

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on March 18, 2003 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Ken Wilke, Revisor of Statutes
Dennis Hodgins, Legislative Research
Mike Heim, Legislative Research

Conferees appearing before the committee:

Proponents

Senator Jackson
Representative Rob Boyer
Representative Toelkes
Vic Miller, County Commissioner, Shawnee County
Dennis Schwartz, Kansas Rural Water Association
Marilyn Chapman, Sedgwick County Election Commissioner
Senator Hensley
Edgar Peck, representing Tecumseh Township and Topeka
Tecumseh Fire District Board
Leslie Kendall, Concerned Citizen, Shawnee County
Brad Oliver, Concerned Citizen, Shawnee County
Jack Savely, Concerned Citizen, Shawnee County
Fred Hienz, Concerned Citizen, Shawnee County

Opponents

Don Moler, League of Municipalities
Joseph Ledbetter, Taxpayer in Topeka and Shawnee County
Danielle Noe, Johnson County
Colin Hansen, Kansas Municipal Utilities
Bruce Felker, Mayor, City of Topeka
Mike Taylor, City of Wichita
Bob Watson, City Attorney, Overland Park

Others attending: See attached list

Hearing on

HB 2212 - Annexation; effective date

Chairperson Allen brought the committee's attention to the open hearing of **HB 2212** and informed members of a document distributed to each, from Mike Heim showing which counties are impacted by **HB 2212** (Attachment 1). In lieu of the number of conferees wishing to appear and time constraints, Chairperson Allen instructed committee members to hold questions until after all testimony and announced that each conferee would be allowed 1.5 minutes to speak.

Appearing to testify in favor of **HB 2212** were: Senator Jackson (Attachment 2), Representative Boyer (Attachment 3), Representative Toelkes (Attachment 4), Vic Miller the Shawnee County Commissioner (Attachment 5), Dennis Schwartz from Kansas Rural Water Assn. (Attachment 6), Marilyn Chapman the Sedgwick County Election Commissioner (Attachment 7), Edgar Peck representing Tecumseh Township and Topeka Tecumseh Fire District Board (Attachment 8), Leslie Kendall from Shawnee County (Attachment 9), Brad Oliver from Shawnee County (Attachment 10), Jack Savely from Shawnee County (Attachment 11), Fred Hienz from Shawnee County (Attachment 12), and Dave Anderson the Mayor of DeSoto (Attachment 13). In addition, written testimony supporting **HB 2212** from Carol Bainum from Shawnee County (Attachment 14) and Richard Rowzer from Tecumseh, KS (Attachment 15) was

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT at on March 18, 2003 in Room 245-N of the Capitol.

distributed to members. Chairperson Allen asked if there was anyone else wishing to testify on behalf of **HB 2212**, there was no response. Chairperson Allen also informed members that Senator Hensley was listed to testify as a proponent of **HB 2212** and would be allowed to do so once he arrived at the meeting.

Chairperson Allen announced the start of the opponents testimony. Appearing to testify against **HB 2212** were: Don Moler the Executive Director for League of Kansas Municipalities (Attachment 16), Joseph Ledbetter from Shawnee County (Attachment 17), Danielle Noe the Intergovernmental Relations Coordinator for Johnson County (Attachment 18), Colin Hansen the Executive Director for Kansas Municipal Utilities (Attachment 19), Mayor Felker of Topeka (Attachment 20), Mike Taylor the Governmental Relations Director for Wichita (Attachment 21), and Bob Watson the City Attorney for Overland Park (Attachment 22). In addition, testimony to oppose **HB 2212** from Mayor Eloise Mueller of Marion (Attachment 23) was distributed to members. Chairperson Allen asked for anyone else wishing to testify against **HB 2212**, there was no response.

Chairperson Allen recognized Senator Hensley, who then testified in support of **HB 2212** (Attachment 24). Chairperson Allen announced the opening of questions for any of the proponents or opponents. During the questioning concerns regarding Don Moler's testimony, referenced earlier, regarding the constitutionality of **HB 2212** were addressed; according to the staff there was no consensus that this was definitely a problem. Senator Schmidt questioned the need for this issue to be at the state level rather than being worked out between the City of Topeka and Shawnee County, noting that this seems to be fueled by disagreements among these entities and not throughout the state. Various proponents and opponents made comments on how attempts to work this out have been unsuccessful.

Once questioning tapered down, Chairperson Allen called for any additional questions. Since no additional questions arose, Chairperson Allen announced the close of the hearing on **HB 2212**.

Chairperson Allen received a written proposal for amendments on **HB 2112** from John Todd (Attachment 25) and written information from Cole Smith (Attachment 26) to respond to questions from Senator O'Connor. This information was previously requested by Chairperson Allen during the hearing on March 11, 200 and to be distributed to members when **HB 2112** is to be worked.

Adjournment

Chairperson Allen announced the next meeting to be on Wednesday, March 19, 2003 at 1:30 p.m. and called the meeting adjourned.

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date June 18

BRAD OLIVER	Meslie Kendall
FRED HEINZ	Dennis G. Schwan
JACK SAVELY	CLARK DUFFY
COLIN HANSEN	Joseph Ledbetter
Keith Haxton	Winnie Crapson
Marcella Melton	ASHLEY SHERRARD
Emil Lutz	Lester + Lila Zimmerman
Stuart Ledbetter	ROY BENEF
Edgar Peck	Karen Lelman
Lauraine Longoria	Joi Knodle
Tommy D. Hardy	Erik Sartorius
Warren M. Mullen	Bob Watson
Warne Sylvestor	Danielle Hoe
Charles E. Bollinger	MIKE PEGSON
Denny Burgess AAAA	

Governmental Taxing Units in Kansas by County

Note: When two numbers are listed (e.g. 2+3), the first shows the number of whole units; the second shows the number of parts of a unit within the county.

Name	1991 Population	Counties	Cities	Town- ships	School Districts	Comm. College	Region. Library	Cemetery Districts	Fire Districts	Hospital Districts	Drain. Dist.	Sewer Dist.	Cons. Dist.	Watershed Districts	Improve. Districts	Other Districts	TOTAL
Allen	14,638	1	9	12	2+3	1	P	2+2	3	0	0	2	1	0+3	0	0	33+9
Anderson	7,803	1	7	15	0+3	0	P	6+1	1	0	0	0	1	0+2	0	0	31+7
Atchison	16,932	1	5	8	1+6	0	P	14	6	0	0+1	0	1	3+2	0	0	39+9
Barber	5,874	1	7	18	0+4	0	P	6+2	1	1	0	0	1	0	0	0	35+7
Barton	29,382	1	9	22	2+6	1	P	3	1	1	0	0	1	0+1	0	0	41+8
Bourbon	14,966	1	6	11	1+3	1	P	16	4	0+1	0	0	1	2	0	1	44+5
Brown	11,128	1	10+1	10	0+6	0	P	9+2	0	0	0	0	1	2+4	0	0	33+14
Butler	50,580	1	13	29	2+10	1	P	1	9	0	0	2	1	1+4	0	0	60+15
Chase	3,021	1	5	9	0+4	0	P	0	1	0	1	0	1	2+7	0	0	20+2
Chautauqua	4,407	1	6	12	1+5	0	P	14	5+1	0	0	0	1	1+4	0	2	43+11
Cherokee	21,374	1	8	14	4+4	0	P	0	0	0	0	1	1	0	0	1	30+5
Cheyenne	3,243	1	2	7	1+1	0	P	2	1+1	0	0	0	1	0	0	0	15+3
Clark	2,418	1	3	6	0+4	0	P	0	3	1+3	0	0	1	0	0	0	15+8
Clay	9,158	1	6+2	18	0+3	0	P	30+7	7+1	0	2	0	1	0+2	0	0	65+16
Cloud	11,023	1	6+1	18	0+8	1	P	15+3	1+4	0	1	0	1	2+1	0	0+1	46+17
Coffey	8,404	1	6	14	1+4	0	0	10+1	0+1	0	1	0	1	1+4	0	1	36+10
Cornache	2,313	1	3	4	0+1	0	P	3	1	0	0	0	1	0	0	2	15+2
Cowley	36,915	1	7+1	25	2+8	1	P	7	8+2	0	0	0	1	0+6	0	1+1	53+19
Crawford	35,568	1	10	9	2+5	0	P	0	2	1	0	0	1	1	0	0	27+6
Decatur	4,021	1	4+1	25	0+5	0	P	10+3	0+1	0	0	1	1	0	0	0	42+10
Dickinson	18,958	1	9	24	1+6	0	P	30+3	5+3	1	0	0	1	0+2	0	0	72+15
Doniphan	8,134	1	8	9	3+3	1	P	2+1	5	0	4+1	0	1	0+1	0	1	35+7
Douglas	81,798	1	4	9	0+8	0	P	6+1	0+1	0	2+2	10	1	0+2	0	0	33+15
Edwards	3,787	1	4	10	1+2	0	P	2+2	0	0	0	0	1	0+1	0	0	19+6
Elk	3,327	1	5	10	0+6	0	P	10	1	0	0	0	1	0+6	0	0	28+13
Ellis	26,004	1	4	9	0+9	0	P	0+1	1+1	0	0	0	1	0	3	0+1	19+13
Ellsworth	6,586	1	5	19	1+4	0	P	3	4+3	0	0	0	1	0+1	0	0+1	34+10
Finney	33,070	1	2	7	2+1	1	0	0	0	1	1	1	1	0+2	0	2	19+3
Ford	27,463	1	4	14	0+8	1	P	1	1	0+3	3	0	1	0+1	1	0	27+13
Franklin	21,994	1	8	16	2+8	0	P	7+2	4	0	1	0	1	0+2	0	0	40+13
Geary	30,453	1	3	8	0+7	0	0	10+1	2+1	0	0	2	1	0+3	0	3	30+12
Gove	3,231	1	5	9	0+7	0	P	0	0+2	0	0	0	1	0	0	0	16+10
Graham	3,543	1	3	13	2+6	0	0	2+1	1	0	0	0	1	0	0	1	24+7
Grant	7,159	1	1	3	1+3	0	0	1	0	0	0	0	1	0	0	1	9+3
Gray	5,398	1	5	7	0+5	0	0	0	1	1	0	0	1	1+1	0	1	18+6
Greeley	1,774	1	2	3	1+0	0	0	1	1	0	0	0	1	0+1	0	1	11+1
Greenwood	7,847	1	7	15	1+7	0	P	5	1	0	0	0	1	1+8	0	1	33+18
Hamilton	2,388	1	2	8	1+0	0	P	1	1	0	0	0	1	0+1	0	1	16+2
Harper	7,124	1	7	6	1+5	0	P	7+1	0	2+2	0	0	1	0	0	0	25+9
Harvey	31,028	1	6+1	15	0+12	0	P	3	2+2	0	1+1	0	1	2+1	0	0	31+18
Haskell	3,886	1	2	3	0+4	0	0	1	0	2	0	0	1	0	0	0	10+4
Hodgeman	2,177	1	2	9	1+6	0	P	1	1	0	0	0	1	0+1	0	0	16+8
Jackson	11,525	1	9	15	1+9	0	0	20	4+1	0+1	1	0	1	0+4	0	0	52+15
Jefferson	15,905	1	8	12	1+10	0	P	21	12	0	8	7	1	1+1	2	0	72+12
Jewell	4,251	1	7	25	2+5	0	P	10+1	4+1	0	0	0	1	0	0	0+1	50+9
Johnson	355,054	1	18+2	9	3+5	1	0	6	6	0	2+1	20+1	1	0	0	2	69+9
Kearny	4,027	1	2	7	2+1	0	P	2	2	0	0	0	1	1+1	0	1	19+3
Kingman	8,292	1	7	23	0+5	0	P	2	0+1	0+2	0	0	1	0+1	0	0	34+10
Kiowa	3,660	1	3	1	2+2	0	0	3+1	1	0	0	0	1	0	0	1	13+3
Labette	23,693	1	8	16	2+4	1	P	5	2	0	1	0	1	0+1	0	0	37+6
Lane	2,375	1	1	8	0+4	0	0	1	0+1	0	0	0	1	0+2	1	1	14+7
Leavenworth	64,371	1	6	10	5+5	0	P	2	1	0	4	0	1	0	0	3	33+8
Lincoln	3,653	1	4	20	0+5	0	P	4	2+3	0	0	0	1	1+2	0	0	33+11
Linn	8,254	1	6	11	1+3	0	P	5	1	0+1	0	0	1	0+1	0	4	30+6
Logan	3,081	1	2+1	11	0+5	0	P	0	0+1	0	0	0	1	0	0	0	15+8

Senate Elec & Loc Gov
03-18-03
Attachment 1

Name	1991 Population	Counties	Cities	Town- ships	School Districts	Comm. College	Region. Library	Cemetery Districts	Fire Districts	Hospital Districts	Drain. Dist.	Sewer Dist.	Cons. Dist.	Watershed Districts	Improve. Districts	Other Districts	TOTAL
Lyon	34,732	1	9	11	1+7	0	0	0+2	1+3	0	0	0	1	2+6	0	3	29+18
Marion	12,888	1	12	24	1+9	0	P	13	8+1	1	1	0	1	0+6	3	1	66+17
Marshall	11,705	1	9	25	0+8	0	P	20+3	8+2	0	0	0	1	4+1	0	0	68+15
McPherson	27,268	1	8	25	2+7	0	P	3	8+4	0	4	0	1	0+1	0	1+1	53+14
Meade	4,247	1	3	9	1+5	0	P	2	1	2	1	0	1	0	0	1	22+6
Miami	23,466	1	4+1	13	2+6	0	P	7	2	0	0	0	1	0+1	0	11	41+9
Mitchell	7,203	1	6+1	20	0+5	0	P	21	3+3	0	0	0	1	0+2	0	0+1	52+13
Montgomery	38,816	1	9	12	1+6	2	P	14+2	1	0	3	2	1	0+3	0	0	46+12
Morris	6,198	1	7+1	11	0+5	0	P	17+1	11+2	0	0	0	1	0+6	1	1	50+16
Morton	3,480	1	3	6	2+0	0	0	3	0	0	0	0	1	0	0	1	17+0
Nemaha	10,446	1	7+1	20	1+7	0	P	14+1	8	0+1	0	0	1	0+4	1	0	53+15
Neosho	17,035	1	7	12	0+4	1	P	18+2	0	0	0	0	1	1+4	0	0	41+11
Ness	4,867	1	5	10	2+3	0	P	1	1	2	0	0	1	0+2	0	0	23+6
Norton	5,947	1	4+1	5	1+5	0	P	5+2	3+2	0	0	0	1	0	0	0+1	20+12
Osage	15,248	1	9	16	3+8	0	P	15+4	4+4	0	0	1	1	1+4	0	0	51+21
Osborne	4,867	1	5	23	0+7	0	P	22+1	7	0	0	0	1	0+1	0	0+3	59+13
Ottawa	5,634	1	5	20	0+6	0	P	14+1	6+4	0	0	0	1	0+1	0	2+1	49+14
Pawnee	7,555	1	4	21	0+3	0	0	5+2	0	0	0	0	1	0+2	0	1	33+7
Phillips	6,590	1	8	25	1+4	0	P	3	4+1	0	0	0	1	0	0	0+3	43+9
Pottawatomie	16,128	1	10+2	23	1+3	0	0	10	6+3	0+1	2	0	1	1+2	0	1+1	56+12
Pratt	9,702	1	7	7	1+7	1	0	3+1	0	0	1	0	1	0	0	1	23+8
Rawlins	3,404	1	3	10	2+4	0	0	0+1	2+1	0	0	0	1	0	0	0	19+6
Reno	62,389	1	14	31	1+10	1	P	2+1	7+4	0	6+2	8	1	0+4	1	2	75+22
Republic	6,482	1	8	20	0+6	0	P	24+5	10+3	0	1	0	1	0+1	0	0+1	65+17
Rice	10,610	1	9	20	1+6	0	P	3	0+2	2	1+1	0	1	0+1	0	0	38+11
Riley	67,139	1	4+1	14	0+8	0	P	8+4	1	0	0	1	1	0+1	1	2	33+15
Rooks	6,039	1	6	12	0+6	0	P	18	1+1	1	0	0	1	0	0	0+1	40+9
Rush	3,842	1	8	12	0+5	0	P	0	7	0	0	0	1	0+2	0	0	29+8
Russell	7,835	1	8	12	0+3	0	P	3+2	3+2	0	0	0	1	0+1	0	0	28+9
Saline	49,301	1	6	18	1+5	0	P	3+1	2+6	0	6	0	1	0	0	2+1	40+14
Scott	5,289	1	1	7	0+2	0	0	0	1	0	0	0	1	0+2	0	1	12+4
Sedgwick	403,662	1	18+2	27	5+15	0	P	7+1	1	1	4+2	3	1	1+5	9	0	78+26
Seward	18,743	1	2	3	1+4	1	P	4	1	0	0	0	1	0	0	0	14+5
Shawnee	160,976	1	4+1	12	2+7	0	P	0+1	5	0	6+1	9	1	0+2	1	5	46+13
Sheridan	3,043	1	2	14	0+9	0	P	4+1	3	0	0	0	1	0	0	0	25+11
Sherman	6,926	1	2	13	1+1	0	P	0	1+1	0	0	0	1	0	0	0	19+3
Smith	5,078	1	6	25	0+5	0	P	6	1	0	0	0	1	0	0	0+3	40+9
Stafford	5,365	1	6	21	1+7	0	P	10+4	0	4	0	0	1	0	0	0	44+12
Stanton	2,333	1	2	3	0+1	0	0	1	1	0	0	0	1	0	0	1	10+1
Stevens	5,048	1	2	6	1+2	0	0	2	1	1	0	0	1	0	0	1	16+2
Sumner	25,841	1	10+2	30	4+8	0	P	7+1	8+1	1+1	2	1	1	0+1	0	0+1	65+16
Thomas	8,258	1	5+1	13	0+6	1	P	2+2	5+1	0	0	0	1	0	0	0	28+11
Trego	3,694	1	2	7	0+5	0	P	0	1	0	0	0	1	0	0	0+1	12+7
Wabaunsee	6,603	1	7+2	13	0+7	0	0	5+3	1+2	0	0+1	1	1	0+4	2	3+1	34+20
Wallace	1,821	1	2	4	1+2	0	P	0	3	0	0	0	1	0	0	0	12+3
Washington	7,073	1	10+2	25	2+5	0	P	15+4	10	1	0	0	1	0+1	0	1	66+13
Wichita	2,758	1	1	1	0+2	0	0	0	0	0	0	0	1	0+1	0	1	5+3
Wilson	10,289	1	7	15	0+4	0	P	15+4	1	0	0	0	1	1+4	0	0	41+13
Woodson	4,116	1	3	6	1+6	0	P	9+3	0+1	0	0	0	1	2+2	0	1	24+13
Wyandotte	161,993	1	2+2	2	3+1	1	0	0	0	0	3	1+1	1	0	0	1	16+4
GROSS	2,477,574	105	612+30	1,414	103+540	19	0+81	680+96	279+86	27+16	72+13	73+2	105	35+165	26	77+25	3,627+1,055
NET		105	627	1,414	304	19	7	728	323	32	77	74	105	95	26	89	4,025

Properties, Inc. v. Board of Johnson County Comm'rs, 246 K. 412, 414, 789 P.2d 1170 (1990).

