

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 February 8, 2000, in Room 529-S of the Capitol.

All members were present:

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: Senator Stan Clark
Fred WasseMiller, Monument, Kansas
Ruth Clark (presented testimony for Murray Bean)
Judy Moler, Kansas Association of Counties
Dave Yearout, Kansas Association County Planning & Zoning Officials
Joe Krahn, Chief of the Bureau of Right-of-way for KDOT

Others attending: See list attached

Chairman Hardenburger opened hearing on **SB 478 amending the junkyard and salvage control act; relating to county and township highways and repealing the existing sections.**

Senator Stan Clark, testified in favor of the bill informing the Committee that **SB 478** would eliminate the enforcement by KDOT for the operation of a junkyard within 1000 feet county and township road. (Attachment #1) Senator Clark submitted a series of photographs to the Committee representing the area in question. (These photographs may be reviewed in the office of Senator Clark)

The Committee discussed if cities were included in the bill. Senator Clark testified that the bill only applied to county and township roads.

Mr. Fred WasseMiller of Monument, Kansas, also testified in favor of the bill. He informed the Committee that he feels his right to own property is at stake, since the state is applying the restriction of 1000 feet off the edge of county and township roads to vehicles parked on his property. (Attachment #2)

Ruth Clark presented testimony to the Committee from Murray Bean, owner of property referred to in photographs submitted to the Committee. His testimony was in favor of the bill and stated that the current law would take away his freedom of keeping automobiles on his property. (Attachment #3)

Judy Moler, Legislative Services Director/General Counsel, Kansas Association of Counties, presented testimony in opposition of **SB 478**. She informed the Committee that the bill would remove the ability of the county and township to require junkyards be sited more than 1,000 feet of the nearest edge of the right-of-way. (Attachment #4)

Dave Yearout, Kansas Association County Planning & Zoning Officials, an opponent of the bill, advised the Committee that he works closely with counties to establish local rules in regard to auto salvages. He informed the Committee that local individuals are conscientious and go out of their way to find solutions to the problem, rather than threaten lawsuits. Mr. Yearout feels that this is not an amendment that is going to resolve the problems for all the collectors and hobbyists. He advised that the law has been on the books since 1967 to address this situation. (No written testimony)

The Committee discussed home rule powers, also the difference between an automobile grave yard and a salvage yard.

Joe Krahn, Chief of the Bureau of right-of-way for KDOT, presented testimony informing the Committee that the law requires salvage yards to be screened from view from the roadway unless the location is in an

CONTINUATION SHEET

industrial area. He advised that KDOT, over the years, has responded to numerous requests from legislators, local officials, law enforcement, and citizens concerned with salvage storage locations that have developed in their communities along county or township roads. He said they have had an excellent working relationship with the Department of Revenue's Division of Motor Vehicles, the Department of Health and Environment, state and local law enforcement personnel, and the federal Environment Protection Agency. (Attachment #5)

The Committee discussed this being a local issue, and if the 1967 law should be rescinded.

Chairman Hardenburger closed the hearing on **SB 478** and opened further discussion on **SB 462 concerning campaign finance; relating to contributions and repealing the existing section**. She advised the Committee that the bill relates to contributions during the session through the party committees that exist in the Senate and the House, and to the leadership committees that exist in the Senate and the House. Currently, legislatures and candidates for the legislature and state officers and candidates for state offices and candidate committees for those individuals cannot receive contributions from January 1st through sine die. This ban would extend it to the nine PAC's that exist presently.

Carol Williams, Executive Director of Governmental Ethics Commission, submitted a breakdown of contributions received during the 1999 session by the recognized party committees. (Attachment #6)

Senator Lawrence moved that SB 462 be moved out favorably.

Senator Huelskamp asked if this would include PAC's outside of the group listed in Ms. Williams breakdown. The Committee was informed by Ms. Williams that it would not.

Senator Praeger seconded the motion.

Chairman Hardenburger informed the Committee that the purpose of the bill was to prevent influence upon legislators during the session. Currently, legislators cannot receive direct contributions during the ban period. However, a loophole in the statutes allows party committees to receive PAC contributions that could influence legislation indirectly.

Motion failed.

Senator Huelskamp proposed an amendment to the bill to have the effective date of the bill to be upon publishment in the Kansas Register, seconded by Senator Vidricksen. Motion carried.

Senator Vidricksen moved that the bill be passed out as amended, seconded by Senator Huelskamp. Motion carried.

Meeting was adjourned at 2:30 p.m. Next meeting is scheduled for February 9, 2000.

ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: FEBRUARY 8, 2000

NAME	REPRESENTING
Joseph Krahn	KDOT
Bruce Dimmitt	Kansans for Life.
Fred Wassemiller	Monument, KS
Ruth Clark	Murray Bean - Oakley Resident
Stan Clark	Senate
Judith Moler	Ks. Assn of Counties
Brad Bryant	Sec. of State
Barbara Duro	AAUW
Catherin Hoy	League of Women Voters
Nancy Sargent	NWV
MaryAnne Powell	LWN
Midge Minton	LWV
Mary Frances Hogg	LWV : AR 2nd
Fred Minton	LWV
Paul Williams	Gov Ethics Commission



COMMITTEE ASSIGNMENTS

CHAIR: INFORMATION TECHNOLOGY
VICE CHAIR: UTILITIES
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS & INSURANCE
RULES & REGULATIONS

Stan Clark

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
ELECTIONS AND LOCAL GOVERNMENT**

**SENATE BILL NO. 478
FEBRUARY 8, 2000**

Chairman Hardenburger and members of the committee:

Thank you for scheduling this hearing on automobile graveyards. In 1965, Congress passed Lady Bird Johnson's Highway Beautification Act which tried to limit the number of highway billboards, restricted their location and provided chain-linked screening fences around auto salvage yards.

In 1966, the Kansas Legislative Summer Interim topics included a study on how to implement this act since the penalty for noncompliance is 10% of the federal highway funds the state receives (pages 13-16).

The 1967 Kansas Legislature adopted the necessary statutes to be in compliance with the federal law (page 17), but in one place they decided to be more stringent than the federal law required. Federal Law in 23 CFR § 751.3 and § 751.9 (pages 18-20) requires that automobile graveyards with 10 or more inoperable vehicles located within 1000 feet from the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Highway systems be screened from sight. The Kansas Legislature expanded the definition to include county roads, township roads and city streets (page 21). Enforcement of this statute is by the Kansas Department of Transportation. If you have 10 or more inoperable vehicles closer than 1000 feet, you have to pay \$50 annually to the secretary of transportation for a license and maintain the screened fence (pages 21 & 10).

The legislation before you today seeks to eliminate the enforcement by KDOT on county and township roads. In an era of tight budgets, surely we can save some money by not having KDOT officials patrolling county and township roads counting vehicles in farmyards and guessing whether they are operable or not. At a time when local units of government want more "home-rule" authority, this is an area that we can grant their desire and

agree that local zoning and health ordinances are more appropriate enforcement than KDOT.

You have a series of pictures with my testimony. (page 3) The first picture is taken on US 83-383 along the west edge of Oakley looking towards the northwest. This is about 1½ miles south of where I live. There are 2 farmsteads. The one on the right has a nice home that is about 10 years old with a large cedar windbreak, to the west is another farmstead that is probably 60 years old.

(page 4) This is a close-up of the older farmstead.

(page 5) This photo is of the older farmstead taken from the township road. If you look very closely, you can see a couple of older vehicles through the trees on the west side of the house.

(page 6) This is a picture of the farmstead taken from the township road west of the house looking towards the northeast. You can see several older vehicles.

Last July, KDOT issued a letter to the owner Murray Bean giving him 45 days to either remove the vehicles or pay the \$50 license fee and build the screening. At the time he had 12 inoperable vehicles. He contacted me, and I asked Hank Avila in Legislative Research to research this topic for me. A couple days before the time limit expired Mr. Bean, using typical western Kansas common sense, pulled 3 of his vehicles 1000 feet north of the property line and left 9 in his yard to reluctantly comply with state law.

(pages 7 & 8) Now every time I drive to town, along with the 2000 other vehicles that use US 83-383 everyday, we can look off to the west and see 3 vehicles sitting out in the middle of a field all because of KDOT's enforcement of a law.

I was hoping that this was the end of this issue. In December, I received another phone call from Fred Wasse Miller. His dad had just received the same letter. Fred is here today to testify for his dad. Following Fred, my wife, Ruthie, will give testimony for Mr. Bean.

