

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 February 19, 2002 in Room 245-N of the Capitol.

All members were present except: Senator Bob Lyon, excused
Senator Rip Gooch, excused
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

Conferees appearing before the committee:

Sherry Diel, Kansas Real Estate Commission
Joe Lawhon, Legislative Post Audit
Bob Longino, Director, ABC
Amy Campbell, Kansas Association of Beverage Retailers
Phillip Bradley, Executive Director, Kansas Licensed Beverage Association
Tuck Duncan, KS Wine and Spirits Wholesalers Assn.
Julie Hein, Kansas Restaurant and Hospitality Assn.

Others attending: Please see attached

Senator Harrington opened the meeting by asking for any bill introductions for the committee.

Senator Les Donovan asked the committee to introduce a bill which would allow Choose Life license plates. Senator O'Connor made a motion to introduce. Senator Gilstrap seconded the motion. The motion passed.

Chairperson Harrington announced that the committee would work both **SB 439-Real estate brokers and salespersons; licensure; disciplinary action; dual agency** and **SB 440-Real estate brokers and salespersons; multiple affiliation, restrictions.**

Sherry Diel, Kansas Real Estate Commission presented testimony in favor of and to amend **SB 439.** (Attachment 1) She then presented testimony in favor of and to amend **SB 440.** (Attachment 2)

Senator O'Connor made a motion to amend both bills and recommend them favorable for passage. Senator Brungardt seconded that motion. The motion passed.

Joe Lawhon, Legislative Post Audit, presented the Post Audit report on the liquor tax. (Attachment 3)

Senator O'Connor asked if there had been any follow-up and if the numbers in the report were comparable to what they are today, since the report was six years old, and Mr. Lawhon stated that he could get that information to the committee tomorrow.

Chairperson Harrington opened the hearing on:

SB 463-Common carriers authorization to transport liquor

Bob Longino, Director, Alcoholic Beverage Control, presented testimony in favor of the bill. (Attachment 4)

Senator Brungardt stated that he appreciated the clean-up of the bill, but he questioned its existence. Mr. Longino stated that what is left of the statute requires a common carrier to be registered with the KCC and

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on February 19, 2002 in Room 245-N of the Capitol.

other appropriate state agencies. He stated that it also requires them to deliver to a licensed warehouse, so they can't just deliver anywhere.

Senator O'Connor asked Mr. Longino how many five dollar fees had been collected, and Mr. Longino replied that there had not been very many. He stated that there were approximately 250 to 300 in terms of permits, and some go back to 1949. He stated that a lot of them were more current, and there are probably a significant number of transportation firms who are delivering that they are just not aware of or who are not aware of the requirement.

Senator Teichman asked a question in reference to Mr. Longino's language "licensed warehouse," and Mr. Longino stated that in line 21, a consignee shall be a manufacturer or distributor maintaining a warehouse that sells liquor in the state of Kansas. He stated that the fact that it would be a distributor would mean that they would be licensed. She asked what would happen if someone bootlegged in alcohol, and Mr. Longino stated that they would be committing a crime.

Chairperson Harrington opened the hearing on:

SB 465--Qualifications for licensure under liquor control act; tax payments

-Bob Longino, Director, Alcoholic Beverage Control, presented testimony in favor of the bill.
(Attachment 5)

Amy Campbell, Kansas Association of Beverage Retailers, presented neutral testimony on the bill.
(Attachment 6)

Ms. Campbell stated she did not have any numbers in front of her which showed that retail liquor stores are in any way less responsible in paying their sales and withholding taxes than any other type of government licensee. She stated that if that information is available, then she would like to have it to present to her members to encourage them to be in compliance.

In response to a comment from Ms. Campbell, Chairperson Harrington stated that she did not think that the industry is being singled out. The Chair stated that everything is on the table this year with the budget shortfalls. Ms. Campbell stated that it is important if efforts are made to increase enforcement and collection, then everyone should see the numbers.

Phillip Bradley, Executive Director, Kansas Licensed Beverage Association, presented neutral oral testimony on the bill. Mr. Bradley stated that his association believes that everyone should pay their taxes on time. He stated that he found two things curious. He stated that anyone who collects taxes and does not remit them to the state is wrong and criminal. He stated that this applied to all individuals, and that sales taxes and withholding taxes go to more people than those who own liquor licenses. He stated that the committee just dealt with a bill dealing with the renewal of real estate licenses, and he would assume or ask the committee to ask them if they are current on their business taxes.

Chairperson Harrington stated that such an issue would not be assigned to this committee, but to tax.

Mr. Bradley stated that it pointed out that uniform enforcement was what they were going after. He stated that going after taxes is not dealing with the health and safety of our citizens anymore like licensure.

Chairperson Harrington stated that she would like to point out to the committee that she moved the hearings up to this week from last week to accommodate him, and she really regretted that he did not have written testimony.

Mr. Bradley stated that he would like to apologize to the committee for not providing written testimony.

Chairperson Harrington instructed the committee to note written testimony from Tuck Duncan, KS Wine and Spirits Wholesalers Association, neutral to the bill. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on February 19, 2002 in Room 245-N of the Capitol.

Julie Hein, Kansas Restaurant and Hospitality Assn., provided testimony in opposition to the bill. (Attachment 8)

Chairperson Harrington stated that it is nice that the amendments were agreed to by those who were initially in opposition to the bill. She stated that the committee appreciated them all working it out before bringing it before them.

Senator Barnett asked, on average, how delinquent other businesses are in their taxes, and Dedra Platt, Department of Revenue, stated that liquor was primarily a cash business, so they did not have those statistics. After clarification that he was interested in similar business, she stated that she would be able to provide the committee with an update. Chairperson Harrington stated that last year Legislative Research provided her a breakdown of taxes into corporate, business, and personal. She stated that from that, in general, the state is behind in collecting taxes about 500 million dollars a year, and the report went back about eight years. She stated that about two and a half million of that goes toward bankruptcy. In response to another question from Senator Barnett, Mr. Longino stated that cereal malt beverage establishments are not included in the bill because they are licensed locally. He stated that he did not disagree that they too should pay taxes, but it was a question of how.

Russell Mills, Legislative Research, asked Mr. Longino if he endorsed Tuck Duncan's request for a substitute bill or not. Mr. Duncan stated that he would prefer a substitute bill. Mr. Longino stated that he would leave it up to Ms. Kiernan, and she stated that might be easier.

Chairperson Harrington asked the committee if it was interested in a substitute bill. Ms. Kiernan stated that a substitute bill was just like a giant amendment, but just a different way of getting to the same end. Chair Harrington asked the committee if it was interested in doing the bill today.

Senator O'Connor made a motion to create a substitute bill with Mr. Longino's language. Senator Teichman seconded. The motion passed.

Senator O'Connor stated that the committee might want to create a conceptual bill that states that all state licensees need to be up to date on their taxes. Ms. Kiernan stated that such a bill might also catch lawyers, doctors, and some others, so she would just need the details of how far the Senator would want the bill to go. Senator O'Connor stated that she could make a future motion.

Senator Brungardt made a motion to pass sub SB 465 out favorable as amended. Senator O'Connor seconded the motion. The motion passed.

Senator Brungardt made a motion to amend SB 463 and recommend it favorable as amended. Senator O'Connor seconded the motion. The motion passed.

Senator O'Connor made a motion to introduce a conceptual bill to require anyone licensed by the state to be current on their taxes. Senator Brungardt seconded the motion. The bill was introduced.

Senator Barnett asked the committee for the introduction of two bills. He stated that the first bill would broaden the base for K-12 education funding, and the second bill dealt with child pornography.

Senator Barnett made a motion to introduce the two bills. Senator O'Connor seconded the motion. The bills were introduced.