12-520. Conditions which permit annexation; ordinance; actions challenging validity.

(a) Except as hereinafter provided, the governing body of any city, by ordinance, may annex land to such city if any one or more of the following conditions exist:

(1) The land is platted, and some part of the land adjoins the city.

(2) The land is owned by or held in trust for the city or any agency thereof.

(3) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county which has primary use as a county-owned and operated airport, or other aviation related activity or which has primary use as a county owned and operated zoological facility, recreation park or exhibition and sports facility without the express permission of the board of county commissioners of the county.

(4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

(5) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 21 acres shall be annexed for this purpose.

(6) The tract is so situated that $\frac{2}{3}$ of any boundary line adjoins the city, except no tract in excess of 21 acres shall be annexed under this condition.

(7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

(b) No portion of any unplatted tract of land devoted to agricultural use of 21 acres or more shall be annexed by any city under the authority of this section without the written consent of the owner thereof.

(c) No city may annex, pursuant to this section, any improvement district incorporated and organized pursuant to K.S.A. 19-2753 *et seq.*, and amendments thereto, or any land within such improvement district. The provisions of this subsection shall apply to such improvement districts for which the petition for incorporation and organization was presented on or before January 1, 1987.

(d) Subject to the provisions of this section and subsection (e) of K.S.A. 12-520a, and amend-

ments thereto, a city may annex, pursuant to this section, any fire district or any land within such fire district.

(e) Whenever any city annexes any land under the authority of paragraph 2 of subsection (a) which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until the adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

(f) No city may annex the right-of-way of any highway under the authority of this section unless at the time of the annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

(g) The governing body of any city by one ordinance may annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by the ordinance and which conform to any one or more of the foregoing conditions.

(h) Any owner of land annexed by a city under the authority of this section, within 30 days next following the publication of the ordinance annexing the land, may maintain an action in the district court of the county in which the land is located challenging the authority of the city to annex the land and the regularity of the proceedings had in connection therewith.

History: L. 1967, ch. 98, § 2; L. 1974, ch. 56, § 4; L. 1980, ch. 62, § 1; L. 1986, ch. 70, § 2; L. 1987, ch. 66, § 2; L. 1993, ch. 147, § 1; July 1.

Research and Practice Aids:

Municipal Corporations ¶ 29(1).

C.J.S. Municipal Corporations §§ 43, 68.

Law Review and Bar Journal References:

"State Control of Local Government in Kansas: Special Legislation and Home Rule," Barkley Clark, 20 K.L.R. 631, 677 (1972).

"Urban Revitalization: Planning for the Future in Our Cities," Lester D. Mardiks, 21 W.L.J. 116, 118 (1981).

Attorney General's Opinions:

Location of detached auxiliary banking services facilities. 82-92.

Boundaries of representative districts; authority to establish precinct boundaries. 83-46.

Conditions which permit annexation by cities; ordinances; actions challenging validity. 88-138.

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References:
nment in Kansas: Special Leg-
ley Clark, 20 K.L.R. 631, 677

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W.L.J. 116, 118 (1981).

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districts; authority to establish

annexation by cities; ordinances;
138.

Ownership and disposition of fire-fighting equipment sub-
sequent to annexation of township by a city. 91-162.

Annexation of land devoted to agricultural use. 95-91.

Land separated from city by military reservation does not
"adjoin" city. 95-116.

Annexation; land devoted to agricultural use, effect of pres-
ence of home site; rural homestead exemption. 96-17.

Recreational trails; requirements on responsible party; ad-
jacent property owner, rights and remedies; annexation. 98-6.

CASE ANNOTATIONS

1. Procedure under last paragraph permissive; annexation
of lands which depend on completion of other pending annex-
ations not permitted. State, ex rel., v. City of Coffeyville, 211
K. 746, 748, 749, 750, 752, 508 P.2d 1007.

2. Substantial compliance with subsection (g) consent to an-
nexation; statute not jurisdictional; no review under 12-712.
Sabatini v. Jayhawk Construction Co., 214 K. 408, 410, 411,
412, 520 P.2d 1230.

3. Construed; word "perimeter" defined; act constitutional.
State, ex rel., v. City of Overland Park, 215 K. 700, 702, 707,
708, 709, 712, 714, 715, 716, 717, 527 P.2d 1340.

4. Adequate standards (plan and timetable requirements)
contained in amended statute (1974) substantial compliance.
Clarke v. City of Wichita, 218 K. 334, 336, 343, 543 P.2d 973.

5. Annexation of territory by municipality challenged by
United States; city's plan was bona fide; there was substantial
compliance with statutes (12-520 to 12-520(b)). United States
v. City of Leavenworth, Kan., 443 F.Supp. 274.

6. Applied in holding a city has no standing to challenge the
annexation proceedings of another city. City of Lenexa v. City
of Olathe, 228 K. 773, 779, 780, 620 P.2d 1153.

7. Whether land adjoins annexing city is in dispute, another
city has rights which entitle it to challenge annexation. City of
Lenexa v. City of Olathe, 229 K. 391, 392, 625 P.2d 423.

8. Statute discussed; annexation under two successive or-
dinances adopted by city; procedure substantially complied
with statute. Grandon v. City of Hutchinson, 6 K.A.2d 896,
897, 898, 899, 636 P.2d 205 (1981).

9. Considered in holding board of county commissioners a
proper party to appeal from its order denying petition filed
under 12-521. Board of Johnson County Commissioners v.
City of Lenexa, 230 K. 632, 633, 638, 639, 640 P.2d 1212
(1982).

10. Publication of incorrect description of property annexed
held to be not in substantial compliance of act. City of Lenexa
v. City of Olathe, 233 K. 159, 162, 163, 165, 660 P.2d 1368
(1983).

11. Where annexation of wholly described tract invalid as
to part, invalid in toto; separately described tracts, if invalid do
not affect remainder. Board of Riley County Comm'rs v. City
of Junction City, 233 K. 947, 952, 954, 955, 956, 667 P.2d 868
(1983).

12. Annexation of tracts nonadjoining at time proceedings
commenced ineffective following annexation of adjoining tract.
Banzer v. City of Wichita, 237 K. 798, 805, 806, 703 P.2d 812
(1985).

13. Where no showing made annexation under subsection
(e) would make boundary line straight or harmonious, annex-
ation invalid. McDowell v. City of Topeka, 239 K. 263, 267,
718 P.2d 1308 (1986).

14. City not required to exhaust proceedings to annex par-
cels eligible hereunder before proceeding pursuant to 12-521.
In re Petition of City of Overland Park for Annexation of Land,
241 K. 365, 736 P.2d 923 (1987).

15. Cited; proper statute to challenge city ordinance rezon-
ing property, timeliness of notice of appeal, effective date of
ordinance examined. Davis v. City of Leavenworth, 243 K. 522,
527, 759 P.2d 113 (1988).

16. With owners' consent, annexation of multiple contigu-
ous tracts, where part adjoins city, proper under one hearing
and one ordinance. City of Leawood v. City of Overland Park,
245 K. 283, 287, 777 P.2d 830 (1989).

17. Proposed use of or reason for island annexation (12-
520c) examined where future growth affected. Cedar Creek
Properties, Inc. v. Board of Johnson County Comm'rs, 249 K.
149, 153, 815 P.2d 492 (1991).

**12-520a. Resolution; hearing; notice;
publication; sketch of area; criteria consid-
ered at hearing; consent, effect.** (a) The gov-
erning body of any city desiring to annex land un-
der the authority of K.S.A. 12-520, and
amendments thereto, shall adopt a resolution stat-
ing that the city is considering the annexation of
the land. The resolution shall:

(1) Give notice that a public hearing will be
held to consider the annexation of the land and fix
the date, hour and place of the public hearing.
Unless the governing body of the city determines
adequate facilities are not available, the public
hearing shall be held at a site located in or as near
as possible to the area proposed to be annexed.
The hearing shall be held at the time determined
by the governing body to be the most convenient
for the greatest number of interested persons;

(2) describe the boundaries of the land pro-
posed to be annexed; and

(3) state that the plan of the city for the ex-
tension of services to the area proposed to be an-
nexed, which is required under the provisions of
K.S.A. 12-520b, and amendments thereto, is avail-
able for inspection during regular office hours in
the office of the city clerk.

(b) The date fixed for the public hearing shall
be not less than 60 nor more than 70 days follow-
ing the date of the adoption of the resolution fix-
ing the date of the hearing.

(c) A copy of the resolution providing for the
public hearing shall be mailed by certified mail to
each owner of land proposed to be annexed not
more than 10 days following the date of the adop-
tion of the resolution. The resolution shall be pub-
lished in the official newspaper of the city not less
than one week and not more than two weeks pre-
ceding the date fixed for the public hearing. A
sketch clearly delineating the area in such detail
as may be necessary to advise the reader of the
particular land proposed to be annexed shall be
published with the resolution. A copy of such

ers who shall, within thirty (30) days following the receipt thereof, make findings and notify the governing body of the city thereof. Such findings shall be spread at length upon the journal of proceedings of said board. The failure of such board to spread such findings upon the journal shall not invalidate the same.

Any owner or city aggrieved by the decision of the board of county commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K.S.A. 19-223. Any city so appealing shall not be required to execute the bond prescribed therein.

History: L. 1974, ch. 56, § 5; March 28.

Research and Practice Aids:

Municipal Corporations ¶ 29(4).
C.J.S. Municipal Corporations § 46.

Attorney General's Opinions:

Annexation of land not adjoining city; residents thereon are city residents. 81-61.

Attachment of additional land by rural water districts. 81-80.

Boundaries of representative districts; authority to establish precinct boundaries. 83-46.

CASE ANNOTATIONS

1. City has no standing to challenge the annexation procedures of another city. *City of Lenexa v. City of Olathe*, 228 K. 773, 781, 782, 620 P.2d 1153.

2. Considered in holding board of county commissioners a proper party to appeal from its order denying petition filed under 12-521. *Board of Johnson County Commissioners v. City of Lenexa*, 230 K. 632, 633, 638, 639, 640 P.2d 1212 (1982).

3. Publication of incorrect description of property annexed held to be not in substantial compliance of act. *City of Lenexa v. City of Olathe*, 233 K. 159, 162, 163, 660 P.2d 1368 (1983).

4. Cited in holding 12-529 constitutional delegation over manner cities may alter boundaries. *Board of Riley County Comm'rs v. City of Junction City*, 233 K. 947, 951, 959, 667 P.2d 868 (1983).

5. Adjoining owner of property to be annexed that does not adjoin city without standing to challenge proposed annexation. *Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs*, 13 K.A.2d 734, 779 P.2d 463 (1989).

6. Adjoining landowner has standing to seek review of decision on "island" annexation. *Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs*, 246 K. 412, 417, 789 P.2d 1170 (1990).

7. Proposed use of or reason for island annexation must be considered since use or reason will affect future growth. *Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs*, 249 K. 149, 158, 815 P.2d 492 (1991).

8. Joint review of petitions for annexation and incorporation (15-121) examined. In re *Petition of City of Kansas City for Annexation of Land*, 253 K. 402, 407, 856 P.2d 144 (1993).

12-521. Petition to county commissioners for annexation of certain lands city not

authorized to annex; contents; plans; reports, contents; statement of plans; hearing, time and place; publication notice; notice to landowners; sketch of area; procedure at hearing; criteria to be considered; granting of order; entry in journal, effect; appeals to district court. (a) Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under K.S.A. 12-520, and amendments thereto, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amendments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section. The governing body, in the name of the city, may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

(1) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(A) The present and proposed boundaries of the city affected by such proposed annexation;

(B) the present streets, water mains, sewers and other city utility lines, and the proposed extension thereto;

(C) the general land use pattern in the areas to be annexed.

(2) A statement setting forth a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed at the time of annexation and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. The plan shall include a timetable for the extension of major municipal services to the area proposed to be annexed. The plan shall state

the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

(b) The date fixed for the public hearing shall be not less than 60 nor more than 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of the hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published in a newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of the land proposed to be annexed not more than 10 days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board for good cause shown may continue the hearing beyond the time specified in the notice without further publication.

(c) On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the owners of land in areas near or adjacent

to the land proposed to be annexed or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

(1) Extent to which any of the area is land devoted to agricultural use;

(2) area of platted land relative to unplatted land;

(3) topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;

(4) extent and age of residential development in the area to be annexed and adjacent land within the city's boundaries;

(5) present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed;

(6) the extent of business, commercial and industrial development in the area;

(7) the present cost, methods and adequacy of governmental services and regulatory controls in the area;

(8) the proposed cost, extent and the necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend such services;

(9) tax impact upon property in the city and the area;

(10) extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;

(11) effect of the proposed annexation on the city and other adjacent areas, including, but not limited to, other cities, sewer and water districts, improvement districts, townships or industrial dis-

tricts and, subject to the provisions of K.S.A. 12-521a, fire districts;

(12) existing petitions for incorporation of the area as a new city or for the creation of a special district;

(13) likelihood of significant growth in the area and in adjacent areas during the next five years; and

(14) effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan.

(d) The board of county commissioners shall render a judgment within seven days after the hearing has been adjourned sine die. If a majority of the board of county commissioners concludes that the annexation or any part thereof should be allowed, the board shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. Orders of the board of county commissioners denying the petition or a part thereof for annexation shall require a majority vote of the members of the board. When an order denying a petition or part thereof is issued, it shall be by resolution, which shall be sent by certified mail to the city proposing the annexation. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of the board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

(e) Any owner of land annexed pursuant to this section or the city aggrieved by the decision of the board of county commissioners may appeal the decision of the board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Nothing in this subsection shall be construed as granting the owner of land in areas near or adjacent to land annexed pursuant to this section the right to appeal the decision of the board of county commissioners. Any city so appealing shall not be required to execute the bond prescribed therein.

History: L. 1967, ch. 98, § 3; L. 1974, ch. 56, § 6; L. 1987, ch. 66, § 5; L. 1993, ch. 147, § 3; July 1.

Law Review and Bar Journal References:

"Kansas Annexation Law: The Role of Service Plans," Michael M. Shultz, 40 K.L.R. 207, 222 (1991).

Attorney General's Opinions:

Boundaries of representative districts; authority to establish precinct boundaries. 83-46.

Conditions which permit annexation by cities; ordinances; actions challenging validity. 88-138.

Ownership and disposition of fire-fighting equipment subsequent to annexation of township by a city. 91-162.

CASE ANNOTATIONS

1. Act not constitutionally impermissible; severance of 12-525. State, ex rel., v. City of Overland Park, 215 K. 700, 707, 527 P.2d 1340.

2. Board of county commissioners held to be proper party to appeal taken from its order denying petition filed hereunder. Board of Johnson County Commissioners v. City of Lenexa, 230 K. 632, 633, 634, 638, 639, 640, 641, 640 P.2d 1212 (1982).

3. Decision by board of county commissioners to deny city's petition to annex land upheld. In re Appeal of City of Lenexa, 232 K. 568, 657 P.2d 47 (1983).

4. Authority and function of county commissioners considered; no provision for reconsideration or modification of order once entered and appeal taken; scope of judicial review on appeal. In re Petition of City of Shawnee for Annexation of Land, 236 K. 1, 10, 13, 14, 15, 25, 26, 687 P.2d 603 (1984).

5. City not required to annex parcels eligible under 12-520 before proceeding hereunder; nature of determination by commissioners; "manifest injury" construed; judicial review. In re Petition of City of Overland Park for Annexation of Land, 241 K. 365, 736 P.2d 923 (1987).

6. Adjoining owner of property to be annexed that does not adjoin city (12-520c) without standing to challenge annexation examined. Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs, 13 K.A.2d 734, 738, 779 P.2d 463 (1989).

7. Annexation of multiple contiguous tracts, with owners' consent, where part adjoins city as proper under 12-520 examined. City of Leawood v. City of Overland Park, 245 K. 283, 285, 777 P.2d 830 (1989).

8. Proposed use of or reason for island annexation (12-520c) examined where future growth affected. Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs, 249 K. 149, 153, 815 P.2d 492 (1991).

9. Section construed; determination to be made by board of county commissioners, criteria to be used; "manifest injury"; appellate review. City of Topeka v. Board of Shawnee County Comm'rs, 252 K. 432, 845 P.2d 663 (1993).

10. Joint review of petitions for annexation and incorporation (15-121) examined. In re Petition of City of Kansas City for Annexation of Land, 253 K. 402, 856 P.2d 144 (1993).

12-521a. Same; annexation of a fire district; criteria to be considered. When determining the effect of a proposed annexation on a fire district or a portion of a fire district, considerations by the board of county commissioners shall include, but not be limited to, the:

(a) Response time of the city and the fire district to the area proposed to be annexed;

(b) impact on the fire district from the decrease in its tax base if the annexation is approved;

(c) impact on the city's provision of fire service if the annexation is disapproved;

(d) impact on the residents of the area if the annexation is approved; and

(e) impact on the remainder of the fire district if the annexation is approved.

History

12-521

Upon the condition ordinance clerk shall with the clerk of the county or No fee shall register of titled copies her.

