Approved: April 1, 2004
Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on March 22, 2004 in Room 313-S of the Capitol.

All members were present except:
Representative Todd Novascone- excused

Committee staff present:
Russell Mills, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:
Senator Tim Huelskamp, 38th District, Fowler, KS
Denny Burgess, City of Wichita
Mike Pepoon, Sedgewick Country

Others attending:
See Attached List.

SB 400 - Law enforcement; training of part time law enforcement officers

Senator Tim Huelskamp, a prime sponsor of **SB 400**, explained that it amends the Kansas Law Enforcement Training Center to clarify what "law enforcement" entails and which employees of the state or local government are considered "part-time" and "full-time" for training purposes (Attachment 1). This bill addresses situations in small towns in which they don't have resources to hire a full-time law enforcement officer and would still like to qualify for two weeks training at the Kansas Law Enforcement Training Center.

The hearing was closed on **SB 400.**

Ms. Torrence explained that **SB 405** would allow the amount of time for remediation of an environmental contaminated area under the tax increment financing act to be extended from 20 to 30 years. The City of Wichita had requested the bill.

Denny Burgess, City of Wichita, testified in favor of the bill (Attachment 2). He explained that KDHE approval, for the clean-up of environmental contamination in Wichita, was not granted until 2000, leaving only eleven years of the 20 year limit to finish the project. The extension would allow cities additional time to complete the project, with the approval of the Board of County Commissioners and the Board of Education.

Mike Pepoon, Sedgewick Country, stated that in its original form, Sedgwick County opposed **SB 405**, however, they support the current *amended* version of the bill (Attachment 3). The Gilbert and Mosley Project had taken an area that had suffered from groundwater contamination and turned it into one of the finest entertainment districts in their region.

The hearing was closed on **SB 405.**

Representative Siegfreid made the motion to move **SB 400** out favorably. Representative Johnson seconded the motion and the motion carried.

Representative Brunk moved that **SB 405** be passed out favorably. Representative Lane seconded the motion.

Representative Craft made the motion to amend language on page 3, line 18. The word *approves* would be changed to *approve.* Representative Cox seconded the motion and the motion carried..

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on March 22, 2004 in Room 313-S of the Capitol.

Representative Brunk moved that **SB 405**, as amended, be passed out favorably. Representative Lane seconded the motion and the motion carried.

HB 2784 - Allowing federal law enforcement officers arrest powers in certain situations; deemed to be within the scope of their employment.

Discussion followed regarding an amendment recommended by Thomas A Nunemaker, Asst. Special Agent in Charge, FBI, Kansas City Division.

Representative Freeborn moved that they amend **HB 2784** to include the phrase "*and assigned to the Federal Bureau of Investigation"* immediately following the words "the United State Government". Representative Burroughs seconded the motion. The motion carried.

Representative Brunk moved that they pass **HB 2784** out, as amended. Representative Cox seconded the motion.

Representative Siegfreid moved that they amend line 14 to strike *"view"* and substitute "*judgement"*. Representative Rehorn seconded the motion. The motion carried..

Representative Burroughs made a motion that they amend "*sunset language (3 years)*" into **HB 2784.** Representative Hutchins seconded the motion. The motion carried.

Representative Brunk closed and made the motion to move **HB 2784** out favorably, as amended. Representative Cox seconded and the motion carried.

Liquor Control Act

The Chairman reviewed the recent court order on the Liquor Control Act, issued March 19, 2004, that upheld the district judge's ruling. He explained the rationale behind having another uniformity bill on the house floor to send to the Senate. Copies of a **PROPOSED Substitute For Senate Bill 295** were distributed, which included changes made during the interim (Attachment 4).

Discussion followed regarding how "Sunday Sales" and taxes are affected by the substitute bill.

Representative Edmonds made the motion to strike Section 7, pertaining to taxes. Representative Freeborn seconded the motion and the motion carried.

Representative Rehorn made a motion to amend the local option Sunday sales (county) provision as contained in **SB 305** into the bill. Representative Cox seconded.

Due to language difficulties Representative Rehorn withdrew his amendment. Representative Cox concurred.

He restated his amendment.

Representative Rehorn made a motion to adopt Sunday sales, as in **SB 305**, as passed out of the Interim Committee, which allows for city local options. Representative Cox seconded the motion. The motion failed 10-11.

Representative Williams made the motion to amend "Easter" to the list of holidays in section 9, on page 17. Representative Hutchins seconded. The motion carried 17-4

Discussion followed regarding the rationale behind protecting any "holiday" and concern over passing out such a significant bill with little time for review.

Representative Rehorn made a motion to strike, Memorial Day, Independence Day and Labor Day from the list of holidays in section 9, Representative Ruff seconded the motion.

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on March 22, 2004 in Room 313-S of the Capitol.

Discussion followed concerning the impact the bill would have on families and various communities.

The motion failed 9-11.

Representative Hutchins made the motion that **Substitute for SB 295** , as amended, be passed out favorably. Representative Freeborn seconded the motion. The motion carried 13-10.

The meeting adjourned at 3:10 p.m. The next meeting will be March 23, 2004.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE March 22, 2004

NAME	REPRESENTING
Denny Burgess	Wichita
Eric Collins	Ks Govt Consulting
Mike Pepoon	Sedgwick County
Kyle Smith	KBI / KLETC
Sandy Jacquot	LKM

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February 10, 2004

To: Senator Tim Huelskamp

From: Mike Heim, Principal Analyst

Re: Explanation of SB 400

Enclosed is a brief explanation of SB 400 and the need for the bill.

I hope this is helpful.

MH/dg

Enclosures

39420(2/10/4{3:33PM})

HS Federal & State Affairs
February 22, 2004
Attachment 1

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February 10, 2004

SB 400

SB 400 amends the Kansas Law Enforcement Training Center to clarify what "law enforcement" entails and to clarify which employees of the state or local government are considered "part-time" and "full-time" for training purposes.

Current law has been interpreted by the Kansas Attorney General to require a full-time city employee who only spends part of his or her time engaged in law enforcement to receive the full 560 hours of training required of a full-time law enforcement officer instead of the 80 hours required for part-time officers. See Attorney General Opinion 2001-31, on page 6, which reaffirms Attorney General Opinion No. 79-104, which stated the above rule.

