

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Representative Gerry Ray at 3:30 p.m. on February 6, 2001 in Room 519-S of the Capitol.

All members were present except: Rep. Hermes - excused  
Rep. Kauffman - excused  
Rep. Toplikar

Committee staff present: Theresa Kiernan, Revisor  
Mike Heim, Research  
Kay Dick, Committee Secretary

Conferees appearing: Ashley Sherard, Johnson County  
Bill Tulley, District Legal Council  
Larry McAulay, Assistant County Counselor, Johnson Co.

Others attending: See attached list

**Chair opened the Hearing on HB 2119**

Bill Tulley, Legal Council for Johnson County Park and Recreation District offered testimony in support of **HB 2119**. He indicated that specific issue to be addressed was a revision to change a requirement that the Park Districts' Board of Commissioners receive an open bids. Then evaluate, accept or reject such bid "immediately" by such Board. He addressed particular problems and concerns as outlined in his written testimony. Mr. Tulley told of the time restraint that this causes and why this issue needs legislative resolution. He also indicated that this particular statute only applies to the Johnson County Park and Recreation District. (attachment #1) Mr. Tulley answered questions asked by committee members.

Ashley Sherard, Johnson County Intergovernmental Relations Manager, appeared before the committee testifying in favor of **HB 2119**, which would amend the Johnson County Park & Recreation District's purchasing statute to enable the Park Board and staff to evaluate bid proposals prior to contract award. She also stated that the Johnson County Commission believes this change would make for a more efficient and more effective bid process, which would ultimately benefit taxpayers. (attachment #2)

**Chair Ray closed the hearing on HB 2119.**

**The hearing on HB 2157- relating to computer software was opened by the Chair**

Larry McAulay, Assistant County Counselor for Johnson County, testified in support of **HB 2157**. He stated that this bill would give all Kansas counties, not just Johnson County, the specific authorization to develop, own, sell, lease, license and market computer software. Enabling to adopt fees and prices, obtain and enforce software copyrights and trademarks. He pointed out that Johnson County recognized its statutory Home Rule authority, but in supporting **HB 2157** it removes any doubt about such authority and avoids any future legal challenges to the County's authority. (attachment #3) Mr. McAulay answered questions posed by the committee members.

**Hearing was closed on HB 2157.**

**Action on: HB 2086 - depositories for public funds.**

Chair asked for presentation of two proposal for amendments.

Chuck Stone, Kansas Bankers Association, presented the first proposal. He referred to previous written testimony which contained the amendment from his organization, that was given at the hearing on January 30, 2001 for **HB 2086**. He said, "it was significantly different enough from the original bill that

CONTINUATION SHEET

MINUTES ON HOUSE LOCAL GOVERNMENT COMMITTEE

February 6, 2001

Page 2

it would need to be a substitute bill, but that was beside the point at this time". He explained that this amendment does one main thing, in that it divides out what is referred to as "idle funds from the active account" and allows the active account to be bid by all banks, both out of state banks and in state banks. It would maintain the current law on the idle money or the CD money.

Don Moler, League of Kansas Municipalities, handed out LKM's proposed amendment to **HB 2086**, which appeared in **bold**. (attachment #4)

Committee members posed question that were answered by Mr. Stone, Mr. Moler and Randy Allen, Kansas Counties Assoc.

Following more questions from the committee, Rep. Hayzlett made a motion to not pass **HB 2086** and seconded by Rep. Minor.

Again, The Chair opened for discussion. More intense discussion and comments among the committee, regarding the bill, the amendments, and the motion already posed on the floor followed.

Rep. Campbell made a substitute motion to report the bill out favorably with the following amendments:  
1. Requires public funds to be re-bid at each maturity. 2. Banks must maintain a satisfactory Community Reinvestment rating. 3. Banks must have a main bank facility or branch facility located in the state of Kansas. Rep. Barnes Seconded the motion. HB 2086 was passed out of committee as amended..

The meeting was adjourned at 5:05. Next scheduled meeting is February 8, 2001.