History

12-525

exception take effect except that within thirty day following within thirty day shall become last such election shall apply of state, county and general this section

History:

1. Cited; or of Hutchinson

2. Publication held to be not v. City of Olat

12-524

not authorized construed to authorize any part or city.

History:

Research and Municipal C.C.J.S. Municipal

1. Section re challenge the Lenexa v. City

12-525.

History: 1974, ch. 56



DAVID D. JACKSON
 STATE SENATOR, 18TH DISTRICT
 NORTH SHAWNEE COUNTY
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 TOPEKA, KANSAS 66617-2305
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COMMITTEE ASSIGNMENTS
 WAYS AND MEANS
 ELECTIONS AND LOCAL GOVERNMENT
 TRANSPORTATION
 JOINT COMMITTEE ON SPECIAL CLAIMS
 AGAINST THE STATE
 TOPEKA STATE HOSPITAL CEMETERY
 MEMORIAL ADVISORY COMMITTEE
 JOINT COMMITTEE ON CHILDREN'S ISSUES
 SPECIAL COMMITTEE ON KANSAS SECURITY

SENATE CHAMBER

Testimony on House Bill 2212
 Before the Senate Elections and Local Government Committee
 Barbara Allen, Chairperson

Good afternoon Madame Chairman and Committee members. I am here in support of the amendment to HB 2212 as proposed by Representative Toelkes because this bill is an important improvement in a public policy area which has long been a divisive issue among local government and citizens.

Simply put, this bill will cause city and counties to work together to accomplish better government. As unilateral annexation works now, city council members have the power to chose a government without a choice by those being annexed. Taxation without representation is what results and our ancestors fought the Revolutionary War over this very issue.

You will undoubtedly hear the wails of anguish from the opponents of this bill and they will infer that this provides for the orderly development of populated areas. This is nonsense. What has actually occurred is the flight of good people beyond the county lines for protection from the reaches of a municipality with an aggressive annexation policy that causes an increase in property taxes and a decline in the quality of service.

A study was performed in 2001 by the University of Kansas School of Law's Public Policy Clinic. According to that study there is no evidence to support the contention that economic development or any other benefit has been derived from the current annexation laws.

It's time for a change. With the passage of this bill unfettered economic development can and will occur and citizens can select their own form of government. I ask for your support of this bill and would stand for questions.

Thank You,

David D. Jackson
 Senator, 18th District

Senate Elec & Loc Gov
 03-18-03
 Attachment 2

ROB BOYER
REPRESENTATIVE, 38TH DISTRICT
JOHNSON COUNTY
26412 W. 110TH TERR.
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TOPEKA

HOUSE OF
REPRESENTATIVES

March 18, 2003

Senate Committee on Elections and Local Government

Re: Support for the annexation amendment to HB 2212

The amendment makes it possible for cities to annex "inactive" military sites.

Background: Sen. Brownlee, Rep. Ballou, and I have been engaged in creating a re-development authority for the Sunflower Army Ammunition Plant in Western Johnson County. The legislation that creates that authority is SB 237. The purpose of the re-development authority is to resolve issues at Sunflower relating to the transfer, clean up and development of the property. SB 237 is our primary effort at the resolution of the Sunflower issue.

The annexation amendment to HB 2212 is important in the event that SB 237 either fails or is passed in such a way that it fails to meet the intended objective. The City of De Soto is most effected by this amendment, however if the cities of Olathe or Gardner annex land up to the borders of Sunflower this amendment would effect them.

Since the failed OZ project, the future of Sunflower has been an unresolved issue. GSA (Government Services Administration) represents the U.S. Army at Sunflower and has repeatedly expressed their frustration over our inability to provide coherent leadership and strategies for the future of the site. Should SB 237 fail, we will once again be left without viable options.

With this amendment, the Cities of De Soto, Olathe, or Gardner could create their own re-development authority (a power already granted them), annex the Sunflower site, and take direct responsibility for the future of this ground. The added possibility of statewide STAR bond authority as well as federal programs including the Brownfields Tax Incentives and the new Small Business Liability Relief and Brownfields Revitalization Act make annexation and development a viable option for local cities.

Most importantly, we all fear the liability issues associated with Sunflower. Neither the State nor the County want to be in the chain of custody for the title of the land at Sunflower. If the City of De Soto creates its own re-development authority it could take direct transfer of the Sunflower land. The State and County would not be party to the transfer and therefore avoid all liability issues associated with the contamination of the land.

Thank you for the opportunity to speak on behalf of this amendment.

Senate Elec & Loc Gov
03-18-03
Attachment 3

ROGER E. TOELKES
REPRESENTATIVE, 53RD DISTRICT
SHAWNEE COUNTY
3811 SE 33 TERR
TOPEKA, KANSAS 66605
(785) 267-7105



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

ETHICS AND ELECTION
LOCAL GOVERNMENT
TRANSPORTATION
UTILITIES

CHAIRMAN: SHAWNEE COUNTY DELEGATION

STATE CAPITOL BUILDING—ROOM 281-W
TOPEKA, KANSAS 66612-1504
(785) 296-7687

Madam Chair, and members of Local Government Committee:

I come before you today to support HB 2212.

HB 2212 amends the city annexation law to change the effective date of the ordinance from 30 days to 60 days upon publication.

This bill was amended to bring true equity to the annexation process in Shawnee County. It would not allow unilateral annexation in any county with an improvement district.

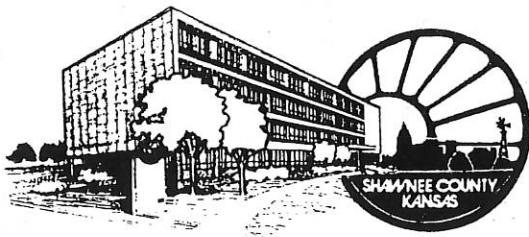
An area in Southwest Shawnee County known as Lake Sherwood, because of State Statute KSA-192753 cannot be unilaterally annexed without the vote of the County Commission. HB 2212 would allow equal treatment to all residents of Shawnee County. This would give the County Commission, who are elected by the County residents, a final vote to see if the annexation process was done properly, according to the law.

Further it would allow cities to annex territory of a United States Military reservation if that establishment is not an active reservation.

Equal and fair representation for all the residents of Shawnee County is at stake in this bill. I urge your support for all the citizens.

Thank you for hearing my testimony.

Senate Elec & Loc Gov
03-18-03
Attachment 4



Shawnee County Board of Commissioners

Rm. B-11, Courthouse Topeka, Kansas 66603-3933

Marice Kane, 1st district

Vic Miller, 2nd district

Theodore D. Ensley, 3rd district

(785) 233-8200 ext. 4040, Fax: 785-291-4914

E-Mail: Commission@co.shawnee,ks.us

Network Address: www.co.shawnee,ks.us

March 18, 2003

Madam Chairperson and Members of the Committee:

My name is Vic Miller. I currently serve as Chairman of the Shawnee County Commission.

I appear here in support of HB 2212, not as a commissioner seeking more work or as a proponent or opponent of the city's efforts to annex. Rather, I appear as an elected representative of a group of citizens who are currently treated under the law as second class citizens.

K.S.A. 12-520(c) affords citizens of certain improvement districts the protection of a review by the county commission of a city's effort to unilaterally annex. In Shawnee County this translates to 4,457 citizens (Lake Sherwood Improvement District – 2000 Census). The people in my commission district, Senator Jackson's or Senator Hensley's district and Rep. Toelkes' district do not enjoy this protection. They have lesser rights but are given no justification as to why. Can someone tell them why they should not enjoy the same rights as the people of Lake Sherwood? I can't.

Are the citizens asking for this protection asking the city to do anything onerous? Their simple request is that the city do what they are already required to do in many other instances – make their case to the county commission.

The county approval process was recently described thusly:

- 1) Saves the city time and money;
- 2) Simplifies the process for the annexation of multiple parcels of land; and
- 3) Affords affected landowners certain protections.

Lastly, I would note that county commissions cannot act arbitrarily in reviewing a city's application for unilateral annexation. The legislature has carefully crafted a list of fourteen criteria which **must** be considered. The commissioners **must** make specific findings relating to the statutory criteria. All findings are reviewable by a district court and **must** be based on evidence submitted at the hearing. (K.S.A. 12-521)

If the commissioners can be trusted with these decisions in certain cases, why not in others?

Senate Elec + Loc Gov
03-18-03

Attachment 5

Local & State

Built for you
A new subdivision
at S.W. 17th and Urish Road
offers custom-made homes.
Saturday in At Home

C
THURSDAY
THE CAPITAL-JOURNAL
MARCH 13, 2003

Community

City to attempt expansion

Annexation: Two areas near Topeka could be added pending approval from county commission

By Mike Hall
The Capital-Journal

Topeka City Council members voted unanimously late Tuesday to seek annexation of two large areas, one west of the city and one south.

Unlike past annexation attempts, the city will ask the Shawnee County Commission to approve the two areas.

The first area is 376 acres west of the present city limit — west of West

Ridge Mall — west to S.W. Urish Road, north to Huntoon and south to 21st.

The other area includes 461 acres south of S.W. 49th, between the new US-75 highway bypass and the Burlington Northern and Santa Fe Railway tracks. It includes the new Target distribution center site and other areas expected to develop for industrial and commercial uses in the future.

Public works director Neil Dobler said the city would need to seek county commission approval of the annexations because state law limits the city to using its own annexation powers on platted developments or unplatted sites of less than 21 acres.

There are no residential properties in the south area, but Dobler said there are 68 houses in the west area.

The city will ask the county to place the city's resolution on the county agenda for Monday morning. The resolution would set a public hearing date of May 21 for the county commission to hear arguments for and against the annexations. The county then would be asked to vote on the annexations within one week after the hearing.

In other action, the council, after months of deliberation, took a preliminary action for the purchase of a tub grinder for the forestry dump. The \$478,000 tub grinder is a large machine that grinds tree limbs and even relatively large tree trunks into wood pulp. The machine is considered necessary because state and county officials have ordered the city

to cease burning brush.

The council's action was to add the purchase to the city's capital improvement plan. Further specific actions will be needed, including a determination of how to pay for it, before the machine will be purchased.

Another proposed addition to the capital improvement plan, a new street to be called S.W. Wenger Road in the new industrial area south of the city, was withdrawn. Councilman Clark Duffy requested the withdrawal, saying more information was needed and more decisions needed to be made before the city would be ready to consider that project.

Mike Hall can be reached at
(785) 295-1193 or mhall@cjonline.com.

Quiz

More than 150,000 sold
passed through what place in
Kansas during World War II?
(Answer below)

Briefly

Sebelius fills slot on appellate court

WICHITA — In her first judicial appointment, Gov. Kathleen Sebelius named Judge Tom Malone to the Kansas Court of Appeals.

The announcement was made Wednesday in Wichita, where Malone has served since 1991 as a state district judge in the 18th Judicial District. Prior to that, he practiced law in Wichita at the firm of Redmond, Redmond & Nazar.

"I am confident that Judge Malone will be an excellent addition

5-2

5-2

City of Topeka Annexation Presentation

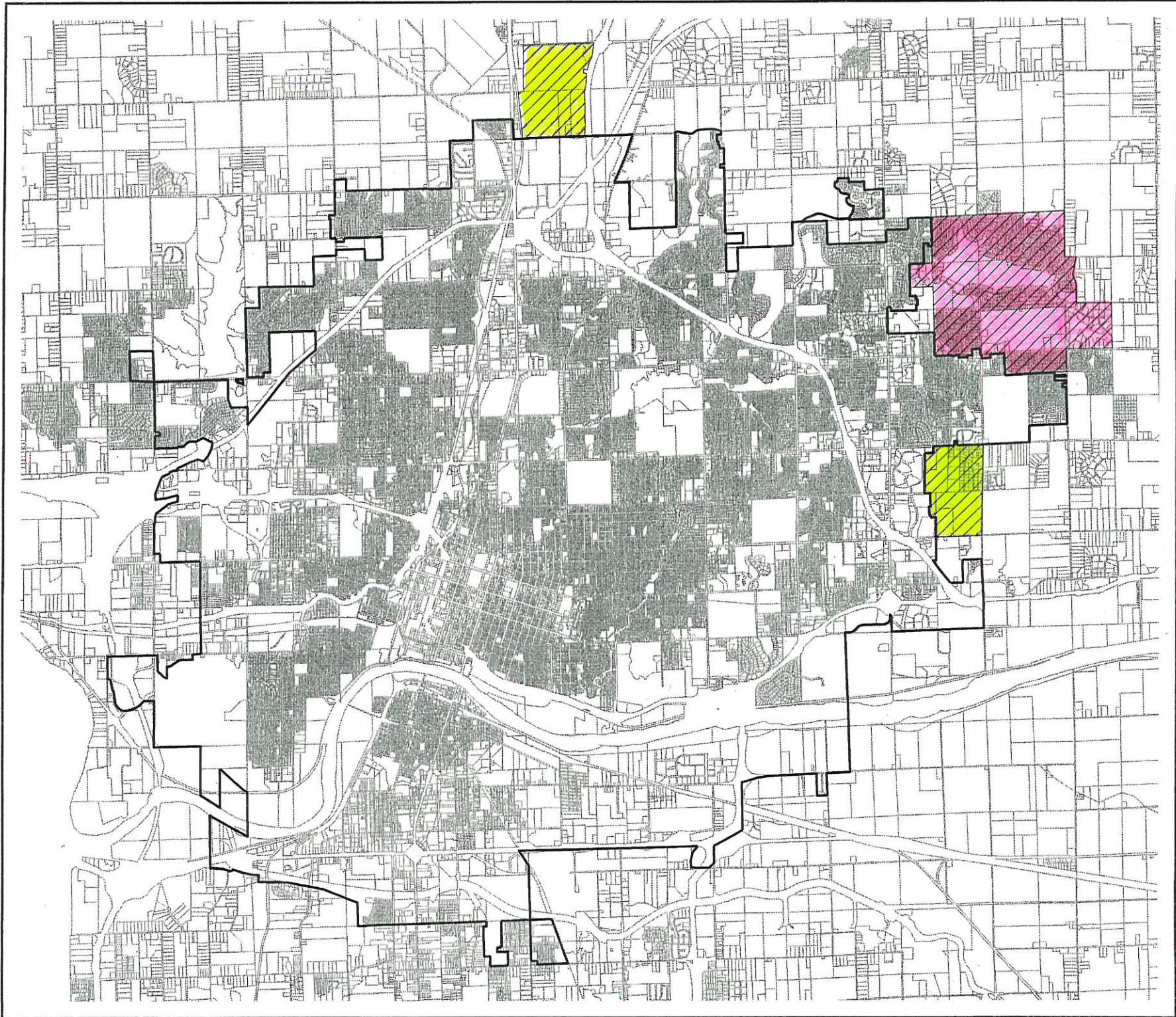
March 11, 2003
Council Chambers

County Approval Process

- ◆ Saves the City time & money
- ◆ Simplifies the process for the annexation of multiple parcels of land
- ◆ Affords affected landowners certain protections

Annexation Process

- ◆ City Council passes Resolution asking County to set public hearing
- ◆ County sets hearing date 60 to 70 days from presentation of resolution
- ◆ County holds public hearing
- ◆ County Commission votes on annexation within 7 days of hearing
- ◆ If approved, City Council passes annexation ordinance



Annex map

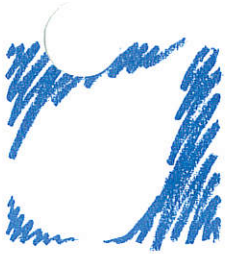


03/17/03

By: Atchison

This property ownership map is for tax purposes only. Shawnee County is not liable for use of this map for any purpose. This map is not intended for conveyance. Not a legal survey. This map and its contents are subject to change without prior notice.





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**Comments on House Bill 2212
before the Senate Committee on Elections and Local Government.
March 18, 2003**

Mr. Chairman and Members of the Committee:

I am Dennis Schwartz, Director of the Kansas Rural Water Association, and the General Manager of Rural Water District No. 8, Shawnee County Kansas.

I appear here today in support of House Bill No. 2212. This bill would give those who would be affected by a city's intentions to annex some voice in the proceedings by requiring approval of the annexation by the Board of County Commissioners. Under present law, the action of a city may be totally unilateral and made by members of a governing body not representing those entities or property owners who are proposed to be annexed. This method is totally contrary to any resemblance of representative governing.

If a valid case exists for the annexation of certain territories into a city, and if it is truly in the overall best interests of both those who are proposed to be annexed as well as the rest of the community and any other local units of government, it should be assumed that the Board of County Commissioners will act appropriately.

I have watched numerous times as a city has proposed a unilateral annexation. I have seen the frustration of members of the governing bodies of local entities and citizens standing before a governing body, feeling powerless as the fate of their organizations and property rests in the hands of political leaders for whom they never had the ability to vote upon.

Please consider restoring the democratic process to the method by which land may be attached to a city. Please consider approving House Bill 2212.

Sincerely,

Dennis F. Schwartz, Director
Kansas Rural Water Association

Senate Elec & Loc Gov
03-18-03
Attachment 6



SEDGWICK COUNTY, KANSAS

Commissioner of Elections

Marilyn K. Chapman

Historic Courthouse * 510 North Main * Wichita, Kansas * Telephone (316) 660-7100 * Fax (316) 383-7388 * sedgwickcounty.org/elections

TO: Committee on Elections and Local Government
FROM: Marilyn K. Chapman
DATE: March 18, 2003
SUBJECT: HB 2212

Pursuant to KSA 19-3426, the election commissioners in the four largest Kansas counties are required to publish changes to wards and/or precincts once at least 30 days before any election. 12-523 allows cities to annex properties up to 30 days before an election. These two deadlines are not compatible.

Every election can be affected by the annexations. In city elections in odd numbered years the people become eligible to vote for city candidates. In township elections in even numbered years the people are no longer eligible to vote for township candidates.

Over the past few years many cities have pursued aggressive annexation programs that have made it virtually impossible for us to meet our statutory publication deadlines. Some of the areas annexed include dozens of parcels. Information provided by the cities is often not helpful and exact locations and addresses have to be researched and determined. Then databases must be changed and the people notified. This often takes many days, or even weeks, to complete.