The meeting adjourned at 11:40 a.m. The next meeting will be held on February 20, 2002 at 10:30 a.m. in Room 245-N.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: February 19, 2002

NAME	REPRESENTING
Stemmy C. Diehl	KS Real Estate Commission
Phil Bradley	Kansas Licensed Beverage Assn.
Amy Campbell	KABR
Trista Beadles	Office of the Governor
Dedeia Platt	KDOR
Tom Whitaker	KS Motor Carriers Assn
Bob Longino	KDOR ABC
Dean Reynolds	ABC
Pete Bodyk	KDOR/ABC
Laura Graham	KDOR/ABC
Neal Whitaker	KBWA
GARY DAVENPORT	KS Motor Carriers Assn
Anne Spiess	KCRAR - K.C. Realtors
Joseph Lawlor	Post Audit
Kristin Theohany	Sen. Jim Barnett
Mike Hein	KRHA
Dennis Carpenter	KRHA
Dan Mermes	Mirror, Inc.

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Attach #1
02/19/02

1 rules and regulations adopted thereunder, may impose on such licensee
2 a civil fine not exceeding \$500 for each violation.

3 (c) If a broker or salesperson has been declared disabled by a court
4 of competent jurisdiction, the commission shall suspend the broker's or
5 salesperson's license for the period of disability.

6 (d) ~~Except as provided by this subsection,~~ no complaint alleging vi-
7 olation of this act or rules and regulations adopted hereunder, or the
8 brokerage relationships in real estate transactions act or rules and regu-
9 lations adopted thereunder, shall be commenced more than three years
10 from the date of the occurrence which is the subject of the complaint.

11 ~~The provisions of this subsection shall not apply to complaints alleging~~
12 ~~violation of subsection (a)(4) or (a)(5).~~ ✓

13 (e) All administrative proceedings pursuant to this section shall be
14 conducted in accordance with the Kansas administrative procedure act.

15 (f) Notwithstanding any provision of this act or the brokerage rela-
16 tionships in real estate transactions act to the contrary, the commission
17 may use emergency adjudicative proceedings, as provided by K.S.A. 77-
18 536, and amendments thereto, to summarily suspend the license of any
19 licensee if the commission has reasonable cause to believe that the li-
20 censee's trust account is in unsound condition or that the licensee is mis-
21 appropriating funds belonging to other persons.

22 (g) If a licensee has entered a plea of guilty or *nolo contendere* to, or
23 has been convicted of, any felony charge, the commission may use emer-
24 gency adjudicative proceedings, as provided by K.S.A. 77-536, and
25 amendments thereto, to suspend, revoke, *condition* or restrict the li-
26 censee's license.

27 (h) When the real estate license of an individual is revoked and that
28 individual's name is included in the trade or business name of a real estate
29 brokerage business, the commission may deny continued use of the trade
30 or business name if, in the opinion of the commission, it would be con-
31 fusing or misleading to the public.

32 If the revocation of the individual's license is appealed to district court
33 and a stay of the commission's order is granted by the court, the com-
34 mission may not deny continued use of the trade or business name until
35 such time as the district court upholds the order of the commission.

36 Sec. 7. K.S.A. 2001 Supp. 58-30,103 is hereby amended to read as
37 follows: 58-30,103. (a) Except when acting as a transaction broker or
38 solely as a seller, buyer, landlord or tenant, a broker shall act only as a
39 statutory agent in any real estate transaction. A licensee shall not act as
40 ~~undisclosed~~ a dual agent or in a dual capacity of agent and undisclosed
41 principal in any transaction.

42 (b) A broker may work with a single party in separate transactions
43 pursuant to different relationships, including, but not limited to, selling

(1) Except as provided by paragraph (2) of

(2) Unless the violation is not reasonably ascertainable,
complaints alleging violation of (a) (5) shall be commenced
within three years from the date of the occurrence of the violation.
If the violation is not reasonably ascertainable, complaints alleging
violation of (a) (5) shall be commenced within three years from the
date the violation is ascertained by the commission.

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02/19/02

1 (b) No salesperson or associate broker shall:

2 (1) Except as provided in paragraph (A) or (B), accept a commission
3 or other valuable consideration from anyone other than the broker by
4 whom the licensee is employed or with whom the licensee is associated
5 as an independent contractor.

6 (A) A salesperson or associate broker may accept a commission or
7 other valuable consideration from a licensee who employs the salesperson
8 or associate broker as a personal assistant provided that: (i) the licensee
9 and the salesperson or associate broker who is employed as a personal
10 assistant are licensed under the supervision of the same broker, and (ii)
11 the supervising broker agrees in writing that the personal assistant may
12 be paid by the licensee.

13 (B) If a salesperson or associate broker has (i) organized as a profes-
14 sional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments
15 thereto, (ii) incorporated under the Kansas general corporation code con-
16 tained in K.S.A. 17-6001 *et seq.*, and amendments thereto, (iii) organized
17 under the Kansas limited liability company act contained in K.S.A. 2001
18 Supp. 17-7662 *et seq.*, and amendments thereto, or (iv) has organized as
19 a limited liability partnership as defined in K.S.A. 2001 Supp. 56a-101,
20 and amendments thereto, the commission or other valuable consideration
21 may be paid by the licensee's broker to such professional corporation,
22 corporation, limited liability company or limited liability partnership. This
23 provision shall not alter any other provisions of this act.

24 (2) Fail to place, as soon after receipt as practicable, any deposit
25 money or other funds entrusted to the salesperson or associate broker in
26 the custody of the broker whom the salesperson or associate broker
27 represents.

28 (3) (A) *Except as provided by paragraph (B), be employed by or as-*
29 *sociated with a licensee at any one time other than the supervising broker*
30 *who employs such salesperson or associate broker or with who the sales-*
31 *person or associate broker is associated as an independent contractor.*

32 (B) *An associate broker may be employed by or associated with more*
33 *than one supervising broker at any one time if each supervising broker*
34 *who employs or associated with the associate broker consents in writing* ✓
35 *to such multiple employment or association.*

36 (c) No broker shall:

37 (1) Pay a commission or compensation to any person for performing
38 the services of an associate broker or salesperson unless such person is
39 licensed under this act and employed by or associated with the broker.

40 (2) Fail to deliver to the seller in every real estate transaction, at the
41 time the transaction is closed, a complete, detailed closing statement
42 showing all of the receipts and disbursements handled by the broker for
43 the seller, or fail to deliver to the buyer a complete statement showing

Such consent shall be on a form provided by the commission and shall not be effective until a signed copy of the form has been filed with the commission.

2-2

1 business days after the purchase agreement is signed by all parties unless
 2 otherwise specifically provided by written agreement of all parties to the
 3 purchase agreement, in which case the broker shall deliver the purchase
 4 agreement and earnest money deposit to the escrow agent named in the
 5 purchase agreement on the date provided by such written agreement; or
 6 (B) fail to obtain and keep in the transaction file a receipt from the
 7 escrow agent showing date of delivery of the purchase agreement and
 8 earnest money deposit.

9 The commission may adopt rules and regulations to require that such
 10 purchase agreement which provides that the earnest money be held by
 11 an escrow agent other than a real estate broker include: (1) notification
 12 of whether or not the escrow agent named in the purchase agreement
 13 maintains a surety bond, and (2) notification that statutes governing the
 14 disbursement of earnest money held in trust accounts of real estate bro-
 15 kers do not apply to earnest money deposited with the escrow agent
 16 named in the purchase agreement.

17 (e) A branch broker shall not be employed by or associated with more
 18 than one supervising broker at any one time unless each supervising bro-
 19 ker who employs or associates with the branch broker consents in writing
 20 to such multiple employment or association.

Such consent shall be on a form provided by the commission
 and shall not be effective until a signed copy of the form has
 been filed with the commission.

21 (e) (f) Nothing in this section shall be construed to grant any person
 22 a private right of action for damages or to eliminate any right of action
 23 pursuant to other statutes or common law.

24 Sec. 2. K.S.A. 2001 Supp. 58-3062 is hereby repealed.

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



PERFORMANCE AUDIT REPORT

Use of Alcoholic Liquor Fund Moneys By Local Units of Government

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
February, 1995

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02/19/02

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$6 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators or

committees should make their requests for performance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

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PERFORMANCE AUDIT REPORT

USE OF ALCOHOLIC LIQUOR FUND MONEYS BY LOCAL UNITS OF GOVERNMENT

OBTAINING AUDIT INFORMATION

This audit was conducted by Joe Lawhon and Scott Claassen. If you need any additional information about the audit's findings, please contact Mr. Lawhon at the Division's office.

