCONNELL	KCC



KANSAS
ASSOCIATION OF
COUNTIES

January 26, 2000

Senator Hardenburger and Members of the Committee:

I am Judy Moler representing the Kansas Association of Counties. I am here today requesting legislation that would afford counties constitutional home rule. Currently counties have statutory home rule while cities enjoy constitutional home rule. The primary difference? The legislature, subject to the provisions of the constitutional amendment, can restrict city home rule powers. However, the home rule powers of counties can be restricted and even repealed by the state legislature. When county home rule was enacted by the 1974 Kansas legislature, it only limited county home rule powers in eight specific areas. The list of statutory restrictions has grown to thirty-one.

As more and more responsibility is passed down to Kansas' 105 counties, they need the flexibility to creatively and efficiently deal with these issues as they affect the individual county. Currently 23 states have given counties home rule.

The Kansas Association of Counties has long had as part of our platform the protection of our statutory home rule. At the 1999 KAC Annual Conference, the issue of achieving constitutional home rule was elevated to one of our five legislative priorities.

I have attached an article written by Mike Heim, Kansas Legislative Research, for the December County Comment dealing with the differences in constitutional and statutory home rule. I would like to work with Mr. Heim and the revisor's office to draft this bill.

The Kansas Association of Counties respectfully requests introduction of this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services to its 105 member counties. The Association's main office is in Topeka, and the Education Program office is located at 3500 N. Rock Road, Wichita, Ks. 67226.

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Senate Elections & Local Government
Date: 1-26-00
Attachment # 1-1

Statutory Home Rule v. Constitutional Home Rule

Home rule power for cities and counties is basically the same regardless of whether it is conferred by a state constitutional amendment or conferred by statute. True or false?

Home rule powers are generally conferred on cities and counties by state constitutional provision. Cities in 37 states and counties in 23 states have constitutional home rule power. Home rule power is conferred by statutory enactment in 11 states for cities and 13 states for counties. Note that 24 states confer home rule power on cities and 12 states on counties by both a constitutional and by a statutory grant of power.

The key distinction between county and city home rule in Kansas is the fact that the county home rule is granted by statute whereas the city home rule grant is contained in the *Kansas Constitution*, Article 12, Section 5. The Legislature can restrict "city" home rule powers but is subject to the provisions of the constitutional amendment. By contrast, the state legislature has a much freer hand to restrict or even repeal county home rule which is granted by statute, K.S.A. 19-101a. Only the voters of Kansas have the ability to repeal city home rule and voters may do this only after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for the amendment or repeal of the constitutional home rule provision. A second but closely related difference between city and county home rule is the numerous exceptions to county home rule powers that are found in the statutory home rule grant of power.

Commentators have noted that a new era in city-state relations was inaugurated in this state on July 1, 1961, the effective date of the City Home Rule Amendment which had been approved by voters at the November 1960 general election. Since that date, cities have been able to look directly to the *Kansas Constitution*, Article 12, Section 5 for the source of their powers. Cities are no longer dependent upon specific enabling acts of the Legislature since the Home Rule Amendment has in effect stood Dillon's Rule on its head by providing a direct source of legislative power for cities. Dillon's Rule, although formulated by the courts for cities, is a reflection of the general dependency of all local governments including counties upon state legislatures absent a home rule grant of authority. Dillon's Rule states that local governments have only those powers granted in express words of a statute and any fair or reasonable doubt concerning the existence of power is resolved by the courts against the corporation.

The City Constitutional Home Rule Amendment serves a two fold purpose: as a direct source for city or local legislative power and as a constitutional limit on state legislative control over the affairs of cities. Both aspects of the amendment must be understood to fully appreciate how the relationship of cities and the state and, more specifically, the Legislature has changed. Briefly stated, cities now may enact local laws on subjects that are not even addressed by state law, on subjects where a state law exists but that law does not apply uniformly to all cities, and on subjects where there is a uniform state law and the city wants to enact additional or supplemental local provisions. Conversely, the Legislature, with certain constitutional exceptions, may completely bind cities only if it enacts state laws that apply uniformly in the exact same way to all cities and the law contains a clear statement of preemption. The Home Rule Amendment thus has an empowering aspect as well as a limitation aspect, both of which are of nearly equal importance.

Senate Elections & Local Government

Date: 1-26-00

Attachment # 1-2

The Kansas county home rule act, which appears at K.S.A. 19-101a et. seq., and was passed in 1974, provides that “the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate . . .” subject only to the limits, restrictions and prohibitions listed in the act. See K.S.A. 19-101a(a). The statutory grant, like the City Home Rule Amendment, provides that the home rule shall be liberally construed to give counties the largest measure of self-government. See K.S.A. 19-101c.

Due to the statutory nature of county home rule, however, the Legislature may pass virtually any nonuniform law it sees fit to enact, regardless of subject matter, and then “lock out” the use of home rule by simply adding a further statutory restriction to the county home rule law. The eight statutory restrictions on county home rule powers incorporated in the original law enacted as part of the original law (see L. 1974, ch. 110), have increased to 31 restrictions by 1999. Several of the restrictions are similar or identical to those contained in the city home rule amendment and include: making counties subject to all acts which apply uniformly to all counties; prohibiting counties from altering or consolidating county boundaries; and making counties subject to acts of the legislature prescribing limits of indebtedness.

