

MINUTES OF THE HOUSE TRANSPORTATION.

The meeting was called to order by Chairperson Gary Hayzlett at 1:40 p.m. on February 12, 2002 in Room 519-S of the Capitol.

All members were present except:

Representative Aday, excused
Representative Howell, excused
Representative Larkin, excused

Committee staff present:

Bruce Kinzie, Office of the Revisor
Hank Avila, Legislative Research Department
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Bob Alderson, Mid-States Port Authority

Others attending:

See attached list

HB 2747 - port authorities, refunding bonds

Chairman Hayzlett opened hearings on **HB 2747** and called on Bob Alderson as the first proponent. He said this bill amends two sections of the port authority statutes, both of which requires the involvement of the cities and/or counties which "created" a port authority in order for certain actions to be taken by the port authority. There were originally fourteen counties involved in the port authority however three have withdrawn as there was no longer any public purpose for that county's participation as none of the rail lines acquired by MSPA were situated in their counties. He concluded it does not serve a useful purpose to require approval of a port authority's actions by cities or counties which are no longer members of the authority or have any involvement whatsoever in its operation. He asked support for passage of **HB 2747**. He also presented to the committee a memorandum providing background information on MSPA's formation, its purposes and objectives and the organization, operation and financing of its operations. (Attachment 1)

There were no other proponents. There were no opponents. Chairman Hayzlett closed hearings on **HB 2747**.

HB 2675 - personalized license plates, number of

Chairman Hayzlett opened **HB 2675** for final action. Representative Ballou made a conceptual motion to amend **HB 2675** which would provide the buyer with two plates but it would be mandatory to only display one on the back of the car, and to pass the bill out favorably, as amended. This was seconded by Representative Levinson.

Representative Dillmore suggested dividing the question and vote first on the amendment and then on passing the bill. There was no objection from Representative Ballou or Representative Levinson.

Following discussion, Representative Ballou offered a substitute motion which would give the buyer the option of buying one or two plates, seconded by Representative Osborne. Following discussion Representative Ballou withdrew his substitute motion and Representative Osborne withdrew his second.

Representative Ballou made a motion to pass **HB 2675** favorably, as amended, which would provide the buyer with two plates but would be mandatory to only display one, seconded by Representative Levinson and the motion carried. Representatives Powers and Dillmore requested their "no" vote be recorded.

The minutes for the House Transportation Committee for February 5th, 6th and 7th were presented for approval or corrections. Representative Phelps made a motion to accept the minutes as approved, seconded by Representative Dillmore and the motion carried.

The next meeting of the House Transportation Committee will meet on Wednesday, February 13th, 2002 in Room 519-S.

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
LESLIE M. MILLER
MICHELLE L. MILLER

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785) 232-0753
FACSIMILE: (785) 232-1866
WEB SITE: www.aldersonlaw.com

OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON
JOHN E. JANDERA (RETIRED)

LL.M., TAXATION
LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

**TESTIMONY OF BOB ALDERSON, GENERAL COUNSEL
OF MID-STATES PORT AUTHORITY,
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION
February 12, 2002**

My name is Bob Alderson, and I am appearing today in my capacity as General Counsel of Mid-States Port Authority (MSPA) in support of House Bill No. 2747. Initially, I should note that I have attached to this testimony a Memorandum providing background information on MSPA's formation, its purposes and objectives and its organization and operation, including the financing of its operations. Should the Committee need further information regarding MSPA, I trust you will not hesitate to contact me.

HB 2747 amends two sections of the port authority statutes, K.S.A. 12-3402 and 12-3420. Each of these statutes currently requires the involvement of the cities and/or counties which "created" a port authority in order for certain actions to be taken by the port authority. In order to amend the joint cooperative agreement which creates a port authority, K.S.A. 12-3402 requires that such action be taken by the governing bodies of the cities and counties which "executed such agreement." Similarly, K.S.A. 12-3420 requires that, in order to issue revenue refunding bonds, the bond issue must be approved by the cities and counties which "created" the port authority. Each of these statutes are amended in HB 2747 to require such action by the cities and counties which "comprise such port authority." The purpose for these amendments can be illustrated by the experience of MSPA in issuing its revenue refunding bonds in 1994.