The bill adds a definition of "law enforcement" on page 1 and then ties the definitions of "full-time" and "part-time" on page 2 to "law enforcement related work."

To whom it may concern:

As you may be aware, there has been considerable dialog between the KLETC, and the City of Montezuma concerning the difficulties of obtaining training for a part time police officer for our city. Perhaps a more accurate description would be dialog concerning the definition of a "part time officer". It would seem obvious that a "full time police officer" would be one that spends at least a majority of his work period doing police related work. It would seem just as obvious that a "part time officer" would be one that would spend a minor part of the work period doing police work. As a matter of fact, the statutes state that a part time police officer can work no more than 1000 hrs. per year doing police work. That seems like a reasonable description of a "part time police officer". It seems that at one point an Attorney General for Kansas opined that where that part time officer worked the balance of his work period, outside of his police duties, would impact on whether or not that person is classified as a "part time officer", or a "full time officer".

In a small city such as Montezuma that employs 4 or 5 employees, the employees do many different job functions. If the same criteria were applied to the other employees as is applied to police officers, then the employee that changes the oil on his pick-up would be considered a full time mechanic, or the employee that cleans the shop when it needs it, even if his main job is being an electrical lineman, would be classified as a full time custodian. Of course both of these employees are full time employees, but to say that one is a full time mechanic, and the other a full time custodian would be ludicrous.

In my opinion, what might seem to be a complicated matter is in all reality a very simple matter. What it boils down to is that a small city has few choices under the current wording in the statutes for providing police protection for its citizens.

A city may hire a full time officer and send that officer for 560 hrs of training at the KLETC. During that period, the employee is prohibited, by statute, from working for the City. The city will bear the burden of not only the salary, but also the fringe benefits for over 3 months while that officer receives the training. The reality of the situation is that most small cities do not need, and cannot afford to hire a full time police officer.

A city may simply rely on the Sheriff's Office to provide law enforcement. I believe that if you have been following the news concerning some smaller towns in Kansas you have seen that this is at best a matter of some concern for the citizens and governing bodies of these towns. Apparently many Sheriffs feel that enforcing traffic laws, etc. in small towns in their county is not conducive to getting re-elected.

A city may hire a part time officer and send him to 2 weeks of training at KLETC. This may not sound like a difficult solution, but it does, in fact, create many problems. If the person is employed by a private sector employer, that employee must take 2 weeks off their primary job to obtain the KLETC training. Very few citizens with private sector full time employment have the latitude on their jobs to be effectively available for the duties involved in part time policing.

Many small towns in the past have hired older retired citizens to be part time police officers. With the 1000 hr. limitation on part time officers, these retired citizens are many times the only persons available to fill the position. Finding a retired senior citizen able or even willing to complete the 40 hr. training is difficult at best. There are many ways that older retired citizens are a great asset to a community. Due to the physical requirements of police work, utilizing them to fill this position would seem to put them and the citizens they are protecting at some risk. Anyone that grew up in small town Kansas can fondly

recall the aging "night marshal" patrolling the town in his personal vehicle with a red light affixed to it in some manner. He could even at times be seen dozing behind the wheel at the end of Main Street on a slow night. Unfortunately those days are gone, along with the days of leaving the keys in the ignition of your car at night, and leaving the house unlocked just in case someone dropped by to visit while you were out.

The current interpretation of the statutes does provide us with another option. We can utilize volunteers to fill the position of reserve officers. These reserve officers are allowed to do all the duties of a police officer without any formal training at all. Many smaller cities have done this for many years.

The bottom line is, if a small city can't afford or doesn't need a full time officer, and the Sheriff isn't willing or doesn't have the staff to provide the service, and a qualified retired person isn't available, then most small towns use the last option which is a completely untrained volunteer to enforce our ordinances and traffic laws.

There appears to be one option that would address most, if not all of these problems. By allowing small communities to employ a part time officer that would work less than 1000 hrs. per year on law enforcement duties, and also utilize that employee in another completely separate department, the intent of the current statute would be satisfied. That employee would then be able to work the remainder of the time on other useful functions for the City. The employee would be able to make a livable income, have access to health insurance and other full time employee benefits, while the City would have the benefit of a trained qualified officer any time one is needed. Auditing the hrs. worked by this employee to ensure the 1000 hr. threshold for law enforcement duties is not exceeded would be a very simple matter. I believe if any intelligent, reasonable citizen was asked which was the better option, an untrained volunteer or a trained part time officer that by some stretch of the imagination might exceed the 1000 hr. limitation, the answer would be obvious. The worst that would happen with the trained officer is that he might exceed the 1000 hr. limitation, and then steps could be taken to correct that situation. But the larger issue is what could happen with a completely untrained volunteer? That is just a disaster waiting to happen. The result of such a disaster would obviously not be so easy to correct.

In the current environment when we all talk about homeland security and police presence, the utilization of untrained volunteers doing work as important as law enforcement is, at best, a band-aid fix, and at worst, a ridiculous option. Many people claim what happened on 9-11 taught us some lessons. Until the officials that are able to change these regulations see that changes need to be made, and made today, not tomorrow or next year or after another disaster, then we truly haven't learned anything.

In the AG's opinions there are several references to the intent of the legislation. I believe it is clear that the intent is to provide training for full time officers at one level, provide training for part time officers at a reduced level, and authorize the use of reserve officers to supplement the police presence. While the issue is bogged down in a long bureaucratic debate concerning the wording of the statutes and legal opinions, these small towns are utilizing the few remaining options available. As long as this situation is allowed to continue we are doing a huge disservice to the citizens of this state and inviting more disasters that we all pay lip service to trying to prevent. Common sense must prevail if we are going to provide the protection that our citizens have the right to expect, and we as their government have the responsibility to provide.

Thank you,
Dwight Watson
City of Montezuma Ks.