Cities are also notorious in failing to notify us in a timely fashion of annexation ordinances. In a primary election a couple of years ago, our first indication of a sizable annexation was on Election Day when a voter called inquiring why his usual place was not open for voting. The voter filed an objection to the primary and several hundred voters were subsequently allowed to vote in a special election, changing the results of the primary. The annexation had occurred two months before, but we had no notification from the city on that ordinance, or on two others passed at the same time.

We have tried to prevent any further such occurrences by sending a letter to each city with a list of all annexation ordinances that have been received from each of them since the last election.

Senate Elec + Loc Gov
03-18-03

Attachment 7

ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

RE: HOUSE BILL #2212

MADAM CHAIRPERSON & COMMITTEE MEMBERS

My name is Edgar Peck and I am treasurer of Tecumseh Township which is located in eastern Shawnee County, and also serve on the Topeka Tecumseh Fire Board.

Until you are affected by a law or statute we assume it must be okay because law makers had to have thought about it and approved it for it to become law. Now, because part of our township and fire district are involved with possible annexation, I have studied the broad authority granted cities to annex communities unilaterally. Webster defines unilateral as, "Relating to, involuntary, or affecting only one side", but the fact of the matter is there is another side besides the city and that is the communities being annexed. Something is wrong with the system when a developed and established community has no voice or representation in their future taxation.

I would encourage your support of this bill which will give representation through their elected county commissioners.

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03-18-03
Attachment 8

Leslie A Kendall
2701 SE Peck Road
Topeka, Kansas 66605

March 18, 2003

To: Kansas Senate Committee on Elections and Local Government

Subject: Support of House Bill 2212

My name is Leslie Kendall and I am speaking as a concerned citizen as well as a representative of a group of citizen's who, in 2002, were the subject of a unilateral annexation plan.

On August 6, 2002, the Topeka City Council adopted resolution, #7252, "to consider annexation of land in the general vicinity of SE 29th Street and Croco Road by means of the unilateral annexation method." We, the residents in the proposed annexation area, were concerned and had numerous questions that about the proposed annexation.

We had questions about service changes, the completeness of the information in the Service Plan prepared by the city, as well as what voice we would have in the process. Questions such as,

Why did the city council vote on a preliminary plan? They voted to pursue annexation on August 6 using a plan marked Preliminary. The final plan was filed on August 9. Between those two dates dollar figures on the plan went from a \$281k gain for the city to a \$31k loss. (Source: Preliminary Annexation Service Plan by the City of Topeka, Kansas, August 5, 2002; Annexation Service Plan by the City of Topeka, Kansas, August 6, 2002)

How was economic growth to be obtained by annexing a fully developed residential area east of the city instead of land west and southwest where industrial and retail development projects are currently underway.

More specific concerns rose around the facts and figures in the Service Plan.

1) Numerous figures in the revenue and expense documents called for providing services at low or zero (0) cost, such as:

- a. Police protection \$0 expense
- b. Fire protection \$0 expense
- c. Snow removal \$700/per year expense
- d. Electricity for traffic signals \$0 expense
- e. Cost of street repair \$0 expense

(Though plan called for an expenditure of \$43,000)

(Source: Annexation Service Plan by the City of Topeka, Kansas, August 6, 2002)

2) Costs were pro-rated costs in anticipation of a much larger annexation plan. The city was in fact calling this Phase I of a five-phase annexation plan. The service plan for Phase I contained several large expenditures while the distribution of the cost was dependant on the city annexing over 1,000 other homes. Examples:

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03-18-03
Attachment 9

Leslie A Kendall
2701 SE Peck Road
Topeka, Kansas 66605

- a) The plan called for the installation of traffic signals at 29th St. and Croco Road, which comply with city standards. The total cost, \$150,000. The amount attributed to the annexation, \$13,470.
- b) The cost of asphalt overlay of 29th Street and Croco Road is shown at \$62,000. The cost listed in the service plan for phase I was \$43,000.
- 3) The property tax revenue gain for the city included taxes beginning in 2003 while the statute reflects language that Taxes for 2003 would be paid to the Tecumseh Township.
- 4) Many regulatory changes for the residents in the Service Plan contained no outline or plan for assisting the residents in complying with the regulations.

This list includes just a few of our questions. There were many reasons for the citizens to be concerned with the contents of the plan.

We went to the council to address our questions and concerns and were told, this was not the place to address them. Instead concerns should be addressed at the public hearing.

This also concerned us as; per the cities own published timeline there was not enough time after the hearing to address major issues.

Timeline for annexation (Source: Certified letter to residents informing them of the annexation plan.)

Public Hearing, October 14

First reading, October 15

Final reading, October 22

How were we to get a fair examination of our concerns in one day?

Throughout the process we continued to bring our concerns to the city council. A government body, which, by virtue of this annexation were saying they wanted to represent us.

We were treated as adversaries from the first moment. Remarks like “it is time for the county residents to pay their share,” or “the city is providing services and it is time for people to pay for them” were given over and over.

I doubt I need to tell you that the City of Topeka never “gave” me water. I pay for sewer service operated by the city, and purchase my water from Rural Water Dist #8. Water sold to the water district by the city.

I can tell you that, through the process, the prevailing concerns of the majority of the citizens were 1) how can they do this when we have no say in the matter and 2) how can

Leslie A Kendall
2701 SE Peck Road
Topeka, Kansas 66605

they treat us this way when they claim to want us in the city? What sort of welcome is this?

Suddenly citizens, who work, shop, and participate in the economy of this city were....“the enemy.” We were adversaries. Why, because the city did not want to make a case for annexing our homes to our elected representatives, the Shawnee County Commission.

Why did they feel the need to use unilateral annexation if it was such a good idea for everyone? I ask that question of Mayor Felker, at a meeting on August 29th. I was told, “because, that is the law.”

I would submit to you, representatives of Kansas, that taking action on citizens in an adversarial manner, where those citizens have no elected representation is not only divisive it is inherently negative and harsh. It should be reserved for the most serious and extreme events. Annexation of a 96 home subdivision in the middle of a fully developed community doesn't qualify.

I would urge you to act favorably on House Bill 2212.... a step that will help provide equal protection for all citizens.

Thank you.

Brad Allen Oliver

3101 SE Starlite Drive
Topeka, KS 66605
785/267-3240

March 18, 2003

To: Honorable Chairman and Respected Members of the Elections and Local Government Committee of the Kansas Senate.

Re: Comments in Support of House Bill 2212

It is my honor to appear before this Senate Committee and provide the following information for your consideration in supporting House Bill 2212:

On August 6, 2002, a resolution was introduced by the Mayor of the City of Topeka declaring an interest in, and establishing a public hearing date for considering the unilateral annexation of certain lands generally described as being in the vicinity of 29th and Croco Road located in the southeastern portion of Shawnee County, Kansas. *See Exhibit 1.*

The Council Form accompanying the proposed resolution introduced by the Mayor clearly indicated that the unilateral annexation was but one of a "series of annexations scheduled for the area." *See Exhibit 2.*

It was discovered that the City of Topeka was actually considering unilateral annexation of five (5) separate phases in southeastern Shawnee County that would eventually affect at least 1,069 existing homes. Yet, the City Council was intentionally proposing to do the phased annexation to avoid allowing our elected representatives, the Board of County Commissioners of Shawnee County, to have any voice in this process.

At the Council Meeting held on August 6, 2002, I appeared as a concerned, affected resident and raised an objection to the Mayor's proposed resolution. My objections to the proposed resolution were based on the inadequacies of the resolution to provide the affected residents of Shawnee County with proper notice and opportunity to be heard. The resolution stated that the City had a Service Plan on file in the City Clerk's Office. My personal visit to the City Clerk on that same date revealed no such plan was on file as misrepresented by the resolution. Neil Dobler, the director of Public Works for the City of Topeka, quickly announced that the proposed Service Plan would be on file on August 9, 2002.

Despite the objections voiced by many affected residents and the many unanswered questions posed by members of the City Council to City Staff, Resolution No. 7252 was approved by a 5 – 4 vote on August 6, 2002. *See Exhibit 3.* A public hearing was scheduled by the City Council on October 14, 2002, with a first reading to occur on October 15, 2002.

Senate Elec & Loc Gov
03-18-03

Attachment 10

On August 7, 2002, I filed an Open Records Request with the City Clerk for the City of Topeka for a copy of the proposed Service Plan. *See Exhibit 4.*

On August 8, 2002, the City Attorney replied to my Open Records Request stating that the Service Plan was on file in the City Clerk's Office and was readily available for inspection and copying. The City Attorney's statements of the availability of the proposed Service Plan contradicted the representations made by Neil Dobler at the City Council Meeting held on August 6, 2002.

On August 9, 2002, I personally visited the City Clerk's Office and attempted to obtain a copy of the Service Plan. I was informed that the Service Plan was not available for inspection as it was "being revised to address the objections raised by concerned residents and the requests for additional information by council members." I requested that the City Clerk's Office notify me as soon as a final version of the City's proposed Service Plan became available. I was never notified that a final version was available.

During a City Council Work Session held on October 1, 2002, Neil Dobler, the director of Topeka's Public Works Department, admitted openly that the City chose to "do a phased annexation" since it is a "small enough area to take" without requiring the submission of the annexation plan to the Board of County Commissioners for Shawnee County. This confirmed the suspicions of affected residents that the City of Topeka was attempting to deprive us from having our elected representatives assist us in evaluating whether the City of Topeka's proposed unilateral annexation complied with the statutory requirements of K.S.A. § 12-520a(e)(1-5).

On Friday, October 11, 2002, the Public Works Department for the City of Topeka made its revised annexation service plan available for the first time to affected residents of southeast Shawnee County, only four days prior to the scheduled public hearing date, October 14, 2002.

K.S.A. § 12-520 requires that the City of Topeka provide services that are "equal to or better" than the basic service currently provided to affected residents. Please keep in mind that the City of Topeka was proposing to annex least 1,069 homes in southeast Shawnee County. Yet, the revised Annexation Service Plan, as proposed by the City of Topeka, made absolutely no fiscal allocation for the provision of basic services such as fire and police protection which we, the affected residents, receive from Topeka – Tecumseh Fire District and Shawnee County.

Even after the City revised its proposed the Annexation Service Plan, the City completely failed to include any means for providing fire and police protection to the 1,069 homes. Even without providing such basic safety services to the affected residents, the City of Topeka could still not economically justify annexing Phase I. *See Exhibit 6.*

The City's stated plan to do annexation through five (5) phases was improper from the beginning. Each phase of an annexation plan must be evaluated on its own merit. Annexation of lands which depend on completion of other pending annexations is not permitted. *State v. City of Coffeyville*, 211 Kan. 746 (1973).

Recognizing the legal questionability of the City of Topeka's proposed annexation, four brave members of the Topeka City Council walked out of the public hearing on October 14, 2002. Because the Mayor and other city council member choosing to attend the public hearing could not establish a quorum of the Council, the public meeting was cancelled.

On October 15, 2002, at the City Council meeting, Topeka Mayor Felker announced that the city, on advice of counsel, would not pursue annexation under the service plan generated for Resolution #7252. This was a small, but costly victory for the residents of southeast Shawnee County who stood up for their legal rights.

County residents who are targeted by cities through the current statute permitting unilateral annexation do not have an elected representative voice in the process. My neighbors and I ask that this Committee support House Bill 2212 so that affected residents may count on our elected representatives, the Board of County Commissioners, to objectively evaluate whether a city's proposed annexation service plan complies with all of the statutory requirements to provide services equal to or better than those services currently being provided to the affected residents.

In short, we simply ask for the statutory right to have equal representation in any annexation proceeding.

Thank you for your time and consideration.

A handwritten signature in black ink, appearing to be 'BAC' with a flourish at the end.

City Council Meeting Agenda

Contact Iris Walker with any questions

[View the current Detailed Agenda Information in Adobe Acrobat (.pdf) format]

August 6, 2002

7:00 P.M.

INVOCATION:

PLEDGE OF ALLEGIANCE:

I. PROCLAMATIONS:

II. ROLL CALL:

III. CONSENT AGENDA:

- A. A Final Plat for Eveningside Subdivision on property located at the northwest corner of SW 30th Street and SW Eveningside Drive in the City of Topeka, Kansas. (P02/12)

(Approval will provide for a six (6) lot subdivision intended to accommodate its use and development for two-family development.)

- B. A Final Plat for Highland Crest Plaza Subdivision on property located at the southeast corner of SE Fremont Street and SE 29th Street in the City of Topeka, Kansas. (P02/19)

(Approval will allow the use and development of the property for a one (1)-lot subdivision to accommodate the construction of a public mini storage facility in addition to retail commercial.)

- C. A Final Plat for Gardner Estates Subdivision No. 3 on property located at the northwest corner of SE 23rd Terrace and SE Cuvier Street within unincorporated Shawnee County, Kansas. (P02/21)

(The proposed plat lies within the three (3) mile extra-territorial jurisdiction of the City of Topeka for subdivision review and approval.)

- D. Minutes of the Regular Meeting of July 9, 2002 and July 23, 2002
E. Applications

IV. PUBLIC HEARINGS:

- A. A PUBLIC HEARING for the purpose of hearing and answering questions or objections of taxpayers relating to the proposed use of all funds and the amount of tax to be levied.
B. A PUBLIC HEARING for citizen comment on the proposed FY2003 Consolidated Plan.

Final

V. UNFINISHED BUSINESS:

A. AN ORDINANCE introduced by Mayor Felker and Councilmembers Clark Duffy and Duane Pomeroy relating to uses that are regulated by adoption of City Ordinance and specifically repealing City of Topeka Ordinance No. 17830. Final reading. *(Referred from Committee on July 22, 2002 with a "do not pass" vote of 2-1-0.)*

(This ordinance amends City zoning ordinances only by establishing a 90-day period for property owners to initiate rezoning and/or conditional use permit application to bring a site into compliance with newly enacted regulations addressing Group Residences and Correctional Placement Residences.

This ordinance was originally adopted on May 14, 2002 as a Shawnee County Resolution and City of Topeka Ordinance and was declined by Shawnee County.)

B. AN ORDINANCE introduced by Mayor Felker and Councilmembers Clark Duffy and Duane Pomeroy, amending the Comprehensive Zoning code by adding as permitted, provisional and conditional uses, group residence general, group residence limited, correctional placement residence general, and correctional placement residence limited, and providing definitions therefor, amending City of Topeka Code Chapter 48, Article XXXV and Article XXVI, and specifically amending City of Topeka Code Section 48-2.02(c), 48-3.02(c), 48-4.02(c), 48-5.02(c), 48-6.02(c), 48-7.02(c), 48-8.02(c), 48-8a.02(c), 48-9.02(a) and (c), 48-10.02(a) and (c), 48-11.02(a) and (c), 48-12.02(c), 48-13.02(c), 48-17.02(a) and (c), 48-18.02(a) and (c), 48-23.02(a) and (c); 48-23a.03.2, 48-23a.04.2, and specifically repealing said original code sections as noted in section 48 of this City of Topeka Ordinance and specifically repealing City of Topeka Ordinance No. 17829. Final Reading. *(ACZR02/2) (Referred from Committee on July 22, 2002 with a "do pass" vote of 2-1-0.)*

(This ordinance amends City zoning ordinances only by adding Group Residence and Correctional Placement Residence and new defined uses and providing for their regulation, and, amending the current definition of Family. This ordinance was originally adopted on May 14, 2002 as a Shawnee County Resolution and City of Topeka Ordinance and was declined by Shawnee County.)

VI. NEW BUSINESS:

A. A RESOLUTION introduced by Councilmember John Alcalá requesting designation of \$250,000 per year for 10 (ten) consecutive years beginning FY2003 from the Transient Guest Tax fund to restore the Great Overland Station.

B. A COMMUNICATION requesting approval of the Real Estate Officers Report for acquisition of Sumner School, and authorization for the Mayor to sign the real estate agreement.

A. A RESOLUTION introduced by Mayor Felker declaring an interest in, and establishing a public hearing date for considering the unilateral annexation of

certain lands to the City of Topeka, Kansas.

(Annexation is being considered in the general area of 29th and Croco Road)

VII. FIRST READINGS:

A. AN ORDINANCE introduced by Mayor Harry Felker relating to the vacation of a 20-foot wide alley right-of-way adjoining the north side of 1516 SW 6th Avenue, as dedicated by the plat of Haynes Subdivision, City of Topeka, Shawnee County, Kansas. First reading. (V02A/5) (Council District No. 1)

(Approval will allow the expansion of the existing parking lot located immediately north of 1516 SW 6th Avenue.)

B. AN ORDINANCE introduced by Mayor Harry Felker relating to the vacation of a 12-foot wide sanitary sewer easement on property located at 2432 SE Eveingtide Way, as dedicated by plat of Shawnee Lake Subdivision "C", City of Topeka, Shawnee County, Kansas. First reading. (V02E/5) (Council District No. 4)

(Approval will remove 12-foot wide sanitary sewer easement which extends through the applicants' home. The old sewer line was removed or abandoned and a new sanitary sewer line installed around the structure to compensate.)

C. AN ORDINANCE introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located about the northeast corner of SE Wittenburg Road and the Kansas Turnpike in the City of Topeka, from "C-4" Commercial District and "I-1" Light Industrial District ALL TO "I-2" Heavy Industrial District and specifically repealing City of Topeka Ordinance 17595. First reading. (Z73/15) (Council District No. 4)

(Approval will conclude a zoning process initiated in 1973.)

D. AN ORDINANCE introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning property located at 1603 SW 29th Street in the City of Topeka, from "R-1" Single Family Dwelling District to "O&I-1" Office and Institutional District. First reading. (Z02/6) (Council District No. 5)

(Approval will allow the applicants to continue the present use of an accounting and tax preparation office.)

E. AN ORDINANCE introduced by Mayor Harry Felker authorizing the City of Topeka, Kansas, to issue its Housing and Health Care Revenue Bonds, Series 2002, (Brewster Place Project) in the aggregate principal amount of \$2,225,000 for the purpose of financing the costs of constructing, equipping and improving certain residential and health care facilities located on the Brewster Place Campus in the City; authorizing the

Topoka City Not - City Council Agenda

execution of a second supplemental indenture by and between the City and Commerce Bank & Trust, Topeka, Kansas, as trustee, authorizing the execution of a second supplemental lease by and between the City and the Congregational Home, a Kansas Not-For-Profit Corporation; and authorizing and approving certain additional documents and actions in connection with the issuance of said bonds. First reading.