USE OF ALCOHOLIC LIQUOR FUND MONEYS BY LOCAL UNITS OF GOVERNMENT

Summary of Legislative Post Audit's Findings

In 1979, the Legislature imposed a 10% tax on gross receipts from the sale of alcoholic liquor. Drinking establishments, caterers and temporary permit holders collect the tax and remit it to the Department of Revenue. The State returns 70% of the money to the localities where the money was collected. By law, localities may only use the money for the purchase, establishment, maintenance, or expansion of services or programs whose principal purpose is alcohol and drug abuse prevention, education, detoxification, intervention, or treatment.

Are local units of government spending the money in their Special Alcohol and Drug Program Funds for unauthorized purposes? We determined that about 85% of the money spent by the 10 localities we visited was used for programs and services allowed by law. About 11% of the expenditures were made for purposes that in our opinion did not fit the criteria outlined in the law. Examples of the uses that we considered unallowable were the payment of salaries of prosecutors who handled driving under the influence cases, the purchase of police vehicles for alcohol safety patrols, and the payment of administrative costs. For about 4% of the moneys, the municipalities did not have sufficient documentation for us to determine whether the programs fulfilled the criteria set out in the statute.

Although two counties made slight errors in distributing tax revenues from the State to their Special Alcohol and Drug Program Funds, localities generally have established reasonable procedures to ensure that the moneys awarded to outside agencies are spent according to the law. In our opinion, questionable expenditures resulted more from a lack of clarity in the law than from a lack of procedures at the local level.

This report recommends that the law be clarified to help ensure that Special Alcohol and Drug Program moneys are used in accordance with the criteria set forth in State law. We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or State officials.



Barbara J. Hinton
Legislative Post Auditor

Use of Alcoholic Liquor Fund Moneys By Local Units of Government

State law imposes a 10% tax on the gross receipts from the sale of alcoholic beverages by clubs, caterers, drinking establishments, or temporary permit holders. In calendar year 1994, more than \$18 million was collected from this tax. Although the tax is remitted to the Department of Revenue, 70% of the money collected is placed in the Local Alcoholic Liquor Fund and returned to the cities and counties where the tax was initially generated.

State law specifies how cities and counties may use this revenue. Generally, the money must be split between a local unit's General Fund, Special Parks and Recreation Fund, and Special Alcohol and Drug Program Fund. Money in the Special Alcohol and Drug Program Fund can be used only for the purchase, establishment, maintenance, or expansion of services or programs whose principal purpose is alcohol and drug abuse prevention, education, detoxification, intervention, or treatment.

In 1986, the Legislative Post Audit Committee authorized an audit to address legislators' concerns that local moneys intended for alcohol and drug abuse programs were being spent for other purposes. That audit found that localities spent these moneys on a variety of programs and services, but that most of the money was appropriately spent on substance abuse treatment and education programs.

Legislators again have raised concerns that some cities and counties may be using moneys from their Special Alcohol and Drug Program Funds for programs and activities that are not directly related to the treatment or prevention of alcohol or drug abuse. This performance audit answers the following question:

Are local units of government spending the money in their Special Alcohol and Drug Program Funds for unauthorized purposes?

To answer this question, we reviewed statutes regarding the use of local Special Alcohol and Drug Program moneys and legal opinions issued by the Attorney General interpreting those statutes. We obtained information about the amounts paid to local governments from the Department of Administration. We also visited a sample of five cities and five counties to interview local officials and review expenditures from local Special Alcohol and Drug Program Funds. In conducting this audit, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office.

From our sample, we found that most expenditures of Special Alcohol and Drug Program moneys complied with the requirements of current State law. The cities and counties we audited committed about 85% of their 1994 Special Alcohol and Drug Program moneys to programs that were concerned primarily with substance abuse. However, about 11% of the moneys were used to cover costs whose principal

Overview of the Kansas Liquor Drink Tax

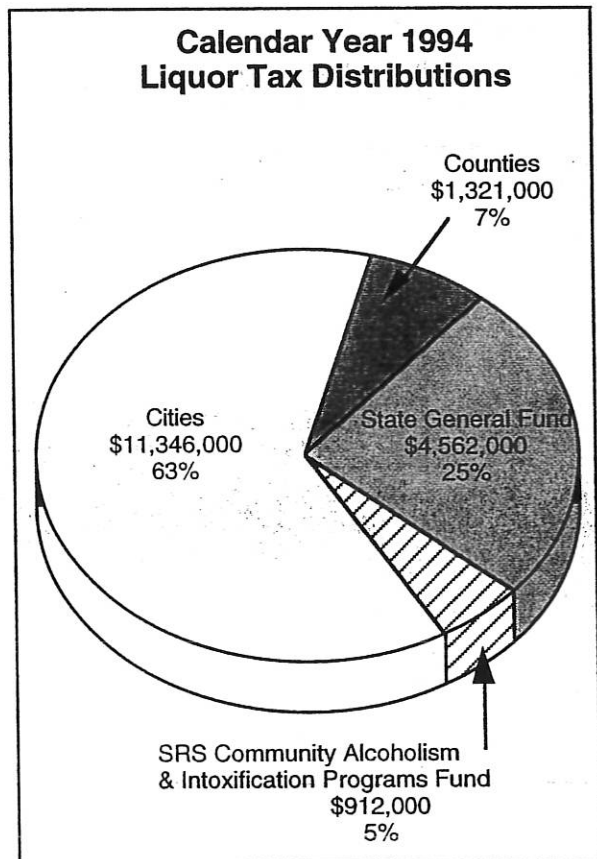
In 1979, the Legislature imposed a 10% tax on the gross receipts derived from the sale of alcoholic liquor by any club, caterer, drinking establishment, or temporary permit holder. Consumers pay the tax to the vendor, and the vendor remits the tax to the Department of Revenue. The Department of Revenue deposits the liquor tax receipts in the State Treasury as follows: 25% to the State General Fund, 5% to the Department of Social and Rehabilitation Services' Community Alcoholism and Intoxification Programs Fund, and 70% to the Local Alcoholic Liquor Fund.

Moneys in the Local Alcoholic Liquor Fund are returned to city and county governments quarterly by the State Treasurer. The graphic on the next page shows how the tax receipts are collected and distributed.

As the graphic shows, cities and counties generally get back 70% of the tax moneys collected within their respective jurisdictions. With one exception, the law requires local units of government to deposit those moneys equally into three funds—their General Funds, their Parks and Recreation Funds, and their Special Alcohol and Drug Program Funds. The exception is for cities with populations of 6,000 or less. Because these cities are too small to fund their own alcohol and drug programs, the portion of the money that normally would go into their Special Alcohol and Drug Program Fund is paid directly to the county and combined with the county's Special Alcohol and Drug Program moneys.

In calendar year 1994, the Department of Revenue collected about \$18.2 million in drink taxes, and the State Treasurer distributed about \$18.1 million. Collections and distributions differ because distributions to the cities and counties lag about three months behind actual collections.

As the accompanying pie chart shows, cities received more than \$11.3 million, or about 63%, of the total amount distributed. Counties received \$1.3 million, or about 7% of the total. The State's General Fund received more than \$4.5 million. The remainder, about \$900,000, was deposited in the Department of Social and Rehabilitation Services' Community Alcoholism and Intoxification Programs Fund. (Appendix A provides a listing of the amounts disbursed to individual cities and counties in 1994.)



State law requires that moneys in local Special Alcohol and Drugs Program Funds be spent only for services or programs whose principal purpose is alcoholism and drug abuse prevention, education, detoxification, intervention, or treatment.

The more-populous cities and counties have established local advisory committees that generally review grant applications and make funding recommendations to the city council or county commission concerning the award of Special Alcohol and Drug Program moneys. Counties are required by law to adopt the advisory committee's recommendations unless the county commission votes unanimously to award the moneys to other organizations. Cities usually adopt the funding recommendations intact, although they are not bound by law to do so. Generally, the less-populous cities and counties have delegated grant application and service provision review, if any, to city or county staff.

