Approved: March 23, 2004
Date

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on February 10, 2004 in Room 519-S of the Capitol.

All members were present except:
Representative William Kassebaum- excused

Committee staff present:
Martha Dorsey, Legislative Research Department
Mike Heim Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:
Tom Winters, Sedgwick County Commission
James Crowl, Shawnee County Counselor's Office
Danielle Noe, Johnson County
Ed Jaskinia, The Associated Landlords of Kansas
Johnni Vosseller
Patrick DeLapp
Gary Hefley, The Associated Landlords of Kansas
Mark Tomb, League of Kansas Municipalities

Others attending:
See Attached List.

The Chairman opened the hearing on:

HB 2600 counties; sale or disposition of county property

Tom Winters, Sedgwick County Commission, testified in support of the bill (Attachment 1). He said that counties have to go through numerous procedural steps when disposing of property but cities have no statutory restrictions when it comes to disposing of or selling property.

James Crowl, Shawnee County Counselor's Office, testified in support of the bill (Attachment 2). He said that the current statute is unnecessary and, in some instances, could constrain a county from disposing of property in a manner that is beneficial to the public. He advised that is K.S.A. 19-211 is repealed, a county would be able to develop flexible procedures for the disposal of property that best suits its specific needs.

Danielle Noe, Johnson County, testified in support of the bill (Attachment 3). She said that the bill would repeal burdensome requirements of K.S.A. 19-211 regarding the disposal of surplus property. She stated that with the repeal of the current statute, the county would be required to develop its own specific surplus policies and procedures. Ms. Noe said that the process could possibly be streamlined to include provisions for some flexibility as to the disposition of surplus property.

Written testimony in support of the bill was submitted by:
- Judy Moler, Kansas Association of Counties (Attachment 4)

There were no opponents to the bill.

The Chairman closed the hearing on: **HB 2600**

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 10, 2004 in Room 519-S of the Capitol.

The Chairman opened the hearing on:

HB 2615 **abatement of nuisances, owner has not exceeding 40 days to abate nuisance; current law 10 days**

Ed Jaskinia, The Associated Landlords of Kansas, testified in support of the bill. He provided no written testimony. He said the bill increases the response time to address abatement of nuisances from 10 days to 40 days.

Johnni Vosseller testified in support of the bill (Attachment 5). She said the change to 40 days would allow the landlord to follow the Landlord Tenant Act without violating the rights of the tenant and not violating the 10 day rule.

Patrick DeLapp testified in support of the bill (Attachment 6). He explained that the landlord must give proper notice to the tenant and that, typically, this is known as a 14/30 day notice. He said a 14/30 day notice spells out what the problem is to the tenant. He stated that the tenant has 14 days to correct the problem or move in 30 days. Mr. DeLapp said that if the problem is not resolved on the 15th day, the tenant must then move within 30 days of receiving the 14/30 day notice. He said in order to comply with the State nuisance codes as currently written, Landlords many times have to directly violate another state law about giving proper notice under the Kansas Residential landlord tenant law.

Gary Hefley, The Associated Landlords of Kansas, testified in support of the bill (Attachment 7). He said because of the 14/30 day notice law, if a landlord attempts to correct a problem before the 30 days is up, he could be held liable by the tenant for disturbing the tenants right to a peaceable existence.

Written testimony was submitted by:

- Thomas Benaka (Attachment 8)
- Marcia Lessenden (Attachment 9)

Mark Tomb, League of Kansas Municipalities, testified in opposition to the bill (Attachment 10). He said the bill creates an unnecessary delay for cities to effectively deal with health and public safety concerns. He stated the bill would prevent cities from dealing with potentially dangerous situations in a timely manner.

The Chairman closed the hearing on: **HB 2615**

The meeting was adjourned at 4:20 p.m.

The next meeting is scheduled for February 12, 2004.

HOUSE LOCAL GOVERNMENT

DATE 2-10-04

NAME	REPRESENTING
Danielle Noe	Johnson County
Michael D. Pepoon	Sedgwick County
Tom Winters	Sedgwick County
James Crowl	Shawnee County
Mark Tomb	League of Kansas Municipalities
Erik Sartorius	City of Overland Park
PATRICK DELAPP	~~SHAWNEE COUNTY~~ LANDLORDS ASSN.
Richard D. Davis	Kansas Farm Bureau
Johnni Vosseller	Self
GARY HEFLEY	RENTAL OWNERS INC. (WICHITA)

Tom Winters

Commissioner - Third District
Chairman

BOARD OF COUNTY COMMISSIONERS
SEDGWICK COUNTY, KANSAS

COUNTY COURTHOUSE • SUITE 320 • 525 NORTH MAIN • WICHITA, KANSAS 67203-3759
TELEPHONE (316) 660-9300 • FAX (316) 383-8275
e-mail: twinters@sedgwick.gov

TESTIMONY ON HB 2600
Before The House Committee on Local Government
February 10, 2004

Honorable Chairman Vickrey and members of the committee, I appreciate the opportunity to present testimony in support of HB 2600, a bill that repeals K.S.A. 19-211 and which would give counties the authority to establish their own policies and procedures for the sale and disposal of property. My name is Tom Winters and I am Chairman of the Sedgwick County Commission. I have been a county commissioner since 1993.