HOUSE LOCAL GOVERNMENT COMMITTEE  
GUEST LIST  
FEBRUARY 6, 2001

[PLEASE PRINT YOUR NAME]

[REPRESENTING]

William M Tuley

Johnson County Parks Recreation  
Dist.

Gary H. Holler

IL

Kelly Kuetala

City of Overland Park

Pat Rehman

City of Lenexa

Tom Kuleks

City of Lenexa

Ashley Shevard

Johnson County

Randy Allen

Ks Assoc of Counties

Nike Repoon

Sedgwick County

Don Seifert

City of Olathe

Gary McElroy

Johnson County

Bob Kennedy

Community Bankers Assoc.

George Barber

" " "

Chuck Stones

KBA

Ron Gaches

CBBA

**SUMMARY OF TESTIMONY OF WILLIAM M. TULEY  
COUNSEL FOR THE JOHNSON COUNTY PARK AND RECREATION DISTRICT  
IN FAVOR OF HOUSE BILL 2119  
BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE  
FEBRUARY 6, 2001**

1. **Specific Issue to be Addressed:** The Johnson County Park and Recreation District is requesting that its statutory procedure for public bid opening and bid letting as required by K.S.A. 19-2881(a) be revised to change a requirement that the Park Districts' Board of Commissioners receive and open bids, and then evaluate, accept or reject such bids "immediately" by such Board. The currently required statutory procedure has previously been strictly interpreted by the Kansas Attorney General pursuant to Opinion 82-10.

2. **History of the Issue:** K.S.A. 19-2881 is a specific statute applicable only to the Johnson County Park and Recreation District. Subsection (a) requires, in part, that the Park District seek competitive bids for any contract for any improvement which is estimated to exceed \$10,000.00 in amount after preparing plans, specifications and a detailed estimate and after publication notice. A second part of subsection (a) requires competitive bids for the purchase of materials, contracts for purchase or sale, lease contracts and other contracts which are estimated to exceed \$10,000.00 in amount. In either bid situation that statute goes on to require, in pertinent part, the following:

...."All bids shall be made in writing and signed by the bidder, and presented by the bidder, or the bidder's agent or attorney, to the board, at a meeting thereof, and all bids shall be considered and accepted or rejected immediately after their submission." ....  
(Emphasis added)

The Kansas Attorney General has previously issued Opinion 82-10 which is, in essence, a strict construction interpretation of this section and requires the Park District's Board of Commissioners to receive, open, evaluate and accept or reject bids at its meeting "immediately after their submission". The Park Board does have the power to reject any bids and cannot accept a bid for work in excess of the estimated cost for work being bid on. The Park District has expanded tremendously in size and in its operations and the practical requirement of having to receive, open, evaluate and accept or reject bids at its meeting immediately after their submission is extremely burdensome for the Park District's Board of Commissioners to comply with.

3. **Particular Problems and Concerns:** The particular concerns of the Park District's Board of Commissioners with regard to the emphasized section of the statute are as follows:

1. As a public agency the Park District is prevented from prequalifying bidders and the requirement for an immediate acceptance or rejection of bids hinders the Park District's ability to perform a thorough reference check of bidders, to accurately



verify bid calculations, to verify the information and documentation required to be submitted with bids, and to overall effectively evaluate the bids and bidders. The Park District's staff and not the Board would be more suited and able to perform those tasks without having an immediate time constraint as currently imposed upon the Park District's Board.

2. The members of the Park District's Board of Commissioners are appointed and are unpaid. As the Park District has expanded in size the time spent by Board members on Park District business has increased tremendously. In considering the number of items for which bids are solicited by the Park District, the actual number of bidders, and the time it takes for the bids to be opened, read aloud, compiled and evaluated, the time spent by the Park District's Board in performing those tasks, all in one meeting and prior to any final action being taken thereon, is taking Board time away from other important matters before the Board.

