

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on March 13, 2001 in Room 245-N of the Capitol.

All members were present except: Senator John Vratil, Excused

Committee staff present: Russell Mills, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor
Nikki Kraus, Committee Secretary

Others attending: See Attached List

Chairman Harrington recognized Theresa Kiernan, Office of the Revisor of Statutes, who presented a memorandum concerning "Home Rules Powers". (Attachment 1).

Chairman Harrington stated that the committee had expressed concern which she thought had been addressed in SB 178-Notifying members of the Legislature of the availability of agency reports, but that Ms. Jolene Miller, Attorney General's Office, might want to give the committee an update on the Glazer's Wholesale Drug Co., Inc. vs. State of Kansas lawsuit currently being litigated. Ms. Miller stated that the Attorney General's Office had filed an appeal on the district court's ruling that the residency requirement was unconstitutional. She stated that whether or not her office was able to get a stay might affect what the committee would want to do legislatively. She stated that the state of Kansas was unable to do background checks on out of state companies, and that the intent of her office was to maintain the status quo, which required residency so that background checks were possible.

Chairman Harrington asked the committee for questions, and there were none. She thanked Ms. Miller on behalf of the committee.

Chairman Harrington opened the hearing again on:

SB 152-An act relating to the regulation of alcoholic beverages

Chairman Harrington stated that Bob Longino, Director of Alcoholic Beverage Control, was in the audience to answer any questions from the committee.

Senator Brungardt reviewed the subcommittee report. (Attachment 2). He stated that there had been a request for bond relief for those who had been good taxpayers and license holders for at least two years. He stated that the Director of ABC stated that he was going to do that through Rules and Regulations so that the amendment would not be necessary. Senator Gooch asked Senator Brungardt if the subcommittee had come to a conclusion whether all or only liquor taxes had to be current for licensees; Senator Brungardt stated that there had been discussion, and if it was all taxes it would be a matter of cross-referencing with the Department of Revenue. He stated that the entire question may be moot if Rules and Regulations handled the issue.

Chairman Harrington stated that she believed that Rules and Regulations could handle that issue, and Mr. Longino agreed.

Mr. Longino stood to answer questions from the committee; Senator Brungardt asked him what the conclusion was concerning bond issues. Mr. Longino stated that there were three bond requirements in statutes for liquor licensees and explained those to the committee.

Senator Gooch stated that he still felt that the spouse issue was too extreme. Mr. Longino stated that initially, spouses were required to meet the qualifications of the licensee, but in all renewals thereafter, they were no

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March 13, 2001

longer required to meet those specifications. Senator Gooch stated that he was concerned about businesses with multiple partners being responsible for spouses. Mr. Longino stated that if all of the spouses met the requirements at the time of initial application and granting, changes later on would be irrelevant.

Senator Brungardt stated that he was concerned that this restriction only referred to spouses and not for parents, children, siblings, etc. Mr. Longino stated that he would be speculating to some degree, but there was a propensity for criminal elements to become involved with the liquor industry, and this might be an attempt to regulate that element more.

Chairman Harrington asked Phillip Bradley, Kansas Licensed Beverage Association, if he was satisfied with the bond issue being handled through Rules and Regulations instead of being made into an amendment, and he stated that he had the word of the Director and the Secretary, so as long as they were in office, he was satisfied.

Senator O'Connor stated that she had a concern about page five, lines 9-11, which she had marked. Chairman Harrington stated that altering that part of the bill would create a problem because if an applicant was not a resident of the state, then it was not possible for Alcoholic Beverage Control to carry out a background check.

Mr. Longino stated that Senator O'Connor's concern was being addressed in **SB 178**. Theresa Kiernan stated that there was a conflict with that bill, but that the conflict could be resolved at a later time. Ms. Kiernan stated that she would be able to make changes so that the bill was consistent throughout and with **SB 178**. Chairman Harrington stated that the committee might want to hold over actually working the bill until the next day. She also stated that **SB 178** had not been read in yet, nor the conference committee assigned.

Ms. Kiernan stated that **SB 178** had to do with the Glazer's Wholesale Drug Co., Inc. case. Senator Brungardt stated that it would make the appeal moot.