State of Kansas
Office of the Attorney General
120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

July 26, 2001

MAIN PHONE: (785) 296-2215
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ATTORNEY GENERAL OPINION NO. 2001-_31_

Ed H. Pavey, Director
Kansas Law Enforcement Training Center
P.O. Box 647
Hutchinson, Kansas 67504-0647

Re: State Boards, Commissions and Authorities--Law Enforcement Training Center, Training Commission--Definitions; Certification Requirements for Certain State, County and City Employees

Synopsis: An employee of a city, county or state law enforcement agency who is not authorized to perform law enforcement duties in that capacity does not fall within the definition of "police officer" or "law enforcement officer" under the Kansas Law Enforcement Training Act when that employee works as a volunteer for the same agency during the employee's off-duty hours as a reserve police or law enforcement officer, and in the employee's volunteer capacity works to prevent or detect crime and enforce criminal or traffic laws. Whether certain acts by a person employed by a city or county solely to perform correctional duties related to jail inmates and the administration and operation of a jail fall within the correctional duties exemption provided by K.S.A. 2000 Supp. 74-5602(e) depends on the specific facts surrounding those acts. The conclusions stated in Attorney General Opinion No. 79-104 are affirmed. Cited herein: K.S.A. 2000 Supp. 74-5602, as amended by 2001 SB 205, § 13; K.S.A. 75-5202; L. 1985, Ch. 258, § 1; L. 1982, Ch. 322, § 2; L. 1973, Ch. 331, § 1.

* * *

Dear Mr. Pavey:

You ask our opinion regarding the interpretation of the definition of "police officer" and "law enforcement officer" in the Kansas Law Enforcement Training Act (Act).[1] According to the Act, those who fall within the definition of "police officer" or "law enforcement officer" must complete the training requirements set forth in the Act. You indicate that there are differences of opinion concerning what persons fall within these definitions and are required to complete the required training.

Your first question is:

> "Does an employee of a city, county or state law enforcement agency who is not authorized to perform law enforcement duties fall within the definition of 'police officer' or 'law enforcement officer' under K.S.A. [2000 Supp.] 74-5602(e) when that employee works as an unpaid volunteer for the same agency during his or her off-duty hours as a reserve police or law enforcement officer and in the employee's volunteer capacity works to prevent or detect crime and enforce criminal or traffic laws?"

The Act defines "police officer" or "law enforcement officer" as follows:

> "'Police officer' or 'law enforcement officer' means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. . . ."[2]

The fundamental rule of statutory construction to which all other rules are subordinate is that the intent of the Legislature governs.[3] When a statute is plain and unambiguous, a court must give effect to the intent of the Legislature as expressed rather than determining what the law should or should not be.[4] If a statute is susceptible to multiple interpretations, the court may look at the historical background of the enactment, and the effect the statute may have under various constructions to determine legislative intent.[5]

There are no reported cases addressing the question you present and the meaning of the statute is not clear; therefore, we turn to the legislative history to determine the Legislature's intent. The language quoted above was enacted in 1973,[6] with the exception

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[1] K.S.A. 74-5601 *et seq.*

[2] K.S.A. 2000 Supp. 74-5602(e).

[3] *Robinett v. Haskell Co.*, 270 Kan. 95 (2000).

[4] *Id.*

[5] *Id.*

[6] L. 1973, Ch. 331, § 1.

of the reference to part-time salaried officers or employees that was added in 1982.[7] In 1999 a bill was introduced in the Legislature to delete the word "salaried" from the definition and to define "part-time" to specifically include "members of organized nonpaid groups or individuals which operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups."[8] At the hearing on this bill in the House Judiciary Committee, a member of the Kansas Law Enforcement Training Commission testified that there were over 1,000 reserve officers at work in Kansas; however nothing in the law required reserve officers to receive basic training. He further explained that the bill resulted from an extensive study concerning reserve officers conducted by the Kansas Law Enforcement Training Commission. The study concluded that most Kansas agencies would support mandated reserve officer basic training and certification.[9] A representative for the League of Kansas Municipalities testified in opposition to the bill, asserting that state-mandated training requirements for volunteer reserve officers would be cost-prohibitive for cities that, in the League's opinion, should be allowed to make training decisions at the local level, based upon the use of the officers and needs of the local community.[10] Although the House Judiciary Committee recommended the bill favorably for passage, the bill failed in the House Committee of the Whole. While the Legislature's failure to pass a bill is not necessarily indicative of legislative intent,[11] this legislative history indicates that those who testified at the committee hearing interpreted K.S.A. 74-5602(e) to exclude volunteer reserve officers.

In Attorney General Opinion No. 82-166, then Attorney General Stephan concluded that a non-salaried reserve officer is not a police officer or law enforcement officer for the purposes of the Act. The Opinion reasoned that K.S.A. 74-5602(e) clearly required that a police officer or law enforcement officer must be a salaried officer or employee of an appropriate governmental unit.

> "Accordingly, the training requirements imposed on full-time and part-time police and law enforcement officers are applicable only to such *salaried* officers and employees. Thus, since the reserve officers you mentioned in your inquiry are unsalaried, we necessarily conclude that they are not subject to these training requirements."[12]

That opinion did not address whether a salaried employee of a governmental unit who is not authorized to perform law enforcement duties for their salaried position falls within the definition if they volunteer as a reserve officer in their off-duty hours. In other words, if they are salaried by the State, a county or a city to perform non-law enforcement duties, are

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[7] L. 1982, Ch. 322, § 2.

[8] 1999 H.B. No. 2278, § 1.

[9] Minutes, House Judiciary Committee, February 16, 1999, Attachment 6.

[10] Minutes, House Judiciary Committee, February 16, 1999, Attachment 8.

[11] *U.S.D. No. 501 v. Baker*, 269 Kan. 239, 246 (2000).

[12] Attorney General Opinion No. 82-166 (emphasis in original).

they required to complete training under the Act because they volunteer as a reserve officer? If so, then a salaried employee of the State or any county or city would be required to obtain training under the Act if they chose to be a volunteer reserve officer on their off-duty time, but any other volunteer reserve officer who is a nongovernmental employee[13] would not be required to obtain training to be a volunteer reserve officer. This interpretation would create a different standard for state, county or city employees who volunteer as reserve officers than for people who work for other entities and volunteer as reserve officers.