This audit focused only on expenditures from the local Special Alcohol and Drug Program moneys, and did not focus on expenditures from local General Funds or Parks and Recreation Funds.

**Drink Tax Receipts
Calendar Year 1994**

<u>Jurisdiction</u>	<u>Total Drink Tax Receipts</u>	<u>Alcohol & Drug Program Portion</u>
Cities		
Kansas City	\$ 682,385	\$ 227,462
Lawrence	847,660	282,553
Overland Park	1,495,167	498,389
Topeka	991,550	330,509
Wichita	2,493,751	831,250
Counties		
Crawford	46,311	22,982
Johnson	102,360	59,862
Saline	51,948	18,037
Sedgwick	223,502	82,449
Shawnee	126,033	42,390
Total	<u>\$7,060,667</u>	<u>\$ 2,395,883</u>

As the table shows, total drink tax distributions to these 10 localities amounted to more than \$7 million. Of this amount, nearly \$2.4 million was credited to their Special Alcohol and Drugs Program Funds.

Shawnee and Crawford Counties made errors in distributing tax revenues to the proper funds during calendar year 1994. In each case, county officials simply put one-third of the entire amount the county received from the State Treasurer in each of the three funds: their General Fund, their Parks and Recreation Fund, and their Special Alcohol and Drug Program Fund.

To make the distribution properly, the counties should have first subtracted the amount of taxes attributable to drink sales in cities with a population of 6,000 or fewer people, and deposited that money directly into the Special Alcohol and Drug Program Fund. The remainder of the money then should have been split into thirds and deposited into the respective funds.

These errors resulted in the Special Alcohol and Drug Program Funds in these counties receiving slightly less money than they should have. In Shawnee County, the error occurred in all four quarters and amounted to \$379. In Crawford County, the error occurred only in the third quarter, and the amount was \$1,486. We notified staff in both counties of the problem, and they agreed to correct the errors.

**The Audited Localities Spent Their
Special Alcohol and Drug Program Moneys
On a Variety of Programs and Services**

To determine how the localities actually spent moneys set aside for alcohol and drug abuse programs, we reviewed local grant files, accounting records, contracts, and other documentation. We found that the audited cities and counties bud-

tual administrative tasks may be performed by local advisory committees or local government employees. For example, Wichita, Overland Park, and Johnson County all used a portion of their Special Alcohol and Drug Program moneys to award and monitor grants from the fund.

- **Other:** This category includes miscellaneous uses of moneys that did not appear to have substance abuse as their primary concern. These included the acquisition of police cars and other drug-testing equipment, and the salaries and related costs for municipal court prosecutors who worked mostly on driving under the influence (DUI) cases.

In the Audited Localities, Most Special Alcohol and Drug Program Expenditures Complied With State Law, But a Few Did Not

State law provides that moneys in local Special Alcohol and Drug Program Funds shall be under the direction and control of the local governing body. Under the law, these moneys can be spent only for the purchase, establishment, maintenance, or expansion of services or programs whose principal purpose is one or more of the following:

- alcoholism and drug abuse prevention and education
- alcohol and drug detoxification
- intervention in alcohol and drug abuse or
- treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers

Since the law was adopted in 1979, the Attorney General's Office has issued a series of opinions interpreting the law. The box on the following page summarizes some of these opinions.

In general, those opinions have held that the money can be spent on programs or individual components of the programs, as long as their principal purpose is alcohol and drug prevention, education, treatment, etc. In cases where the principal purpose of a program is unclear, Attorney General opinions have held that the governing body of the local unit of government must review the program and determine that its principal purpose complies with the statute.

In reviewing the appropriateness of the Special Alcohol and Drug Program Funds expenditures in the 10 localities we visited, we used these opinions to help guide us in our decisions. We also used definitions of terms such as prevention and detoxification provided by the Alcohol and Drug Abuse Services Division of the Department of Social and Rehabilitation Services. This Division is responsible for ensuring that substance abuse programs are available across the State, and for licensing substance abuse treatment programs.

**Attorney General Opinions Pertaining to the Use of
Special Alcohol and Drug Program Moneys**

Opinion No. 81-221 The Legislature indicated its intent that Local Alcohol and Drug Program moneys may not be spent for capital improvements by omitting the term "facilities" when setting out the permitted uses of these funds.

Opinion No. 85-155 Moneys may be used for medical treatment of alcohol and drug-related conditions of city prisoners. However, funds may not be used to incarcerate persons arrested for driving under the influence of alcohol.

Opinion No. 87-103 1986 amendments to the law raised the standard so that a service or program must have, as its principal purpose, one of the following: alcoholism and drug abuse prevention and intervention in alcohol and drug abuse; or treatment of persons who are alcoholics or drug abusers, or who are in danger of becoming alcoholics or drug abusers, if it is to be given Local Alcohol and Drug Program moneys.

Opinion No. 88-17 Local Alcohol and Drug Program moneys may not be used to finance drug law enforcement. The primary purpose of drug law enforcement is crime detection and criminal law enforcement, not the treatment and rehabilitation of alcohol and drug abuse problems.

Opinion No. 88-133 Organizations that provide social services other than drug treatment or rehabilitation may be given Local Alcohol and Drug Program moneys if the local unit of government determines that a program's principal purpose is one listed in the statute.

Opinion No. 89-117 Moneys from the Local Alcohol and Drug Program may be used as matching money for grants only to the extent that the grant money will be used to provide drug and alcohol abuse treatment and rehabilitation.

Also, it appears the Legislature did not intend for administrative costs to be paid with these moneys. If it did, it likely would have specifically authorized this use in the statute, as it did in a similar statute that allows the Department of Social and Rehabilitation Services to spend up to 10% of its share of liquor drink tax moneys for administration.

The cities of Lawrence and Overland Park also spent a portion of their moneys on law enforcement activities. Overland Park paid the salaries of attorneys prosecuting driving under the influence cases, and Lawrence paid for patrol cars and other equipment associated with the Police Department's Alcohol Safety Action Project. Past Attorney General opinions have consistently held that Special Alcohol and Drug Program Fund moneys should not be used for drug law enforcement. Opinions 88-17 and 89-117 concluded that these moneys may not be used to finance drug law enforcement because its primary purpose is not the treatment and rehabilitation of alcohol and drug abuse problems, but rather crime detection and criminal law enforcement.

Finally, we question expenditures the City of Lawrence made for an offenders' work program, a court-appointed special advocate program, and an emergency shelter for battered women. Our rationale is as follows:

- The offenders' work program did not appear to meet the criteria in the law because it places all types of offenders from the court system in nonprofit organizations to perform community service work. While some of these offenders

with the "principal purpose" criteria. This distinction is important because Attorney General Opinion 88-133 held that programs that only tangentially involve alcoholism or drug abuse prevention and education probably are not entitled to receive Special Alcohol and Drug Program moneys.

For us to determine whether these activities are entitled to receive Special Alcohol and Drug Program Fund moneys would have involved visiting each place where the services are provided, interviewing clients and staff, and examining supporting documentation. For example, the documents we saw for the Turner school district indicated that one of the goals of its cooperative learning program was to decrease the use and abuse of alcohol, tobacco, and other drugs. The grant application was vague as to how this goal would be achieved. Without going to the school district and reviewing its records, we couldn't tell whether the school district's use of Special Alcohol and Drug Program moneys was appropriate.

**For the Amounts of Money Involved,
Localities Generally Have Established Adequate Procedures to
Ensure that Moneys Are Spent According to the Law**

To provide assurances that Special Alcohol and Drug Program moneys are spent in accordance with State law, we would expect municipalities to have established some procedures that ensure that:

- distributions from the State are deposited correctly into the proper funds
- programs or services to be funded are reviewed before any moneys are spent, so that expenditure criteria described in the law are adhered to
- expenditures are reviewed after the fact to ensure that moneys were spent as the local governing body had intended

The procedures that cities and counties actually establish will be affected by the amount of money they receive. As one would expect, local governments that award larger amounts of money have established more elaborate and sophisticated procedures than local governments awarding smaller amounts.