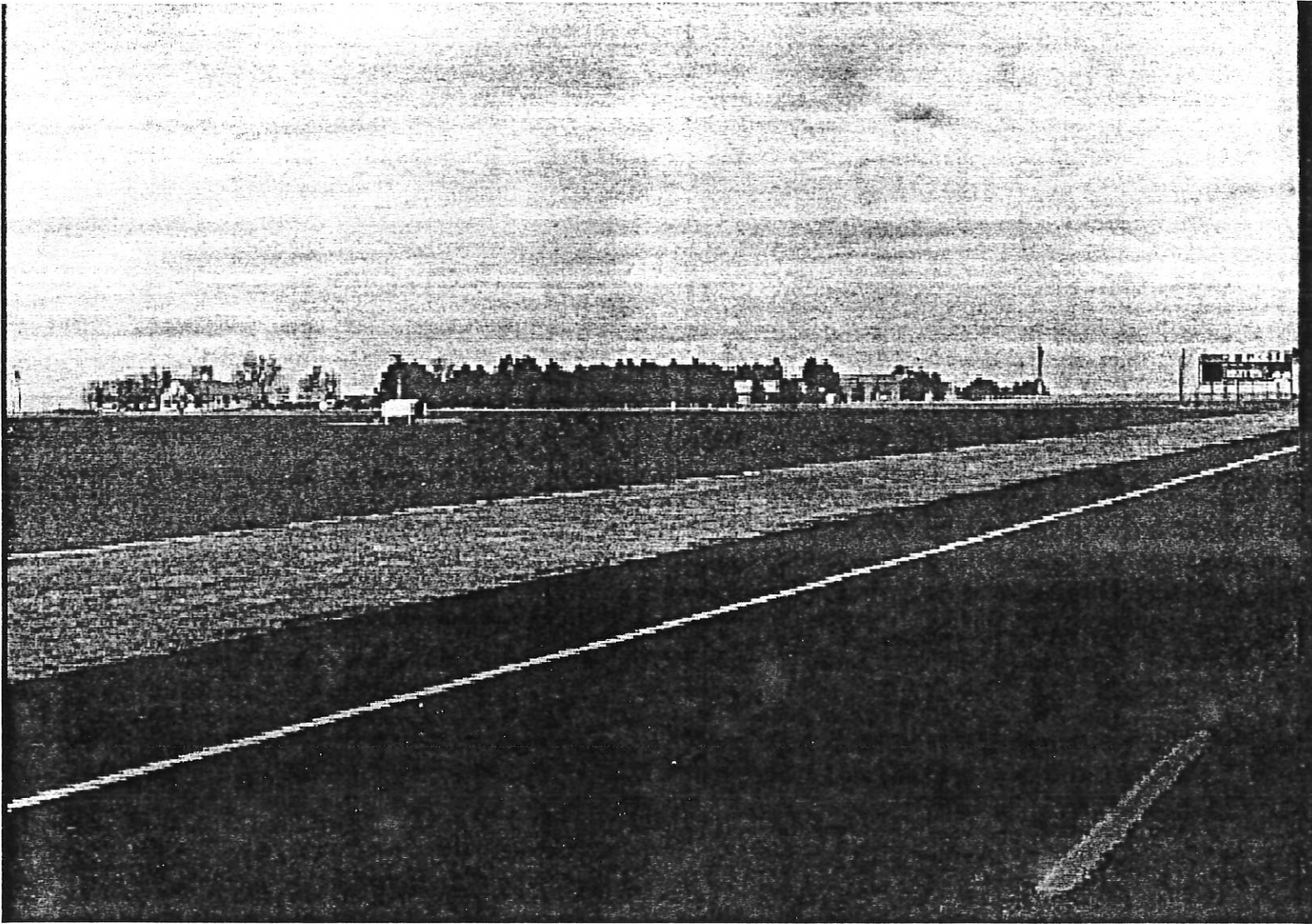
I have attached copies of Hank's letter to me (page 12), the 1966 Interim Report (pages 13-16), the Federal Law (pages 18-20), 1967 legislation (page 17), 1973 (page 21) and 1978 (pages 22 & 23) amendments and the current law (pages 9-11) to the end of my testimony.

Madam Chairman, I will gladly stand for questions.