The Legislature is presumed to intend that its enactments be given a reasonable construction, so as to avoid absurd or unreasonable results.[14] An unreasonable result would occur if the statute in question is interpreted to require training for reserves who are employees of the State, a county or a city and not require training for reserves who are nongovernmental employees. Therefore, we opine that an employee of a city, county or state law enforcement agency whose salaried job functions do not include the performance of law enforcement duties does not fall within the definition of "police officer" or "law enforcement officer" under K.S.A. 2000 Supp. 74-5602(e) when that employee works as an unpaid volunteer for the same agency during his or her off-duty hours as a reserve police or law enforcement officer, and in the employee's volunteer capacity works to prevent or detect crime and enforce criminal or traffic laws.

Your next three questions refer to your first question and ask:

> "A. Does your interpretation change if the employee is not paid by the law enforcement agency but is paid directly by a school district, another governmental agency, or a private entity?
>
> "B. Does your interpretation change if the employee is not paid by the law enforcement agency but a reserve officer's organization (of which the employee is a member and thus the employee will benefit indirectly by the payment) is paid by a school district, another governmental agency, or a private entity?
>
> "C. Does your interpretation change if the employee is paid by the law enforcement agency but the law enforcement agency is reimbursed by a school district, another governmental agency, or a private entity as compensation for services the employee performed as a reserve law enforcement officer for the school district, other governmental agency, or private entity?"

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[13]For purposes of this opinion, "nongovernmental employee(s)" is deemed to include persons who are employed by private employers or governmental units other than the State, a county or a city.

[14]*Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 113 (1999).

Our interpretation would not change in any of the scenarios described in questions A, B and C. Based on the foregoing discussion, it is our opinion that K.S.A. 2000 Supp. 74-5602(e) does not require training for volunteer reserve officers. Therefore, as long as the compensation paid in the scenarios set forth above is for the performance of only non-law enforcement duties, the employee is not included in the definition of "police officer" or "law enforcement officer" set forth in the K.S.A. 2000 Supp. 74-5602(e).

Your next question involves the exemption in K.S.A. 2000 Supp. 74-5602(e) for employees who perform correctional duties. That language states that the terms "police officer" and "law enforcement officer" shall *not* include:

> "[A]ny employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail . . . ."

You ask the following:

> "If an employee of a city or county who is 'employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail' performs or is authorized to perform any of the following acts, will that employee continue to fall within the correctional duties exemption provided by K.S.A. [2000 Supp.] 74-5602(e):
>
> "A. taking a person into custody when the person surrenders himself or herself pursuant to an arrest warrant, transporting prisoners;
>
> "B. taking a person into custody in a courtroom when ordered by a judge;
>
> "C. taking custody of a person initially arrested by another law enforcement agency; or
>
> "D. leaving his or her assigned correctional duties at the courthouse and responding to a request for backup or emergency assistance from a law enforcement officer employed by the same agency and subsequently assists in the subduing or arresting of offender(s)."

The above-quoted portion of K.S.A. 2000 Supp. 74-5602(e) was added by the Legislature in 1985 at the request of Shawnee County.[15] Because Shawnee County's jail is administered and operated by a department of corrections rather than by the sheriff, the County wanted to exempt its corrections officers, who perform only correctional duties related to jail inmates, from the general law enforcement training required by the Act and, instead, provide training specific to jail personnel.

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[15]L. 1985, Ch. 258, § 1.

The term "correctional duties" is not defined in the Act; however the duties of a corrections officer under the State Secretary of Corrections are set forth in K.S.A. 75-5202 as follows:

> "(f) 'Corrections officer' means a full-time, salaried officer or employee under the jurisdiction of the secretary, *whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons convicted of criminal offense[s] in this state* and sentenced to a term of imprisonment under the custody of the secretary." (Emphasis added.)

While this statute does not apply to the Kansas Law Enforcement Training Act, we believe that the list of correctional duties performed by corrections officers in a state correctional institution are the same or similar to those performed by city or county employees who are employed solely to perform correctional duties related to jail inmates. Applying this list of duties to the scenarios presented in your question, it is our opinion that if the actions you describe in A, B, and C involve a jail inmate, then an employee who performs those duties would most likely fall within the correctional duties exemption provided by K.S.A. 2000 Supp. 74-5602(e). The actions you outline in D appear to go beyond correctional duties related to jail inmates and therefore may remove the employee from the correctional duties exemption, depending on the specific facts. Because a definitive answer to your question depends on the specific facts surrounding the particular actions described, we are unable to provide an opinion concerning those scenarios. Under specific circumstances, any of the scenarios you describe may or may not be considered "correctional duties related to jail inmates and the administration and operation of a jail."

Finally, you ask:

> "Is the opinion given in Attorney General Opinion 79-104 still valid with regard to the application of certification requirements to employees of a city, county or state agency who perform some law enforcement duties but who do not perform exclusively law enforcement duties? If the opinion is still valid, how does this reasoning apply in the first question with regard to the full-time training requirements of employees volunteering as reserve law enforcement officers for a law enforcement agency?"

Attorney General Opinion No. 79-104 considered whether an employee of a municipality who was employed full-time for the municipality as a city marshal and general maintenance man was a police officer or law enforcement officer within the meaning of K.S.A. 74-5602(e). The opinion concluded that even though an employee's working hours are not exclusively devoted to the prevention or detection of crime and the enforcement of criminal and traffic laws of the state or municipality, the employee fell within the definition. The opinion explained that the statute did not require that the employee devote full-time to law enforcement duties.

> "We believe that the 'full-time' element contained in the definition relates to the employment status of the officer or employee rather than to the allocation of employee duties."

We believe that opinion is still valid. The employee who was the subject of the opinion falls within the definition of "law enforcement officer" under K.S.A. 2000 Supp. 74-5602(e) because his duties included the prevention or detection of crime and the enforcement of criminal or traffic laws of the State or a municipality. The opinion does not address training for volunteer reserve officers. Your first question involves an employee who, as such, is not authorized to perform law enforcement duties. In Attorney General Opinion No. 79-104, the employee was authorized to perform law enforcement duties at least part-time as a city marshal. A similar conclusion was reached in Attorney General Opinion No. 84-62 regarding parking service officers at the University of Kansas who engage in traffic control as part of their duties. That opinion determined that parking service officers who direct traffic, even as a very small part of their employment, are police officers under K.S.A. 74-5602(e).