As stated in the attached Memorandum, MSPA was formed by the joint cooperative agreement of 14 Kansas counties in 1980. However, effective September 1, 1985, Wabaunsee County withdrew from MSPA, and on June 1, 1990, Riley County also withdrew. In the resolutions effecting its withdrawal, the Board of Commissioners of each of these counties declared that none of the rail line acquired by MSPA from the Trustee in Bankruptcy for the Chicago, Rock Island and Pacific Railroad Company was situated in that county, and that there was no longer any public purpose for that county's participation in MSPA. In withdrawing, each of these counties relinquished any right, title or interest it may have in MSPA's property in the event of MSPA's dissolution.

Notwithstanding, in the fall of 1993, when MSPA began the proceedings leading to the issuance of revenue refunding bonds pursuant to K.S.A. 12-3420, MSPA's bond counsel advised that this statute required the approval of all 14 counties which "created" MSPA,

including Wabaunsee and Riley Counties. While both of these counties eventually adopted resolutions approving the bond issue, such action was preceded by considerable correspondence and discussions in open sessions before each county commission, to explain why the commission should adopt a resolution approving a bond issue by MSPA, of which the county was no longer a member. Not unexpectedly, there was some reluctance among the county commissioners of these two counties, some of whom either had never heard of MSPA or knew very little about it.

In doing some long-range planning recently, MSPA's Board of Directors has recognized the possibility that MSPA might want to again issue revenue refunding bonds under K.S.A. 12-3420 at some point in the future. Thus, MSPA would like to avoid the necessity of having to obtain the approval to do so from counties which have withdrawn from the Authority and relinquished their right, title and interest in and to MSPA's property. It is respectfully suggested that it does not serve a useful public purpose to require approval of a port authority's actions by cities or counties which are no longer members of the port authority or have any involvement whatsoever in its operation. Rather, it would seem to make better sense to require such approval by the governmental entities which are currently involved in the port authority's operations, i.e., the cities and/or counties which "comprise such port authority."

As a somewhat parenthetical note, you also should be aware that, following abandonment of MSPA's rail line in Clay County, that county also withdrew from MSPA, effective June 21, 1999.

I appreciate very much the opportunity to appear before the House Committee on Transportation, to request that you recommend House Bill No. 2747 favorable for passage. If I can respond to any questions members of the Committee may have, I will be pleased to do so.

**ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.**
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2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
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—————
(785) 232-0753
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OF COUNSEL:
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—————
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MEMORANDUM

TO: House Committee on Transportation

FROM: W. Robert Alderson, General Counsel, Mid-States
Port Authority

RE: Background Information on Mid-States Port Authority

DATE: February 12, 2002

The purpose of this Memorandum is to acquaint the members of the House Committee on Transportation with the Mid-States Port Authority (MSPA), by providing a brief summary of MSPA's formation, its purposes and objectives and its organization and operation, including the financing thereof.

Formation

The MSPA is a public body corporate and politic, organized and existing under the authority of K.S.A. 12-3401 et seq. In a series of two abbreviated opinions and one formal opinion, the Kansas Supreme Court approved the validity of these statutes in State, ex rel. Tomasic v. Kansas City, Kansas Port Authority, 229 Kan. 538, 626 P.2d 209 (1981); 230 Kan. 19, 630 P.2d 692 (1981); 230 Kan. 404, 636 P.2d 760 (1981). Further challenges to these statutes and the operation of the Kansas City, Kansas, Wyandotte County Joint Port Authority were rejected in State, ex rel. Tomasic v. City of Kansas City, 237 Kan. 164, 696 P.2d 382 (1985); 237 Kan. 572, 701 P.2d 1314 (1985).