As an example of the problems created for the District, a special Park Board meeting has been scheduled for February 12, 2001 primarily to open bids. Among several categories of items for which bids are to be received are tee shirts for various District programs and fertilizers and chemicals. Based upon the specifications, sizes and different color options on tee shirts, bids on eighty-eight (88) separate tee shirts are anticipated by an estimated six to ten different bidders, for an estimated minimum total of 528 bids to be received, evaluated and accepted or rejected. Thirty-three (33) separate fertilizer and chemical bids are anticipated by an estimated twelve bidders, for an estimated minimum total of additional 396 bids to be received, evaluated and accepted or rejected. It is anticipated that the Board meeting will not be short in duration.

**4. Why does this issue need legislative resolution?** Based upon the opinion of the Attorney General, the Park District has no effective alternative to the bid opening and bid letting procedure. The Park District agrees with the competitive bidding process, but would simply like to have a procedure approved whereby the Park District's staff or a designated representative of the Park District Board could receive, open and read aloud the bids in advance of a board meeting and then afford the District's staff time to review the bids, evaluate the bids and bidders, check references, and then present a full compilation and evaluation of the bids and bidders, and with potential recommendations, to the District Board for discussion, evaluation and final action by the Board at its board meeting. Such a procedure would provide for more efficient use of the Park District's staff and the Board member's time.

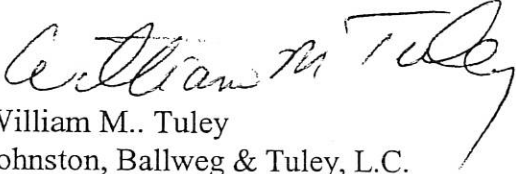
**5. Is there any county or statewide impact.**

This particular statute only applies to the Johnson County Park and Recreation District. As a local comparison, the Board of County Commissioners of Johnson County has established their own bidding procedure and has a purchasing manager and staff who actually receive, open and evaluate bids for Johnson County. Depending upon what is being bid on and the amount of the bid, the purchasing manager has authority to accept certain bids and contract for the County.

The purchasing manager, Mark Zack, has commented that the bidding procedure required of the Park District does not make the most efficient use of the District's staff and Board time. The Board of County Commissioners of Johnson County and the County staff support the proposed change in legislation.

6. **Other Documentation:** A copy of K.S.A. 19-2881 is attached hereto for ready reference.

Respectfully submitted:



William M.. Tuley  
Johnston, Ballweg & Tuley, L.C.  
8655 College Boulevard  
Overland Park ,Kansas 66210  
Telephone (913) 491-6900  
FAX (913) 491-4930

**19-2877.**

**History:** L. 1953, ch. 170, § 19; Repealed, L. 1969, ch. 158, § 8; July 1.

**19-2878.**

**History:** L. 1953, ch. 170, § 20; Repealed, L. 1976, ch. 136, § 1; July 1.

**19-2879.**

**History:** L. 1953, ch. 170, § 21; Repealed, L. 1983, ch. 102, § 1; July 1.

**19-2880. Same; invalidity of part.** 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. 1953, ch. 170, § 22; June 30.

**19-2881. Contracts for improvements; plans and specifications; bids; purchases through a public agency.** (a) Before the board of any park district created under K.S.A. 19-2859 to 19-2880, inclusive, and amendments thereto, shall let any contract for any improvement which is estimated to exceed \$10,000, the board shall cause accurate detailed plans and specifications therefor, together with a detailed estimate, of the cost of same, to be made and filed in the office of the secretary of such board. Before letting such contract, the board shall advertise for bids to do such work in accordance with such plans and specifications for at least one week in a newspaper of general circulation in such district. Except as provided by subsection (b), the purchase of materials, contracts for purchase or sale, lease contracts and other contractual services which are estimated to exceed \$10,000, shall be made upon competitive bids. All bids shall be made in writing and signed by the bidder, and presented by the bidder, or the bidder's agent or attorney, to the board, at a meeting thereof, and all bids shall be considered and accepted or rejected immediately after their submission. The board may reject any bids and shall not accept a bid in excess of the estimated cost of the work, and a contract let at a price in excess of the estimated cost of the work shall be void.