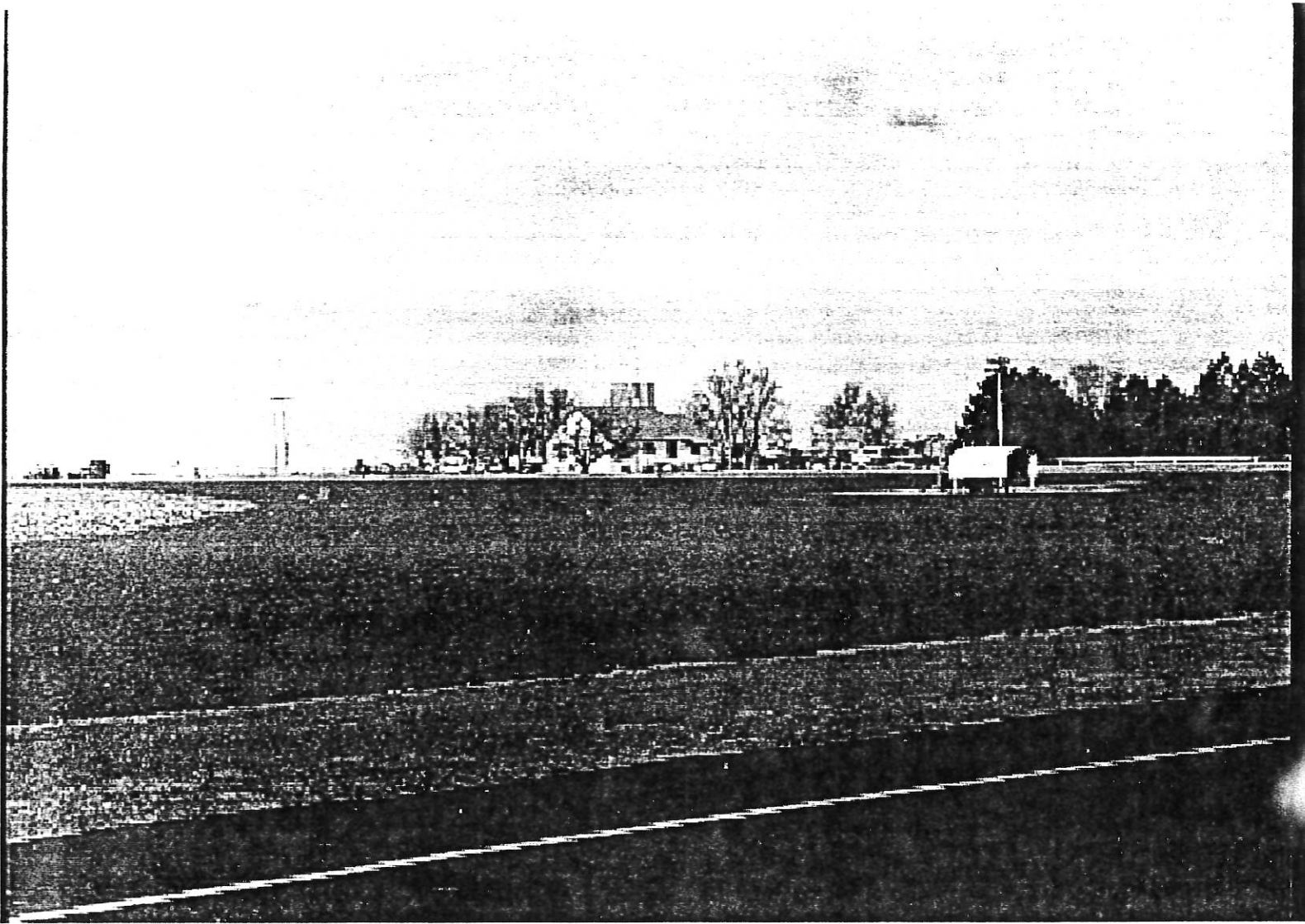
Senate Elections & Local Government

Date: 2-8-00

Attachment # 1-2



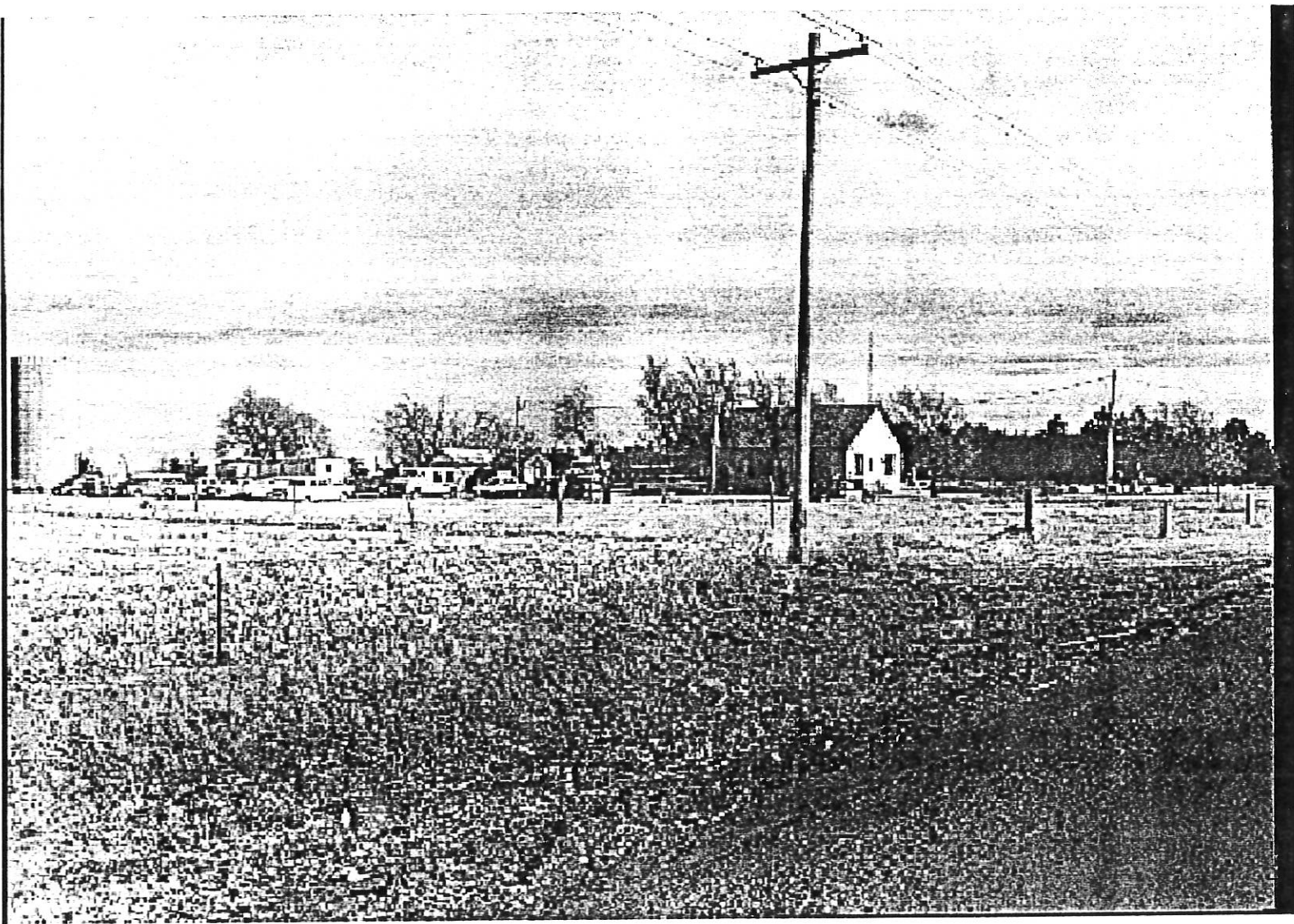
Senate Elections & Local Government
Date: 2-8-00
Attachment # 1-3



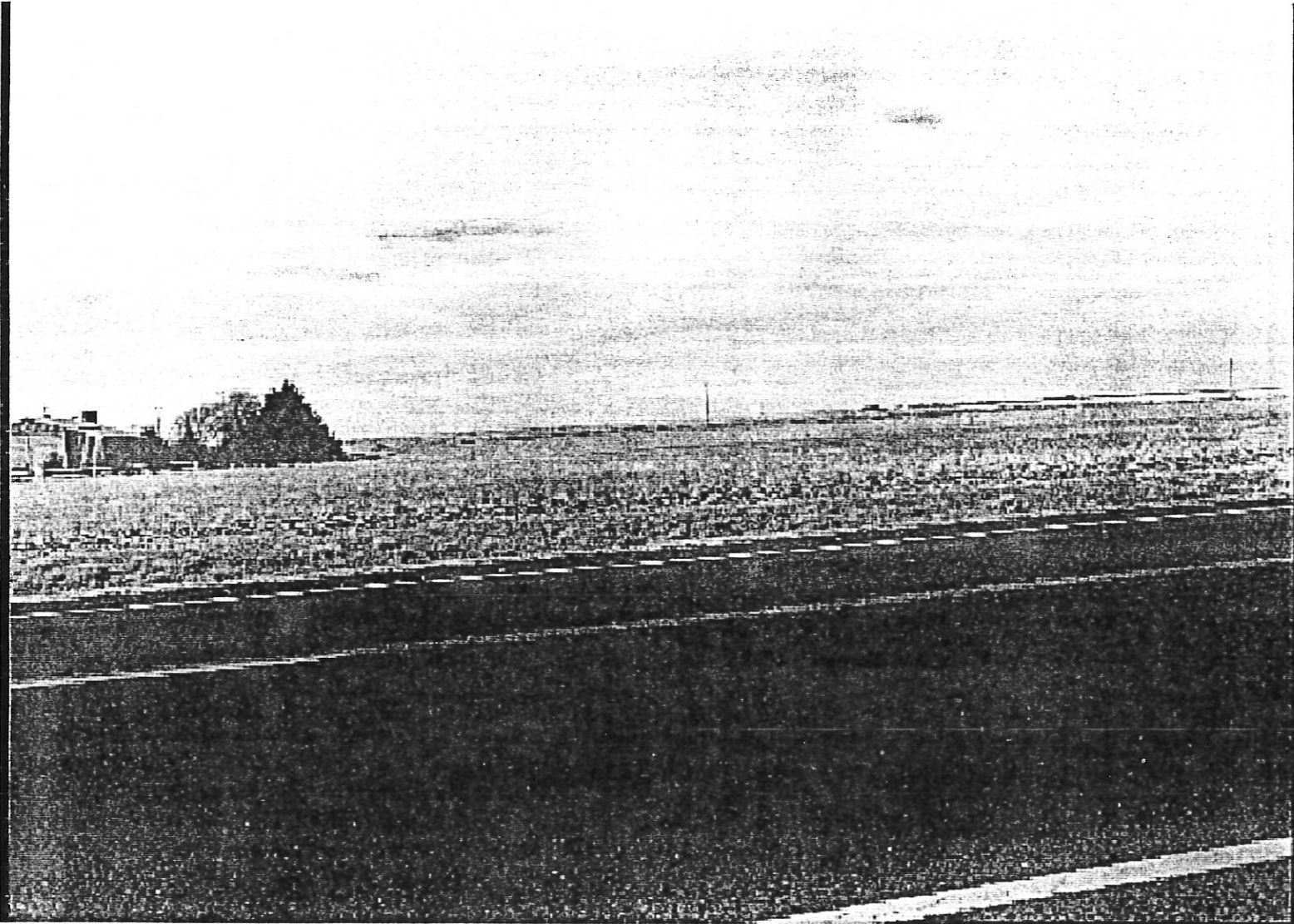
Senate Elections & Local Government
Date: 2-8-00
Attachment # 1-4



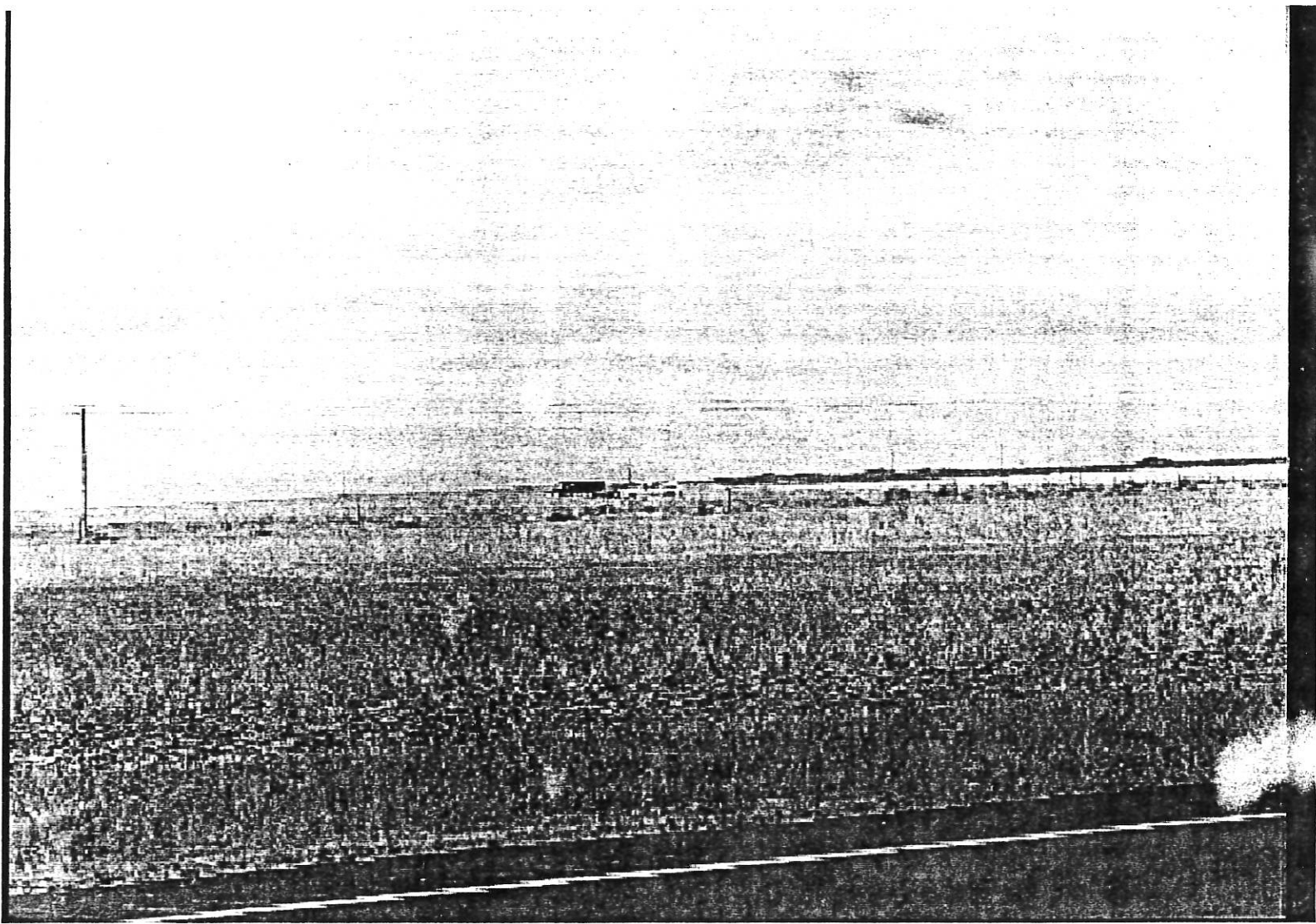
Senate Elections & Local Government
Date: 2-8-00
Attachment # 1-5