K.S.A. 19-211 is a statute that was first enacted in 1871 and has been amended numerous times over the past 133 years. This statute creates a number of restrictions on a county's authority to dispose of property, including:

Property in excess of $50,000:

- A unanimous vote by a county commission.
- Public notice of the sale (published 3 consecutive weeks in county newspaper).
- Must be sold pursuant to bid process (highest and best bid).
- Decision of county commission subject to possible election and rejection by voters.

Property in excess of $1000:

- A unanimous vote by the county commission to sell or dispose of property.
- A finding by the county commission that "property is no longer required or cannot prudently be used for public purposes."
- County must publish "notice of intent to sell" two times in county newspaper stating the "time, place and conditions of such sale."

Property in excess of $50:

- Has to be recorded in a county's year-end statement that is published in the official county newspaper.

The statute also provides for procedures for selling or disposing of real property interests, such as easements, again after notice and public hearing, including very complicated procedures for provisions relating to whom this property must vest. Then the County must again publish notice of the conveyance and provide adjoining landowners with such notice by certified mail.

While keeping in mind that counties have to go through all of the above procedural steps when disposing of property, *cities have no statutory restrictions when it comes to disposing of or selling property*. Certainly counties deserve and should be granted the same measure of local control over the management of assets that cities currently enjoy.

House Local Government
Date: 2-10-04
Attachment # 1

RESPONSIBLE LOCAL GOVERNMENT

2-10-04

One of the benefits that would be achieved by repealing this statute is the greater flexibility that the County would have in hiring experts to assist in disposing of surplus property. We could hire realtors and other industry experts in the technology, heavy equipment or agriculture sectors to aid in the disposal or sale of property. We could also avail ourselves to the latest and most effective methods to sell property including: public auctions; internet auctions (such as eBay); reverse auctions; trade magazines ads; and joint networking and advertising with other municipalities. Our Facility Project Manager would like the option of being able to work with a realtor to target the appropriate market and get the best price possible on the sale of real estate no longer needed by the County. Our Fleet Manager would like the flexibility of taking vehicles to public auctions, when he thinks he can save money and get a better price than holding his own public sales. And our Purchasing Director would like the flexibility to create an internet site, similar to eBay in which she can sell surplus property—a practice already being used in other jurisdictions. All of the above practices are either prohibited or greatly restricted because of this statute. Like many municipalities, Sedgwick County has been trading in used vehicles as part of the purchasing process of buying new vehicles. Recently we have stopped this practice (even though such trade-ins are the norm in the business world of buying vehicles) because of not wanting to be in violation of this statute.

Often times when trying to sell real estate with an appraised value of over $50,000, we go through the entire process of having the unanimous vote, spending a great deal of staff time preparing bid documents, spending relatively large sums of money on publication costs, and delaying the bid openings beyond the 45 day protest period—only to discover that either no one bid on the property or the bids received were so ridiculously low that we ended up having to reject all bids.

There is no reason that a County should not be able to establish its own policies and procedures for selling or otherwise disposing of property. Why should there be the need for a unanimous vote? This allows a single county commissioner in some counties to override the wishes of the majority and block the sale of a piece of property. Why should there be a 45 day period to allow the public by petition to overturn the decision of the elected body? County commissioners are elected to make these kinds of decisions and so long as such decisions are made in an open public meeting, their decisions should stand. And finally, why should there be the requirement of publication of notices in the official county newspaper? This not only ads unnecessary cost to the process, but the official county newspaper might not even have the largest circulation in the county or target the population most likely to buy the property. It might make more sense to use limited advertising funds on an ad in a trade magazine or on the radio.

Sedgwick County, like all cities and counties in the state of Kansas, has had to adjust to the loss of demand transfer funds from the State. In our county alone this amounted to approximately $6.4 million last year. In response to this loss of money, Sedgwick County has made numerous cuts (including the elimination of 84 full time positions) and sees itself as a partner with the legislature to weather these difficult economic times. That is why our 2004 Sedgwick County Legislative Platform focused on legislative proposals that will make doing business at the county level more cost effective and efficient, rather than relying on the state of Kansas for money. The repeal of K.S.A. 19-211 would one step in accomplishing this objective.

