

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Representative Gerry Ray at 3:30 p.m. on February 14, 2002 in Room 519-S of the Capitol.

All members were present except:

Committee staff present:

Mike Heim, Research Department
Theresa Keirman, Revisor
Kay Dick, Committee Secretary

Conferees appearing before the committee:

Proponents
Representative O'Neal
Representative Bethell

Neutrals

Laura Kelly, Ex. Dir. Ks. Recreation & Park Assoc.
Mark Tallman,

Others attending:

The Chair opened the hearing on:

HB 2782 - Recreation systems

Representative Bethell, representing 113th District, asked for the committee's favorable consideration of **HB 2787**. He explained that this bill came about because of two or three districts discussing consolidation. Now it has mushroomed into quite a few of districts talking about consolidating. One of the issues that came up, was in regard to a district having an existing recreation commission and if they were to consolidate with another district and create a new district, they were told by the Department of Education that the existing recreation commission would automatically follow into the new district. **HB 2787** would allow for a snapshot of the district boundary before the consolidation and then allows funding based on those boundaries. Also, it would allow the remaining area of the new district to do one of three things; 1) do nothing, 2) by a vote of the qualified voters become apart of the existing recreation commission or 3) create commission of it's own. (Attachment #1)

Laura Kelly, Exe. Director of the Kansas Recreation & Park Association (KRPA), appeared before the committee regarding **HB 2787**. She testified that KRPA supports the intent of the bill to ensure that existing recreation systems continue in the event of school district consolidation. She also went on to state, support for allowing voters outside the borders of the existing system to determine if they want to be taxed to support the existing system. The KRPA had some doubts about the New Section 4 which would allow voters to establish a new recreation system in the same school district as an existing system. They wonder if this would be the best way to proceed or if it would be better to eliminate this provision. She explain that KRPA would like the time to study the ramifications of school district consolidation on recreation systems and with other groups and legislature to develop a plan that addresses needs of citizens most directly affected. (Attachment #2)

Mark Tallman, Assistant Director, Kansas Association of School Boards, gave *unwritten* testimony, echoing Ms. Kelly and the KRPA views. Mr Tallman stated the KSAB does not oppose the basic intent of **HB 2787**.

Rep. Bethell, Ms. Kelly, and Mr. Tallman answered questions asked by committee members..

The hearing was closed on **HB 2787**.

The hearing opened on:

HB 2670 - townships; officers who also are employees, restriction

Representative Mike O'Neal, testified in favor of **HB 2670** stating, "It was brought to my attention by a

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT at on February 14, 2002 in Room 519-S of the Capitol.

local township board member that, after contact with the Governmental Ethics Commission and the Attorney General's Office, there was apparently no rules or statutes that prohibits one of his co-board members, who also is a township employee, from voting himself a pay raise. Of the three-member board, he only needed one vote from another board member. I was also informed that since the hiring of the board member he has sought and obtained two pay increase for himself with little or no justification or substantiation. The concerned board member that has brought these facts to me has been powerless to do anything about it. Hence, the proposed bill would prohibit the board-member employee from actually voting on his own pay increase." Rep. O'Neal brought attention to the letter from the Attorney General in regard to the conflict between Kansas statues and common law principles related to incompatibility of office and conflict of interest. It also went on to state that this conflict could be resolve. "When a statute conflicts with the common law, the statute, of course, controls." (Attachment #3)

Questions were asked by committee members and answered by Rep. O'Neal.

The Chair closed the hearing on **HB 2670**.

Madam Chair Ray announced that they would work **HB 2727 - improvement districts; powers and duties of governing body**.

Rep Barnes made a motion to pass **HB 2727** out of committee favorably. Rep. Gilbert seconded the motion. Following a discussion by committee members a vote taken and **HB 2727** passed favorably.

The Chair decided to have action on **HB 2670 - previously heard concerning; townships; officers who are employees**

A motion was made by Rep. Hermes to pass out the bill. Rep. Hayzlett seconded the motion. **HB 2670** passed out with no opposition.