Senate Elections & Local Government
Date: 2-8-00
Attachment #1-6



Senate Elections & Local Government
Date: 2-8-00
Attachment #1-7



Senate Elections & Local Government
Date: 2-8-00
Attachment #1-8

Research and Practice Aids:
Highways ⇐ 153.5.
C.J.S. Highways § 218.

68-2202. Purposes. For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest, and necessary and appropriate to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to highways, roads and streets within this state.

History: L. 1967, ch. 357, § 2; L. 1973, ch. 271, § 1; July 1.

Revisor's Note:

No change made in this section in 1973.

Attorney General's Opinions:

Enactment of moratorium on establishment of salvage yard must be in good faith, nondiscriminatory and reasonably related to public health, safety and welfare. 91-61.

68-2203. Definitions. (a) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(b) "Automobile graveyard" shall mean any establishment which is maintained, used, or operated, for storing, keeping, buying, or selling ten (10) or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, but such term shall not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the chief engineer of the division of water resources of the state board of agriculture.

(c) "Junkyard" shall mean an establishment which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps.

(d) "Interstate system" means that portion of the national system of interstate and defense highways, including city connecting links and portions of the Kansas turnpikes, located within this state, as officially designated, or as may hereafter be so designated, by the sec-

retary, and approved by the proper federal authority as provided by law.

(e) "Primary system" means that portion of connected main highways, including city connecting links, as officially designated, or as may hereafter be so designated, by the secretary, and approved by the proper federal authority as provided by law.

(f) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company or corporation, including municipal corporation.

(g) "Commission" means the secretary of transportation.

(h) "Board" means the secretary of transportation.

History: L. 1967, ch. 357, § 3; L. 1973, ch. 271, § 2; L. 1975, ch. 426, § 60; L. 1978, ch. 276, § 1; July 1.

68-2204. Junkyards prohibited, when. No person shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any street or highway on the interstate system or the primary system, or any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any other state, county, township highway, road, or city street, except the following:

(a) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the street or highway, or otherwise removed from sight.

(b) Those located within areas which are zoned for industrial use under authority of law.

(c) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules and regulations to be adopted by the secretary of transportation.

(d) Those which are not visible from the main traveled way of a street or highway on the interstate or the primary systems, or any other state, county, township highway, road, or city street.

History: L. 1967, ch. 357, § 4; L. 1973, ch. 271, § 3; L. 1975, ch. 427, § 214; L. 1976, ch. 296, § 1; July 1.

68-2205. Certificate of compliance; requirements; failure to make an original or renewal application; injunction. No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any street

or highway on the interstate or the primary systems, or any other portion of which is within 1,000 feet of the nearest edge of the right-of-way of any other state, county, township highway, road or city street, without obtaining a certificate of compliance from the secretary of transportation, which certificates shall be issued only for junkyards not prohibited by K.S.A. 68-2204, and amendments thereto. The secretary of transportation shall have the sole authority to issue certificates of compliance for the establishment, maintenance and operation of junkyards within the limits defined herein, except that an initial application for a certificate of compliance must show that such junkyards were approved by a local governing body if such approval is required by the local governing body. The secretary of transportation shall charge an annual fee of \$50 payable on or before January 1. Anyone establishing a junkyard after July 1 of any year shall pay a fee of \$25 for the remaining portion of the year. No city or county governing body shall be required to pay any fees provided for herein. All licenses issued under this section shall expire on January 1 following the date of issue. A certificate of compliance may be renewed from year to year upon paying to the secretary of transportation the sum of \$50 in advance for such renewal.

Any person who shall willfully or intentionally refuse to make an original application or renewal application, or to pay the annual certificate of compliance fee, as prescribed in this act, shall be deemed delinquent on and after February 16 of any year, or in cases where business is established after the first of the year such person shall be deemed delinquent on and after 45 days after establishment of the business and shall be assessed a penalty fee by the secretary of transportation of \$1 per day for each day such person continues to do business until the application is made and the fees have been paid. After such time it shall be unlawful for the owner, or any person, to operate the junkyard. Proceeds from such fees shall be deposited with the state treasurer in the state highway fund and be subject to disbursement as provided by law to defray the expenses of administering the provisions of this act. Whenever any person required to be certified under this act fails to make application with the secretary of transportation, or to pay the certificate of compliance fee when due, or continues to do business when the secretary of transportation has denied, suspended or re-

voked such application or certificate of compliance, the secretary of transportation may file an action to enjoin such person from operating in violation of this act.

History: L. 1967, ch. 357, § 5; L. 1968, ch. 154, § 1; L. 1972, ch. 250, § 1; L. 1973, ch. 271, § 4; L. 1976, ch. 296, § 2; L. 1987, ch. 263, § 1; Jan. 1, 1988.

68-2206. Requirements as to screening. The secretary of transportation shall have the authority to adopt rules or regulations governing the location, planting, construction and maintenance, including the materials used in screening or fencing required by this act. Any plantings, fencing or other screening facilities located on public land or easements shall be public property.

History: L. 1967, ch. 357, § 6; L. 1975, ch. 426, § 61; Aug. 15.

68-2207. Junkyards lawfully in existence. Any junkyard which was lawfully in existence on May 4, 1967, and duly certified in the subsequent year and which is within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of any street or highway on the interstate or the primary systems and any junkyard within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of any other state, county, township highway, road or city street, and which is not located as specified in subsection (b) or (c) of K.S.A. 68-2204, and amendments thereto, shall be screened, if feasible and if federal funds are available, by the secretary of transportation at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main traveled way of such highway.

History: L. 1967, ch. 357, § 7; L. 1973, ch. 271, § 5; L. 1975, ch. 427, § 215; L. 1987, ch. 263, § 2; Jan. 1, 1988.

68-2208. Acquisition of land, when. When the secretary of transportation determines that the topography of the land adjoining the highway, road or street will not permit adequate screening of any junkyard lawfully in existence, or the screening of such a junkyard would not be economically feasible, the secretary shall have the authority to acquire by gift, purchase, exchange, or condemnation, such interests in lands as may be necessary to secure the relocation, removal or disposal of the junkyards; and to pay for the costs of re-

location, removal, or disposal, thereof. When the secretary determines that it is in the best interest of the state the secretary may acquire such lands, or interests in lands, as may be necessary to provide adequate screening of such junkyards.

History: L. 1967, ch. 357, § 8; L. 1973, ch. 271, § 6; L. 1975, ch. 427, § 216; Aug. 15.

68-2209. Nuisances. Any junkyard which comes into existence after the effective date of this act, or was being maintained in violation of law on the effective date of this act, or after said date is altered, changed or enlarged so as not to conform to this act, and which is not made to conform to the act by the owner or operator thereof or is operated or maintained in violation of this act is declared to be a public and private nuisance.

History: L. 1967, ch. 357, § 9; L. 1973, ch. 271, § 7; July 1.

68-2210. Interpretation. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which are more restrictive than the provisions of this act.

History: L. 1967, ch. 357, § 10; May 4.

68-2211. Agreements with the United States authorized. The secretary of transportation is hereby authorized to enter into agreements with the United States secretary of commerce as provided by title 23, United States code, relating to the control of junkyards in areas adjacent to the interstate and the primary systems, and to take action in the name of the state to comply with the terms of any such agreement.