The MSPA was created by the Joint Cooperative Agreement entered into on May 29, 1980, by the following, 14 Kansas counties: Clay, Cloud, Decatur, Jewell, Norton, Phillips, Republic, Riley, Sheridan, Sherman, Smith, Thomas, Wabaunsee and Washington. The formation of MSPA was approved by the Attorney General of Kansas in Attorney General Opinion 80-95, issued April 23, 1980. Subsequent to MSPA's formation, Riley, Wabaunsee and Clay Counties withdrew from MSPA, relinquishing any right, title or interest they may have had in any MSPA property.

Purposes and Objectives

The exercise of MSPA's statutorily-conferred powers "will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions." K.S.A. 12-3418. Moreover, MSPA's activities and operations "constitute the performance of essential governmental functions." K.S.A. 12-3418.

The MSPA was created by counties in northwest and north central Kansas adversely affected by the loss of rail service in these counties, by reason of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company (Rock Island). The board of county commissioners of each of the counties affected determined there was a need for a joint port authority to function in the counties and region affected, in order to restore rail service and to insure the continued availability of rail service in the future. Therefore, consistent with the statutory requirement that the powers exercised by a port authority be for the benefit of the people of the state, the MSPA was created to serve the public purpose of restoring rail service to the affected counties.

In 1983, the Kansas Legislature agreed to guarantee a portion of a loan of \$18 million from the Federal Railroad Administration (FRA) to the MSPA, through the establishment of the Railroad Rehabilitation Loan Guarantee Fund (K.S.A. 75-5029) and by the authorization for payments from that fund to the FRA of not to exceed fifty percent (50%) of any loss resulting from default by the MSPA on any loan it obtained from FRA.

The rail line was acquired from the Rock Island's Trustee in bankruptcy on May 15, 1984, pursuant to an Amended Contract for Sale of Railroad Line (Limon-Hallam) dated April 11, 1984. Upon closing of the contract, the Trustee in bankruptcy executed two Quitclaim Deeds which were identical, except for the descriptions of the property being conveyed. One of these deeds conveyed the Trustee's interest (with certain exceptions) in and to the rail line in Clay, County, Kansas and the other conveyed the Trustee's interest (with certain exceptions) in and to the remainder of the line.

By virtue of these transactions, MSPA acquired a portion of Rock Island's right-of-way and track which runs from Limon, Colorado in the West to Belleville, Kansas, with lines running from that point to Clay Center, Kansas and to Hallam, Nebraska, being the eastern termination of MSPA's rail line. A map of the rail line acquired by MSPA is included herewith as Appendix I. Also acquired were various depots, switching and communication equipment, tools and other items useful to the provision of rail service.

The property acquired included approximately 465 miles of mainline track and right-of-way, approximately 40 miles of spur and siding track, 288 acres of real estate, depots, repair shops and bridges.

Organization and Operation

MSPA is governed by a Board of Directors comprised of one individual appointed by the board of county commissioners of each member county and eight individuals elected "at

large" collectively by the boards of county commissioners of the member counties. A list of the current members of the Board of Directors and their residence addresses is being submitted as Appendix II.

Pursuant to its duly adopted Rules and Regulations, the MSPA has created an Executive Committee, consisting of MSPA's Chairman, Vice Chairman, Secretary and Treasurer. Creation of the Executive Committee pursuant to rules and regulations is authorized by K.S.A. 12-3403(c). The rules and regulations authorize the Executive Committee to transact routine business and also to act upon such other matters as may be delegated to it by the Board of Directors.

The MSPA does not have any employees, but the Rules and Regulations provide for the Board's appointment of two special officers, a Deputy Treasurer and a General Counsel. Compensation for the services of these special officers is fixed by the Board of Directors.