We found that procedures for distributing liquor drink tax moneys to the proper fund generally appeared to be adequate. As mentioned earlier in the report, only two municipalities we visited made mistakes in depositing the moneys to the proper funds, and those mistakes were very minimal.

Most communities use the planning and budgeting process as their primary control for ensuring that the money is spent appropriately. Grants the cities and counties made to other entities accounted for about two-thirds of the uses we reviewed in this audit. In the more-populous cities and counties, agencies seeking

ditors told us that they either didn't look specifically at this money because it was immaterial in relation to the municipalities' total expenditures, or they had looked at it and didn't find any problems.

Problems with questionable uses of Special Drug and Alcohol Program moneys appeared to result more from a lack of clarity in the law than from a lack of controls. None of the problems we found resulted from moneys being spent for purposes other than the city council or county commission intended. All of the municipalities we visited have advisory boards or some other form of review designed to ensure that these moneys are spent appropriately.

It seems that many of the expenditures from Special Alcohol and Drug Program Funds could appear to be reasonably related to alcohol and drug abuse prevention. While the statute dictates that these moneys may be spent only for programs or services whose principal purpose is drug abuse treatment and rehabilitation, local units of government are given a lot of flexibility in determining whether a program's principal purpose meets the criteria.

The problems we found occurred because the local units of government interpret the expenditure criteria set forth in State statute differently. Our findings suggest a need to clarify State law regarding the appropriate uses of these moneys.

Conclusion

Although we did not find major abuses, considerable disagreement exists about how Special Alcohol and Drug Program moneys can be used. The law says that these moneys can be used only for services or programs whose principal purpose is alcoholism and drug abuse prevention, education, detoxification, intervention, or treatment. However, the law does not define these terms. The Attorney General has issued a series of opinions that discuss how these moneys may be used. Administrative and law enforcement costs are two areas where significant amounts of money are being spent, and where legislative intent needs to be more clearly spelled out. Until the law is clarified, significant areas of disagreement will continue to exist about whether certain uses of these moneys are appropriate.

APPENDIX A

Liquor Drink Tax Distributions to Cities and Counties Calendar Year 1994

This appendix lists all cities and counties that received at least \$5,000 in liquor drink tax receipts during calendar year 1994. Information concerning the amounts received by cities and counties that are not listed may be obtained from the Legislative Division of Post Audit.

<u>Cities Receiving More Than \$5,000</u>	<u>Amount</u>	<u>Cities Receiving More Than \$5,000</u>	<u>Amount</u>
Abilene	\$ 24,029	Junction City	\$ 134,726
Andover	14,302	Kansas City	682,385
Arkansas City	39,101	Kingman	5,896
Arma	6,718	Kinsley City	7,113
Atchison	46,706	Lake Quivira	11,151
Atwood	5,416	Lansing	13,920
Augusta	17,592	Larned	10,982
Basehor	6,165	Lawrence	847,660
Beloit	10,140	Leavenworth	128,253
Bonner Springs	145,834	Leawood	171,427
Burlington	5,027	Lenexa	410,785
Chanute	42,691	Liberal	101,383
Cherryvale	6,334	Lindsborg	8,629
Clay Center	12,642	Lyons	5,502
Clearwater	6,686	Manhattan	507,917
Coffeyville	46,773	Marysville	15,074
Colby	25,796	McPherson	51,881
Columbus	10,284	Merriam	20,834
Concordia	24,668	Mission	92,097
De Soto	8,175	Mission Hills	43,916
Derby	31,287	Mulvane	10,077
Dodge City	121,259	Neodesha	6,942
El Dorado	37,436	Newton	38,433
Ellinwood	7,732	Norton	8,898
Emporia	167,765	Oakley	8,697
Eureka	5,347	Olathe	267,430
Fort Scott	24,741	Osage City	7,326
Frontenac	12,429	Osawatomie	5,757
Garden City	190,175	Oskaloosa	7,296
Gardner	16,562	Ottawa	30,477
Goodland	20,743	Overland Park	1,495,167
Grandview Plaza	13,463	Parsons	24,464
Great Bend	68,973	Pittsburg	93,223
Halstead	5,509	Prairie Village	66,737
Harper	5,467	Pratt	25,371
Hays	131,286	Russell	9,109
Haysville	17,025	Salina	241,737
Herington	7,211	Scranton	7,923
Hill City	8,898	Seneca	7,928
Hugoton	6,705	Shawnee	202,486
Hutchinson	155,806	Smith Center	14,285
Independence	56,835	Topeka	991,550
Iola	15,207	Ulysses	6,843

APPENDIX B

Uses of Special Alcohol and Drug Program Moneys Calendar Year 1994

This appendix lists all the calendar year 1994 uses of the Special Drug and Alcohol Program moneys by the 10 localities reviewed during this audit. The appendix also shows the total amount of taxes that were deposited to each city or county's Special Drug and Alcohol Program Fund.

City of Kansas City (continued)

Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
Unified School District 202 (Turner)	<u>10,000</u>	Provide a "cooperative learning" program, of which one goal is to decrease the use of alcohol and drugs.
subtotal	\$ 50,000	
Total	<u>\$220,000</u>	

Total 1994 Liquor Drink Tax Receipts for Alcohol/Drug Abuse Programs: \$227,462.

City of Lawrence (continued)

Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
<i><u>Not in Compliance (cont'd)</u></i>		
CMI, Inc.	928	Cover travel expenses and registration fees for a police officer to attend maintenance classes for breath testing units.
Intoximeters, Inc.	<u>170</u>	Supply 1,000 mouthpiece tubes for portable breath testing units.
Subtotal	\$71,782	
Total	<u>\$182,072</u>	

Total 1994 Liquor Drink Tax Receipts for Alcohol/Drug Abuse Programs: \$282,553.

City of Overland Park (continued)

**Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994**

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
<i><u>Not In Compliance</u></i>		
DUI / Law Dept. Program	\$107,738	Provide City staff to prosecute DUI cases in municipal court.
Drug & Alcoholism Council of Jo. County	<u>9,750</u>	Defray program administration costs.
subtotal	\$117,488	
Total	<u>\$660,488</u>	

Total 1994 Liquor Drink Tax Receipts for Alcohol/Drug Abuse Programs: \$498,389.

City of Wichita

Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
<i><u>In Compliance</u></i>		
Recovery Services Council	\$264,230	Provide social detoxification services and intermediate treatment for low-income, chemically dependent people.
Drug/Alcohol Abuse Prevention Center	130,980	Provide drug education materials and presentations aimed at specific ethnic groups.
City of Wichita Community Health Dept. Alcohol Family Counseling Center	95,830	Provide outpatient substance abuse counseling, intervention, referrals, follow-up and aftercare.
Parallax	76,010	Provide treatment and aftercare to indigent chemical abusers or chemically dependent people.
Sedgwick County Mental Health Addiction Treatment Services	52,450	Provide outpatient substance abuse treatment with a focus on services for African-Americans.
Mid-America All-Indian Center Indian Alcoholism Treatment Services	43,590	Provide counseling and outpatient services to Native American substance abusers and their families.
Northeast Drug/Alcohol Referral and Tracking Station	35,830	Provide direct and continuing counseling for substance abusers.
Miracle House, Inc.	30,650	Provide substance abuse counseling to chemically addicted women with dependent children.
Sedgwick Co. Mental Health Women's Alcoholism Treatment Services	27,000	Provide specialized outpatient substance abuse services for women and their dependent children.
Mental Health Association of South Central Kansas---Pathways Program	13,390	Provide early substance abuse intervention for children ages 6 to 17.
A New Beginning	12,000	Provide therapeutic outpatient counseling and support/referral services.
Big Brothers/Big Sisters	<u>11,000</u>	Provide training for staff and volunteers to handle cases involving chemical dependency.
Subtotal	\$792,960	

Crawford County

Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
<i><u>In Compliance</u></i>		
Crawford County Community Mental Health Center	\$36,496	Provide substance abuse treatment, intervention, detoxification, and prevention services.
<i><u>Insufficient Documentation to Determine Compliance</u></i>		
Safehouse	<u>\$3,858</u>	Provide refuge, counseling, and referral services to battered women and their children who may be victims of substance abuse.
Total	<u>\$40,354</u>	

Total 1994 Liquor Drink Tax Receipts for Alcohol/Drug Abuse Programs: \$22,982

Johnson County (continued)

Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
<i><u>Not In Compliance</u></i>		
Drug & Alcoholism Council of Jo. County	<u>\$3,253</u>	Defray program administration costs.
subtotal	\$3,253	
Total	<u>\$60,000</u>	

Total 1994 Liquor Drink Tax Receipts for Alcohol/Drug Abuse Programs: \$59,862.