Senator Gooch asked why the committee did not have **SB 178**, and Chairman Harrington stated it was because the House just passed it the day before. She also stated that **SB 178** addressed another issue dealing with the lawsuit.

Ms. Miller stated that the Attorney General's Office did not want the committee to feel obligated to make this decision at this time unless the committee felt that it was a good policy decision. She stated that if the residency requirement were eliminated totally, it would make the litigation moot, but if it were only reduced, the case may remain as a question of constitutionality. In response to a question from Senator Gooch, she stated that the state needed to be able to at least do NCIC checks on applicants who were non-residents, in addition to other requirements.

Chairman Harrington stated that since **SB 178** was amended on the floor of the House yesterday, that until it was put into conference committee, she thought that the committee would not work the bill until after the conference committee. She told the committee to write their concerns down, and after **SB 178** was finished, then concerns with **SB 152** could be addressed. Chairman Harrington asked the committee for further discussion and recognized Senator Barnett.

Senator Barnett stated that he would like to follow up the comments made by Senator Gooch, and ask again why residency was important beside the background check. Ms. Miller stated that the state was able to do a lot more in terms of Liquor Control with the residency requirement than without it. She stated that she was not fully informed because she had only recently had the case turned over to her.

Chairman Harrington stated that the House passed the bill yesterday and that there were some conflicts over its amended version, so it would probably be placed in conference committee.

Chairman Harrington stated that if the committee was assigned Senator Schodorf's bill during session that it would be announced from the floor and placed on the schedule for the committee.

The meeting adjourned at 11:23 a.m. The next meeting is scheduled for 10:30 a.m. on March 14, 2001.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE: March 13, 2001

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Phil BRADLEY	KLBA
Judy Melin	KAC
Holly Buetala	City of Overland Park
Sandy Jarquist	CKM
Carole Jordan	KDA
Doug Sims	Pinegar - Smith Company
Marsha Strahm	CWA of KS
Tom Palace	PMCA
Michael White	Kearney Law Office
KG Longini	KFOR ABC
Erik Sartorius	K.C. Regional Assn of Realtors
Robert Francisco	KGC
- Bill YANEK	KS Assn of Realtors
Wanda Jean Smith	ILMHA
Carol McDowell	Bottenberg + Assoc's.
Amy Gwynell	KABE
John Cranley	Sun Star Clark
Jack DUNCAN	KS Wine & spirits wholesalers ASSN.

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MARY O. CHENG, M.S.
RICHARD M. CHAMPNEY, B.S.

MEMORANDUM

TO: Special Committee on Federal and State Affairs
FROM: Theresa Kiernan
RE: Home Rule Powers Overview
Date: August 17, 1998

CITIES POWER TO LEGISLATE

Police Power.

- The broadest class of power exercised by cities includes the powers to protect the public safety, public health, morality, peace and quiet and law and order.
- Derived from statute (grant from legislature) and/or constitution (grant from people).
- Prior to the adoption of the Home Rule Amendment in 1961, the Kansas Supreme Court recognized that cities could exercise police powers to supplement or add to regulatory authority granted by the state as long as there was no conflict with the state law or the field had not been preempted by state law.

Home Rule Power.

- Cities have a constitutional source of local legislative power in Article 12, Section 5 of the Kansas Constitution.
- The Home Rule Amendment provides a Constitutional limit on state legislative control over the affairs of cities.
- Cities may adopt local laws on subjects not addressed by state law.
- Cities may adopt local laws on subjects where a state law exists, but which state law does not apply uniformly to all cities.
- Cities may adopt local laws on subjects where there is a uniform law and the city wants to enact additional or supplemental local provisions.
- The legislature, with certain exceptions, may bind completely cities by enacting a state law that applies uniformly in the exact same way to all cities and the law contains a clear statement of preemption.
- Powers granted under the home rule amendment are to be construed liberally to give cities the largest measure of self-government.
- Home rule power includes police powers. In a 1995 case, the Supreme Court stated "home rule is merely an alternative procedure mechanism to enabling statutes for cities to use in exercising police power."

How Is Home Rule Exercised?