In summary, an employee of a city, county or state law enforcement agency who is not authorized to perform law enforcement duties does not fall within the definition of "police officer" or "law enforcement officer" under the Kansas Law Enforcement Training Act when that employee works as a volunteer for the same agency during the employee's off-duty hours as a reserve police or law enforcement officer and in the employee's volunteer capacity works to prevent or detect crime and enforce criminal or traffic laws. Whether certain acts by a person employed by a city or county solely to perform correctional duties related to jail inmates and the administration and operation of a jail fall within the correctional duties exemption provided by K.S.A. 2000 Supp. 74-5602(e) depend on the specific facts surrounding those acts. The conclusions stated in Attorney General Opinion No. 79-104 are affirmed.

Very truly yours,

Carla J. Stovall

CARLA J. STOVALL
Attorney General of Kansas

Donna M. Voth

Donna M. Voth
Assistant Attorney General

CJS:JLM:DMV:jm

CITY OF WICHITA

LEGISLATIVE TESTIMONY

TO: Chairman Bill Mason and Members of the House Federal and State Affairs Committee

SUBJECT: Testimony in Support of Senate Bill 405

SUBMITTED BY: ~~Allen~~ Bell, ~~Economic~~ Develop~~ment Director~~

Testimony submitted by Denny Burgess

DATE: March 22, 2004

In the 1980's, it was discovered that the groundwater underlying most of central Wichita, including the downtown area, is contaminated with chemicals and solvents that originate industrial uses. This 4 square mile area, known as the Gilbert and Mosley Site, was about to be listed as a Super Fund site. The mere knowledge of the contamination cast a deadly pall over all real estate and economic activity in this crucial area. Property stopped changing hands; banks stopped making loans against real property, real estate investments dried up and redevelopment efforts ground to a halt.

In 1991, the City of Wichita teamed up with the Kansas Legislature and put into place one of the most innovative approaches to financing "brownfields" clean-up ever devised. This is the legislation that enabled Wichita to establish a new kind of tax increment financing district for the purpose of financing the cost of investigation and remediation of environmental contamination. The Gilbert and Mosley environmental TIF district was established in 1991 and the North Industrial Corridor environmental TIF district was established in 1996.

The legislation enacted in 1991 sets a 20-year limit on the time that the tax increment can be collected and used to pay for contamination clean-up. The 20-year period starts with the date the city enters into a consent decree agreement with the Kansas Department of Health and Environment. The 20-year timeframe represented the best "guestimate," in 1991, of how long it would take. In reality, based on now knowing exactly how the clean-up will be done, we now know that it will take much longer. For example, the final approval by KDHE of the remedial design for the Gilbert and Mosley Site came in 2000 -- the point at which most expenses begin to occur. By this time, much of the 20 years have already expired. The bill before you today, Senate Bill 405, will allow cities like Wichita with enough time to complete the clean-up of environmental contamination.

Senate Bill 405, as amended by the Senate Committee of the Whole, allows cities to extend the 20-year period for implementing contamination remediation for up to 10 years, provided the extension is approved by the local board of county commissioners and board of education.

The ability to complete the clean-up of environmental contamination in Wichita is utterly crucial to the economic health, not to mention the physical health of our community. I urge the Committee to give favorable consideration to Senate Bill 405.

GOVERNMENT RELATIONS

Sedgwick County Courthouse
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mpepoon@sedgwick.gov

Michael D. Pepoon
Director

TESTIMONY ON SB 405
Before The House Committee on Federal and State Affairs
March 22, 2004

Chairman Mason and members of the committee, I appreciate the opportunity to submit testimony in support of SB 405 on behalf of the Board of County Commissioners of Sedgwick County. SB 405 is a very important piece of legislation for the City of Wichita. This bill amends K.S.A. 12-1771a, which gives a city the authority to establish an environmental increment in certain redevelopment districts. This in turn allows a city to divert taxes from such district to help pay for environmental remediation.

SB 405 in its original form was opposed by Sedgwick County. The reason we opposed the legislation was that we were concerned that a city could divert not only city taxes, but also county and school district taxes, for an unreasonable length of time at the sole discretion of such city. But since our original objection to the bill, officials from the City of Wichita and Sedgwick County have been able to discuss this issue and reach a compromise that is satisfactory to all of the parties involved. Under the current amended version of the bill, before a city can extend a redevelopment project relating to environmental investigation and remediation for a maximum period of ten years, the city must make a written request and get approval from the board of county commissioners and the board of education for such an extension. We feel very strongly that this approval is necessary because of the $3.8 million dollars that is being diverted this year for the City's two projects, $1 million of this money would have gone to county operations. And even though the County has been very supportive of the City in its effort to clean up the two areas where environmental increment districts have been set up, we feel we should have some say before the districts are extended beyond the original twenty-year time frame.

What the City of Wichita has done in connection with the Gilbert and Mosley Project has been nothing short of remarkable. In an area that suffered from groundwater contamination from years of industrial and commercial activities, there has now been serious clean up and remediation efforts. This has in turn taken an area of our City that just a few years ago had become stagnant to commercial development and turned it into one of the finest entertainment districts in our region. None of this development would have occurred if not for the vision of City leaders and the use of public tax money for this necessary cleanup.

For all of the above reasons Sedgwick County strongly urges you to support SB 405, as amended by the Senate.

"Sedgwick County…working for you."

HS Federal & State Affairs
February 22, 2004
Attachment 3

PROPOSED Substitute FOR SENATE BILL NO. 295

By Committee on Federal and State Affairs

AN ACT concerning alcoholic beverages; relating to the regulation thereof; amending K.S.A. 41-208, 41-301, 41-302, 41-303, 41-710, 41-712, 41-714 and 41-2704 and K.S.A. 2003 Supp. 19-101a, 41-347, 41-501 and 41-719 and repealing the existing sections; also repealing K.S.A. 41-1111, 41-1112, 41-1114 through 41-1121.

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

Section 1. K.S.A. 2003 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271--74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in

statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2005.

(17) (A) Counties may not exempt from or effect changes in

K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2005.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or

any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d~~,~~ or 65-1,178 through 65-1,199 ~~or--K.S.A.--2003--Supp. 17-5909~~, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2003 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) (A) Counties may not exempt from or effect changes in the Kansas liquor control act, except as provided by paragraph (B).