Sedgwick County

**Uses of Local Alcoholic and Drug Abuse Program Moneys
Calendar Year 1994**

<u>This organization received funds</u>	<u>Amount Awarded</u>	<u>Organization indicated it would use the funds to</u>
<i><u>In Compliance</u></i>		
Sedgwick Co. Dept. of Mental Health Addiction Treatment Services	\$30,000	Provide group substance abuse counseling focusing on indigent and minority clients and their families.
Drug/Alcohol Abuse Prevention Center	26,765	Provide drug education materials and presentations aimed at specific ethnic groups.
Sedgwick Co. Dept. of Mental Health Women's Alcohol Treatment Services	<u>24,671</u>	Conduct individual and group counseling sessions for female substance abusers and their family members.
Total	<u>\$81,436</u>	

Total 1994 Liquor Drink Tax Receipts for Alcohol/Drug Abuse Programs: \$82,449.

APPENDIX C

City and County Responses

On January 30 we provided copies of the draft audit report to the five cities and five counties included in our audit sample. Six of the municipalities responded. Their responses are included as this appendix. After carefully reviewing the responses, we made a few minor changes to clarify the report. These changes did not affect the conclusions or recommendations.

Response to Legislative Division Post Audit Report
Use of Alcoholic Liquor Fund Moneys by Local Units of Government

February 3, 1995
Page 2 of 2

Again, the City appreciated the opportunity to review the draft and confidential report and provide written comment prior to finalization to the Committee. In review of these comments, if you or your staff have any comments or questions, please feel free to contact the City at your convenience. Your consideration of this supplemental information and clarification would be appreciated.

Respectfully submitted,



Nancy L. Zielke
Director of Finance/Budget Director

enclosure exhibits

cc: Mayor Joseph E. Steineger, Jr.
David T. Isabell, City Administrator
Marian J. Augustus, Director of Human Resources
Edith J. Farmer, Special Alcohol Program Coordinator

services or programs whose principal purpose . . . " or a statutory exclusion of administrative costs, it is appropriate to allow city governing bodies -- the bodies authorized by law to direct and control these funds -- to interpret these and other terms in the law. If a city governing body directs that "prevention" and "intervention" in alcohol and drug abuse includes law enforcement, prosecution and adjudication efforts reasonably related to alcohol and drug abuse, this seems an appropriate interpretation of the law. Certainly, "principal purpose" should not be interpreted to mean every program or service must be broken up and fragmented from other programs, departments, etc., so that only an alcohol or drug component is present.

5. We disagree with the conclusion that there is "confusion" (page 15) over how Special Alcohol and Drug Program money can be used. We think it is more accurate to say there is a disagreement between certain state and local officials over this section of the law. City officials are not confused about how this money can be used.
6. We disagree with the caption heading, "Not in Compliance", on page 22. It is more accurate to state that these programs do not follow the Post Audit interpretation of the use of these funds.

In conclusion, home rule should be the operative policy in determining the use of these funds. When social service agencies appear before the Lawrence governing body and make strong cases that their services are reasonably related to issues of drug and alcohol abuse, treatment and prevention, that governing body should be able to make a decision based on what is best for that community. If Lawrence feels that bike patrol efforts around the numerous bars in its downtown are proper intervention tactics related to alcohol and drug abuse, these should be local decisions.

We appreciate your efforts regarding this project. If we can clarify our comments, please contact me.

Respectfully,



Mike Wildgen
City Manager

c: City Commission
Ed Mullins
Ron Olin

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351
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February 2, 1995

Barbara Hinton
Legislative Post Auditor
Mercantile Bank Tower
800 Southwest Jackson Street, Suite 1200
Topeka, Kansas 66612-2212

Dear Ms. Hinton:

Thank you for the opportunity to provide comments, corrections, and clarifications to the draft performance audit of the Special Alcohol Fund dated January 30, 1995. The City of Wichita's goal is to provide quality drug and alcohol programs through the receipt of special liquor tax funds collected by the state. The performance audit report, Use of Alcoholic Liquor Fund Moneys by Local Units of Government, will positively impact our continued effort to expend these funds in a manner which is most efficient and effective at providing services to individuals in need of drug and alcohol programs.

Please find attached comments, corrections, and clarifications to the draft performance audit. If additional information or clarification is necessary please feel free to call Jeanne Hernandez, Internal Auditor, at the phone number listed above.

Sincerely,


Chris Cherches
City Manager

Enclosure

cc: Jeanne Hernandez, Internal Auditor

Program Administration is a key element to effectively implement the procedures with some certainty of accountability.

Procedures for purchasing a new program or service are as follows:

1. Programs and Services to be purchased are identified through a plan developed by the Alcohol and Drug Abuse Advisor Board (ADAAB). The administration provides clerical and staff support in developing this plan as well as providing research and recommendations during the plan development.
2. An RFP is issued and proposals are received for the following fiscal year. Proposals are submitted and reviewed by administration to ensure the proposals are in compliance with regulations governing the use of Special Alcohol Funds. Additional comments regarding how the proposals address the plan objectives are provided to ADAAB by the administration. The administration also reviews the proposals to ensure duplicate funding is not awarded for individual programs and/or services. This step ensures that quality programs are funded rather than funding programs on a first come first serve basis.
3. Questions regarding compliance with Special Alcohol Regulations are referred to the City of Wichita Law Department for review and approval. An attorney has been assigned responsibility for the Special Alcohol Fund.
4. ADAAB recommends projects and funding levels to the City Council and the County Commission for approval.
5. The projects and funding levels are approved by the City Council and County Commission (a unanimous vote by the County Commission is required to overturn the recommendation by the ADAAB board).

Procedures for establishment of a program are as follows:

1. Administration develops a contract for each program or service approved by the City Council and County Commission. City contracts have provisions for payments to be on a cost reimbursement basis.
2. The contract is reviewed by the City of Wichita Law Department.
3. The contracts are amended by administration based upon the Law Department review.
4. Contracts are approved by the City Council and County Commission.
5. Administration provides budget/financial information to the Finance Department for internal control of payment.

Procedures for maintenance or expansion of a program are as follows (Note - expansion of a program would fall under procedures for purchasing a new program.):

1. Request for payment is reviewed by administration to ensure contract compliance prior to approval of payment.

City of Wichita believes the Summer Youth Program expenditure is in compliance with state law.

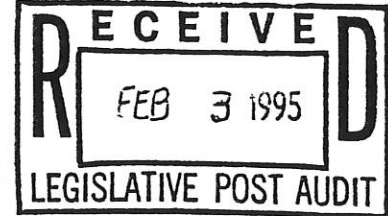
The City of Wichita concurs with the recommendations requesting the Legislature to clarify whether administrative costs, or law enforcement costs including prosecution, are in accordance with the criteria set forth in the State Law. The City of Wichita would like to emphasize the importance of Program Administration to effectively manage and account for expenditures within the Special Alcohol Fund and Program Administration is a direct activity in supporting the purchase, establishment and maintenance of programs and/or services.

In addition, the recommendation for the Legislature to "state whether agencies or organizations whose principal purpose is not alcohol and drug abuse prevention,..... can get these moneys, and if so, under what conditions" will clarify and impact how future appropriations are prioritized and awarded. The City of Wichita believes effective drug and alcohol abuse programs can be provided by an agency whose principal purpose is not alcohol and drug abuse prevention, detoxification, intervention, or treatment. In other words, a program could be established which meets the principal purpose criteria within an agency or organization who does not meet the principal purpose criteria.