The rail line acquired by MSPA from Rock Island's Trustee in bankruptcy is operated pursuant to two separate leases with rail carriers. It has a lease with Kyle to provide rail service along the MSPA's track in Kansas and Colorado. The other operating lease is with Union Pacific, which provides rail service on the segment of the line from Fairbury to Hallam, Nebraska. The facilities leased to Kyle actually include the segment of the line from the Kansas-Nebraska State line to Fairbury, Nebraska. However, there has been no traffic over this segment of the line since it was acquired by MSPA.

Under these lease agreements, Kyle and Union Pacific are responsible for providing freight service along their respective leased rail lines, and the interstate operating authority necessary to provide such service has been obtained by these carriers. MSPA does not have any authority to operate as a rail carrier itself, although MSPA is considered a railroad under various Kansas statutes, because of its ownership of railroad right-of-way.

Pursuant to both of these lease agreements, MSPA has retained control over the right-of-way and other property along the rail line that is not directly required for railroad operations, and a substantial portion of this "ancillary property" has been leased by MSPA to various lessees.

1989 Refinancing

Pursuant to Public Law 100-457 (the Federal Government's Deficit Reduction Program), the FRA was instructed to dispose of \$99 million of its assets. Among the assets FRA identified for disposal were the Notes issued by MSPA and guaranteed by the State of Kansas. As part of the effort to sell its assets, the FRA agreed to sell the MSPA's Notes back to MSPA for \$11 million. At that time, the face amount of the Notes plus accrued interest had a value of approximately \$20 million.

During the first five years of its operations, MSPA was able to accumulate nearly \$5,000,000.00 in cash. Thus, in 1989, after providing for reserves and closing costs, MSPA was able to apply a sizable portion of the cash on hand to the repurchase of its Notes from FRA, thereby reducing its need for refinancing to less than \$7 million.

However, because MSPA is a unique entity, as far as public bodies are concerned, ordinary bank financing of the balance of the monies necessary to repurchase the Notes from FRA was not available without the continued guarantee of the State of Kansas. Accordingly, the 1989 Kansas Legislature made the statutory changes necessary to perpetuate the State guarantee of MSPA's indebtedness. Section 1 of that act (now codified as K.S.A. 75-5031) authorized the Secretary of Transportation to guarantee the repayment of any amounts which may be in default on any loan obtained by MSPA for the refinancing of its obligations to FRA. Attorney General Opinion No. 89-45 clarified the Secretary of Transportation's authority under that law to guarantee the MSPA's obligation upon refinancing.

With the enactment of this legislation, the requisite financing was then provided by BANK IV Kansas, N.A. The financing arrangements with BANK IV included the bank's loan of \$6,575,000 to MSPA for the purpose of repurchasing its Notes from FRA. The loan was made pursuant to a Term Loan Agreement among MSPA, BANK IV and the Secretary of Transportation and various other "loan documents," including a Mortgage, Security Agreement, and Assignment of Leases between MSPA and BANK IV.

State Guarantee

The 1989 refinancing perpetuated the guarantee of MSPA's indebtedness by the State of Kansas, acting by and through the Kansas Secretary of Transportation. Under the Term Loan Agreement with BANK IV, the Secretary of Transportation, as Guarantor, was required to "include an appropriate amount in [KDOT's] budget request made each year to the Kansas Legislature to fund its remaining obligations" under the guarantee. The failure of the Kansas Legislature to make the required appropriation by May 15 in any year was deemed to be an "event of default." It is to be noted, however, that the Kansas Legislature has never failed to make the required appropriation to fund the State's guarantee, either as to the original financing with the FRA, the 1989 refinancing with BANK IV or the Revenue Refunding Bond Issue, as discussed subsequently.

Revenue Refunding Bonds

In 1993, MSPA's Board of Directors began exploring the possibility of re-financing its obligation to BANK IV. A re-financing proposal was submitted to BANK IV, and at the suggestion of then Secretary of Transportation Mike Johnston, the Board of Directors also considered the issuance of bonds pursuant to K.S.A. 12-3420, which authorizes a port authority to issue revenue bonds for the purpose of refunding any bonds or "other obligations" of the port authority. On the basis of the comparative funding analysis prepared by KDOT personnel and a comparison of the respective terms, provisions and conditions attending the BANK IV's re-financing proposal and the issuance of revenue refunding bonds pursuant to K.S.A. 12-3420, the MSPA Board of Directors concluded that it was advisable and in the best interests of the MSPA to proceed with the issuance of said bonds.