Most restrictions, however, are unique to the counties. These restrictions generally fall into two categories: general prohibitions against counties engaging in certain types of activities such as altering county election laws and prohibitions against changing certain non uniform laws that apply to some but not all counties such a law dealing with the construction of civic centers. The latter type of restriction is used whenever the Legislature passes a nonuniform law applying to one or more counties but not all counties and desires to prohibit counties from exercising statutory home rule power to charter out of the nonuniform law. This latter type restriction accounts for 17 of the 31 restrictions.

Home rule power for cities and counties is basically the same regardless of whether it is conferred by a state constitutional amendment or conferred by statute. True or false?

Written by Mike Heim, Kansas Legislative Research and reprinted from the December issue of the County Comment.

Ron Thornburgh
Secretary of State



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STATE OF KANSAS

Senate Committee on Elections and Local Government

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

January 26, 2000

Madam Chairman and Members of the Committee:

The Secretary of State's office requests introduction of three bills.

The first bill is a technical cleanup bill. It would accomplish two things: (1) change the street address of the Secretary of State's office in K.S.A. 25-22309(c)(4)(ii), dealing with the mailing of voter registration application forms, (2) change the year designation from 19__ to 20__ in K.S.A. 25-216 and 25-1802.

The second bill would amend K.S.A. 80-201 so that persons appointed to fill vacancies in township offices would face a midterm election if appointed during the first half of the term. Appointed township officers would be treated the same as most other elected officials.

The third bill is being requested at the recommendation of the Legislative Coordinating Council. It would reduce the number of Permanent House and Senate Journals stored by the Secretary of State after the initial distribution of the volumes.

We request introduction of these proposals as committee bills. Thank you for your consideration.

Senate Elections & Local Government

Date: 1-26-00

Attachment # 2

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To: Members of Senate Elections and Local Government Committee
From: Vera May Gannaway
General Counsel, Kansas Governmental Ethics Commission
Date: January 26, 2000
Re: K.S.A. 46-233(d)

Statute:

K.S.A. 1998 Supp. 46-233 involves participation by state employees in the making of contracts. It states in pertinent part:

“(a) (1) No state officer or employee shall . . . be substantially involved in the preparation of or participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee or any member of such officer's or employee's immediate family has a substantial interest. . . .

“(2) . . . whenever any individual has participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business as an employee, independent contractor or subcontractor until two years after performance of the contract is completed or until two years after the individual terminates employment as a state officer or employee, whichever is sooner. . . .

...

“(d) Subsections (a) and (b) shall not apply to the following:

“(1) Contracts let after competitive bidding has been advertised for by published notice. . . .”

Issue:

K.S.A. 46-233(a) and (b) place limitations on who may participate in the making of contracts and who may take jobs with entities that have been awarded state contracts. Subsection (d) states that these prohibitions shall not apply to contracts which are let after a competitive bid procedure and which have been advertised for by published notice.

The question presented is whether the Legislature wishes contracts which are let after a competitive bid procedure and which have been advertised for by published notice, but which also contain elements of negotiation, to be subject to the prohibitions in K.S.A. 46-233(a) and (b).

History:

1974: The statutory provisions at issue were enacted in 1974. At that time, the state was

involved with two types of contractual arrangements. These may be described as the sealed bid/lowest bid contracts and the sole source contracts, each of which is described below:

Sealed Bid/Lowest Bid: State puts out Request For Proposal or Bid (RFP) and advertises. Bids are opened in public and the lowest bid receives the contract. *See e.g.* K.S.A. 75-3739.

Sole Source: Individual negotiation. No Competitive bidding procedure or advertising required.

When K.S.A. 46-233 was enacted, only sole source contracts contained elements of negotiation and those contracts were subject to the prohibitions listed in subsections (a) and (b). Sealed bid/lowest bid contracts, however, were exempt from those prohibitions.

1987: As early as 1987, the Legislature enacted statutes which provided for a new contractual arrangement which can be described as competitively bid/negotiated contracts:

Competitively Bid/Negotiated: State puts out Request For Proposal or Bid (RFP) and advertises. Each bid is then analyzed, interpreted and negotiated individually, to produce the best value for the State. The lowest bid may not receive the contract.

These contracts are let after a competitive bid procedure and are required to be advertised for by published notice, but they also contain elements of negotiation. *See e.g.* K.S.A. 75-37,102.

Current Status of the Law:

In 1999, the Kansas Governmental Ethics Commission was asked to determine whether these competitively bid/negotiated contracts were exempt from the prohibitions contained in K.S.A. 46-233(a) and (b).

K.S.A. 46-233(d) contains two elements which must be met in order for the exemption to apply. The contract must be (1) let after a competitive bid procedure and (2) advertised for by published notice. Because these contracts meet both elements of the exemption as the statute is currently written, the Commission determined that competitively bid/negotiated contracts are exempt from the prohibitions listed in K.S.A. 46-233(a) and (b).

Therefore, as the law currently reads, a state employee would be permitted to participate in the making of a contract which contains elements of negotiation, even if that employee has a substantial interest in the business receiving the contract. In addition, if a state employee is involved in the making of a competitively bid/negotiated contract, that state employee may immediately accept employment with the business that received the contract.