(B) Counties may adopt resolutions which are not in conflict with or contrary to the Kansas liquor control act.

(34) (A) Counties may not exempt from or effect changes in the Kansas cereal malt beverage act, except as provided by paragraph (B).

(B) Counties may adopt resolutions which do not conflict with or are more restrictive than or supplemental to the Kansas cereal malt beverage act.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable

to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 2. K.S.A. 41-208 is hereby amended to read as follows: 41-208. (a) Except as specifically provided in the Kansas liquor control act, the power to regulate all phases of ~~the control of~~ the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer regardless of its alcoholic content~~, except as specifically delegated in this act, is hereby~~ is vested exclusively in the state and shall be exercised as provided in ~~this act. No city shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this~~ the Kansas liquor control act. Any ordinance or resolution enacted by a city or county which is in conflict with or contrary to the provisions of the Kansas liquor control act shall be null and void.

(b) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not ~~exceed~~ be less than the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed by this act for the same violation.

(c) Nothing in this section shall be construed as prohibiting cities and counties from enacting ordinances and resolutions which are not in conflict with or contrary to the Kansas liquor control act.

(d) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional,

it shall be presumed conclusively that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Sec. 3. K.S.A. 41-301 is hereby amended to read as follows: 41-301. (a) Except as provided by subsection (b), the director shall issue to qualified applicants, who have filed the bond and paid the registration and license fees required by this act, licenses to sell at retail alcoholic liquor ~~at--retail~~ in the original package at premises within the corporate limits of ~~cities-and-outside-the-corporate--limits--of--cities--in--certain townships--as--provided--in--this--act:--Provided,--That--no-such retailer's-license-shall-be-issued-for-any--premises--within--any city--of--the--first--or--second--class-wherein-a-majority-of-the qualified-electors-of-such-city-who-voted-on-the--proposition--to amend--section--10-of-article-15-of-the-constitution-of-the-state of-Kansas-at-the-general-election-held-in-November,--1948,--shall have--voted-against-the-adoption-of-such-proposition-or-in-cities of-the-third-class-located-in-a-township,-or-townships,-wherein-a majority--of--the--qualified--electors--of--such---township,---or townships,---who---voted---on---said--proposition--to--amend--the constitution-at--said--election--shall--have--voted--against--its adoption,-until-a-majority-of-the-qualified-electors-of-such-city voting--at--an--election--held--as-provided-by-K.S.A.-41-302,-and amendments-thereto,-shall-have-declared-by-their-votes-to--be--in favor--of--the--licensing--of-the-sale-of-alcoholic-liquor-by-the package-in-such-city~~ any city.

(b) No retailer's license shall be issued for premises within a city if the governing body of such city, within 90 days after the effective date of this act, adopts an ordinance prohibiting the licensing of the sale at retail of alcoholic liquor in the original package within such city. Upon adoption of such ordinance, the city clerk promptly shall transmit a copy of such ordinance to the director and the director shall refuse to issue licenses to sell at retail alcoholic liquor in the original package in such city. If the governing body adopts such an

ordinance, the holder of any valid existing retailer's license for premises in such city shall have the right to continue to operate under such license for a period of 90 days after the effective date of the ordinance or until the expiration of such license, whichever period of time is shorter. If such period of time expires before the expiration of the term for which the retailer's license was issued, the licensee shall be entitled to a refund of the license fee for the unexpired portion of the license period which remains, in accordance with rules and regulations adopted by the secretary.

(c) No retailer's license shall be issued for premises within a city if, after the effective date of this act, a majority of the qualified voters of such city voting at an election held as provided by K.S.A. 41-302, and amendments thereto, votes against the licensing of the sale at retail of alcoholic liquor in the original package within such city unless, at a subsequent election, a majority of the qualified voters of such city voting at such election votes in favor of the licensing of the sale at retail of alcoholic liquor in the original package within such city.

Sec. 4. K.S.A. 41-302 is hereby amended to read as follows: 41-302. (a) The question of licensing the ~~retail~~ sale at retail of alcoholic ~~liquors by the~~ liquor in the original package shall be submitted by the governing body of ~~any~~ a city at any regular general city election occurring in such city whenever a sufficient petition requesting such submission has been filed with the city clerk of ~~any~~ such city as ~~hereinafter~~ provided in this section. ~~In cities of the first and second class, any~~ Such petition shall be signed by ~~such number of electors~~ qualified voters of such city ~~which equals~~ equal in number to not less than 30% or more of the total vote cast in such city at the last general election for the office of secretary of state. ~~In cities of the third class, any such petition shall be signed by such number of electors of such city which equals 40% or more of the total vote cast at the last general city election held in such~~

~~city of the third class for candidates for the city office for which the greatest number of total votes were cast.~~ Each sheet of each petition shall comply with the provisions of K.S.A. 25-3601 through 25-3607, and amendments thereto. No signature on such petition shall be valid unless appended to the petition within the last 90 days prior to the date of filing the petition with the city clerk. Such petition shall be filed not less than 40 nor more than 60 days prior to the date of the election. After any such petition has been filed, no signature shall be withdrawn and no signature shall be added. ~~The governing body of the city shall have the power to determine the sufficiency of any such petition.~~

Any person who signs a ~~proposal or~~ petition authorized by this section and who knowingly is not a qualified ~~elector in the place where such proposal or petition is made~~ voter of the city where submission of the question is sought, or who aids or abets ~~any other persons in doing any of the acts mentioned~~ another in so doing, or any person who bribes, gives or pays any money or thing of value to any person directly or indirectly to induce such person to sign such ~~proposal or~~ petition shall be guilty of a misdemeanor ~~and~~. Upon conviction thereof, such person shall be punished by a fine of not more than $300 or by imprisonment of not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

~~(b) Upon the ballot the proposition shall be stated as follows:~~

~~"Shall the sale of alcoholic liquors by the package YES ( ) be licensed in (here insert the name of the city)? NO ( )~~

~~Voters desiring to vote in favor of the sale of alcoholic liquors by the package shall place a cross or check mark in the square opposite the word "Yes" and those desiring to vote against the sale of alcoholic liquor by the package shall place a cross or check mark in the square opposite the word "No."~~

~~(c)~~ (b) Upon the filing of a sufficient petition, the governing body shall call ~~any~~ an election required by this section ~~and notice of such election shall be given in the manner~~

~~provided by the general bond law. The provisions of the laws of this state relating to election officers, voting places, election places and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on the proposition under the provisions of this act~~. Such election shall be called and held in the manner provided by law for question submitted elections.