In compliance with statutory requirements, each of the original 14 counties which formed the MSPA adopted a resolution authorizing MSPA's Board of Directors to proceed with the

revenue refunding bond issue. Pursuant to such authorization, MSPA's Board of Directors issued Federally Taxable Revenue Refunding Bonds, Series 1994, dated May 1, 1994. On May 26, 1994, a single bond in the face amount of \$4,975,000 was issued to the Kansas Pooled Money Investment Board on behalf of the Kansas Department of Transportation. The bond proceeds were used to satisfy MSPA's obligations to BANK IV.

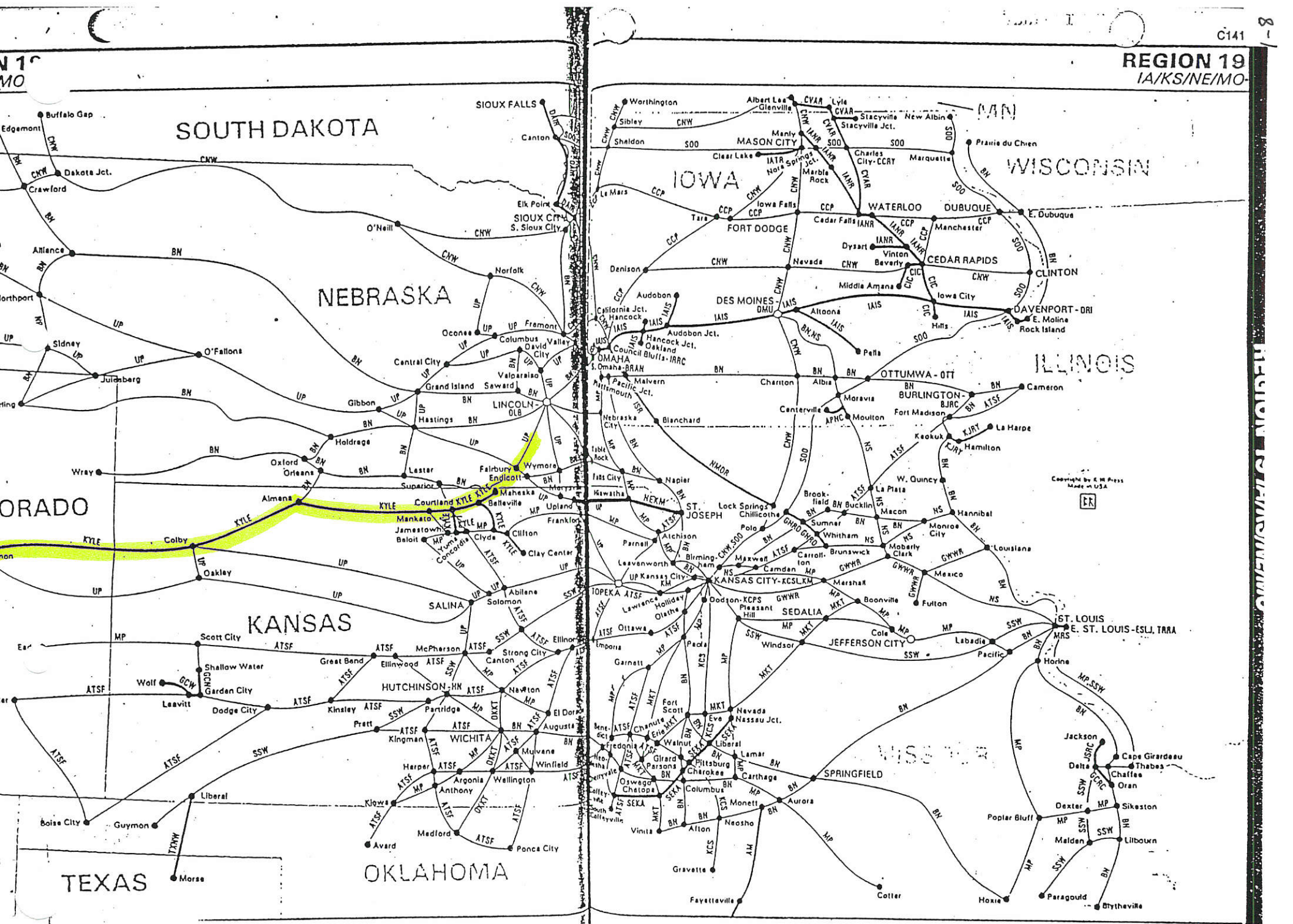
In connection with the revenue refunding bond issue, the Secretary of Transportation has continued to provide an Unconditional Guarantee of Payment, and in consideration thereof, MSPA executed a Mortgage, Security Agreement and Conditional Assignment of Leases in favor of the Secretary of Transportation. The terms and conditions of the revenue refunding bond issue are governed by an Indenture of Trust by and between the MSPA and the First National Bank and Trust, Phillipsburg, Kansas, as Trustee. Clarification of the "Reserve Requirement" under the Indenture was accomplished by the First Supplemental Indenture of Trust executed by the parties as of February 1, 1996.