(b) The district may enter into agreements with any public agency for the purchase of materials, contracts for purchase or sale, lease contracts and other contractual services through such governmental units using the bidding procedure of such public agency. When used in this section,

"public agency" means any state or a political or taxing subdivision thereof.

**History:** L. 1961, ch. 151, § 4; L. 1963, ch. 190, § 1; L. 1986, ch. 108, § 1; L. 1995, ch. 26, § 1; July 1.

**Cross References to Related Sections:**

Procedures for correction of public improvement project bids based on mistakes, see 75-6901 et seq.

**Attorney General's Opinions:**

Parks, museums, lakes and recreational grounds; competitive bid procedures. 82-10.

Johnson county park and recreation district; bid procedure. 91-55.

**19-2881a. Same; contracts with federal agencies for recreational areas and facilities on or around federal reservoirs within the district; tax levies.** (a) The board of commissioners of the Johnson county park and recreation district is hereby authorized to contract in the name of the district with any agency or instrumentality of the United States for furnishing, constructing, equipping, operating, managing or maintaining recreational areas and facilities on or around any federal reservoir, all or any part of which is located within the boundaries of said district. Said board may obligate the district for the reimbursement of any such federal agency or instrumentality for obligations incurred pursuant to such contract, but not to exceed an amount equal to 15% of the assessed valuation of the tangible property within the district, plus any interest thereon not exceeding the maximum rate of interest prescribed by K.S.A. 10-1009, and amendments thereto. Such contract for reimbursement may extend over such period of years as is permissible under applicable federal laws and regulations and as shall be agreed to by the board of commissioners, but not to exceed 50 years.

For the purpose of financing such reimbursement, said board of commissioners is hereby authorized to levy an annual tax of not to exceed two mills on all the taxable tangible property of the district during the period of said reimbursement contract, if the levy of such tax has been approved by the electors of the district in the manner provided in K.S.A. 19-2881b, and amendments thereto.

The powers granted to the board by this section may be exercised in addition to or in conjunction with any other powers vested in the board pursuant to law.

**History:** L. 1974, ch. 103, § 1; L. 1990, ch. 66, § 30; May 31.

**19-2881b.**

**duties of board.** The board of any county park and recreation district shall have the same tax authority as the board of any county. The same shall have the same authority as the board of any county to determine by the qualification of whether to levy the tax on the electors of the district. The board shall have a special election for such purpose giving of not more than 10% upon the question of general bond issue and counted toward the total amount of the tax are in favor of the tax.

It shall be the duty of the board to determine whether such general or special election and to give notice of such election to the officer. If such election is held, the board shall be authorized to levy the tax. If such election is held, the board shall be authorized to levy the tax.

**History:****PARK DISTRICTS**

**Cross Reference:** Designation of

**19-2882.**

**tions.** (a) The board of any county park and recreation district shall have the same authority as the board of any county to determine by the qualification of whether to levy the tax on the electors of the district. The board shall have a special election for such purpose giving of not more than 10% upon the question of general bond issue and counted toward the total amount of the tax are in favor of the tax.

(b) The board of any county park and recreation district shall have the same authority as the board of any county to determine by the qualification of whether to levy the tax on the electors of the district. The board shall have a special election for such purpose giving of not more than 10% upon the question of general bond issue and counted toward the total amount of the tax are in favor of the tax.

**History:**

**Attorney General's Opinions:** Kansas constitution. 80-199.

**19-2883.**

**tion, name.** The board of any county park and recreation district shall have the same authority as the board of any county to determine by the qualification of whether to levy the tax on the electors of the district. The board shall have a special election for such purpose giving of not more than 10% upon the question of general bond issue and counted toward the total amount of the tax are in favor of the tax.



Johnson County, Kansas

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**OFFICE OF THE COUNTY ADMINISTRATOR**

To: The Honorable Gerry Ray, Chairman  
Members, House Local Government Committee

From: Ashley Sherard  
Johnson County Intergovernmental Relations Manager

Date: February 6, 2001

Subject: HB 2119 – Park and Recreation Districts

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Thank you for giving me the opportunity to appear before you today concerning HB 2119, a bill which would amend the Johnson County Park & Recreation District's purchasing statute to enable the Park Board and staff to evaluate bid proposals prior to contract award.