Ordinary Ordinances

- If there is no existing state law on the subject, a city may adopt an "ordinary" ordinance. (Regulation and licensure of massage parlors).
- To supplement, enlarge or enhance a uniform state law, a city may adopt an "ordinary" ordinance. (Prohibiting the carrying of an unconcealed weapon; requiring the closing of a private club at a time earlier than prescribed by statute).

- As a complete alternative to an existing permissive statute, whether uniform or not, but the city chooses to act under its home power, a city may adopt an "ordinary" ordinance. A 1995 case, Blevins v. Hiebert held the use of an ordinary resolution by Douglas county was improper and would require the use of a charter resolution.

Charter Ordinances

- A charter ordinance is an ordinance which exempts a city from the whole or part of an enactment of the legislature. A charter ordinance may provide substitute and additional provisions on the same subject addressed in an enactment of the legislature.
- A city may not use a charter ordinance to exempt from an enactment of the legislature which:
 - 1) Is nonuniform, but where the legislature has established not to exceed four classes of cities for the levy of taxes, excises, fees, charges and other exactions (Art. 12, §5(b)).
 - 2) Is of statewide concern applying uniformly to all cities (Art. 12, §5(c)(1)).
 - 3) Is applicable uniformly to all cities (Art. 12, §5(c)(1)).
- A city may not enact a charter ordinance to exempt from a constitutional amendment.
- A charter ordinance is subject to protest petition and election.

How Does a City Determine If It May Exercise Home Rule?

- 1) Is there a state law that governs the subject?
- 2) If there is a state law, is it uniformly applicable to all cities?
- 3) If there is a uniform state law, does it contain language which clearly preempts further action by the city?
- 4) If there is a uniform state law, but no preemption, does the ordinance conflict with the state law?

- An enactment is all sections of a single bill enacted by the legislature. Every section of a bill must apply uniformly to all cities if the bill is to be an uniform enactment.
- In Claflin v. Walsh, the court stated all statutes on the same subject whether enacted at the same time or not are considered in pari materia and should be construed together to determine the question of uniformity.

How Is It Determined If There Is A Conflict Between Uniform State Law and an Ordinance?

1) If the ordinance permits what the state law prohibits or prohibits what the state law authorizes, a conflict exists.

2) If the ordinance is parallel or identical to the state law, there is no conflict.

3) If the ordinance supplements or adds to the state law, there is no conflict.

4) If the ordinance provides for standards of performance that are higher than those set by the state law, there is no conflict.

5) If the state law is uniform, but does not expressly preempt the field, there is no conflict.

Do Cities Have Power to Adopt Ordinances Regulating Liquor Licensees?

- If the general principles governing home rule authority are applied to the liquor laws, it appears cities do have the authority to adopt ordinances regulating liquor licensees.
- The liquor control act, K.S.A. 41-101 et seq., is a nonuniform law and should be subject to home rule by a city through adoption of a charter ordinance, but Article 15, Section 10 of the Kansas Constitution provides that the legislature may permit, regulate, license and tax the sale of intoxicating liquor. Cities may not home rule out of constitutional provisions.
- The Supreme Court has ruled that cities may adopt ordinances supplementing the club and drinking establishment act, because

the legislature did not clearly preempt the area of regulation and control of consumption of alcohol as it did in the area of the traffic in alcohol.

- A district court in Wichita has ruled that the city may adopt an ordinance providing for the local licensure of clubs and drinking establishments since the state has not preempted the area, and through its police powers the city could enact nonconflicting ordinary ordinances. The court found the city's licensing fee schedule in conflict with the state statute and therefore invalid. The Supreme Court twice refused to hear the question of law, reserved by the city, on the fee schedule because the court felt it did not present a question of statewide concern. In its order to show cause, the Supreme Court referred to the limit on cities' home rule power when a uniform state law limits a tax fee, charge or other exaction.
- If the court does not construe Article 15 Section 10 as a limit on the cities home rule power and given the manner in which the various liquor acts have been amended in single enactments, the entire body of the liquor laws may be subject to home rule.
- If the court finds that by enacting various nonuniform laws, the legislature has not clearly preempted the area, a city may adopt an ordinary ordinance to supplement any uniform state law.
- Cities may adopt a charter ordinance to a nonuniform law notwithstanding any preemptive language in the statute.
- Attorney General Opinion No. 93-147 determined the Liquor Control Act is nonuniform and subject to charter ordinance.