History: L. 1967, ch. 357, § 11; L. 1975, ch. 427, § 217; Aug. 15.

68-2212. State salvage board abolished; transfer of powers, duties and functions to secretary of transportation; provisions for transition and continuity. (a) The state salvage board is hereby abolished. All of the powers, duties and functions of the state salvage board are hereby transferred to and conferred and imposed upon the secretary of transportation. The secretary of transportation shall be the successor in every way to the powers, duties and functions of the state salvage board in which the same were vested prior to August 15, 1975. The secretary of transportation shall be a continuation of the state salvage board, and every act performed under the authority of the sec-

retary of transportation shall be deemed to have the same force and effect as if performed by the state salvage board in which such functions were vested prior to August 15, 1975.

(b) On and after August 15, 1975, whenever the state salvage board, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of transportation.

(c) All rules or regulations of the state salvage board in existence on August 15, 1975, shall continue to be effective and shall be deemed to be the rules or regulations of the secretary of transportation, until revised, amended, repealed or nullified pursuant to law.

History: L. 1967, ch. 357, § 12; L. 1974, ch. 348, § 35; L. 1974, ch. 277, § 1; L. 1975, ch. 426, § 62; Aug. 15.

68-2213. Denial, suspension or revocation of certificate of compliance; hearing; judicial review. The secretary of transportation may deny the application of any person for a certificate of compliance under this act and may suspend or revoke a certificate of compliance issued or refuse to issue a renewal thereof. Orders under this section, and proceedings thereon, are subject to the provisions of the Kansas administrative procedure act and are subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1967, ch. 357, § 13; L. 1973, ch. 271, § 8; L. 1975, ch. 427, § 218; L. 1986, ch. 318, § 126; L. 1987, ch. 263, § 3; L. 1988, ch. 356, § 272; July 1, 1989.

68-2214. Severability. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

History: L. 1967, ch. 357, § 14; May 4.

68-2215. Unlawful junkyard maintenance; penalty. Unlawful junkyard maintenance is intentional operation or maintenance of a junkyard in violation of article 22 of chapter 68 of Kansas Statutes Annotated, and amendments thereto.

Unlawful junkyard maintenance is a class C misdemeanor.

History: L. 1968, ch. 154, § 2; L. 1973, ch. 271, § 9; July 1.

Stan Clark

From: Hank Avila <HankA@klrd.state.ks.us>
To: <sclark@ink.org>
Sent: Monday, August 02, 1999 2:33 PM
Subject: Junkyards

In response to your constituent's questions regarding the background of the definition of "automobile graveyard" and the prohibition against establishing a junkyard within 1,000 feet of a township road, I have contacted the Office of Right-of-Way of the Kansas Department of Transportation and the Federal Highway Administration in Washington, D.C. about the matter. The KDOT official indicated that state law is basically a response to the federal Highway Beautification Act of 1965. An interim study in 1966 also concluded that if states did not comply with the act the federal government could withhold a certain percentage of the state's highway funds. An official of the Federal Highway Administration confirmed that under federal law, 23 U.S.C. 136, that the Secretary of Transportation is required to withhold 10 percent of the amounts which would be otherwise be appropriated to the state if the state does not provide for effective control of its junkyards.

As to the specific questions, the definition of an automobile graveyard is found in Code of Federal Regulations (23 CFR 751.7). The definition states: "Ten or more such vehicles will constitute an automobile graveyard". K.S.A 68-2203 parallels the federal regulation. The "Ten or more" provision in state law was enacted by the 1978 Legislature in response to federal regulations. Before 1978 "five or more vehicles" constituted an automobile graveyard.

The 1,000 feet applicability is also found in the federal regulations (23 CFR 751.3). The federal regulation, however, only applies to federal-aid- Primary and Interstate Systems while Kansas law applies to every state highway, county or township road or city street. The KDOT official explained that federal law allows states to be more but not less restrictive than federal Code.

If you need additional information, please let me know.

Senate Elections & Local Government
Date: 2-8-00
Attachment #1-12

PART I
REPORT AND RECOMMENDATIONS
OF THE
KANSAS LEGISLATIVE COUNCIL
SEVENTEENTH BIENNIAL
SUBMITTED TO THE 1967 LEGISLATURE

THE LEGISLATIVE COUNCIL

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VICE CHAIRMAN

CLYDE HILL, *Speaker of the House*

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CALVIN A. STROWIG, *Representative*
JOHN B. UNRUH, *Representative*
WM. H. WARD, *Senator*
JOE WARREN, *Senator*

* Appointed March 16, 1966, to fill vacancy created by resignation of Representative Frank Lill.

RESEARCH DEPARTMENT

KENNETH E. BEARLEY, *Director*
RICHARD W. RYAN, *Asst. Director*
CAMDEN STRAIN, *Research Associate*

BILL DRAFTING DEPARTMENT

JOHN C. WEEKS, *Revisor of Statutes*
FRED J. CARMAN, *Asst. Revisor*
ARDEN K. ENSLEY, *Asst. Revisor*
W. ROBERT ALDERSON, *Assoc. Revisor*

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JOHN C. WEEKS, *Revisor of Statutes*
Secretary of Kansas Legislative Council
Topeka, Kansas

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1966



31-7034

PROPOSAL No. 37

A PROPOSAL to study the need for legislation to meet requirements of the highway beautification act of 1965 and other recent federal legislation specifying conditions for continuance of federal-aid highway funds to states, particularly with reference to control of signs and junkyards.

This proposal was introduced by Representative Dierdorff and referred to the roads and highways committee at the March 1966 meeting of the council. In defining the scope of the study, the committee concluded that it should determine (1) what action would be necessary if the state were to comply with the provisions of the federal highway beautification act of 1965; (2) the probable cost of compliance; and (3) whether compliance with the federal act was or was not desirable. The committee also determined that it was necessary to complete this study prior to the 1967 legislative session since the penalty provisions of the federal act become effective January 1, 1968.

HIGHWAY BEAUTIFICATION ACT OF 1965

The federal act requires the states to establish "effective control" of outdoor advertising and junkyards in areas adjacent to the interstate and primary highway systems by January 1, 1968. In the event that a state has not acted to control outdoor advertising and junkyards by this date, the secretary of commerce may withhold a percentage of the federal-aid highway funds allocated to the state. Questions have been raised about the total amount of the penalty since there are varying interpretations of title I and II of the act. It appears, however, that the penalty for noncompliance will amount to ten percent of the federal-aid highway funds allocated to a state. On the basis of current Kansas allocations, the penalty for noncompliance would be about \$4,000,000 per year.

The federal law defines "effective control" of outdoor advertising to mean that no such advertising will be permitted within 660 feet of the right-of-way and visible from the main travelled way of the system of any interstate or primary highway except the following:

- (1) Directional and other official signs (such as those pertaining to natural, scenic, or historical attractions).
- (2) On-premise advertising.
- (3) Advertising in commercial and industrial areas.
- (4) Advertising in unzoned commercial and industrial areas as

these are determined by agreement between the state and the secretary of commerce.

Under the terms of the federal act, a state must develop regulations or standards governing outdoor advertising in zoned and unzoned commercial and industrial areas. Such standards will pertain to spacing between signs, lighting, size, and like features and are subject to agreements between the state and the secretary of commerce. Directional and official signs must conform to national standards to be promulgated by the secretary.

"Effective control" of junkyards means that no junkyard may be operated within 1,000 feet and visible from the main travelled way of the system of any interstate or primary highway except those that are screened from view or those located in industrial areas. Junkyards that cannot be screened are required to be removed.

Nonconforming outdoor advertising and junkyards are not required to be removed until July 1, 1970.

The federal act makes provision for sharing the cost of removal or relocation in the amount of 75 percent of the cost of compensation to affected owners in those cases eligible under the act. *It should be noted that federal funds are not available for the payment of compensation for those advertising devices or junkyards erected after October 22, 1965, the effective date of the federal act.* State delay in enacting legislation to provide "effective control" may result in 100 percent state cost for removal of each sign or other device erected after the 1965 date.

Also included in the federal law is a provision for federal grants to those states which develop, subject to approval by the secretary of commerce, landscaping and roadside development programs. This provision is permissive and does not require state matching funds.

COST ESTIMATES

The council requested the highway department to submit estimates of the probable cost of compliance with the federal act. Highway department officials submitted figures ranging from about four to fifteen million dollars. The lower figure is that reached through application of the formula prescribed by the bureau of public roads. The higher amount is considered by the staff of the highway department to be a more realistic estimate of potential cost to the state of Kansas.