OFFICE of COUNTY ADMINISTRATOR

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Salina, Kansas 67401-2396
913/826-6555
FAX: 913/826-7244



February 2, 1995

Barbara J. Hinton
Legislative Post Auditor
Legislative Division of Post Audit
Mercantile Bank Tower
800 Southwest Jackson Street, Suite 1200
Topeka, Kansas 66612-2212

Dear Ms. Hinton:

Thank you for the opportunity to comment on the performance audit report regarding Saline County's use of alcoholic liquor fund moneys. It was a pleasure for myself and my staff to work with Mr. Joe Lawhon. He was friendly, inquisitive and thorough.

The agencies that receive funding from Saline County's Special Alcohol and Drug Fund use the money for worthwhile programs. I am pleased to know that Saline County is allocating these funds appropriately.

Sincerely,

David Criswell

David Criswell
Saline County Administrator

STATE OF KANSAS

Bill Graves, Governor

Robert Longino, Director
Division of Alcoholic Beverage Control
Kansas Department of Revenue
915 SW Harrison
Topeka, KS 66625-3512



DEPARTMENT OF REVENUE

Stephen S. Richards, Secretary

(785) 296-7015
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Internet: www.ksrevenue.org/abc

Division of Alcoholic Beverage Control

To: Senator Nancey Harrington, Chairperson Senate Federal and State Affairs Committee

From: Robert Longino, Director Alcoholic Beverage Control Division

Date: February 19, 2002

Subj: Testimony in Support of SB 463

Madame Chairperson and Distinguished Committee Members - Good Morning.

Thank you for the opportunity to appear before you today in support of Senate Bill 463. SB 463 involves two aspects of transportation carrier requirements for transporting alcoholic beverages in Kansas. When I refer to this transportation requirement, I am referring to the transportation of the product from suppliers and manufactures to licensed distributors/wholesalers in Kansas.

The first area I will address is the requirement to obtain a permit to transport alcoholic beverages in the state. K.S.A. 41-408 requires common carriers to obtain such a permit from the Division of Alcoholic Beverage Control. This is a one-time permit per company for a \$5 fee in accordance with administrative regulations. To date we have issued several hundred permits going all the way back to 1949. Our initial thought was to undertake a project to purge the list and then take action to ensure compliance by those carriers who may be transporting alcoholic beverages without a permit. Upon further review of this issue, we questioned the time and costs versus the benefit of maintaining this permit requirement.

Any transportation carrier characterized by the phrase "common carrier" meets Kansas requirements to transport products in the state via regulation through the Kansas Corporation Commission. Any common carrier may obtain a permit to transport alcoholic beverages as there are no requirements to meet other than being a "common carrier. The Division currently does not expend its limited resources verifying companies delivering alcoholic beverages to distributors have the required permits.

This bill eliminates the requirement for common carriers to obtain a permit from ABC to transport alcoholic beverages.

The second area the bill addresses is the requirement for all types of transportation carriers to furnish ABC with duplicate bills of lading for all alcoholic beverage products delivered in Kansas. This statute, K.S.A. 41-801, has been in the Liquor Control Act unchanged since 1949. Handling and processing the volumes of paperwork this requirement generates is beyond our capability. We already receive large quantities of documents from suppliers and distributors on products shipped, received and warehoused in the state. The duplicate bills of lading have

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02/19/02

neither been received nor requested for many years. We feel this requirement is not something necessary to the regulation of alcoholic beverages.

As an FYI, we are working on an Electronic Data Interchange (EDI) project to collect and store this type of data via an electronic means versus tons of papers and documents.

There is one additional amendment to this bill we propose. We recommend striking the word "bonded" on lines 21, 22, and 26 of the bill. The term "bonded" is an out dated term.

I appreciate the attentiveness and support of this committee in considering this statutory change.

Thank you for your time this morning and I will now stand for any questions.

STATE OF KANSAS

Bill Graves, Governor



DEPARTMENT OF REVENUE

Stephen S. Richards, Secretary

Robert Longino, Director
Division of Alcoholic Beverage Control
Kansas Department of Revenue
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Internet: www.ksrevenue.org/abc

Division of Alcoholic Beverage Control

To: Senator Nancey Harrington, Chairperson, Federal and State Affairs Committee
From: Robert Longino, Director Alcoholic Beverage Control Division
Date: February 19, 2002
Subj: Testimony in Support of SB 465

Madam Chairperson and distinguished committee members – Good Morning. I appear today on behalf of the Department of Revenue, representing the Alcoholic Beverage Control and the Division of Taxation in support of Senate Bill 465.

Before we get too far on SB 465 this morning, I want to mention that we do advocate a clarifying amendment that I will outline at the conclusion of my remarks. I would also like to mention that Dedra Platt from the Division of Taxation is with us today. Dedra heads up the Civil Tax Enforcement section of the Compliance Management core process. She is here to help answer any tax collection-specific questions you may have.

Senate Bill 465 requires a liquor licensee to be current in the payment of withholding, sales and liquor taxes relating to the liquor licensed business before the license could be renewed. Current law only requires liquor licensees to be current in the payment of liquor taxes. The current statutes and regulations provide mechanisms to collect liquor taxes but the mechanisms are not tied directly to the license renewal process as proposed in this bill. Requiring liquor licensees to also be current in the payment of these business related tax types in order to receive a renewal license would improve tax compliance, increase tax revenue, and better enable the Department of Revenue to maintain a level playing field among liquor licensees.

It is important to understand that sales, liquor enforcement and liquor drink taxes are trust taxes. Businesses are entrusted to collect these taxes from purchasers on behalf of the state and remit it on the 25th day following the month of sale. Similarly, businesses are required to withhold a percentage of their employees' wages and remit them to the state. Licensees that pocket the sales and liquor taxes collected from consumers or wages withheld from their employees rather than remitting it to the Department of Revenue are not only stealing from the state but are also operating at a competitive advantage over complying liquor licensees.

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02/19/02

Current figures show a clear tax compliance problem. The following table is a snap shot of tax accounts associated with liquor licensees:

Liquor Licensee Tax Compliance

Tax Type	No. of accounts	No. of accounts with a delinquency	Percentage delinquent	Accounts Receivable
Sales Tax	1641	565	34%	\$1,770,079
Withholding	2264	656	29%	\$3,349,419
Liquor Enforcement Tax	753	133	18%	\$1,756,900
Liquor Drink Tax	2027	519	26%	\$2,918,588

Explanation of Table:

Tax Type	- particular tax type
No. of Accounts	- number of tax accounts associated with liquor licensees
No of Delinquent Accounts	- number of tax accounts with a balance due or non-filed periods
Percentage Delinquent	- percentage of accounts with a balance due or non-filed periods
Accounts Receivable	- dollar amount of balances due – does not reflect non-filed periods

The following are recent examples of liquor licensee noncompliance.

1. Licensee renewed liquor license in August after filing and paying past due liquor taxes. The licensee owed over \$12,000 in sales taxes and has not filed or paid withholding taxes since 1999.
2. Licensee renewed its liquor license after paying off over \$7,600 liquor drink tax delinquency but has defaulted on a payment plan to satisfy over \$22,000 sales tax debt. This licensee has not filed a sales tax return in the last six months.
3. Licensee paid off an \$85 liquor drink tax liability to get its liquor license renewed but owes over \$14,800 in sales tax and has already defaulted on two payment plans.

While the Division of Taxation does have ways to collect delinquent taxes, doing so administratively through the renewal process is far more cost effective for the state and less intrusive to the liquor licensee taxpayer. The process used in enforcing collections goes from assessment notices and collection letters to tax warrants, bank account levies, and in some circumstances, seizure and sale of inventory. Collecting delinquent taxes through the license renewal process is less intrusive than the involuntary seizure of assets and doesn't put the taxpayer in a position to build up a larger tax debt to the state.