Madame Chair asked for approval of the minutes for January 29, 2002. Rep. Gilbert made the motion to approve the minutes and Rep. Barnes seconded. January 29th minutes were approved by the committee.

Rep. Ray adjourned the committee at 4:30 p.m.

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TOPEKA

Testimony on House Bill 2787

Chairman Ray and members of the House Local Government Committee, thank you for allowing me to come before you today. I am Bob Bethell, Representative of District 113 of Kansas.

I would ask for your favorable consideration of HB 2787. This bill has been introduced because of a request of one of the school districts in the 113th Representative District.

This may come as a shock to you but two, actually four, districts from my area have been in discussions about, dare I say, consolidation. As the discussion progressed the goal of accomplishing something this year was set. However in discussion with the State Department of Education it was learned that the recreation commission of the lead school district would have a problem with funding after the consolidation. This problem came into existence because the funding of the recreation commission was linked to the school district. The Superintendent was told that the recreation commission would not follow the new district and therefore would be unfunded.

Not wanting to lose the recreation commission that the district currently cooperated with, I was asked to see what could be done. After consultation it was determined to introduce HB 2787; which allows for a snapshot of the district boundary the moment before the consolidation and then allows funding based on those boundaries. HB 2787 also allows the remaining area of the new district to do one of three things; 1) they can do nothing, 2) they can by vote of the qualified voters become a part of the existing recreation commission or 3) by vote of the qualified voters create a second recreation commission.

The question arises as to why two commissions in one school district. The answer that I have for that is sometimes it is better to create two than to force one.

Thank you again, I ask for your support of HB 2787 and I will stand for questions.

KRPA

KANSAS RECREATION AND PARK ASSOCIATION

House Committee on Local Government
February 14, 2002

Testimony on HB 2787
Laura Kelly, Executive Director
Kansas Recreation and Park Association

Madame Chair and members of the committee:

Thank you for the opportunity to appear before you today regarding HB 2787. I am Laura Kelly, Executive Director of the Kansas Recreation and Park Association (KRPA).

KRPA represents over 900 professionals and citizen advocates in over 220 agencies, including 160 recreation commissions.

HB 2787 addresses the issue of what happens to recreation commissions in the event of consolidation of school districts. It would provide for the continued operation of existing recreation systems. It would allow voters outside the boundaries of existing recreation systems to determine if they wanted to tax themselves and expand the boundaries of the recreation system to encompass the new school district boundaries. Or it would allow voters outside the boundaries of the existing recreation system but within the boundaries of the new school district to tax themselves to create a new recreation system, while maintaining the existing system.

KRPA supports the intent of HB 2787 to ensure that existing recreation systems continue in the event of school district consolidation. We also support allowing voters outside the borders of the existing recreation system to determine if they want to be taxed to support the existing recreation system. What we are less sure about is New Section 4 which would allow voters to establish a new recreation system in the same school district as an existing recreation system. We are not sure if this would be the best way to proceed or if it would be better to eliminate this provision.

What KRPA would like is the time to study the ramifications of school district consolidation on recreation systems and to work with other groups and the legislature to lay out a plan that addresses the needs of those citizens most directly affected.

Thank you.

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HOUSE LOCAL GOVERNMENT

02/14/02

Attachment 2

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

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HUTCHINSON/NORTHEAST RENO COUNTY

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CHAIRMAN:
JUDICIARY COMMITTEE
REDISTRICTING COMMITTEE

MEMBER:
KANSAS FUTURES
FISCAL OVERSIGHT
UNIFORM LAW COMMISSION
KANSAS JUDICIAL COUNCIL

TESTIMONY ON H.B. 2670
COMMITTEE ON LOCAL GOVERNMENT

Feb. 14, 2002

Chairman Ray and members of the Committee, thank you for your consideration of H.B. 2670. At first blush, I'm sure many of you are asking why this bill is needed. One would assume that the behavior which is the subject of the bill is already prohibited. That was certainly what one of my local township board members thought. However, after contact with the Governmental Ethics Commission and the Attorney General's Office, he found that there was apparently no rule or statute prohibiting one of his co-board members who was also a township employee from voting himself a pay raise. Of the three-member board all the employee needed was the vote of another board member.