(The \$2,225,000 in tax-exempt health care revenue bonds will allow Brewster Place to extend and strengthen the quality and quantity of the services that they provide for senior citizens in the Topeka area. The project enhances the marketability of Brewster Place and protects previous city bond issues of \$12.6 million.)

VIII. REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER:

IX. REPORTS OF COMMITTEES AND OFFICERS:

X. PRESENTATIONS BY MEMBERS OF THE COUNCIL:

XI. PUBLIC COMMUNICATIONS AND COMMENTS:

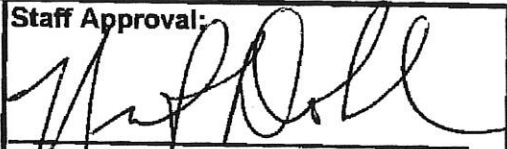
XII. EXECUTIVE SESSION:

XIII. ADJOURNMENT:

[Back to the City Council page](#)

City of Topeka City Council Form

606

Date: 2-Aug-02	Staff Approval:  Department Head	Mayor/CAO Approval:
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ACTION NEEDED:
Approve Resolution setting Public Hearing for annexation.

BACKGROUND/DESCRIPTION: Annexation is being considered in the general area of 29th and Croco Road - more specifically:
AREA 1 - For the area generally bounded by 29th Street on the south, Croco Road on the west, 27th Street on the north, and the east line of Meadow View Subdivision on the east. The subdivisions are commonly known as Meadow View Subdivisions No. 1 and No. 2, plus the individual home sites of 2540, 2632 and 2636 Croco Rd. within the Peck Subdivision; 3625 Howard St. within the Meek Subdivision; and 2530 Croco Rd. within the Belhaze Subdivision.
AREA 2 - For the area known as Croco Road R/W from the North Line of Shawnee Gardens Subdivision to the south R/W of 29th Street.
AREA 3 - The individual home site west of Croco Road which is an individual dwelling site inset in the Shawnee Gardens Subdivision, known as 2401 SE Croco Road.

FINANCIAL IMPLICATIONS: No cost for this action.

STAFF RECOMMENDATION:
Approve the resolution setting the public hearing on October 14, 2002 at 7:00 at Shawnee Heights Elementary School, 2410 SE Burton.

OPTIONS:

1. Approve the resolution and set the public hearing date.
2. Do not approve the resolution - the annexation process will not continue for these tracts.
3. Send to committee, which would require a new public hearing date.

PROS/CONS:

Pros: The series of annexations scheduled for this area will proceed in an orderly fashion.
Cons: None apparent, this only sets the public hearing, which is a requirement of the annexation process.

1 (Published in the Topeka Metro News _____)
2
3

4 RESOLUTION NO. _____
5
6

7 A RESOLUTION introduced by Mayor Felker declaring an interest in, and establishing
8 a public hearing date for considering the unilateral annexation of
9 certain lands to the City of Topeka, Kansas.

10 WHEREAS, the City of Topeka is a municipal corporation with powers of annexation
11 as authorized by K.S.A. 12-519 *et seq.*; and

12 WHEREAS, the City of Topeka provides a number of municipal services to
13 residents and businesses outside of the city limits, and there is strong interest by the City
14 of Topeka to continue to provide such services to lands inside and outside of the present
15 city limits; and

16 WHEREAS, the City of Topeka recognizes the need to have balanced growth in
17 order to have a healthy economy, and provide for industrial development opportunities in
18 addition to commercial and residential growth; and

19 WHEREAS, the following described land meets one or more of the conditions
20 prescribed by K.S.A. 12-520(a)(1)-(6); and

21 WHEREAS, a report concerning the extension of municipal services to the
22 proposed annexation area has been prepared as required by K.S.A. 12-520b; and

23 WHEREAS, the land to be annexed is located wholly within Shawnee County.

24 NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Topeka,
25 Kansas that the City of Topeka is considering the annexation of certain eligible properties
26 described as follows:

27 Area 1: For the area generally bounded by 29th Street on the south,
28 Croco Road on the west, 27th Street on the north, and the
29 east line of Meadow View Subdivision on the east. The
30 subdivisions are commonly known as Meadow View
31 Subdivisions No. 1 and No. 2.

32 Plus:

33 The individual home sites of 2540, 2632 and 2636 Croco Rd.
34 within the Peck Subdivision; 3625 Howard St. within the
35 Meek Subdivision; and 2530 Croco Rd. within the Belhaze
36 Subdivision.; and also

37 Area 2: For the area known as Croco Road R/W from the North Line
38 of Shawnee Gardens Subdivision to the south R/W of 29th
39 Street; and also

40 Area 3: The individual home site west of Croco Road which is an
41 individual dwelling site inset in the Shawnee Gardens
42 Subdivision, known as 2401 SE Croco Road.

43 These include the lots, tracts and lands in Shawnee County, Kansas legally
44 described in Exhibit "A" attached hereto, and incorporated herein by this reference.

45 BE IT FURTHER RESOLVED, that a report setting forth plans for extending to the
46 area proposed to be annexed the major municipal services available to residents of the
47 City of Topeka, Kansas is on file in the office of the City Clerk, City Hall, 215 SE 7th Street,
48 Topeka, Kansas, and is available for inspection during regular office hours.

49 BE IT FURTHER RESOLVED, that a sketch of the lots, tracts, and lands proposed
50 to be annexed is marked as Sketch No. 1, attached hereto, and incorporated herein by
51 this reference.

52 NOTICE OF PUBLIC HEARING

53 BE IT FURTHER RESOLVED, that a notice is hereby given that a public hearing
54 will be held by the City Council of the City of Topeka, Kansas on October 14, 2002, at 7:00
55 p.m. at Shawnee Heights Elementary School, 2410 SE Burton, Topeka, Kansas 66605,
56 during which the proposal for annexation, including the plan for extension of municipal
57 services, will be presented and comments from all interested persons shall be heard.

58 BE IT FURTHER RESOLVED, that within ten (10) days of the adoption of this
59 Resolution, the City Clerk of the City of Topeka, Kansas shall by certified mail serve a
60 copy of this Resolution and sketch of the area proposed to be annexed on all owners of
61 land within the area proposed to be annexed and other interested parties and entities
62 prescribed in K.S.A. 12-520a(d)(1)-(7).

63 BE IT FURTHER RESOLVED, that this Resolution and sketch of the area proposed
64 to be annexed shall be published once in the official City newspaper not less than one
65 week nor more than two weeks preceding said public hearing.

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ADOPTED and APPROVED by the City Council _____

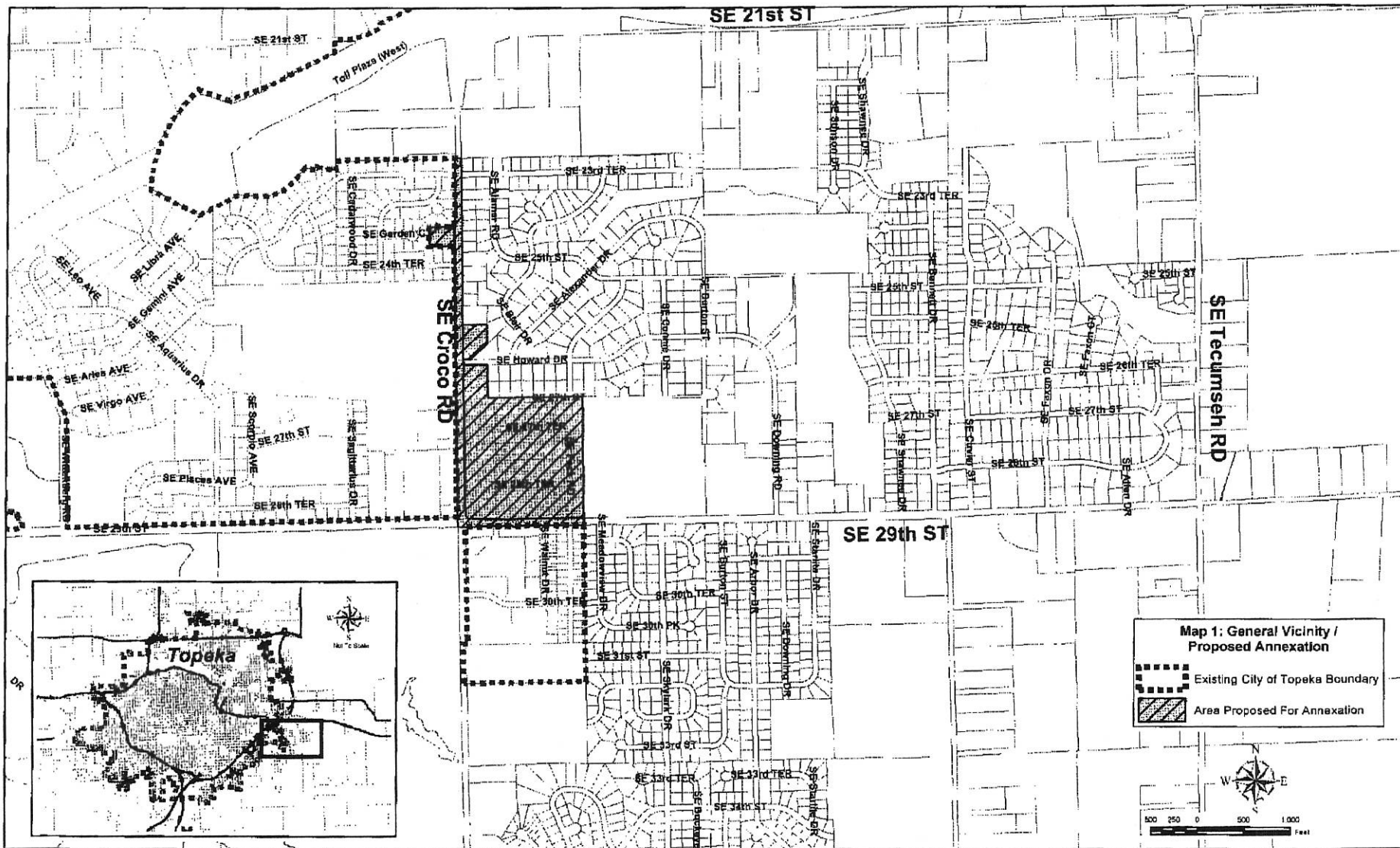
CITY OF TOPEKA, KANSAS

Harry Felker, Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 8/2/02 BY [Signature]



1 (Published in the Topeka Metro News OCTOBER 2, 2002)
2

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4 RESOLUTION NO. 7252
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7 A RESOLUTION introduced by Mayor Felker declaring an interest in, and establishing
8 a public hearing date for considering the unilateral annexation of
9 certain lands to the City of Topeka, Kansas.

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11 as authorized by K.S.A. 12-519 *et seq.*; and

12 WHEREAS, the City of Topeka provides a number of municipal services to
13 residents and businesses outside of the city limits, and there is strong interest by the City
14 of Topeka to continue to provide such services to lands inside and outside of the present
15 city limits; and

16 WHEREAS, the City of Topeka recognizes the need to have balanced growth in
17 order to have a healthy economy, and provide for industrial development opportunities in
18 addition to commercial and residential growth; and

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20 prescribed by K.S.A. 12-520(a)(1)-(6); and

21 WHEREAS, a report concerning the extension of municipal services to the
22 proposed annexation area has been prepared as required by K.S.A. 12-520b; and

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25 Kansas that the City of Topeka is considering the annexation of certain eligible properties
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34 within the Peck Subdivision; 3625 Howard St. within the
35 Meek Subdivision; and 2530 Croco Rd. within the Belhaze
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38 of Shawnee Gardens Subdivision to the south R/W of 29th
39 Street; and also

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41 individual dwelling site inset in the Shawnee Gardens
42 Subdivision, known as 2401 SE Croco Road.

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48 Topeka, Kansas, and is available for inspection during regular office hours.

10-15

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55 p.m. at Shawnee Heights Elementary School, 2410 SE Burton, Topeka, Kansas 66605,
56 during which the proposal for annexation, including the plan for extension of municipal
57 services, will be presented and comments from all interested persons shall be heard.

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59 Resolution, the City Clerk of the City of Topeka, Kansas shall by certified mail serve a
60 copy of this Resolution and sketch of the area proposed to be annexed on all owners of
61 land within the area proposed to be annexed and other interested parties and entities
62 prescribed in K.S.A. 12-520a(d)(1)-(7).

63 BE IT FURTHER RESOLVED, that this Resolution and sketch of the area proposed
64 to be annexed shall be published once in the official City newspaper not less than one
65 week nor more than two weeks preceding said public hearing.

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AUG - 6 2002

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ADOPTED and APPROVED by the City Council

CITY OF TOPEKA, KANSAS





Harry Felker, Mayor

ATTEST:



Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 8/2/02 BY FA

**REQUEST FOR RECORD
CITY OF TOPEKA**

NAME: BRAD ALLEN OLIVER (Printed)

ADDRESS: 3101 SE Starlite Dr. (Street) 785/267-3240

Topeka, KS 66605 (City, State)

SIGNATURE: BAO

Copies Sought: Please provide a specific description of the record(s) you desire to inspect. Include record title, date, originating city agency/department, or any other pertinent information:

Record Title/Date	Originating Agency/Department
1. <u>The Report (referenced in Item 6C of 08/06/02 Agenda) setting forth plans for extending services to the area considered for annexation generally located near 29th + Croco Road as required by K.S.A. 12-520b.</u>	<u>City Zoning + Planning</u>

(To be completed by Records Custodian)

Charges: A charge for providing access to public records is authorized by state law and has been established by the city governing body. These charges are set at a level to compensate the city for the actual costs incurred in honoring record requests. The fee schedule established by the city is posted in this office.

Prepayment for the above request _____ is required _____ is not required

Request: Date _____ Access Provided: Date _____
Time _____ am/pm Time _____ am/pm

Pages Copied: _____ Pages @ \$.25 per page \$ _____

Staff Time Involved: _____ Hours @ \$13.00 per hour _____

Other Charges _____

Total Charges \$ _____

Prepaid _____
Paid _____
Billed _____

Records Custodian

Your copy of this form is your receipt

2002 AUG 11 9:06 AM
RECEIVED
CITY OF TOPEKA



CITY OF TOPEKA

CITY ATTORNEY
215 SE 7th Street Room 353
Topeka, Kansas 66603-3979
Phone 785-368-3883
Fax 785-368-3901

RISK MANAGEMENT
215 SE 7th Street Room 353
Topeka, Kansas 66603-3979
Phone 785-368-3883
Fax 785-368-3901

CITY PROSECUTION
215 SE 7th Street Room 260
Topeka, Kansas 66603-3979
Phone 785-368-3910
Fax 785-368-3104

August 8, 2002

Mr. Brad Allen Oliver
3101 SE Starlite Drive
Topeka, KS 66605

Re: Open Records Request

Dear Mr. Oliver:

Your request to inspect and obtain a copy of the "Service Plan" for the proposed annexation area located near 29th and Croco Road was referred to this office for response. Please be advised that this plan is on file with the City Clerk's office. The document consists of approximately 36 pages. Current City policy requires prepayment of twenty-five cents (\$.25) per page to compensate the City for the cost incurred in honoring record requests. This fee must be paid prior to copies being made. If you wish to obtain a copy, please feel free to stop into the City Clerk's office and show them a copy of this letter along with your record request. In the event that you do not wish to have a copy of the entire record, the City Clerk should allow you to review the original document and indicate what you want copied.

Please let me know if I can be of further assistance. If you have any questions, please advise.

Sincerely,

Brenden J. Long
City Attorney

BJL/gl

cc: Iris E. Walker, City Clerk

REVISED ANNEXATION SERVICE PLAN

8 - 6 - 02

Revenue

Water	\$138,629
Wastewater	144,340
Stormwater	17,280
Property Tax	<u>223,800</u>

Total Revenue \$524,049

Loss of Revenue

Water	\$ 99,191
Wastewater	225,905

Expenditures 230,390

Total Lost Revenue
And Expenditures \$555,486

NET LOSS TO CITY \$ 31,437

Senators:

Thank you for the opportunity of appearing before you this afternoon with reference to House Bill 2212.

I fully believe that everyone should be treated equally under the law.

Today, you have the opportunity to see that it occurs with respect to HB 2212 as it relates to annexation by city governments.

In Topeka, several city council-persons believe the way to show growth in the city proper is to annex areas adjacent to the city. They don't seem to care whether there are jobs to permit full employment for those in the city nor whether they have the means to provide equal or better services to the area being annexed but appear to want only the head count to provide the bigger population numbers and the property taxes to fill the coffers.

The unilateral annexation attempt has the following characteristics:

It is NOT about the fairness of the proposal.

It is NOT about being able to provide equal or better services for the increase in taxes that will occur.

It is NOT about fairness to county and township services provided the population in the remaining non-annexed areas.

It is NOT about fairness to all the population since areas protected from unilateral annexation by being deemed an improvement district but otherwise included in the same adjacent area to the city proper.

It is NOT about the increased cost to the current citizens of the city of Topeka that the annexation will likely require.

It IS about population numbers, increased tax base and area, without regard for the damage it will do to the county and township entities remaining behind to service those who are not annexed.

It IS also about non-representation in the annexation process since unilateral annexation does not permit those being annexed to appeal to their elected representatives. They have no elected representatives until after the annexation process is complete and the redistricting allocations are established.

HB 2212 corrects a wrong that exists and provides for representation of those being annexed by forwarding the action to the county commissioners for approval. If the proposed action is justified, I have no doubt that the commissioners will approve and the results will consider all those impacted by the process, including the current citizens of the city, the citizens living in the area being proposed for annexation and the citizens of the county that remain outside of the city proper. The commissioners will consider the results of such action and its impact on those individuals and services remaining outside the city area.

HB 2212 institutes fairness for all whereas unilateral annexation is fraught with problems.

Thank you for your attention.

Senate Elec + Loc Gov
03-18-03
Attachment 11

Text of comments by Fred Heinz to the Kansas Senate Elections and Local Government Committee on 18 March 2003 regarding House Bill 2212.