On December 1, 1995, a partial redemption of the revenue refunding bonds was accomplished in connection with MSPA's abandonment of its rail lines between Belleville and Clay Center, Kansas, and between Fairbury and Thompson, Nebraska. The rail, ties, ballast and other track materials were salvaged on these segments of MSPA's rail line, and the net salvage proceeds of approximately \$1,400,000 were paid over to the bond holder (KDOT) pursuant to the Indenture's redemption provisions.

In addition to the partial redemption, throughout the term of the revenue refunding bonds, MSPA has made timely payments to the Trustee, as required by the Indenture, and the Trustee has made the required semi-annual interest payments and the annual principal payments to the bond holder. As a result, the outstanding principal balance on the bonds has been reduced to approximately \$2,340,000.00.

Conclusion

It is hoped that this Memorandum has provided members of the House Committee on Transportation with a better understanding of the MSPA and its role as a governmental entity. If any additional information or documents are needed to clarify or supplement this Memorandum, they will be provided on request.



APPENDIX II

MSPA BOARD MEMBERS

Richard Chartier
725 Campbell Avenue
Clyde, KS 66938

Dwain Compton, Vice Chairman
2140 Northridge Drive
Fairbury, NE 68352

Maryjo M. Downey
Eastern Colorado Council of Governments
Box 28
Stratton, CO 80836

Karol Evans
509 N. York
Oberlin, KS 67749

John Golden, Chairman
Box 330
Goodland, KS 67735

Lynn Hoelting
P.O. Box 116
Goodland, Kansas 67735

William W. Kaumans, Secretary
1783 Highway 183
Phillipsburg, KS 67661

Norman Kliewer
P.O. Box 146
Grainfield, KS 67737

Dean Kruse
910 Pratt Avenue
Almena, Kansas 67622

Foster Matteson
208 West G Street
Phillipsburg, KS 67661

Troy McCue
P. O. Box 160
Arriba, CO 80804

Jerry L. Meyer
Route 2, Box 103
Phillipsburg, KS 67661

Martin Nelson
P. O. Box 76
Courtland, KS 66939

Norman Nelson
505 Sunset
Norton, KS 67654

Marion Patton
Morganville, KS 67468

Doyle Rahjes
1798 E. 900 Road
Agra, KS 67621

Warren Reid
P.O. Box 177
Brewster, KS 67732

John E. Stover
Rural Route 1, Box 145B
Glen Elder, KS 67446

Denis Sweat, Treasurer
Route 1, Box 24
Cedar, KS 67628