The actual cost of state compliance will be affected by several factors. One such factor is the rate at which the state proceeds to

require the removal of nonconforming devices. Another key factor is the method which is followed in computing what the federal act refers to as "just compensation." Highway department estimates submitted to the bureau of public roads were based solely on the cost of replacement as required by the bureau formula for cost computations. These estimates may be, therefore, minimal. Representatives of the outdoor advertising industry who appeared before the committee advocated compensation based on damage to the entire company operation. Representatives of the industry reported to the committee their belief that the intent of the congress was to require that "just compensation" mean more than minimum replacement costs. Compensation on the basis recommended by the advertising industry would, of course, result in a higher state cost. Another factor which may affect the total cost of implementing compliance with the federal act is the extent to which the police power of the state may be used. This matter is still under discussion by highway officials.

Representatives of the Kansas automotive wreckers association who appeared before the council also expressed concern over the method of determining compensation for affected owners in the event that a nonconforming junkyard were required to be removed. A number of factors which could be considered in computing compensation were suggested. The representatives of the association also expressed their belief that state costs could be reduced if the installation of screening on the highway right-of-way were to be permitted. It was noted that effective screening could not be placed on private property in those cases in which the highway elevation was above the elevation of the surrounding property.

POLICY DECISIONS

If Kansas is to comply with the provisions of the highway beautification act there are complex questions of policy to be considered. The committee has identified and considered alternate solutions to the following *policy* questions:

- (1) The location of administrative responsibility for implementing any statutory provisions for regulation and control of outdoor advertising and junkyards in areas along the interstate and primary systems.
- (2) The extent to which regulatory guidelines should be included in any statute.
- (3) The extent to which existing eminent domain procedures are adequate for a determination of "just compensation."

(4) The rate at which the state should proceed in requiring the removal of nonconforming advertising and junkyards.

(5) The location of responsibility for defining unzoned commercial and industrial areas.

(6) The source of funding the cost of regulation.

After consideration of these issues, legal counsel for the highway commission was requested to submit draft bills for consideration. The council committee also reviewed the approaches to compliance found in the statutes of other states, the sample laws drafted by the bureau of public roads, and the sample draft law for the control of outdoor advertising prepared by the roadside business association.

In the case of the state statutes which have been enacted or which are being considered, the general pattern is to follow the draft prepared by the bureau of public roads. Only four states have enacted legislation which indicates a marked variance from this pattern. The draft law for control of advertising prepared by the roadside business association differs from that prepared by the bureau of public roads in that it includes detailed direction for the determination of "unzoned commercial and industrial areas," directs political subdivisions to strip zone along affected highways, and makes statutory provision for the specific regulations applicable in areas where regulated advertising is permitted. The bureau of public roads sample law is much less detailed and provides that the regulatory agency develop and issue rules and regulations necessary for administration of the act. The draft prepared generally follows the bureau of public roads sample.

At this time, it appears that compliance with the terms of the highway beautification act will be necessary in view of the penalty provisions of the federal act. On the basis of present funding, a one-year delay in compliance would result in the loss of four million dollars in federal-aid highway funds; in a four-year period, the loss of funds would be greater than the higher cost-of-compliance estimate submitted by the highway commission.

RECOMMENDATIONS

The council recommends that the 1967 legislature enact legislation which will enable Kansas to comply with the requirements of the highway beautification act of 1965. In order to meet the requirements of the federal act, such legislation must provide for "effective control" over outdoor advertising and junkyards along the interstate and primary highway systems in Kansas. We have

Any person who uses the turnpike project and fails or refuses to pay the toll provided therefor shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than thirty (30) days, or both, and in addition thereto the authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof until the amount of such toll and all charges in connection therewith shall have been paid.

SEC. 20. K. S. A. 1965 Supp. 68-2050 is hereby repealed.

SEC. 21. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 21, 1967.

CHAPTER 357

HIGHWAY BEAUTIFICATION

Senate Bill No. 177

AN ACT relating to roads, highways and streets, providing for preservation of scenic beauty of lands bordering same, regulating the location and maintenance of junkyards; defining junk, junkyard and automobile graveyards; authorizing adoption of rules and regulations; authorizing certain licenses and fees; prescribing certain powers and duties; declaring certain private and public nuisances; and providing for removal, obliteration or abatement thereof; authorizing acquisition by eminent domain or purchase in certain cases; authorizing certain agreements with the secretary of commerce of the United States; and creating a state salvage board.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. *Short title.* This act may be cited as the "junkyard and salvage control act."

SEC. 2. *Purposes of act.* For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest, and necessary and appropriate to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to highways, roads and streets within this state.

SEC. 3. *Definitions.* (a) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(b) "Automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, dismantled or inoperative motor vehicles or motor vehicle parts.

(c) "Junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying,

or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(d) "Interstate system" means that portion of the national system of interstate and defense highways, including city connecting links and portions of the Kansas turnpikes, located within this state, as officially designated, or as may hereafter be so designated, by the commission, and approved by the proper federal authority as provided by law.

(e) "Primary system" means that portion of connected main highways, including city connecting links, as officially designated, or as may hereafter be so designated, by the commission, and approved by the proper federal authority as provided by law.

(f) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company or corporation, including municipal corporation.

(g) "Commission" means the state highway commission.

(h) "Board" means state salvage board created by section 12 of this act.

SEC. 4. *Junkyard prohibited, when.* No person, firm, corporation, or municipality shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any street or highway on the interstate system or the primary system, or any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any other state, county, township highway, road, or city street, except the following:

(a) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the street or highway, or otherwise removed from sight.

(b) Those located within areas which are zoned for industrial use under authority of law.

(c) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules and regulations to be adopted by the board and approved by the commission.

(d) Those which are not visible from the main traveled way of a street or highway on the interstate or the primary systems, or any other state, county, township highway, road, or city street.

SEC. 5. *License required; issuance of license; fee; term; renewal.* No person shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any street or highway on the interstate or the primary systems, or any other portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any other state, county, township highway, road or city street, without obtaining a license from the board which licenses shall be issued only for junkyards not prohibited by the preceding section of this act. The board shall have the sole authority to issue licenses

further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial, industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

§ 750.709 On-property or on-premise advertising.

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise sale or lease of property on which they are located or advertise ac-

tivities conducted on the property on which they are located. These signs are subject to regulation (subpart A, part 750, chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

§ 750.710 Landmark signs.

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

§ 750.711 Structures which have never displayed advertising material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

§ 750.712 Reclassification of signs.

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

§ 750.713 Bonus provisions.

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.

PART 751—JUNKYARD CONTROL AND ACQUISITION

- Sec.
- 751.1 Purpose.
- 751.3 Applicability.
- 751.5 Policy.
- 751.7 Definitions.
- 751.9 Effective control.
- 751.11 Nonconforming junkyards.
- 751.13 Control measures.
- 751.15 Just compensation.
- 751.17 Federal participation.
- 751.19 Documentation for Federal participation.
- 751.21 Relocation assistance.
- 751.23 Concurrent junkyard control and right-of-way projects.

751.25 Programming and authorization.

AUTHORITY: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

§ 751.1 Purpose.

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration (FHWA) policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

[40 FR 12260, Mar. 18, 1975]

§ 751.3 Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This part does not apply to the Urban System.

§ 751.5 Policy.

In carrying out the purposes of this part:

(a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);

(b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and

(c) Nonconforming junkyards should be relocated only as a last resort.

§ 751.7 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Junkyard.* (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This

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definition includes scrap metal processors, auto-wrecking yards, salvage scrap yards, autorecycling used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations, passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk.* Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main traveled way.* The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) *Industrial zones.* Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of part 750, at G of this chapter relative to Outdoor Advertising Control shall

apply insofar as industrial zones are concerned.

(e) *Unzoned industrial areas.* An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

§ 751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's

operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

§ 751.11 Nonconforming junkyards.

Subject to the provisions of § 751.9 of this part, the following requirements for the maintenance and continuance of a nonconforming junkyard apply:

(a) The junkyard must have been actually in existence at the time the State law or regulations became effective as distinguished from a contemplated use, except where a permit or similar specific State governmental action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.

(b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyards, worthless junk, and the like are not similarly protected.

(c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.

(d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulations and must continue to be lawfully maintained.

(e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.

(f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

§ 751.13 Control measures.

(a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose.

(b) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used in fencing or screening.

(d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.

(e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

§ 751.15 Just compensation.

(a) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.

(b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in § 751.11 must pertain at the time of the taking

removal in order to establish a right to just compensation.

751. Federal participation.

(a) Federal funds may participate in a percentage of the costs of control measures incurred in carrying out the provisions of this part including necessary studies for particular projects, and the employment of fee landscape architects and other qualified consultants.

(b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the costs of applying the State standards on a statewide basis. Where State standards require control of junkyards, zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, and such projects should be deferred until the work in the areas where control is required has progressed well toward completion.

(c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements, temporary rights of entry, necessary to accomplish the purposes of this part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.

(d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screening standards established in this part or due to changed conditions.