I have come here today to ask this committee to do your part toward maintaining the integrity of our governmental system. Let the County Commissioner I had a chance to vote for represent me in the annexation process. Please vote in favor of House Bill 2212 not because the county commission knows any more than the city counsel but because the county commission is my representative to the governmental process that is annexation.

I, personally have no problem with having my home annexed into the city of Topeka. There is a high probability I will again be a citizen of the city of Topeka as were three prior generations of my family. My disagreement was with the plan proposed by the city and the harm I feel it would do to all parties concerned. I suspect recognition of flaws in the city's plan is why they tried to "phase in" the annexation of a large area in small parcels.

Someone I had a chance to vote for should have the opportunity to examine the plan and vote, yes or no. Isn't that what representation is about? My problem isn't annexation. It's the unilateral part that is wrong. My position as an employee of Blue Cross Blue Shield of Kansas has exposed me to an elected official making a decision I didn't like. But I, at least, had previously been given the opportunity to vote for that person. I can respect that person and the system without agreeing.

The Kansas Legislature has provided other areas of Shawnee County protection from unilateral annexation by the city of Topeka because it recognized the need for the representation I'm asking for. Please give my family and me the same. Please vote in favor of House Bill 2212.

Thank you

Fred M. Heinz
3906 SE 32nd Street
Topeka, Kansas 66605-2116

Senate Elec + Loc Gov
03-18-03
Attachment 12

City of De Soto

"Building On Small Town Values"



David R. Anderson
Mayor

Gregory S. Johnson
City Administrator

Lana R. McPherson, CMC
City Clerk

Patrick G. Reavey
City Attorney

Michael D. Brungardt, P.E.
City Engineer

City Council

Tim Maniez

Brad Seaman

John D. Taylor

Emil Urbanek

Unda Zindler

March 28, 2003

Senate Testimony

RE: House Bill No. 2212
Section 3 - Amendment

Sunflower Ordnance Works Plant currently carries a De Soto zip code and mailing address. The property has always been historically and economically linked to the City of De Soto, Kansas. We have enjoyed the boom years, and experienced the bust years.

The proposed redevelopment authority in SB 237 would allow a process that would include De Soto in the future development of the Sunflower plant. It is not certain that the county would have to form the board; and, therefore, we request your positive consideration for this amendment.

Eventually, portions of the Sunflower Plant are most likely to become annexed into the City of De Soto. We have enjoyed an interlocal agreement with Johnson County that works well in planning and development along our joint borders.

Thank you for your attention this matter.

David R. Anderson
Mayor

Senate Elec & Loc Gov
03-18-03
Attachment 13

Senate Local Government Committee:

The city of Topeka would like to unilaterally annex our area into Topeka without us the residents having any voice or vote on the annexation into the city. We feel that this is inequality because another area southwest of Topeka called Lake Sherwood has the favored status of the Shawnee County Commissioners having a say on any proposed annexation by the city of Topeka.

Please vote for House Bill 2212 because it would assure that the county commissioners would have to agree on any annexation the city would propose. Therefore this would give us the residents a voice in the democratic process because we do vote for the county commissioners. We are not against annexation, but against not having services, now being received, continuing.

Carol Bainum
3019 SE Burton
Topeka, KS 66605

*Senate Elec & Loc Gov
03-18-03
Attachment 14*

March 18, 2003

Senator Allen and Members of this Senate Committee:

My name is Richard Rowzer my wife Linda and I reside at 2428 SE Bennett Drive, Tecumseh, Kansas.

I am here to request that all of you support House Bill 2212. House Bill 2212 is about fairness. Fairness not only to the citizens that could be annexed but fairness to the citizens of the city doing the annexing.

On August 5th, 2001 many of us were able to read the City of Topeka's annexation service plan. Topeka's idea of growth was using a four phase annexation plan to annex approximately fifty square acres and eleven-hundred homes. This way the city could show growth and would prosper financially the first year by over two-hundred and eighty thousand dollars, (\$280,000).

On August 6th, 2001 the next day again we read the service plan that had been revised to show the city of Topeka would financially lose over thirty-one thousand dollars, (\$31,000) by annexing this area.

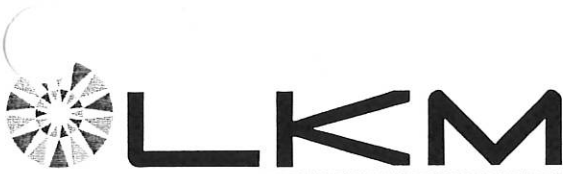
Never could the City of Topeka assure the citizens of the annexation area that we would receive services equal to or better than we were receiving before annexation as outlined by K.S.A. 12-520.

House Bill 2212 gives our elected County Commissioners a voice and a vote to represent us in our future, please support House Bill 2212.

Thank you,

Richard Rowzer
2428 SE Bennett Drive
Tecumseh, Ks 66542

*Senate Elec + Loc Gov
03-18-03
Attachment 15*



300 SW E .rue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

League of Kansas Municipalities

To: Senate Elections and Local Government Committee
From: Don Moler, Executive Director
Re: Opposition to Portions of HB 2212
Date: March 18, 2003

First I would like to thank the Committee for allowing the League to appear today in opposition to New Section 2 of HB 2212. The history of the Kansas annexation statutes is long and storied. I will not bore the Committee with all of the details and nuances of its development today. Suffice it to say, the annexation laws, as they are currently structured, are the result of a major conflict and compromise which occurred in the mid-1980's. The League was a major player in this struggle and worked with many interested parties to reach the eventual compromise which led to the current statutes we see today. As far as the League knows, the annexation statutes have worked well over the past 15 years and we believe they continue to work well.

The Committee should be aware that what is suggested by New Section 2 of HB 2212 is a massive change in public policy and one which should not be undertaken lightly. There is always a natural tension involved between landowners and cities when cities are growing as a result of economic development, population changes, and the need for public services. We understand that landowners feel the need to be protected and that is why there are so many protections currently found in the Kansas annexation statutes. The simple reality is that to adopt the language found in New Section 2 of HB 2212 would effectively obliterate all of the unilateral annexation statutes and completely reverse many years of public policy in this state. New Section 2, which would effectively end unilateral annexation for cities in counties having improvement districts as defined in K.S.A. 12-520, was amended onto HB 2212 as a floor amendment. This bill, in its amended form, would virtually eliminate the ability for cities in at least 12 counties to annex land into the city and muddies the annexation statutes for all cities statewide.

This amendment would allow unilateral annexation only for city owned property and land that adjoins the city when the owner has petitioned for annexation in those 12 counties. It is also believed that by the League that the amendment would make the annexation laws **unconstitutional** under the Home Rule amendment, Article 12, Section 5, of the Kansas Constitution. The Constitutional amendment provides in pertinent part that: "(a) The legislature shall provide **by general law, applicable to all cities**, for the incorporation of cities and the methods by which **city boundaries may be altered...**" Clearly this amendment to HB 2212 would only apply to cities in the 12 affected counties, making it unconstitutional.

As you know, county commissions currently have the ability to review annexations which do not fit under the unilateral annexation statutes and that is one of the key compromises which was reached back in the 1980's. Essentially the compromise allowed that certain, limited annexations could be undertaken unilaterally, without the consent of the county commission, while larger more inclusive annexations, would run through the county commission approval process. As a result, we would suggest that New Section 2 of HB 2212 is unwarranted and unnecessary. To undertake this type of massive change to an existing statute which is working well is not appropriate and we would strongly urge the Committee to reject this amendment out of hand. I will be happy to answer any questions the Committee may have on this subject.

Dear Senators,

It is amazing to me a citizen who pays a HUGE amount of taxes to my two local governments (city and county) that this issue is once again in front of the Kansas legislature . Don't we have more pressing budget problems to deal with in this critical time of deficits and war? The City residents of Topeka unfairly pay 70% of the taxes paid to our County for which we get almost nothing back in services.

I'd like to point out that the complaining from SE Topeka residents now get sewer service courtesy the City of Topeka and the so-called Rural water districts around Topeka get most if not all of their water from the City of Topeka . If Topeka wasn't here the population of Shawnee County would be probably 20,000 instead of 170,000. We are the economic engine driving the surrounding county and counties. We provide 100,000 jobs because this city is here. All the major cities of this state will be effected by this law change which is unneeded , and their economic growth will be effected negatively, thus pulling down the State economy. The cities are the seats of our University's, great libraries and culture and very importantly our markets and commerce. Placing cities under Hostile county governments like Shawnee County is not fair ,and will possibly derail future economic growth and development in ALL of our great cities. This will negatively effect the economies of Topeka, Wichita, Lawrence, Overland Park, Olathe, Hutchinson, Manhattan, et al in future, and the economy of the State of Kansas as a whole. I urge your OPPOSITION.

Sincerely,


Joseph Ledbetter MPA 305 Country Club Drive Topeka, Kansas 66611 ph.232-6946

Senate Elec + Loc Gov
03-18-03
Attachment 17



Johnson County, Kansas

OFFICE OF THE COUNTY MANAGER

Testimony in opposition to HB 2212
presented to the
Senate Elections and Local Government Committee
by
Danielle Noe
Intergovernmental Relations Coordinator
March 18, 2003

Madam Chair and Members of the Committee:

Thank you for the opportunity to testify in opposition to HB 2212.

Specifically, the Board of County Commissioners is opposed to the House Committee of the Whole amendment, which added the language found in Section 3 (page 2 lines 5- 14).

This amendment has the potential to create problems with development of the former Sunflower Army Ammunition Plant, located in Johnson County. The Sunflower Plant is made up of approximately 9,000 acres adjacent to and south of highway K-10. The Department of the Army owns the land. The General Services Administration (GSA) has been working on behalf of the Army to dispose of the land.

The goal of the Board of County Commissioners is to have this land developed using a comprehensive development plan, which follows the county's master development plan. Ideally, this would occur with one major developer taking the lead for the development. Multiple jurisdictions with zoning and planning authority over this land will likely discourage future development in this particular area.

This amendment was made without input from either the Army or GSA. It is unknown whether the Army may have concerns about having a portion of the land annexed. Moreover, we are unaware whether this amendment will affect other "military reservations" within the state of Kansas. There may be situations where a portion of a "military reservation" is active, while another portion is inactive.

Finally, I would add that once the land is transferred from the Army to another governmental or private entity, the land could be annexed under existing annexation authority.

For these reasons, the Johnson County Board of County Commissioners requests that you would not consider HB 2212 favorably.

111 S. Cherry, Suite 3300 • Olathe, Kansas 66061 • (913) 715-0725 • (913) 715-0727 fax

Senate Elec & Loc Gov
03-18-03
Attachment 18



Testimony Before the

Senate Elections and Local Government Committee

March 18, 2003

*Colin Hansen
Executive Director
Kansas Municipal Utilities*

House Bill 2212 – Municipal Annexation

In Kansas, 120 cities provide electricity to their citizens. 67 cities provide natural gas distribution services. Over 600 have a public water system. These municipal utilities provide a critical role for the Kansas communities that they serve.

Kansas Municipal Utilities (KMU) is the statewide association that represents the interests of municipal electric, natural gas and water utilities. Currently, we have 159 member communities in the organization. Celebrating our 75th anniversary this year, KMU member cities now provide utility services to over one million Kansans.

Over the years, the issue of annexation – and thus, utility service territory – has been one defined by constant and unrelenting legislative wrangling. Many times, cities find the annexation statutes that allow for the natural growth of their municipal utilities under fire.

Our members are strongly opposed to the provisions in House Bill 2212 for reasons associated with the continuing viability and growth of their electric, natural gas and water utilities:

- 1) *History of Service Territory Legislation in Kansas*
- 2) *Economic Development*
- 3) *Local Control*

History of Service Territory Legislation in Kansas

From the advent of electricity in Kansas, investor-owned utilities (IOUs) were granted county-wide jurisdiction by the state. In the 1930's, the federal government set up electric cooperatives (RECs) in the rural areas of Kansas and the state granted dual and overlapping certificates for both RECs and IOUs to operate in those areas. Also at this time, municipal electric systems could serve any load within a 3-mile radius of their city limits.

In the 1970's, when RECs decided to build their own generating plants, they sought exclusive certified territories, instead of dual territories, in order to help gain financing for their costly projects.

*Senate Elec & Loc Gov
03-18-03
Attachment 19*

Cities agreed to support the proposal, but only with the insistence that it contain provisions that would allow a city to determine who would serve in newly annexed areas. Other stakeholders understood and agreed to the provisions as are now stated in current law. One reason cities insisted upon the annexation provision is because they gave up a great deal of territory to support the REC proposal. Municipal service territory was severely limited by the legislation. However, cities surrendered their rights to the area understanding that their natural growth could still be accommodated by the annexation provisions.

The subject of electric service territory surfaced once again during the 2002 legislative session. At the request of the interim utilities committee in August of 2001, stakeholders from the state's municipal utilities, investor-owned utilities and rural electric cooperatives met throughout the fall and developed compromise legislation that addressed concerns put forth by the state's rural electric cooperatives. Even during these lengthy debates, the ability of a city to annex was unquestioned.

Any changes that are made to state annexation provisions also impacts utility service territories. The KMU membership is concerned that much of the hard work and compromise that has occurred over the years on service territory issues would be thrown out by the changes to annexation provisions spelled out in HB 2212.

Economic Development

Our members are also concerned that economic development efforts throughout the state would be damaged by any change in the annexation statutes that takes away city decision-making authority. Historically, cities have been the level of government that have planned, promoted and sought out new industries to provide the jobs needed to maintain a healthy and vibrant community. A policy that would not allow a city to extend its own city services into a newly annexed area removes the incentive to expend the effort and resources necessary to recruit vital new business to the state.

Legislation that would remove from elected city officials the decision over who provides electric, gas or water service to annexed areas could stifle the orderly development of communities and permanently and artificially limit a city's electric utility growth. Furthermore, such a proposal would not only have negative short-term consequences for citizens and utility customers, but also have very undesirable long-term consequences for cities and the state with respect to the ability to plan for and encourage economic development.

Local Control

KMU also has extreme concerns about the loss of local control and constitutional home rule authority. Any proposal that might confiscate decision-making authority from elected city officials usurps the constitutional home rule authority granted to those officials and is objected to strenuously.



CITY OF TOPEKA

Harry "Butch" Felker, Mayor
215 S.E. 7th Street, Room 352
Topeka, Kansas 66603
Phone 785-368-3895
Fax Number 785-368-3850

**TESTIMONY TO SENATE COMMITTEE ON
ELECTIONS AND LOCAL GOVERNMENT
RE: HB 2212
MARCH 18, 2003**

The majority of the City Council and the administration is in opposition to HB 2212. This bill is the result of a contract entered into by the City of Topeka and Shawnee County wherein the County agreed not to oppose annexation in the area of County Sewer District 33. In return the City agreed to upgrade the sewer system. (See page 4, Section 11).

The bill was drafted after a statutorily called hearing on the annexation was scuttled by a county commissioner getting 4 city council members to walk out which left the city without a quorum since only 8 council members were present at the beginning of the meeting.

The second reason we appear is that in our opinion the bill is unconstitutional. It is our understanding that a letter written by the Revisor of Statutes was read into the record on the floor of the House. In addition, the committee chair made a presentation on the floor also talking about the constitutionality of the bill.

You will hear from the League of Kansas Municipalities and several other cities regarding this bill. What was a local matter now has been put into a bill that has statewide implications.

We hope that you consider the implication of this bill and vote in opposition to its passage.

Sincerely,

Harry "Butch" Felker
Mayor

*Senate Elec & Loc Gov
03-18-03
Attachment 20*

SHAWNEE COUNTY 21004
CONTRACT # C346-2000

CITY CLERK
OCT 21 10 55 AM '00

CITY OF TOPEKA CONTRACT NO. 30746

AGREEMENT

THIS AGREEMENT entered into this 16th day of Oct., 2000, by and between the City of Topeka, a duly organized municipal corporation hereinafter referred to as "City" and the Board of County Commissioners of the County of Shawnee, Kansas, hereinafter referred to as "County."

WHEREAS, the County serves as the governing body for Shawnee County Sewer District 33, as described in Exhibit A attached hereto and incorporated by reference as fully set forth herein; and

WHEREAS, said sewer district needs to undertake improvement to its respective sewerage system; and

WHEREAS, the City desires to cooperate with the County in achieving the needed improvements; and

WHEREAS, the parties hereto recognize the public health benefits derived from public sewer systems.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN THE PARTIES AGREE AS FOLLOWS:

1. Construction by the City. The City currently owns and operates the Deer Creek Interceptor Sewer (hereinafter referred to as "Receiving Sewer") which has sufficient capacity to receive sewer discharge from areas located in the Deer Creek and Stinson Creek basins. Plans and specifications for the Receiving Sewers are on file in the Engineering Division, City of Topeka.

2. General Obligations of the County. The County will construct or cause to be connected sewer systems (hereinafter referred to as the "System") which may include mains, laterals, pump station, and a force main and connect said System to the Receiving Sewer. All work shall be in accordance with plans and specifications approved by the City. Upon

HAGR/SewerNo33 09/20/00

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completion of the System and following confirmation through inspection that new System construction complies with standards of the City, the City will accept new and previously constructed sanitary sewers within the System for maintenance. Costs associated with the construction of sewers and all other wastewater facilities within each System shall remain a responsibility of the County.

3. System Connection. The City will allow the System to discharge wastewater to the Receiving Sewer through Shawnee County Main and Lateral Sewer District 33. The City will maintain and operate the System under the laws, city ordinances and city regulations that apply to sewers and sewage in the City of Topeka, except as herein specifically excepted, and the City will treat the sewage in the System with the same degree of efficiency as that of sewage originating in the City.

4. Additional Connections. City will allow additional connections to the Receiving Sewer other than Shawnee County Main and Lateral Sewer District 33. Additional connections within the Deer Creek and Stinson Creek basins other than Shawnee County Sewer District 33 will require written notice to the City and payment of appropriate connection fees.

5. Conformity to City System. The plans and specifications for the installation and construction of the System shall be subject to the approval by the City. All ordinances, rules, regulations and standards of design and construction of the City, where applicable, shall be followed in such installation. All materials and equipment used shall be in accordance with standards of the City and shall be subject to inspection and approval of the City as to quality, standards and type.