~~(d) The majority of those voting on the proposition shall be mandatory upon the director insofar as licensing the sale of such liquors therein by the package is concerned. In the absence of any vote on the question of licensing the sale of such liquors in cities of the first and second class wherein a majority of the qualified electors of such city who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted in favor of the adoption of such proposition and in cities of the third class located in townships wherein a majority of the qualified electors voted in favor of such constitutional amendment and in the absence of any further vote in cities of the first, second or third class in which a majority of the qualified electors of such city shall have voted at any special or general city election in favor of the licensing of the sale of alcoholic liquor by the package, the director shall continue to issue licenses to sell the same by the package therein for periods of one year, subject to all the terms and conditions of this act~~

(c) The governing body of the city shall transmit to the director a copy of the results of any election held pursuant to this section. The director shall issue or refuse to issue licenses to sell at retail alcoholic liquor in the original package in such city in accordance with the results of such election.

~~(e)~~ (d) If a majority of the ~~electors~~ voters voting at any ~~such~~ election ~~shall vote~~ pursuant to this section votes against

licensing the sale at retail of alcoholic liquors ~~by the~~ in the original package, the holder of any valid existing retailer's license for premises in such city shall have the right to continue to operate under such license for a period ~~not to exceed~~ of 90 days after the result of such election is canvassed or until the expiration of such license, whichever period of time is ~~the~~ shorter. If such period of time expires before the expiration of the term for which the retailer's license was issued, ~~such~~ the licensee shall be entitled to a refund of ~~that~~ the license fee for the unexpired portion of the license period which ~~is unavailable to such licensee~~ remains, in accordance with rules and regulations ~~established~~ adopted by the secretary of revenue.

~~(f) For the purpose of determining as provided in K.S.A. 41-301, and amendments thereto, and in this section whether a majority of the qualified electors of a township in which a city of the third class is located voted against the adoption of the liquor amendment at the general election held in November, 1948, if any city of the third class is located in two or more townships, the total vote for and against the amendment in all the townships in which such city is located shall be used to determine whether such city is located in a township in which a majority of the qualified electors voted against the amendment.~~

Sec. 5. K.S.A. 41-303 is hereby amended to read as follows: 41-303. (a) The director may ~~license the sale of~~ issue to qualified applicants licenses to sell at retail alcoholic liquor ~~at retail~~ in the original package on premises not located in an incorporated city for use or consumption off the premises, if such premises are located in any township having a population of more than 5,000. No such license shall be ~~granted~~ issued to any applicant unless the applicant possesses all the qualifications required of other applicants for retailers' licenses except the qualification of ~~residence~~ residency within a city. ~~In the event that~~ If any license has been issued under the provisions of this section in a township having a population of more than 5,000, and thereafter such township population decreases or has decreased to

5,000 or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time if they are otherwise qualified.

No such license shall be ~~granted~~ issued to any applicant under this section unless the board of county commissioners of the county in which ~~such--township--is~~ the premises for which licensure is sought are located adopts a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this section.

~~In-the-event-that-any~~ (b) If a license has been issued under the provisions of this section ~~in-a-township-having-a-population of-more-than-5,000,~~ and thereafter the premises so licensed are annexed to a city wherein retail liquor licenses may be issued, such ~~licenses~~ license shall continue to be valid and ~~the licensees-shall-be-eligible-for-renewal-of-such-licenses~~ may be renewed at the appropriate time even though the ~~licensees-shall~~ licensee does not reside in the ~~cities~~ city to which the ~~areas are~~ area is annexed if the ~~licensees-are-otherwise~~ licensee otherwise is qualified and if ~~they-reside~~ the licensee resides in the township in which the premises were ~~originally~~ located prior to such annexation or in the city to which the premises have been annexed.

Sec. 6. K.S.A. 2003 Supp. 41-347 is hereby amended to read as follows: 41-347. (a) The director may issue, in accordance with rules and regulations of the secretary: (1) To one or more charitable organizations a temporary permit authorizing the sale of alcoholic liquor at an auction; or (2) to an individual a temporary permit authorizing the sale of one or more limited issue porcelain containers containing alcoholic liquor. The permit shall be issued in the names of the charitable organizations or individual to which it is issued.

(b) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such

requirement for good cause. Each application for a permit authorizing an auction shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of $25 for each day for which the permit is issued~~,--which~~. Such fee shall be paid in full by a certified or cashier's check of a bank within this state, United States post office money order or cash ~~in--the--full--amount thereof~~. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises ~~where--the city,--county--or--township--zoning-code-allows-use-for-which-the permit--is--issued~~ which comply with all applicable zoning regulations.

(d) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than one temporary permit may be issued to any one applicant in a calendar year.

(e) All proceeds from an auction for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(f) A temporary permit shall not be transferable or assignable.

(g) The director may refuse to issue a temporary permit to any charitable organization or individual which has violated any provision of the Kansas liquor control act.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

Sec. 7. K.S.A. 2003 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) "Malt product" means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of $.18 per gallon on beer and cereal malt beverage; $.20 per gallon on all wort or liquid malt; $.10 per pound on all malt syrup or malt extract; $.30 per gallon on wine containing 14% or less alcohol by volume; $.75 per gallon on wine containing more than 14% alcohol by volume; and $2.50 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United

States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the liquor or cereal malt beverage was manufactured in this state but was shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) ~~Retail~~ Sales <u>at retail</u> of alcoholic liquor <u>in the original package</u>, sales of beer to consumers by microbreweries

and sales of wine to consumers by farm wineries shall not be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax as provided ~~for--in this act~~ in K.S.A. 79-4101 et seq., and amendments thereto.

(h) ~~Notwithstanding any ordinance to the contrary,~~ Except as authorized by K.S.A. 41-310, and amendments thereto, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, farm winery, retailer or nonbeverage user under this act and doing business within the boundaries of the city ~~except as specifically authorized by K.S.A. 41-310, and amendments thereto~~.