Current law requires the Park Board to open bids at a public meeting and immediately accept or reject the bids. Staff is not permitted any time to review the bids to ensure that all information is verified and that documentation is complete prior to the Park Board making an award.

The amendment proposed in HB 2119 would permit the opening and the awarding of bids to occur at separate proceedings, providing time for staff to verify and more comprehensively evaluate bid information. The Johnson County Commission believes this change would make for a more efficient and more effective bid process, which would ultimately benefit taxpayers.

For this reason, the Johnson County Commission strongly supports HB 2119 and urges you to recommend the bill favorable for passage.

Thank you.

**HOUSE LOCAL GOVERNMENT**  
**2/6/01**  
**Attachment 2**





**JOHNSON COUNTY LEGAL DEPARTMENT**

111 S. Cherry St., Suite 3200  
Olathe, Kansas 66061-3441  
Telephone: (913) 715-1867  
Fax: (913) 715-1873

**TESTIMONY REGARDING HB 2157  
HOUSE LOCAL GOVERNMENT COMMITTEE  
FEBRUARY 6, 2001  
F. LAWRENCE MCAULAY, JR.,  
JOHNSON COUNTY ASSISTANT COUNTY COUNSELOR**

Madame Chair and Committee members, my name is Larry McAulay, Assistant County Counselor for Johnson County, Kansas. I am here today to express the SUPPORT of the Johnson County Board of County Commissioners for HB 2157.

The proposed House Bill 2157 would give Kansas Counties specific authorization to:

- develop, own, sell, lease, license and market computer software;
- adopt fees and prices for software;
- obtain copyrights and trademarks for software; and
- enforce software copyrights and trademarks.

The term "computer software" is defined in the Bill.

I will sometimes use the term "sell software" for convenience, but my comments also apply to the other rights set out in the Bill.

Johnson County recognizes and supports its statutory Home Rule authority found in K.S.A. 19-101 et seq. It can be argued that the County has ample authority under Home Rule to allow it to sell software.

We support HB 2157 in order to remove any doubt about such authority and to avoid any future legal challenge to our authority.

Although we have become accustomed to computers and software being a major part of our daily lives, we must remember that in relation to the Home Rule statute, adopted originally 133 years ago in 1868, computers and the use of software are recent additions to the functions of government. When the Home Rule statute was adopted no one could have envisioned the modern high tech world.

Much of the history of governmental entities has involved the provision of basic services, such as police, fire, water and sewer services. The sale of software is ironically far removed from such traditional government services, but, at the same time, directly related to the efficient provision of such services in today's world. An example of this is a computer-aided dispatch system found at a police station or in an emergency medical services department.

Counties today are heavily dependent on computers; however, the software needed by government is not always available in the private market. If the software is available, it often is not designed to comply with Kansas law or procedures. Customizing such software can be expensive. Therefore, it is sometimes necessary for government to develop software, either in house or with the assistance of an outside firm. A great deal of time, money and effort goes into such software development.

Once an effective software program is developed, others may find it of value to use the same software. It may be cost effective for the buyer to pay the selling county for the software, rather than expend the time and money to independently develop software. Cost effectiveness can be achieved by spreading the development costs among multiple users. This process serves the overall public good, for without it, counties would have to spend more money for software or settle for less effective or non-existent software.

If there is doubt about the legal authority to sell software, the benefits of such software will likely not be shared beyond the county that developed it. Additionally, the risk of legal liability, such as warranties or otherwise, will also act as a deterrent to the production of such software. Any warranties or other responsibilities between the selling county and the buyer will be adequately handled by contract and by general contract and warranty law.

Since the type of software that counties will sell under this Bill are directly related to the provision of governmental services, as opposed to private activity, subparagraph (x) of Section 2 was added to the Bill in order to avoid the creation of new liabilities for counties.

It should be noted that the software being developed by counties typically would only be purchased by another governmental entity or a business or an individual involved in some form of governmental service, so we're not talking about individuals buying these products for personal use. This software generally would not be suitable for individual consumers.