In a recent poll of other states, 16 states require some sort of tax clearance before issuing new liquor licensees and 18 require a tax clearance before granting a license renewals.

Requiring tax compliance before licensing would not be new in Kansas. These taxpayers must be current in tax payments to receive operational licenses:

- Lottery retailers
- Each director and officer of an organization licensed under the Kansas Parimutuel Racing Act
- Parimutuel facility owner and facility manager Occupation Parimutuel licensees
- Parimutuel Concessionaire licensees
- Racing or wagering equipment or services Parimutuel licensees

Both the Divisions of Alcoholic Beverage Control and Taxation appreciate your attention to this matter. Voluntary compliance with liquor and tax laws is our goal. Unfortunately, not all licensees comply. This bill provides a useful tool in our efforts to encourage compliance with tax laws and maintain a level playing field. We ask for your favorable consideration.

The final page of this testimony contains our proposed amendment to this bill as it currently stands. The language in the proposed amendment provides clarity on the intentions of this legislation.

Once again, we appreciate the opportunity to appear before you today in support of this bill. Thank you for your consideration and I would be happy to entertain any questions you may have.

SB 465 Proposed Amendment

The following amendment is proposed in order to provide more clarity to the intent of requiring current licensees to be current in their liquor, sales and withholding taxes as a condition of renewal.

Amend K.S.A. 41-327 by adding a new subsection:

41-327. Renewal of license.

(a) Any licensee may renew his license at the expiration thereof if he is then qualified to receive a license and the premises for which such renewal shall be sought are suitable for such purpose.

(b) (1) *Except as specifically provided by this subsection, no license shall be renewed unless, at the time of renewal, the licensee seeking renewal of the license is current in the payment of all taxes imposed pursuant to K.S.A. 41-501 et seq., 79-3294 et seq., 79-3601 et seq., 79-4101 et seq. and 79-41a01 et seq., and amendments thereto.*

(2) *The provisions of paragraph (1) of this subsection shall apply only to taxes related directly to the business for which the license is issued.*

(3) *The provisions of paragraph (1) of this subsection shall not apply to taxes which are under formal appeal or for which an agreement for the payment of such taxes has been entered into by the licensee and the department of revenue and the licensee is current in the payments under such agreement.*

(4) *If the licensee is a corporation, partnership, trust, association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.*

New section for Club and Drinking Establishment Act

41-26XX Renewal of license.

(a) Any licensee may renew his license at the expiration thereof if he is then qualified to receive a license and the premises for which such renewal shall be sought are suitable for such purpose.

(b) (1) *Except as specifically provided by this subsection, no license shall be renewed unless, at the time of renewal, the licensee seeking renewal of the license is current in the payment of all taxes imposed pursuant to K.S.A. 41-501 et seq., 79-3294 et seq., 79-3601 et seq., 79-4101 et seq. and 79-41a01 et seq., and amendments thereto.*

(2) *The provisions of paragraph (1) of this subsection shall apply only to taxes related directly to the business for which the license is issued.*

(3) *The provisions of paragraph (1) of this subsection shall not apply to taxes which are under formal appeal or for which an agreement for the payment of such taxes has been entered into by the licensee and the department of revenue and the licensee is current in the payments under such agreement.*

(4) *If the licensee is a corporation, partnership, trust, association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.*



The Kansas Association of Beverage Retailers

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John Davis, President

Amy A. Campbell, Executive Director

Testimony presented to the
Senate Federal and State Affairs Committee
February 19, 2002
Amy A. Campbell

Madam Chair and Members of the Committee, I am speaking to you today on behalf of the Kansas Association of Beverage Retailers. SB 465 was introduced in order to assist in the collections of sales and withholdings taxes owed by businesses licensed by the Division of ABC.

Without exception, our members fully support the collection of these revenues. Retailers expect the agency to assist the industry in maintaining an even playing field in the marketplace by enforcing the laws equally. The members of KABR support efforts which strengthen the relationship between the licensee and the State. As retailers support the State by collecting and remitting various categories of taxes, the State should support retailers by promoting positive communication and education. Additionally, enforcement policies need to be applied evenly within the industry.

We have asked the Director to include language which specifies the taxes to be collected are directly related to the business for which the license has been issued. It would not be proper to place a license renewal in jeopardy for unrelated debts. We have been assured that this is the intent of the legislation and that the language would be included.

It is notable that this proposal does not attempt to reject all licenses for nonpayment of taxes. If this is an attempt to target a specific industry for collections, then we are interested in the numbers which show that these collections have become a problem for the department. Sharing this information will also assist our association in educating our members to meet their obligations. The last time we were able to review such a report, the liquor stores were doing a good job keeping their accounts current, and we request the department's support to be able to maintain those positive numbers in the future. Viewing tax payment reports by license and tax categories and distributing this information to our members can go a long way in maintaining awareness for licensees.

On the same topic, KABR respectfully requests that all licensees be held to the same standard for the collection of taxes. The original version of the bill does not include licensees which sell cereal malt beverages. There does not seem to be a distinct reason for this omission.

We want to thank Director Longino for taking time to discuss our concerns with this bill. As always, please feel free to contact me at the number above to discuss this or any other matter.

SnFedSt
Attach #6
02/19/02

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association
RE: SB 465

If the committee decides to adopt the policy position being requested by the Alcoholic Beverage Control regarding the payment of certain taxes as outlined in SB 465, we respectfully request that you adopt substitute language that would include this provision in K.S.A. 41-327.

We have worked with the Director of the Alcoholic Beverage Control on this matter and **we believe that a substitute bill that provides in K.S.A. 41-327, by adding a new subsection:**

(b) (1) Except as specifically provided by this subsection, no license shall be renewed unless, at the time of renewal, the licensee seeking renewal of the license is current in the payment of all taxes imposed pursuant to K.S.A. 41-501 et seq., 79-3294 et seq., 79-3601 et seq., 79-4101 et seq. and 79-41a01 et seq., and amendments thereto.

(2) The provisions of paragraph (1) of this subsection shall not apply to taxes which are under formal appeal or for which an agreement for the payment of such taxes has been entered into by the licensee and the department of revenue and the licensee is current in the payments under such agreement.

(3) If the licensee is a corporation, partnership, trust, or association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.

and adding a new section to the Club and Drinking Establishment Act which is parallel to 41-327, as amended, **is better than amending K.S.A. 41-311.**

Thank you for your consideration of this matter.

SnFedSt
Attach #7
02/19/02

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Testimony Re: SB 465
Senate Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 19, 2002

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas trade association for restaurant, hotel, lodging and hospitality businesses in Kansas.

KRHA opposes SB 465 as it was introduced. However, we have reviewed the proposed changes which we believe will be presented by Mr. Bob Longino, Director of the Alcohol Beverage Control Division of the Department of Revenue, and would be supportive of those amendments. If those amendments are adopted, the KRHA would withdraw our opposition to SB 465 as amended, and would be supportive of the bill as amended.

Our opposition to the bill as currently written is due to a number of reasons. As written, the bill would provide that no liquor license shall be issued to a person who is not current on the taxes enumerated in the bill. We have no objection to that penalty on the facility for taxes that are due by the facility alone and is limited to those itemized in the bill. However, as written, the situation could arise where a minority stockholder, or certain other individuals tied to the business could be delinquent in paying taxes, and the majority stockholder or the individual facility could be penalized for actions over which they have no control. For example, if a corporation owned a business with a liquor license (e.g., a restaurant), and a minority stockholder of that corporation owed sales taxes for another business, SB 465 as drafted would permit the Department of the ABC to reject the liquor application of that restaurant.

We have testified previously to committees of the Legislature about this particular problem, and have also discussed this issue with Director Bob Longino. We believe the amendments which, we understand, he may be submitting would solve the problems which we have enumerated in the past, and would alleviate our concerns.

Therefore, we oppose SB 465 as drafted, but we will withdraw our opposition if it is amended in a manner that would address our concerns. If that is accomplished by the proposed amendments, then the KRHA would not oppose SB 465 as amended.

Thank you very much for permitting me to testify, and I will yield for questions.

Sn Fed St
Attach #8
02/19/02