6. Inspection. The City shall conduct inspection of the systems and sewers constructed subsequent to this contract within Shawnee County Main and Lateral District 33. The Water Pollution Control Division shall inspect any gravity sanitary sewers of the System with their closed circuit television camera to determine conformity with city standards. Deficiencies shall be corrected to the satisfaction of the City prior to acceptance. Payment for

such inspection to be made by the County to the City at man-hour and equipment rates effective at the time of the inspections. The Water Pollution Control Division, City of Topeka, will make the necessary building service line connection at the public sewer.

7. Construction and/or Reconstruction. Nothing in this Ordinance shall be construed to place any obligation of liability on the City to construct new sewer or relocate any sewer or pertinent equipment within the System due to new development; nor shall the City be obligated to maintain the sewer trench, or repair damages to the Systems, as a result of new development.

8. Connection Fees. The County shall transfer a sum to the benefit of the Water Pollution Control Division to compensate the City for capacity in the Receiving Sewer, Pump Stations, and Wastewater Treatment Plants to carry and treat wastewater from the district System. Credit of the sum shall be calculated for the System by multiplying the total area (in acres) that can be served by the System at ultimate development conditions times a Connection Fee. The total area that can be served by a System is generally defined by the geographical boundary formed by the line connecting points of highest elevation within the drainage basin associated with the System. The resulting boundary may be modified for specific topographic considerations, as agreed to by each parties' Public Works Departments. The Connection Fee shall be calculated by dividing the total infra structure fixed assets with depreciation (\$76,130,174.00) by the total acres served by the division (36,800 estimated). These inputs are updated by the Water Pollution Control Division on an annual basis.

9. Use of Streets. The County, insofar as possible, shall locate all sewers in existing or contemplated street, road and alley, rights of way or in permanent easements, and shall furnish the City such easements as are necessary to enable the City to maintain and operate that portion of the sewer covered by this contract. Minimum acceptable width for sewer easements shall be sixteen feet (16'). To the extent physically possible and in accordance with sound engineering practice no other utilities shall be allowed to encroach upon this sewer

easement,

10. Lateral Mains and Service Lines. The County shall furnish the City 'as built' plans of all mains and laterals and the location of all service line connections within the System for city record purposes. Installation of all new laterals, mains and service lines shall comply with city ordinances, regulations and rules of the city applicable to sewers and sewage, and shall be subject to city inspection as set forth above.

11. Annexation. The City will not require consent to annexation from any property owner who owns developed property currently served by public sewer service within Shawnee County Sewer District 33 as of the date the System connects to the Receiving Sewer.

The City will require consent to annexation from any property owner who owns property located within the Deer Creek and Stinson Creek basins which:

- a. moves from a septic system to public sewer for any reason;
- b. is subdivided or otherwise developed subsequent to the date the system(s) connects to the Receiving Sewer;
- c. does not have a public sewer connection as of the date this contract is executed;
- d. is included within any petition seeking expansion of an existing Main or Lateral Sewer District or creation of a new Main or Lateral Sewer District.

The County agrees not to oppose any future annexation of properties within the confines of Shawnee County Sewer District 33 or any other property located within Deer Creek and Stinson Creek basins and which can be served by the Receiving Sewer based on capacity.

12. Abandonment of Existing Facilities. The County shall, following construction of and connection to the Receiving Sewer, be responsible for any work needed to abandon the existing treatment facilities within Shawnee County Sewer District 33. Following abandonment of said facilities the County shall transfer any remaining monies in the maintenance funds of Sewer District 33 to the City for the sole purpose of funding operation, maintenance and repair

costs within said sewer district. Any real property remaining after the abandonment of existing treatment facilities shall remain under County ownership, unless otherwise disposed.

13. Term and Amendment. This Agreement may be amended by a document of equal formality. Each party agrees to consider any prepared contract amendment in good faith.

14. Monthly Sewer Rates. The City shall collect sewer use fees for volume and excessive strength waste in accordance with applicable city ordinances and billing policy from each user of the System.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of the day and year first above written.



CITY OF TOPEKA, KANSAS

By Joan Wagner
Joan Wagner, Mayor

ATTEST:

Iris E. Walker
Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 10/20/00 BY cus

BOARD OF COUNTY COMMISSIONERS
Shawnee County, Kansas

Theodore Ensley
Theodore Ensley, Chairman

ATTEST:

Cynthia Beck
Cynthia Beck, County Clerk



Marice Kane
Marice Kane, Vice Chair

Mike Meier
Mike Meier, Member

Approved as to Legality
and Form: Date 10-5-00
Dwain R. Jones
SHAWNEE CO. COUNSELOR



TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
Topeka Phone: 316.648.6236
mtaylor@wichita.gov

House Bill 2212 Annexation Approvals and Requirements

Delivered March 18, 2003
Senate Elections and Local Government Committee

The City of Wichita opposes House Bill 2212 as amended on the floor of the House. The amendment restricting annexations in 12 counties with improvement districts is driven by an isolated situation here in Shawnee County which local elected officials have apparently been unable to resolve. It is not uncommon for the Legislature to be recruited as referees in local political disputes. In rare cases, that may be appropriate and necessary. In most cases, however, it burdens the legislative system with political disagreements which should stay local and results in the development of public policy which far exceeds the scope of the original problem.

HB 2043 proposes to change well developed, long standing annexation policy to benefit a small group of citizens here in Shawnee County. But it impacts citizens in a dozen counties, including Sedgwick County, where the City of Wichita is located. That is unfortunate, unnecessary and poor public policy.

Cities which can't grow, decay and die. In the history of every city, the time comes for growth and orderly expansion. That means farmland, vacant land and even neighborhoods built on the edge of the city limits must be annexed. Bringing property inside the city limits allows for better planning and development and makes it easier to provide services in an efficient, affordable manner. Allowing County Commissions to veto the long term growth of a city because of a political spat of the moment is irresponsible.

The State Legislature understands Cities need to grow, which is why it passed state laws allowing cities to annex homes and properties sitting in their growth path. Those laws spell out very specific and detailed steps the City must follow. Those steps, such as coming up with a plan for providing City services are in place for the protection of the annexed residents. The law explains which properties can and which properties can't be annexed. The law also gives citizens a legal right to speak to City Council members about the annexation plan during an official public hearing. This policy works well.

Most of the properties annexed into the City of Wichita are done so at the request of the developer or property owners in the neighborhood in exchange for water and sewer service. In those cases, the paperwork for annexation was signed when the neighborhood developed.

HB 2212 amended by the House is poor public policy. The City of Wichita also believes it is unconstitutional. But most of all, HB 2212 is about the Legislature once again being asked to inject itself into the politics and affairs of a local community. I urge you to decline the invitation.

Senate Elec & Loc Gov
03-18-03
Attachment 21

City Hall•8500 Santa Fe Drive
Overland Park, Kansas 66212-2899
TEL 913.895.6080/6083•FAX 913.895.5095
E-MAIL watson@opkansas.org

TESTIMONY IN OPPOSITION TO HOUSE BILL 2212,
AS AMENDED

TO: The Honorable Barbara Allen, Chair
Members of the Senate Elections and Local Government Committee
Room 245-N

Date: March 18, 2003

RE: House Bill 2212, as amended – Proposed legislation that would repeal certain unilateral annexation powers of some cities.

Ladies and Gentlemen:

The City of Overland Park strongly opposes HB 2212, as amended, because it repeals certain unilateral annexation powers of some cities.

Although HB 2212, as amended, in its current form would not affect Overland Park, the City also feels that the bill would be bad public policy.

The unilateral annexation powers of cities have existed in the laws of Kansas in one form or another for nearly 100 years, and in 1967 the Kansas Legislature enacted a general annexation law as a result of the findings and recommendations of the Kansas Legislative Council. The new law contained a strong unilateral annexation component. These strong unilateral annexation powers have served the State and its municipalities well over those years.

SB 2212 would remove all but 2 of the existing 7 circumstances in which certain cities in Kansas may unilaterally annex.

Finally, property owners already have a voice in the annexation process. The current law requires that cities prepare a service extension plan, give notice and hold a public hearing before unilaterally annexing in most cases.

This bill is intended to cure a local problem. Local problems should be cured locally, not through bills such as HB 2212.

Because of the dramatic changes this bill makes to longstanding Kansas law, the City of Overland Park requests that you oppose House Bill 2212, as amended.

Thank you for your consideration.



Robert J. Watson
City Attorney

Senate Elec & Lockov
03-18-03
Attachment 22



March 17, 2003

TO: Senator Barbara Allen, Chairman
Senate Elections and Local Government Committee

FROM: Mayor Eloise D. Mueller, City of Marion

RE: HB2212 Annexation Bill to be heard by the above committee on Tuesday,
March 18, 2003

I respectfully request that your committee vote against the above bill for the reason I feel it will severely restrict the unilateral annexation authority of Marion.

Thank you.

A handwritten signature in cursive script that reads "Eloise Mueller".

Senator Anthony Hensley's testimony in support of House Bill 2212

Senator Allen and committee members:

There's an adage in politics which originated in New York City when the Brooklyn-to-Queens Expressway was being constructed.

The affluent and influential residents of Brooklyn Heights convinced city hall to divert the expressway away from their neighborhood.

The poorer, immigrant Red Hook residents did not have such influence, and their neighborhood was bisected by the expressway.

"What can you do?" asked a Red Hook business owner. "We are mostly immigrants here who are afraid we might get deported if we protest. You can't fight city hall."

Today, that adage certainly applies.

In your hands rest the fate of the individuals who are here to voice their concerns because state law bestows upon cities the power of unilateral annexation.

While they would rather not have to "fight city hall," at the same time they have no choice. They have brought their fight to the Legislature because the balance of power is not equal. Cities hold all of the power and they are at their mercy.

They do not want to "fight city hall." And - they do not want city hall fighting them. They want city hall to listen and learn about their concerns.

They are here today to voice those concerns – concerns that will be based on the facts. And, it should come as no surprise to any of us, that their concerns will also be based on emotion.

I don't believe they should be faulted for that. They believe that there is very much at stake in this process. They believe that unilateral annexation is unfair, inequitable, unjust, and unreasonable. And, as their state senator, I agree with them.

Senate Elec & Loc Gov
03-18-03
Attachment 24

I have been a resident of Topeka all of my life and, in fact, live in the house I grew up in at 2226 SE Virginia in the Highland Park neighborhood.

After a long and contentious process, Highland Park was annexed into the city of Topeka on September 5, 1957. Promises were made at the time that to this very day have not been kept. Services were promised at the time that to this very day have not been delivered.

There are some in our community who have the misguided notion that Shawnee County residents who live outside of Topeka are a bunch of freeloaders. The notion is these people enjoy city services but don't have to pay for them.

I will admit that as a city resident, I always thought it was unfair that I had to pay taxes to support the Topeka Public Library while the county residents outside of Topeka didn't.

That has changed. By an act of the Kansas Legislature, 1992 House Bill 2849, an election was authorized and the voters of Shawnee County created a countywide mill levy for the library and the name was changed to the Topeka and Shawnee County Public Library.

The bill created a ten-member board of trustees, seven members are residents of the city and three are residents of the county outside of the city.

Actually, the election required a "dual majority" of voters both in the city and outside of the city. The county voters listened to the facts and voted a mill levy on themselves.

As a city resident, I always thought it was unfair that I had to pay local property taxes to support Washburn University and the county residents outside of Topeka didn't.

That also has changed. By an act of the Kansas Legislature, 1999 House Bill 2565, the Washburn Board of Regents was authorized to impose a countywide sales tax subject to a protest petition.

This bill also abolished the general mill levy paid by city residents. There was no protest and the Washburn sales tax is in place today.

These two issues are compelling examples of how city and county residents were brought together to change an inequitable situation that adversely affected those of us who live in the city.

In the early 1990s, county and city voters agreed on a quarter-cent sales tax for a new, combined law enforcement center in downtown Topeka and for county bridge repair.

In 1996, county and city voters agreed on the extension of this tax for the local share of the Oakland Expressway and Kansas Turnpike construction project and for county bridge repair.

In 2000, county and city voters agreed to extend this tax again for the financing of economic development and bridge repair in Shawnee County.

More recently, we've seen other examples of city/county cooperation. The Target and Goodyear expansions, and in the case of Goodyear, it was the combined effort of city, county and state.

House Bill 2212 is presented to you in the same spirit of cooperation. It is intended to require both city and county approval in the annexation of land outside the city limits. This concept is not new.

By an act of the Kansas Legislature, 1987 Senate Bill 246, city and county approval is required for the Lake Sherwood improvement district to be annexed into the city of Topeka. This law was intended to protect the residents of Lake Sherwood against unilateral annexation.

Why wouldn't we grant other Shawnee County residents the same rights under the law as Lake Sherwood residents now enjoy? House Bill 2212 is intended to do exactly that.

In the spirit of cooperation, fairness and equity, I strongly urge you to report this bill favorably.

Thank you.

CHAPTER 66

Senate Bill No. 246

AN ACT concerning municipalities; relating to annexation; amending K.S.A. 12-519, 12-520b and 12-521 and K.S.A. 1986 Supp. 12-520 and 12-520a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (a) "Tract" means a single unit of real property under one ownership, outside the corporate limits of a city, which may be platted and/or unplatted, title to which is publicly or privately held by an owner as defined by subsection (c) herein.

(b) "Land" means a part of a tract or one or more tracts.

(c) "Owner" means the one who has record title to a tract. In the event two (2) or more persons have record title to a tract, "owner" shall be defined as follows:

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of ten (10) 10 years or longer and a remainderman, "owner" means both such tenant and remainderman; (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface title holder.

(d) "Adjoins" means to lie upon or touch (1) the city boundary line; or (2) a highway, railway or watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed by only the width of such highway, railway or watercourse.

(e) "Platted" means a tract or tracts mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

(f) "Agricultural purposes" as applied to the use of land means the planting, cultivation and harvesting of crops and/or raising and feeding of livestock for profit. "Land devoted to agricultural use" means land which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest

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products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

(g) "Watercourse" means a natural or manmade course where water may flow on a regular or intermittent basis; a watercourse shall not include a natural or manmade lake, pond or other impoundment of five or more acres of surface area.

Sec. 2. K.S.A. 1986 Supp. 12-520 is hereby amended to read as follows: 12-520. (a) Except as otherwise hereinafter provided, the governing body of any city may by ordinance may annex land to such city if any one or more of the following conditions exist:

(a) (1) The land is platted, and some part of such the land adjoins the city.

(b) (2) The land is owned by or held in trust for the city or any agency thereof.

(c) (3) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county which has primary use as a county-owned and operated airport, or other aviation related activity or which has primary use as a county owned and operated zoological facility, recreation park or exhibition and sports facility without the express permission of the board of county commissioners of such the county.

(d) (4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

(e) (5) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 20 21 acres shall be annexed for this purpose.

(f) (6) The tract is so situated that 2/3 of any boundary line adjoins the city, except no tract in excess of 20 21 acres shall be annexed under this condition.

(g) (7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

(b) No portion of any unplatted tract of land devoted to agricultural use of 55 21 acres or more which is used only for agricultural purposes shall be annexed by any city under the

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authority of this section without the written consent of the owner thereof.

(c) No city may annex, pursuant to this section, any improvement district incorporated and organized pursuant to K.S.A. 19-2753 et seq., and amendments thereto, or any land within such improvement district. The provisions of this subsection shall apply to such improvement districts for which the petition for incorporation and organization was presented on or before January 1, 1987.

(d) Whenever any city ~~shall annex~~ annexes any land under the authority of ~~subsection (b) of this section~~ paragraph 2 of subsection (a) which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until ~~such the~~ adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

(e) No city shall be authorized to annex the right-of-way of any highway under the authority of this section unless at the time of ~~such the~~ annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

(f) The governing body of any city may by one ordinance may annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by ~~such the~~ ordinance and which conform to any one or more of the foregoing conditions.

(g) Any owner of land annexed by a city under the authority of this section may, within 30 days next following the publication of the ordinance annexing ~~such the~~ land, may maintain an action in the district court of the county in which ~~such the~~ land is located challenging the authority of the city to annex ~~such lands the land~~ and the regularity of the proceedings had in connection therewith.

Sec. 3. K.S.A. 1986 Supp. 12-520a is hereby amended to read as follows: 12-520a. (a) The governing body of any city desiring to annex land under the authority of K.S.A. 12-520, and amendments thereto, shall first shall adopt a resolution stating that the city is considering the annexation of the land. The resolution shall:

(1) Give notice that a public hearing will be held to consider the annexation of the land and fix the date, hour and place of the

public hearing. *Unless the governing body of the city determines adequate facilities are not available, the public hearing shall be held at a site located in or as near as possible to the area proposed to be annexed. The hearing shall be held at the time determined by the governing body to be the most convenient for the greatest number of interested persons;*

(2) describe the boundaries of the land proposed to be annexed; and

(3) state that the plan of the city for the extension of services to the area proposed to be annexed, which is required under the provisions of K.S.A. 12-520b, and amendments thereto, is available for inspection during regular office hours in the office of the city clerk.

(b) The date fixed for the public hearing shall be not less than 60 nor more than 70 days following the date of the adoption of the resolution fixing the date of the hearing.

(c) A copy of the resolution providing for the public hearing shall be mailed by certified mail to each owner of land proposed to be annexed not more than 10 days following the date of the adoption of the resolution. The resolution shall be published in the official newspaper of the city not less than one week and not more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with the resolution and a copy thereof mailed to the owner of the property with the resolution.

(d) *A copy of the resolution providing for the public hearing shall be sent by certified mail not more than 10 days following the date of the adoption of the resolution to:*

(1) *The board of county commissioners;*

(2) *the governing body of the township where the land to be annexed is located;*

(3) *any special assessment district or governmental unit providing municipal services to the area proposed to be annexed including, but not limited to, sewer districts, rural water districts, fire districts or improvement districts;*

(4) *any utilities having facilities within the area proposed to be annexed;*

(5) *the governing body of any school district in the area proposed to be annexed;*

(6) *any city, county, township or joint planning commission having jurisdiction over the area proposed to be annexed; and*

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24-5

(7) *any other political or taxing subdivision located within the area proposed to be annexed.*

(d)(e) At the public hearing, a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed. Following the explanation, all interested persons shall be given an opportunity to be heard. The governing body may recess, for good cause shown, the hearing to a time and date certain, which shall be fixed in the presence of persons in attendance at the hearing.