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanitoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the

sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of $2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, farm winery, manufacturer or distributor.

Sec. 8. K.S.A. 41-710 is hereby amended to read as follows: 41-710. (a) No retailer's license shall be issued for premises ~~which--are--located--in-areas-not-zoned-for-general-commercial-or business-purposes,-if-the-city-or-township-in-which-the--premises are--located-is-zoned-or-are-not-approved-by-the-director,-if-the premises--sought--to--be--licensed---are---located---outside---an incorporated--city--in--a-township-which-is-not-zoned~~ unless such premises comply with all applicable zoning regulations.

(b) No microbrewery license or farm winery license shall be issued for premises which are zoned for any purpose except

agricultural, commercial or business purposes.

(c) No retailer's, microbrewery or farm winery license shall be issued for premises which:

(1) Are located within 200 feet of any public or parochial school or college or church, except that if any such school, college or church is established within 200 feet of any licensed premises after the premises have been licensed, the premises shall be an eligible location for retail licensing; ~~and~~ or

(2) do not conform to ~~the building ordinances or laws of the state or city or, in the absence of such ordinances or laws, are not structurally in good condition or are in a dilapidated condition~~ all applicable building regulations.

Sec. 9. K.S.A. 41-712 is hereby amended to read as follows: 41-712. No person shall sell at retail any alcoholic liquor in the original package: (1) On Sunday; (2) on Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day; or (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted~~, except that~~. The governing body of any city, by ordinance, may require the closing of premises prior to 11 p.m., but such ordinance shall not require closing prior to 8 p.m.

Sec. 10. K.S.A. 41-714 is hereby amended to read as follows: 41-714. (a) It shall be unlawful for:

(1) Any person to advertise any alcoholic liquor by means of handbills; or

(2) any retailer of alcoholic liquor to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or to have on the retailer's licensed premises any billboard advertising alcoholic liquor~~; or~~

~~(3) any licensee to display alcoholic liquor in any window of the licensed premises~~.

(b) The provisions of this section shall not be interpreted to prohibit the advertising of a microbrewery or farm winery. Any advertising of a farm winery or microbrewery shall be subject to approval by the director prior to its dissemination.

(c) The provisions of this section shall not be interpreted

to:

(1) Preempt any city ordinance or county resolution restricting or prohibiting signs or outdoor advertising; or

(2) prohibit advertising of the price of any alcoholic liquor or advertising of any alcoholic liquor by brand name, other than by means declared unlawful by subsection (a), and no rule and regulation adopted hereunder shall prohibit such advertising.

(d) The secretary of revenue may adopt, in accordance with K.S.A. 41-210, and amendments thereto, rules and regulations necessary to regulate and control the advertising, in any form, and display of alcoholic liquor and nothing contained in this section shall be construed as limiting the secretary's power to adopt such rules and regulations not in conflict with this act.

(e) As used in this section, "billboard" means any board or panel erected, constructed or maintained for the purpose of displaying outdoor advertising by means of painted letters, posters, pictures or pictorial or reading matter, either illuminated or nonilluminated, when such sign is supported by uprights or braces placed upon the ground or upon a structure affixed thereto. Billboard does not include a sign containing statements pertaining to a business conducted within or on the premises on which the sign is maintained.

Sec. 11. K.S.A. 2003 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of

any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-308a or 41-308b, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated or established by a city ~~having a population of more than 200,000~~.

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if such liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A.

41-308a, and amendments thereto, and is consumed only for purposes of judging competitions. The state fair board, in its discretion, may authorize the consumption of such alcoholic liquor on nonfair days in conjunction with bona fide scheduled events involving not less than 75 invited guests and subject to any conditions or restrictions as the board may require.

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of <u>any Kansas national guard armory or</u> the Kansas national guard regional training center ~~located--in Saline--county,~~ and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g)~~,--(h)-or-(i)~~ <u>or (h)</u>.

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the

provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(h) ~~Any city may exempt, by ordinance, from the provisions of subsection (c) any national guard armory in which such city has a leasehold interest, if the Kansas military board consents to the exemption.~~

~~(i)~~ The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

~~(j)~~ (i) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than $50 or more than $200 or by imprisonment for not more than six months, or both.

New Sec. 12. (a) K.S.A. 41-2701 through 41-2727, and amendments thereto, shall be known and may be cited as the Kansas cereal malt beverage act.

(b) Except as specifically provided in the Kansas cereal malt beverage act, the power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in cereal malt beverages is vested exclusively in the state and shall be exercised as provided in the Kansas cereal malt beverage act. Any ordinance or resolution enacted by a city or county which is in conflict with or contrary to the provisions

of the Kansas cereal malt beverage act shall be null and void.

(c) Nothing in this section shall be construed as prohibiting cities and counties from enacting ordinances and resolutions which are not in conflict with or are more restrictive than or supplemental to the Kansas cereal malt beverage act.

(d) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Sec. 13. K.S.A. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of ~~this act~~ the cereal malt beverage act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Except as provided by subsection (g), no cereal malt beverages may be sold:

(1) Between the hours of 12 midnight and 6 a.m.; or

(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city.

(c) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if the licensed premises ~~are also currently~~ also are licensed as a club pursuant to the club and drinking establishment act.

(d) Each place of business shall be open to the public and to law enforcement officers at all times during business hours, except that a premises licensed as a club pursuant to the club and drinking establishment act shall be open to law enforcement officers and not to the public.

(e) Except as provided by this subsection, no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess, consume or purchase any cereal malt beverage in or about a place of business~~, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that~~. A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell at retail cereal malt beverage ~~at retail~~ in the original ~~and unopened containers~~ package and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(f) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(g) Cereal malt beverages may be sold on premises which are licensed pursuant to both the ~~acts contained in article 27 of chapter 41 of the Kansas Statutes Annotated~~ Kansas cereal malt beverage act and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.

Sec. 14. K.S.A. 41-208, 41-301, 41-302, 41-303, 41-710,

41-712, 41-714, 41-1111, 41-1112, 41-1114 through 41-1121 and 41-2704 and K.S.A. 2003 Supp. 19-101a, 41-347, 41-501 and 41-719 are hereby repealed.

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