Counties are under intense pressure to decrease property taxes. The sale of software is one way that counties can reduce their reliance on property taxes, and, at the same time, promote governmental efficiency and the use of technology.

The Johnson County Board of County Commissioners asks for your support of House Bill 2157.

I will be happy to answer your questions or supply you with additional information.

F. Lawrence McAulay, Jr.  
Assistant County Counselor  
Johnson County Legal Department  
111 South Cherry St., Suite 3200  
Olathe, KS 66061  
913-715-1859

## Amendments to HB 2086 appear in bold

Sec. 2. K.S.A. 2000 Supp. 9-1408 is hereby amended to read as follows:

9-1408. Definitions. As used in article 14 of chapter 9 of the Kansas Statutes Annotated:

(a) "Bank" means ~~any~~ **a bank incorporated under the laws of this state, or organized under the laws of the United States or another state and which has a main or branch office in this state** and which has a main office in this state;

(b) "savings and loan association" means ~~any~~ **a savings and loan association incorporated under the laws of this state, or organized under the laws of the United States or another state, insured by the federal deposit insurance corporation or its successor and having a main or branch office in this state** and which has a main office in this state;

(c) "savings bank" means ~~any~~ **a savings bank organized under the laws of the United States or another state insured by the federal deposit insurance corporation or its successor and having a main or branch office in this state** and which has a main office in this state;

(d) "centralized securities depository" means a clearing agency registered with the securities and exchange commission which provides safekeeping and book-entry settlement services to its participants;

(e) "municipal corporation" or "quasi-municipal corporation" includes each investing governmental unit under K.S.A. 12-1675, and amendments thereto;

~~(f) "main office" means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;~~

**(f) "main office" means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;**

~~(g) "branch" means any office, agency or other place of business within this state, other than the main office, at which deposits are received, checks paid or money lent with approval of the appropriate regulatory authorities. Branch does not include an automated teller machine, remote service unit or similar device;~~

**(g) "branch" means any office, agency or other place of business within this state, other than the main office, at which deposits are received, checks paid or money lent with approval of the appropriate regulatory authorities. Branch does not include an automated teller machine, remote service unit or similar device;**

~~(h) (f) (h) "securities," "security entitlements," "financial assets," "securities account," "security agreement," "security interest," "perfection" and "control" shall have the meanings given such terms under the Kansas uniform commercial code.~~

Sec. 4. K.S.A. 2000 Supp. 12-1675a is hereby amended to read as follows:

12-1675a. Definitions. As used in K.S.A. 12-1675, 12-1676 and 12-1677 and K.S.A. 1999 Supp. 12-1677a and 12-1677b, and amendments thereto:

(a) "Bank" means ~~any a~~ **any a** bank incorporated under the laws of this state, or organized under the laws of the United States **or another state and which has a main or branch office in this state** ~~and which has a main office in this state;~~

(b) "savings and loan association" means ~~any a~~ **any a** savings and loan association incorporated under the laws of this state, or organized under the laws of the United States **or another state, insured by the federal deposit insurance corporation or its successor and having a main or branch office in this state** ~~and which has a main office in this state;~~

(c) "savings bank" means ~~any a~~ **any a** savings bank organized under the laws of the United States **or another state insured by the federal deposit insurance corporation or its successor and having a main or branch office in this state** ~~and which has a main office in this state and;~~

(d) "municipality" includes each investing governmental unit under K.S.A. 12-1675, and amendments thereto;

~~(e) "main office" means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;~~

**(e) "main office" means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;**

~~(f) "branch" means any office, agency or other place of business within this state, other than the main office, at which deposits are received, checks paid or money lent with approval of the appropriate regulatory authorities. Branch does not include an automated teller machine, remote service unit or similar device; and~~

**(f) "branch" means any office, agency or other place of business within this state, other than the main office, at which deposits are received, checks paid or money lent with approval of the appropriate regulatory authorities. Branch does not include an automated teller machine, remote service unit or similar device; and**

~~(g) "investment rate" means a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. The 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.~~