(e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the disposal of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost of acquisition less a credit after

disposal) of a site obtained for this purpose.

(f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to nonconforming under revised State regulations and policy pursuant to this part.

(g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.

(h) Federal funds shall not participate in:

(1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;

(2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;

(3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;

(4) Costs of maintaining screening devices after they have been erected; or

(5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

§ 751.19 Documentation for Federal participation.

The following information concerning each eligible junkyard must be available in the States' files to be eligible for Federal participation in the costs thereof:

(a) Satisfactory evidence of ownership of the junk or junkyard or both.

(b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.

(c) Evidence that the necessary property interests have passed to the State and that the junk has been screened,

relocated, removed or disposed of in accordance with the provisions of this part.

(d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

[40 FR 8551, Feb. 28, 1975; 40 FR 12260, Mar. 18, 1975]

§ 751.21 Relocation assistance.

Relocation assistance benefits pursuant to 49 CFR part 24 are available for:

(a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, a payment in lieu of such expenses.

(b) Relocation assistance in locating a replacement business.

(c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.

(d) Replacement housing payments if the acquisition of the dwelling is found by FHWA to be necessary for the federally assisted junkyard control project.

[40 FR 8551, Feb. 28, 1975, as amended at 50 FR 34094, Aug. 23, 1985; 54 FR 47076, Nov. 9, 1989]

§ 751.23 Concurrent junkyard control and right-of-way projects.

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

§ 751.25 Programming and authorization.

(a) Junkyard control projects shall be programmed in accordance with the provisions of part 630, subpart A of this chapter. Such projects may include one or more junkyards.

(b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:

(1) The zoning and validation of the legal status of each junkyard on the project;

(2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;

(3) The real property interest to be acquired in order to implement the control measures;

(4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and

(5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

Sec.

752.1 Purpose.

752.2 Policy.

752.3 Definitions.

752.4 Landscape development.

752.5 Safety rest areas.

752.6 Scenic overlooks.

752.7 Information centers and systems.

752.8 Privately operated information centers and systems.

752.9 Scenic lands.

752.10 Abandoned vehicles.

752.11 Federal participation.

AUTHORITY: 23 U.S.C. 131, 315, 319; 42 U.S.C. 4321 et seq.; 49 CFR 1.48(b), unless otherwise noted.

SOURCE: 43 FR 19390, May 5, 1978, unless otherwise noted.

§ 752.1 Purpose.

The purpose of this part is to furnish guidelines and prescribe policies regarding landscaping and scenic enhancement programs, safety rest areas, and scenic overlooks under 23 U.S.C. 319; information centers and systems

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Sec. 2. This act shall take effect and be in force from and after its publication in the official state paper.

Approved April 11, 1973.

Published in the official state paper April 25, 1973.

CHAPTER 271

House Bill No. 1047

AN ACT concerning junkyards as therein defined adjacent to the interstate and primary systems as therein defined; making certain acts unlawful and prescribing penalties for violations; amending K. S. A. 68-2202, 68-2203, 68-2204, 68-2205, 68-2207, 68-2208, 68-2209, 68-2213 and 68-2215, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 68-2202 is hereby amended to read as follows: 68-2202. For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest, and necessary and appropriate to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to highways, roads and streets within this state.

Sec. 2. K. S. A. 68-2203 is hereby amended to read as follows: 68-2203. (a) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(b) "Automobile graveyard" shall mean any establishment ~~or~~ place of business which is maintained, used, or operated, for storing, keeping, buying, or selling five (5) or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles ~~or~~ motor vehicle parts, but such terms shall not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the chief engineer of the division of water resources of the state board of agriculture.

(c) "Junkyard" shall mean an establishment ~~or~~ place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(d) "Interstate system" means that portion of the national system of interstate and defense highways, including city connecting links and portions of the Kansas turnpikes, located within this state, as officially designated, or as may hereafter be so designated, by the commission, and approved by the proper federal authority as provided by law.

(e) "Primary system" means that portion of connected main highways, including city connecting links, as officially designated, or as may hereafter be so designated, by the commission, and approved by the proper federal authority as provided by law.

(f) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company or corporation, including municipal corporation.

(g) "Commission" means the state highway commission.

(h) "Board" means state salvage board created by section 12 of this act K. S. A. 68-2212.

Sec. 3. K. S. A. 68-2204 is hereby amended to read as follows: 68-2204. No person, firm, corporation, or municipality shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any street or highway on the interstate system or the primary system, or any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any other state, county, township highway, road, or city street, except the following:

(a) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the street or highway, or otherwise removed from sight.

(b) Those located within areas which are zoned for industrial use under authority of law.

(c) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules and regulations to be adopted by the board and approved by the commission.

(d) Those which are not visible from the main traveled way of a street or highway on the interstate or the primary systems, or any other state, county, township highway, road, or city street.

Sec. 4. K. S. A. 68-2205 is hereby amended to read as follows: 68-2205. No person shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any street or highway on the interstate or the primary systems, or any other portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any other state, county, township highway, road or city street, without obtaining a license from the board which licenses shall be issued only for junkyards not prohibited by K. S. A. 1971 ~~Supp.~~ 68-2204, as amended. The board shall have the sole authority to issue licenses for the establishment, maintenance, and operation of junkyards within the limits defined herein and shall charge therefor an annual fee of fifty dollars (\$50) payable on or before the first day of January. Anyone establishing a junkyard after July 1 of any year shall pay a fee of twenty-five dollars (\$25) for the remaining portion of the year. *Provided, however,* No city or county governing body shall be required to pay any fees provided for herein. All licenses issued under this section shall

SESSION OF 1978

Supplemental Information on SENATE BILL 731
AS AMENDED BY SENATE COMMITTEE ON
FEDERAL AND STATE AFFAIRS

Brief of Bill •

S.B. 731 would amend the Junkyard and Salvage Control Act. Under the existing statute, "automobile graveyard" is defined as an establishment which is maintained, used, or operated for storing, keeping, buying, or selling *five* or more wrecked, scrapped, ruined, dismantled, or inoperative motor vehicles. S.B. 731 would amend the definition to apply to establishments with *ten* or more motor vehicles.

Background

The bill, as originally introduced, would have exempted towing services, body shops, and repair shops from the Act. Information was received that such an action could cause the loss of some \$10 million in federal highway funds. The Committee amendment parallels federal legislation in this area and, thus, should not subject the state to any loss of federal funds. As amended, the bill will exempt some towing services and repair shops from the Act.

* Bill briefs do not express legislative intent. They give general information about the bill, not details or expected effects. They are prepared by the Legislative Research Department. The sponsors have not reviewed the briefs.

LEGISLATIVE LIBRARY

payment of principal and interest on the bonds being refunded when, and to the extent that, other funds from revenues otherwise become available for the payment of such principal and interest on the bonds being refunded.

Sec. 4. K.S.A. 68-2044 and K.S.A. 1977 Supp. 68-2017, 68-2031 and 68-2031a are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the official state paper.

Approved April 5, 1978.

Published in the official state paper April 8, 1978.

CHAPTER 276

Senate Bill No. 731

AN ACT relating to the junkyard and salvage control act; concerning automobile graveyards; amending K.S.A. 1977 Supp. 68-2203, and repealing the entire section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1977 Supp. 68-2203 is hereby amended to read as follows: 68-2203. (a) The term "junk" shall mean old scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles and parts thereof, iron, steel, and other old or scrap ferrous or non-ferrous material.

(b) "Automobile graveyard" shall mean any establishment which is maintained, used, or operated, for storing, keeping, buying, or selling five (5) ten (10) or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, but such term shall not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the chief engineer of the division of water resources of the state board of agriculture.

(c) "Junkyard" shall mean an establishment which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps.

(d) "Interstate system" means that portion of the national system of interstate and defense highways, including city connecting links and portions of the Kansas turnpikes, located within this state, as officially designated, or as may hereafter be so designated, by the secretary, and approved by the proper federal authority as provided by law.

(e) "Primary system" means that portion of connected main

highways, including city connecting links, as officially designated, or as may hereafter be so designated, by the secretary, and approved by the proper federal authority as provided by law.

(f) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company or corporation, including municipal corporation.

(g) "Commission" means the secretary of transportation.

(h) "Board" means the secretary of transportation.

Sec. 2. K.S.A. 1977 Supp. 68-2203 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 7, 1978.

Senate Elections & Local Government

Date: 7-8-00
Attachment # 1-27

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**TESTIMONY BEFORE THE SENATE COMMITTEE
ON ELECTIONS AND LOCAL GOVERNMENT**

SENATE BILL 478

FEBRUARY 8, 2000

**FRED WASSEMILLER
MONUMENT, KANSAS**

Senate Elections & Local Government
Date: 2-8-00
Attachment # 2-1

Madam Chairman and Members of the Committee:

I am Fred WasseMiller from Monument, Kansas, in the northwest part of our great state and a life-long resident of this state. I am addressing you on Senate Bill 478 concerning the state's ability to police automobile graveyards on county and township roads. I, as well as others, believe that the state should not be more strict than the federal regulations that govern this.