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SENATE CHAMBER

March 6, 2001

COMMITTEE ASSIGNMENTS

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MEMBER: COMMERCE

FINANCIAL INSTITUTIONS

AND INSURANCE

PUBLIC HEALTH AND WELFARE

To: Senate Committee on Federal and State Affairs

From: Senator Brungardt, Senator Lyon, and Senator Gooch

Re: Second Subcommittee Report on SB 152

Background. The Subcommittee on SB 152 held a hearing on the bill on February 15, 2001 and received a briefing from staff, and testimony from the Division of Alcoholic Beverage Control (ABC) and a number of representatives of the industry. At the full Committee hearing on the bill, a number of amendments were proposed by various conferees. The Chairman directed the Subcommittee to meet again in order to review the proposed amendments. The Subcommittee held a second hearing on February 28, 2001 to discuss the amendments.

The bill contains three major provisions:

1. Currently, furnishing alcoholic liquor and cereal malt beverages (CMB) to minors are criminal violations contained in two separate statutes. The bill combines these two violations into one statute in order to simplify the process of citing and prosecuting individuals who furnish either alcoholic liquor or CMB to minors. This change will mirror the provisions of KSA 41-727, which makes it unlawful for minors to purchase or consume both alcoholic liquor or CMB. (The existing exemption which allows a parent or guardian to furnish CMB to their child is retained in the new language.)
2. The second provision concerns the residency requirements for employees of the Division of Alcoholic Beverage Control. Current law requires that the Director must have resided in Kansas for 5 years and the Deputy Director for 2 years. The revised language states that the Director and all employees of the Division must be US citizens and residents of Kansas.
3. The third provision concerns the requirements for a renewal license for a liquor or CMB licensee. Current law contains an exception that allows a liquor or CMB licensee to renew a license even though the person's spouse is ineligible for any reason other than citizenship, residence requirements, or age. The bill would eliminate this exception, and, thus,

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prevent an individual from obtaining or renewing a license if that individual's spouse is ineligible to receive a license for any reason other than the three noted above.

Testimony. The Acting Director of Alcoholic Beverage Control testified in support of SB 152. He also proposed several amendments to the third provision noted above, concerning renewal licenses. Most representatives of the industry supported the changes noted in items 1 and 2 above. One representative opposed combining the violations sections noted in item 1 into one statute. Nearly all of the industry representatives expressed opposition to the change proposed in item 3, which would delete an existing exception relating to renewal of liquor and CMB licensees.

The Subcommittee held a second hearing for the purpose of reviewing the proposed amendments. The Acting Director of ABC proposed amendments to the bill sections dealing with the qualifications for licensure affecting spouses. The amendments would limit the renewal disqualifications to "a person whose spouse has been convicted of a felony or other disqualifying crime under this section if the crime was committed during a time that the spouse held a license under this act." The Acting Director stated that this new language would address the problem which ABC is trying to reach.

A representative of the Kansas Licensed Beverage Association also proposed an amendment which would affect the bond requirements for liquor licensees. The amendment provides that the bond posted by licensees could be refunded if the licensee stays current in their drink excise tax payments for 12 months. The Acting Director of ABC did not oppose the bond relief amendment, but recommended that the time period be extended to 24 months and that the requirement for licensees to be current include both liquor taxes and also sales and withholding taxes in order to be released from the bond requirement.

Recommendations. The Subcommittee is generally supportive of the changes proposed by the Acting Director in SB 152. The Subcommittee supports combining the two violation statutes into one statute and revising the residency requirements for the Director and ABC employees. The Subcommittee also does support the amendments proposed by ABC in item 3 concerning the renewal requirements of a spouse.

The Subcommittee also endorses the amendments providing bond relief to licensees who are current in their liquor taxes, with the extension of the time period to 24 months as recommended by the Director. The Subcommittee feels that the licensees should only be required to be current in their liquor tax payments. The full Committee may wish to discuss whether the requirement should be extended to other taxes, such as sales and withholding taxes.

The full Committee may still wish to address the policy question of spousal responsibility for licensure. The Subcommittee recommends that these proposed changes be approved and that the full Committee report SB 152 favorably.