My constituent board member's concern was first raised when his co-board member was hired as a township employee. The issue raised in that circumstance was the subject of the attached Attorney General's opinion. The A.G. opined that it was not a violation of the conflict of interest laws to hire a board member and that the common law rule of incompatibility of offices had been statutorily abrogated with the statute allowing board members to be hired as township road overseer.

My constituent's current concern is not so much that a board member may also be an employee, it's the fact that since the hiring of the board member he has sought and obtained two pay increases for himself with little or no justification or substantiation and the concerned board member has been powerless to do anything about it. Hence, the proposed bill would prohibit the board-member employee from actually voting on his own pay increase.

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HOUSE LOCAL GOVERNMENT

02/14/02
Attachment 3



State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

September 13, 2001

MAIN PHONE: (785) 296-2215
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The Honorable David Kerr
State Senator, 34th District
Box 2620
Hutchinson, Kansas 67504

Re: Roads and Bridges--County and Township Roads--Township Road Overseer; Assistants;
Compensation

Statutes; Administrative Rules and Regulations and Procedure--Statutes--Common Law

Dear Senator Kerr:

As Senator from the 34th district, you inform us that in your district a township board member is also a township employee who performs road work. However, we were not informed whether this township board member is employed as the township overseer or as an assistant to the overseer. You further inform us that this township board member voted with one other township board member to raise his hourly rate of pay for doing township road work. In light of this situation you ask whether this action of the township board member constitutes a violation of K.S.A. 75-4301 *et seq.*, the Kansas Conflict of Interest Act, or common law conflict of interest principles. Additionally, if it is determined a conflict of interest exists, you ask our advice on an appropriate remedy.

Initially we note that K.S.A. 2000 Supp. 75-4303a places the responsibility for issuing advisory opinions concerning the Kansas Conflict of Interest Act on the Kansas Commission on Governmental Ethics. Consequently, you may wish to address your first question to the Commission. However, for your guidance we draw your attention to K.S.A. 75-4304:

"(a) No local governmental officer or employee shall, in the capacity of such an officer or employee, make or participate in the *making of a contract* with any person or business by which the officer or employee is employed or in whose business the officer or employee has a substantial interest.

"(b) No person or business shall *enter into any contract* where any local governmental officer or employee, acting in that capacity, is a signatory to or a participant in the making of the contract and is employed by or has a substantial interest in the person or business." (Emphasis added.)

Since the township board member serves as an employee it does not appear that any contract is involved, and thus it does not appear that the Kansas Conflict of Interest Act would be applicable to the situation you describe.

We now turn to an examination of the situation presented in relation to common law principles. The term "conflict of interest" is sometimes used to indicate what is also referred to as incompatibility of office. General authorities provide assistance in determining when the nature and duties of two offices or positions are inconsistent, so as to render them incompatible.

"A conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office or has the power to remove the incumbent of the other to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts."

Based on this common law principle, this office has issued two previous opinions concerning a township board member serving as an employee of the township.

In 1979 Attorney General Stephan opined that the doctrine of incompatibility did not prevent the appointment of a township board member as an assistant to the township road overseer.¹

In 1995 we addressed the myriad of compensation statutes applicable to township board members.² Part of the opinion was based on the then-current version of K.S.A. 68-500 which specifically provided that in townships of less than 500, the township trustee, by unanimous vote, could be appointed to serve as the township road overseer. In that respect we opined that it may create an incompatibility to allow township board members to appoint themselves to the position of road overseer and then pay themselves a reasonable compensation for the work. Thus the opinion concluded that, except in townships with a population under 500, persons may not simultaneously hold the positions of township board member and township road overseer.

The 1996 Legislature amended the many statutes relating to the compensation of township board members.³ In the process of amending township compensation statutes, the Legislature validated "legislative recognition that in certain instances it may be necessary and appropriate to employ township board members to effect construction, repair or maintenance of township roads."⁴ The current versions of the statutes applicable to your question provide:

¹Attorney General Opinion No. 79-242 (copy enclosed).