On December 14, 1999, my father, who also is a life-long resident of Kansas (81 years) except for 4 years during WW II, was visited by a KDOT Right-Of-Way Agent at his farm. Dad's farm is located one-half mile south of US 40 and along County Road 340. We have a large collection of cars, trucks, tractors, farm machinery and other collectibles. The largest part of this is located on the back side of the farmstead, away from the road, but they are within 1000 feet of the township road, 480 to 880 feet. Our machinery, buildings, corrals, feed and cedar windbreak blocks the visibility, for the most part, of our collection of cars. I emphasize that our cars are a collection, not junk. We are not a junkyard nor do we deal in the selling of salvage parts. My father, two close family friends and I have rebuilt numerous cars and tractors. We participate in parades and shows. We were the first in our county to show classic hot rods: 1916 Bucket T, 34 Ford Coupe, 37 Ford Coupe and 30 Ford Coupe. We use our collection of cars for rebuilding others, as well as repair of our farm equipment. There are nine (9) individuals involved in the ownership of the cars that Dad has allowed to be parked on his property at no cost to anyone. He is an avid antique buff and loves having them to look at and talk about.

What really concerns us as property owners, taxpayers and law-abiding citizens is that our rights to own property and pursue happiness are at stake. The state is wanting to come 1000 feet off the edge of county and township roads to regulate what we park on our property. The legal right-of-way is only 60 feet, 30 feet on each side of the section line.

Where the cars are parked now is best for the beautification of the highways and interstate roadways. If they were to be moved 1000 feet from the township road, it would put them in clear view and would locate them on property that is now and should remain in farming production. The vehicles are now located on grass acreage around the farmstead, and the cattle grazing can keep the area clean. Clearly there is an issue of the ability to own property and use it in a reasonable manner, as you desire. No one or two individuals should be able to come and say you own junk when to you it is treasures.

In visiting with other landowners and neighbors, I kept getting the same response, "They could not believe that the state is doing this or that they should have the right to." In rural Kansas most all farmsteads are next to county or township roads, so I urge you not to take away rural Kansans' freedom to own or operate their property. I urge you to remove county or township roads from the present state law and support Senate Bill 478.

Senate Elections & Local Government
Date: 2-8-00
Attachment # 2-2

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
ELECTIONS AND LOCAL GOVERNMENT**

**SENATE BILL NO. 478
FEBRUARY 8, 2000**

**TESTIMONY OF MURRAY BEAN
PRESENTED BY RUTH CLARK**

**Senate Elections & Local Government
Date: 2-8-00
Attachment # 3-1**

Ladies and Gentlemen,

My Senator, Stan Clark, asked me to share my thoughts and opinions on how many vehicles I can have on my personal property.

The reason I have lots of old vehicles on my property is because I can't afford new ones. I use the old vehicles for parts to keep my old vehicles running that I drive.

When I'm working on a vehicle, it's handy to have parts vehicles close by rather than having to store them over a thousand feet away.

By having them close by, my sheep keep the weeds cleaned up around them. If I have to park them a thousand feet from the roadway, I have to farm around them and I can't get close enough to get all the weeds like my sheep can.

When a person is restoring an antique vehicle, he will very often have to buy the whole vehicle just to get the one part that he needs. Then you keep it around just in case you need something else off of it later.

Some people collect salt and pepper shakers or whatever, I collect old cars. It hurts seeing them go to the crusher when there are still so many good, usable parts on them. We've become a throwaway society and now it's costing the country to deal with it. I'm doing my part by getting all the good I can out of what I have. Besides, the old cars have character. The new ones look like frozen pop cans on wheels, ready to explode.

I like having old vehicles that I can sit and see out of my window. Beauty is in the eye of the beholder. What some people have in their yards, I may think is ugly, but they have it because they like it.

By having my vehicles close to my house in my sheep pen, people don't steal as much off of them either. I have a

ram sheep that will keep them from stealing unless they're really fast. Picture this: a vehicle with the hood up, someone leaning over the fender taking a part off that doesn't belong to them, when out of nowhere, from behind, Wham!, they get butted. They may not have teeth marks from a guard dog, but they get the point.

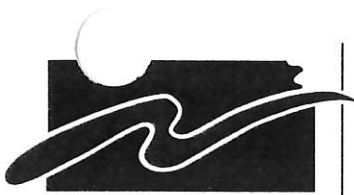
This is one reason I live in the country, so that my vehicles won't bother my neighbors. The farmers have more to worry about than how many vehicles I have.

I think you can utilize my tax money for better reasons than to pay someone a big salary and send them out in a \$25,000 vehicle to tell me how many vehicles I can have. Then, if I have too many, I have to move them a thousand feet from the roadway or get rid of them. Some people don't own enough land to move them that far away. If I get too many vehicles, my wife will keep me in check and she won't cost any taxpayer money. Maybe you could send someone out to tell people that they can't have a rock with a Jayhawk or a Wildcat or, heaven forbid, a Cornhusker on it in their yard. Beauty is in the eye of the beholder.

I appreciate living in America, especially Kansas, where I have the freedom to express my opinions. I feel the current law takes away some of my freedom by telling me how much personal property I can own and where I can keep it. Thank you for the opportunity to exercise my freedom of speech by sharing my thoughts on keeping all the vehicles I want, where I want, on my property.

Sincerely,

Murray L. Bean



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
Before the Senate Elections and Local Government
Judy A. Moler, Legislative Services Director/General Counsel
Kansas Association of Counties
Regarding SB 478
February 8, 2000

Senator Hardenburger and members of the committee, the Kansas Association of Counties is appearing today in opposition to SB 478 which would remove the ability of the county and township to require junkyards be sited more than 1,000 feet of the nearest edge of the right-of-way. The current Junkyard and Salvage Control Act has worked to the benefit of all Kansans in the past years. The law seems to be applied equitably and with common sense at the state and the local level.

Perhaps this bill was introduced to address a specific problem in Kansas. However, the solution offered in SB 478 does not seem like a "good government" answer. The Kansas Association of Counties feels that in instances where there are single problem or a few problems, a better solution is to work on that problem locally rather than craft a solution that binds local government statewide.

The Kansas Association of Counties asks the Committee to reject 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 and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (785) 272-2585.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

Senate Elections & Local Government
Date: 2-8-00
Attachment # 4



**KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION**

E. Dean Carlson
Secretary of Transportation

Docking State Office Building
915 SW Harrison Street, Rm.730
Topeka, Kansas 66612-1568
Ph. (785) 296-3461 FAX (785) 296-1095
TTY (785) 296-3585

Bill Graves
Governor

**Testimony Before
Senate Elections and Local Government**

**Regarding Senate Bill 478
Salvage Control Act
February 8, 2000**

Madam Chairperson and Committee Members:

I am Joseph Krahn, Chief of the Bureau of Right of Way. On behalf of the Department of Transportation (KDOT), I am here today to testify on Senate Bill 478 regarding the Salvage Control Act.

KDOT is responsible for administering the Kansas Junkyard and Salvage Control Act. This law was enacted in 1967 to comply with the federal Highway Beautification Act which requires states to regulate salvage storage locations within 1,000 feet of interstate and federal-aid primary highways. Failure to do so subjected the state to a penalty equal to 10% of certain categories of federal highway funding.

When the Kansas Legislature enacted the law in 1967, it went beyond the federal mandate by making the law applicable to every public road in the state. The law requires salvage yards to be screened from view from the roadway unless the location is in an industrial area. In the late 1970s KDOT sought legislation that would reduce the scope of the law to cover only the interstate and primary systems. The bill was not passed.

Over the years, KDOT has responded to numerous requests from legislators, local officials, law enforcement, and citizens concerned with salvage storage locations that have developed in their communities along county or township roads. We have succeeded in getting many of these locations screened or abated. KDOT has developed an excellent working relationship with the Department of Revenue's Division of Motor Vehicles, the Department of Health and Environment, state and local law enforcement personnel, and the federal Environment Protection Agency.

I thank you for the opportunity to provide background information on this bill and would be happy to respond to any additional questions.

Senate Elections & Local Government

Date: 2-8-00 Attachment #5



GOVERNMENTAL ETHICS COMMISSION

MEMORANDUM

TO: Members of Senate Elections & Local Government
FROM: Carol Williams, Executive Director
DATE: February 8, 2000
RE: Contributions to Recognized Party Committees - SB 462

At your request, I am providing you with the breakdown of contributions received during session in 1999 by the recognized party committees.

Kansas Republican Senatorial Committee	\$12,275
Senate Democrats 2001	45,045
Republican House Campaign Committee	13,140
Kansans for a Democratic House	51,199

Senate Elections & Local Government
Date: 2-8-00
Attachment # 6