(e)(f) No resolution, notice and public hearing required under the provisions of this section shall be required as a prerequisite to the annexation of land owned by or held in trust for the city or any agency thereof or land all of the owners of which petition for or consent thereto in writing.

(f)(g) Any resolution, adopted pursuant to this section, which includes territory subsequently incorporated pursuant to K.S.A. 15-115 *et seq.*, and amendments thereto, shall be invalid.

Sec. 4. K.S.A. 12-520b is hereby amended to read as follows: 12-520b. (a) The governing body of any city proposing to annex land under the provisions of K.S.A. 12-520, *and amendments thereto*, shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in K.S.A. 12-520a, *and amendments thereto*, prepare a report setting forth such plans. The report shall include:

(a)(1) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1)(A) The present and proposed boundaries of the city affected by such proposed annexation;

(2)(B) the present streets, water mains, sewers and other city utility lines, and the proposed extension thereof;

(3)(C) the general land use pattern in the areas to be annexed.

(b)(2) A statement setting forth ~~the plans~~ *a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and the area proposed to be annexed at the time of annexation, setting forth and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be*

annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. Such statement plan shall also include a timetable of the plans for extending each major municipal service to the area annexed. The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

(b) The preparation of a plan for the extension of services ~~as hereinbefore~~ *required by subsection (a)* shall not be required for or as a prerequisite to the annexation of land *of which* all of the owners ~~of which~~ petition for or consent to such annexation in writing.

Sec. 5. K.S.A. 12-521 is hereby amended to read as follows: 12-521. (a) Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex ~~under the authority of K.S.A. 12-520, and amendments thereto, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amendments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section.~~ The governing body in the name of the city may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

(a)(1) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1)(A) The present and proposed boundaries of the city affected by such proposed annexation;

(2)(B) the present streets, water mains, sewers and other city utility lines, and the proposed extension thereto;

(3)(C) the general land use pattern in the areas to be annexed.

(b)(2) A statement setting forth ~~the plans~~ *a plan of sufficient*

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detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed at the time of annexation; setting forth and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. The plan shall include a timetable for the extension of major municipal services to the area proposed to be annexed. The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

(b) The date fixed for such the public hearing shall be not less than ~~sixty (60)~~ 60 nor more than ~~seventy (70)~~ 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of said the hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published in some a newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of the land proposed to be annexed not more than ~~ten (10)~~ 10 days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board may for good cause shown may continue said the hearing beyond the time specified in the notice without further publication.

(c) On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

If said board shall be satisfied that such annexation or the annexation of a lesser amount of such land will cause no manifest injury to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance.

The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

- (1) Extent to which any of the area is land devoted to agricultural use;
- (2) area of platted land relative to unplatted land;
- (3) topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;
- (4) extent and age of residential development in the area to be annexed and adjacent land within the city's boundaries;
- (5) present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed;
- (6) the extent of business, commercial and industrial development in the area;
- (7) the present cost, methods and adequacy of governmental services and regulatory controls in the area;
- (8) the proposed cost, extent and the necessity of govern-

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mental services to be provided by the city proposing annexation and the plan and schedule to extend such services;

(9) *tax impact upon property in the city and the area;*

(10) *extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;*

(11) *effect of the proposed annexation on the city and other adjacent areas, including, but not limited to, other cities, fire, sewer and water districts, improvement districts, townships or industrial districts;*

(12) *existing petitions for incorporation of the area as a new city or for the creation of a special district;*

(13) *likelihood of significant growth in the area and in adjacent areas during the next five years; and*

(14) *effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan.*

(d) *The board of county commissioners shall render a judgment within seven days after the hearing has been adjourned sine die. If a majority of the board of county commissioners concludes that the annexation or any part thereof should be allowed, the board shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. Orders of the board of county commissioners denying the petition or a part thereof for annexation shall require a majority vote of the members of the board. When an order denying a petition or part thereof is issued, it shall be by resolution, which shall be sent by certified mail to the city proposing the annexation. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of said the board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.*

(e) *Any owner or the city aggrieved by the decision of the board of county commissioners may appeal from the decision of such the board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.*

New Sec. 6. (a) *Before any city annexes any land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, the governing body of the city shall submit its resolution of intent to annex adopted pursuant to K.S.A. 12-520, and amendments thereto, or a*

copy of the petition submitted to the board of county commissioners pursuant to K.S.A. 12-521, and amendments thereto, to any city, county, township or joint planning commission having jurisdiction over any portion of the area to be annexed. If the annexation is pursuant to K.S.A. 12-520, and amendments thereto, a copy of the resolution of intent to annex shall be submitted to the planning commission within 10 days following the adoption of the resolution by the city. If the annexation is by petition pursuant to K.S.A. 12-521, and amendments thereto, a copy of such petition shall be submitted to the planning commission within 20 days after the date on which the petition was presented to the board of county commissioners. The provisions of this subsection shall not apply to annexations pursuant to K.S.A. 12-520, and amendments thereto, for which no resolution or intent to annex is required to be adopted.

(b) The planning commission shall review the proposed annexation and make a finding of the compatibility or the incompatibility of the annexation with any adopted land use or comprehensive plans applicable to the area to be annexed and the annexing city. A copy of the planning commission's findings shall be sent to the city. If the city is annexing property pursuant to K.S.A. 12-521, and amendments thereto, a copy of such findings shall be filed with the board of county commissioners at least 20 days prior to the date of the hearing. The planning commission's findings shall be available for public inspection in the office of the city clerk. The failure of a planning commission to issue its advisory report prior to the date required by this section shall not invalidate any annexation commenced under K.S.A. 12-520 or 12-521, and amendments thereto, when the annexing city has complied with the provisions of this section.

New Sec. 7. (a) Five years following the annexation of any land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, five years following the conclusion of such litigation, the board of county commissioners shall call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. The board of county commissioners shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The city; and (2) any landowner in the area subject to the service extension plan.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the

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city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in section 8, if the services are not provided within 2½ years of the date of the board's findings.

New Sec. 8. (a) If, within 2½ years following the conclusion of the hearing required by section 7, or, where there has been litigation relating to the hearing, 2½ years following the conclusion of such litigation, the city has not provided the municipal services as provided in the timetable set forth in the plan prepared in accordance with K.S.A. 12-520b or 12-521, and amendments thereto, the owner of such land may petition the board of county commissioners to exclude such land from the boundaries of the city. Within 10 days after receipt of the petition, the board shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The owner; (2) the city; (3) the township into which the property, if deannexed, would be placed; and (4) the governing body of any fire district, sewer district, water district or other special district governments which have jurisdiction over territory adjacent to the area sought to be deannexed. The notice shall be sent by certified mail no less than 21 days before the date of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. Except as provided by subsection (e), if the board finds after the hearing that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the board may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner as provided in K.S.A. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the land.

(c) The county clerk shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the owner, the register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records where the order is recorded in the register's office.

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(d) Except as provided by this subsection, after the effective date of the order to exclude the land from the city, such land shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest on and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of the land from the city.

(e) The board shall not order exclusion of any land if:

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of the district was blocked by the filing of a sufficient protest petition by some or all of the owners of any land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other tracts of land located within the city's boundaries; or

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such land.

(f) Any owner or the city aggrieved by the decision of the board may appeal the decision to the district court in the manner provided in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

New Sec. 9. (a) The owner of any land in an area annexed by a city who has entered into a written agreement as provided for by section 10 may bring an action in the district court of the county in which the land is located to compel the governing body of such city to provide the services in accordance with the written agreement.

(b) The court shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner of land and representatives of the city. If the court finds that the city has failed to provide the municipal services in accordance with the

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written agreement, the court shall order the city to comply with the agreement. If the city fails to comply within the time so ordered by the court, the court may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner provided in K.S.A. 12-523, and amendments thereto. Such land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the land.

(c) The clerk of the district court shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the city, the register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records where the order is recorded in the register's office.

(d) Except as provided by this subsection, after the effective date of the order to exclude the land from the city, such land shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest on and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed the petition to compel the city to provide such services.

(e) The court shall not order exclusion of any land if:

(1) The agreement conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of the district was blocked by the filing of a sufficient protest petition by some or all of the owners of any land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other tracts of land located within the city's boundaries; or

(4) the court finds the exclusion of the land would have an

adverse impact on the health, safety and welfare of the residents of the city or such land.

(f) If the court finds that the city has failed to provide the municipal services in accordance with the agreement the court shall order the city to pay all attorney fees and court costs.

New Sec. 10. Any written agreement entered into between a city and the owner of land proposed to be annexed by the city which conditions the delivery or extension of municipal water, sewer, electrical, gas or other services to the land, regardless of the size of the land, on the consent of the owner to annexation on a later date shall be deemed to be a sufficient consent to annexation under K.S.A. 12-520, and amendments thereto, by the owner and any successors in interest. Such agreements shall be filed by the city in the office of the register of deeds of the county where the land is located within 30 days after being executed by all parties. Any such agreement executed prior to the effective date of this act shall be binding upon the owner and any successors in interest if the agreement is filed by the city in the office of the register of deeds of the county where the land is located within 180 days following the effective date of this act; however, the failure to so file any written agreement within 180 days shall not make such agreement void or otherwise unenforceable.

New Sec. 11. The governing body of any city annexing land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, may enter into contractual agreements with the owners of land proposed to be annexed to guarantee the apportionment of the costs of improvements made in the area to be annexed between the city at large and the area to be annexed. The term of such agreements shall not exceed 10 years. In the event the city apportions the costs of improvements in a manner contrary to the contractual agreement, the owners of land may bring an action in the district court for deannexation, such action shall be subject to the provisions of section 9.

This section shall not preclude the formation of a benefit district to make such improvements upon petition by landowners in the area to be annexed.

New Sec. 12. The provisions of this act shall be applicable to any annexation made without the written consent of or petition by the landowners and which is not completed before the effective date of this act. For the purpose of this section "completed" means the date of the publication of the annexation ordinance as provided by K.S.A. 12-523, and amendments thereto.

New Sec. 13. If any part or parts of this act are held to be

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invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

Sec. 14. K.S.A. 12-519, 12-520b and 12-521 and K.S.A. 1986 Supp. 12-520 and 12-520a are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 3, 1987.

Published in the *Kansas Register* April 9, 1987.

CHAPTER 67

Senate Bill No. 436

AN ACT concerning water districts; relating to lands annexed by cities; amending K.S.A. 1986 Supp. 12-527 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1986 Supp. 12-527 is hereby amended to read as follows: 12-527. (a) Whenever a city annexes land located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 *et seq.*, and amendments thereto, *the city shall negotiate with the district to acquire title to all facilities owned by the water district and used for the transportation or utilization of water belonging to the water district distribution to the water district benefit units within the area annexed by the city.* Title shall vest in or become the property of the city upon payment by the city to the water district of the reasonable value of such property, as agreed upon by the governing body of the city and the board of directors of the district; ~~or if such agreement is not made, then as determined by the city.~~ The board of directors of any such district may bring an action in the district court to determine the reasonableness of the value fixed and determined by any such city. *If the district is unable to reach agreement with the city on the reasonable value for such facilities, then the reasonable value shall be determined in the following manner:*

(1) *The district and the city shall each select one qualified appraiser and the two appraisers so selected shall then select a third appraiser for the purpose of conducting appraisals so as to determine reasonable value of the property, facilities and improvements of the district annexed by the city.*

(2) *The agreement or decision of at least two of the three appraisers shall be the fair market value presented to the city for payment and the district for acceptance.*

(3) *If either the district or the city is dissatisfied with the decision of the appraisers, then the district or the city may institute an action in the district court to challenge the reasonableness of the value determined by the appraisers.*

(b) *Such compensation shall include an amount to reimburse the district for any bonded indebtedness of the district existing at the time the annexation ordinance took effect and attributable to the annexed area, based on the following factors:*

(1) *The cost of the construction of the facilities within the annexed area in proportion to the construction costs for the entire district at the time of annexation;*

(2) *the number of benefit units connected to and served within the annexed area in proportion to the number of benefit units connected to and served by the entire district at the time of annexation; and*

(3) *the current revenue received from benefit units within the annexed area in proportion to the current revenue received from all benefit units of the entire district at the time of annexation.*

(e) (b) *The compensation required by this section shall be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city and shall be paid at a time not later than 60 120 days following the date the city provides water to one or more benefit units who were supplied water by the district at the time of annexation upon which the fair market value of the facilities are certified to the city and to the district, or at such later date as may be mutually agreed upon by the city and the water district or as may be determined by the district court. Payment of any such compensation shall be made on a basis which is in proportion to the number of benefit units within the annexed area which are connected to and served by the city and the total number of benefit units within the annexed area. The city, as part of its service extension plan required under the provisions of K.S.A. 12-520b and 12-521c, and amendments thereto, shall notify each affected rural water district of its future plans for the delivery of water in areas proposed for annexation currently being served by the district.*

(d) (c) *The governing body of the city and board of directors of the district may provide, on such terms as may be agreed upon,*

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Senator Barbara Allen, Chairperson

March 12, 2003

Senate Elections and Local Government Committee
State Capitol, Room 120-S
Topeka, Kansas 66612

Subject: SUGGESTED AMENDMENTS TO HOUSE BILL #2112 (County Code Enforcement)

Dear Senator Allen:

Please consider adding the following suggestions as amendment(s) to House Bill #2112.

1. County Code Complaints need to be in writing and signed by the complaining person with a copy of the complaint sent to the accused.

Code violations are currently handled as misdemeanor crimes. In our system of government, a person being accused of a crime has a right to know who his accuser is. Requiring signed complaints eliminates this problem. Allowing neighbors to anonymously "snitch" on their neighbor undermines neighborhoods and is reminiscent of foreign political systems that don't serve to protect the private property rights we enjoy in this country.

2. The County Courts need to be abolished and replaced by Mediation between the complaining person and the accused person.

The County Court is not a court of record. There is no stenographic record of the proceedings. The judge and prosecuting attorney can say or do anything they wish with impunity. And even though the Sedgwick County pro-tem judge is appointed by the state District Court, he has allegedly been heard to say on numerous occasions that he "has been charged by the County Commission with cleaning up the County". This type of statement seems to indicate that the Judge is not free and independent and that alleged code violators are guilty before they are tried. Having observed this Court on numerous occasions, it is obvious that property owners are victimized by this Court and fail to receive the due process of law as required by our system of government. People feel violated by the Court. A better and more positive method for citizens to work out their difference lies in the area of Mediation. It is more positive and cost effective, and doesn't leave citizens with the impression that our Court system is totally corrupt. Property rights issues that cannot be Mediated need to be handled by the state Court.

Senate Elec. & Local Gov.
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Attachment 25

3. Private property issues need to be handled in the state District Court, with a real Judge and the opportunity of a jury, and a stenographic record of the proceedings.

Private property issues are too important to be handled by County Court that lacks not only a stenographic record, but also credibility. Most of the County Court cases I have heard about that have been appealed to the District Court in Sedgwick County have been reversed.

Thank you for considering my suggestions. Please feel free to contact me if you have questions or if I can be of assistance.

Sincerely,

John R. Todd

Cole Smith

From: "Tom Wiggins" <wigginst@zcloud.net>
To: "cole smith" <zsmith@hit.net>; "Frankie C Moore" <fcmoore3333@juno.com>;
 <QuickCar@aol.com>; "Randall Lyn Parker" <rarker12@cox.net>; <russ@haviglandtelco.com>
Sent: Wednesday, February 26, 2003 9:55 PM
Subject: [Fwd: Senate Bills Filed]

----- Original Message -----

Subject: Senate Bills Filed
Date: Wed, 26 Feb 2003 21:01:53 -0600
From: "John D'Aloia" <lawyer@oci.net>
To: <Undisclosed-Recipient:>

2/26/03

Senate bills now filed still thru SB246, SCR thru 1611, SR thru 1808.

SB244, Ways/Means. Revises law concerning the burial of indigents to cover situation when there no immediate family or next of kin who will accept burial responsibility. The county of residence gets the honors.

SB245, Fed/State Affairs. Gives state fire marshal authority/responsibility to assess costs of responding to hazmat incidents, to determine responsible parties, and to assess costs to responsible parties. If costs not paid, fire marshall can take person to court in Shawnee County district court. Person assessed can appeal through administrative procedure hearing and/or ask for judicial review.

SB246, Fed/State Affairs. Significant change to charter school law, repealing all existing law except 30 charter school limitation and replacing with new law. Creates seven member Advisory Board on State Charter Schools with four members appointed by and serving at the pleasure of the Governor. Did not make comparison of old/new to see what might be buried in it. If someone familiar with charter schools does do a line-by-line review, would appreciate knowing the results.

House Bills Introduced in Senate:

HB2112, Local Government. Porch art ticket writers; increased taxing authority. Legislative Research Summary: The bill extends to all counties the ability to opt for the enforcement of county codes and resolutions in a special court created within the district court. The law authorizes counties to appoint code enforcement officers who have the power to issue citations and notices to appear but who do not have arrest powers. Costs (except for district judge salaries), including costs of judges pro tem appointed by the administrative district judge, are borne by the county. Counties are authorized to levy not to exceed one-half mill for this purpose. Prosecution is by the county counselor or other attorney as designated by the board of county commissioners. All fines and penalties collected under the code are paid over for deposit in the county general fund or in the special law enforcement fund. Actual procedures under the new code parallel for the most part the Kansas Code of Procedure for Municipal Courts. Appeals shall be tried *de novo* before a district judge other than a judge from which the appeal is taken.

HB2131, Utilities. Designates the International Energy Conservation Code 2003 as the thermal efficiency standard for new commercial and industrial buildings. Add requirement that the person selling a previously unoccupied new residential structure or building a residential structure must disclose to the buyer specified energy efficiency information on a KCC form.

HB2158, Transportation. Designates wreckers, tow trucks, and car carriers which have a KCC certificate of public

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 Attachment 26