²Attorney General Opinion No. 95-113 (copy enclosed).

³L. 1986, ch. 184 (copy enclosed).

⁴Attorney General Opinion No. 79-242.

"The township board, with the approval of the county engineer, shall appoint, on merits only, a competent experienced road builder for road overseer for the entire township. The township road overseer shall have charge of the construction and maintenance of all township roads, bridges and culverts, under the supervision of the township board and the county engineer. When in the opinion of the county engineer the conditions demand it, the overseer may appoint one or more competent assistants, subject to the approval of the township board. *The township board may designate a member of the township board to act as road overseer.* Compensation and the cost of benefits provided to such officer for such work and labor shall be determined by the township board as provided by K.S.A. 80-207, and amendments thereto."⁵

"The compensation of the road overseer and assistants shall be fixed by the township board at such rate as may be reasonable for the time actually employed in the performance of their duties. *In townships where a township board member has been designated as road overseer* under K.S.A. 68-530, and amendments thereto, and when such board member is paid by the day and not by contract, such board member shall be compensated in an amount determined by the board as provided by K.S.A. 80-207, and amendments thereto. Before entering upon such duties, the overseer shall give bond unto the township, with surety to be approved by the township board, in the sum of \$1,000, conditioned upon the faithful discharge of such duties and the protection, care and return of all property of the township which may come into the overseer's custody. *The township overseer and any assistants, if any, shall hold office at the pleasure of the township board.*"⁶

"(a) The township officers of any township shall be reimbursed for any expenses incurred while actually and necessarily attending to township business.

"(b) Members of the township board shall receive compensation for their services while actually and necessarily conducting township business.

"(c) The township board, by adoption of a resolution, may fix the amount of compensation to be received by the members of the board. Such resolution shall be published at least once each week for two consecutive weeks in a newspaper of general circulation within the township. If the total amount of compensation to be received annually by each member of the board is \$100 or less, such resolution shall not be required to be published and shall be effective upon adoption of the resolution.

A resolution providing for an increase in compensation shall not be effective until 30 days following the date of the last publication of the resolution."⁷

⁵K.S.A. 2000 Supp. 68-530 (emphasis added).

⁶K.S.A. 2000 Supp. 68-531 (emphasis added).

⁷K.S.A. 80-207.

As to a township board member who is employed as the township road overseer, we are thus brought to the conflict between these Kansas statutes and common law principles related to incompatibility of office and conflict of interest as determined by the 1995 Attorney General opinion. The conflict is, however, easily resolved.

"From the earliest days of Kansas history, flexibility in the common law has been carefully preserved (G.S. 1949, 77-109).⁸ Indeed, the great office of statutes is to remedy defects in the common law as they are developed and to adapt it to the changes of time and circumstances. That the legislature may change the principle of the common law and abrogate decisions made thereunder when in its opinion it is necessary to the public interest is well settled."⁹

Thus, "when a statute conflicts with the common law, the statute, of course, controls."¹⁰

Specifically in response to your questions, as this office opined in 1979, the doctrine of incompatibility does not prevent the appointment of a township board member as an assistant to the township road overseer. In the absence of a statute to the contrary, the doctrine of incompatibility would prevent the appointment of a township board member as the township road overseer. However, the Kansas Legislature abrogated this common law doctrine through enactment of statutes that specifically authorize the appointment of a township board member as the township road overseer. Any action to modify this authorization would require legislative action.

Very truly yours,



Carla J. Stovall
Attorney General

CJS:CN:jm
Enclosures

⁸Now K.S.A. 77-109.

⁹*Board of County Commissioners of Neosho County ex rel. Board of Trustees, Neosho Memorial Hospital v. Central Air Conditioning Co., Inc.*, 235 Kan. 977, 982-83 (1984), quoting *Williams v. City of Wichita*, 190 Kan. 317, 331-32 (1962).

¹⁰*Id.* at 981.