I strongly request that you support HB 2600 and repeal K.S.A. 19-211.

Shawnee County
Office of County Counselor

RICHARD V. ECKERT
County Counselor

Shawnee County Courthouse
200 SE 7th St., Ste. 100
Topeka, Kansas 66603-3932
(785) 233-8200 Ext. 4042
Fax (785) 291-4902

TO: Chairman Vickrey and the Members of the House Committee on Local Government

FROM: James M. Crowl, Assistant Shawnee County Counselor

DATE: February 10, 2004

RE: House Bill 2600

On behalf of Shawnee County, I would like to express our support of House Bill 2600. Although I do not have any specific "tales of woe" to give you regarding Shawnee County's experience with K.S.A. 19-211, I would like to express our belief that the current statute is unnecessary and in some instances could constrain a county from disposing of property in a manner that is beneficial to the public.

In Shawnee County our Purchasing Director manages both the procurement and disposal of County property. Our Purchasing Director recently asked our office for assistance in reworking the County's disposal of property procedures to streamline the process and incorporate several ideas she had developed over the years. After reviewing K.S.A. 19-211, we were forced to advise our Purchasing Director that some of her cost saving ideas could not be implemented because of statutory requirements. In our opinion, if K.S.A. 19-211 is repealed, a county would be able to develop flexible procedures for the disposal of property that best suits its specific needs.

Thank you for your consideration of House Bill 2600.

JMC/cmf

House Local Government
Date: 2-10-04
Attachment # 2

2-10-04

Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

Testimony in support of HB 2600

presented to the

House Local Government Committee

by

Danielle Noe

Intergovernmental Relations Manager

February 10, 2004

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of HB 2600 which would repeal burdensome requirements of KSA 19-211 regarding the disposal of surplus property.

Currently, we send surplus items to auction every month because we do not have storage available to hold items for any significant length of time. It takes approximately 90 days from the time that items are identified as surplus to take them to auction. For example, in February we will begin the list for the May auction. (The March and April lists are already in the works.) This 90-day timeline provides time for county departments to review the items in question and claim any items that may be of use to them after contacting the department, which identified the items initially as surplus. The list is then submitted to the Board of County Commissioners for their review and declaration as surplus items. Then there is an almost 30-day waiting period while we publish notice prior to the auction. We are required to publish the auction notices for three consecutive weeks prior to any auction. Publishing so often is costly.

As you can see, the logistics for keeping the surplus organized for the appropriate auction is extremely tedious. We basically have to keep at least 3 different areas for different auctions at the same time, while each waits in its own queue to go to auction. Most departments don't have the ability to hold their items for 3 months, so we have a warehouse where we collect items as time and space permit.

Another challenge that we face is the requirement for a unanimous vote of the Board of County Commissioners to dispose of property. If one member of the Board of County Commissioners is absent at a meeting, we cannot hold a vote.

We realize that any repeal of the current statute would only require the County do develop its own specific surplus policies and procedures, but we believe that the process could be streamlined and provide for some flexibility as to the disposition of surplus property. Technology could also be utilized in the form of online auctions, which can be both more convenient and more profitable than the current system. Donations of surplus items such as computers could also be dealt with in a way that the Board of County Commissioners sees fit.

For these reasons, the Johnson County Board of County Commissioners urges you to support HB 2600.

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

Chapter 19.--COUNTIES AND COUNTY OFFICERS
Article 2.--COUNTY COMMISSIONERS

19-211. Sale or disposition of county property; public notice; election, when; publication of certain sales; contracts for sale; lease-purchase agreements; exceptions. (a) Except for any property belonging to a county law enforcement department and as otherwise provided in this section, no property, the value of which is more than $50,000, belonging to any county shall be sold or disposed of by any board of county commissioners without a unanimous vote of such commissioners and public notice of such sale or disposition. Such notice shall state the time or date of the sale or disposition or the date after which the property will be offered for sale or disposal, the place of the sale or disposition and the terms and conditions of the sale or disposition. Such notice shall be published at least once each week for three consecutive weeks prior to the sale or disposition in the official newspaper of the county. The property shall be sold or disposed of publicly, in the manner deemed prudent by the board of county commissioners, to the person or entity tendering the highest and best bid as determined by the board. The board of county commissioners shall have the right to reject any or all bids.

If, within 45 days after the first publication of the notice of sale or disposition a petition signed by not less than 2% of the qualified electors of the county is filed with the county election officer, such property shall not be sold or disposed of unless the proposition of sale or disposal of such property is submitted to a vote of the electors of the county at a question submitted election called therefor. The election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto, or at a general election. If a majority of the votes cast at any such election authorizes any sale or disposition, such sale or disposition shall be made upon the notice hereinbefore prescribed by publication, to the person or entity tendering the highest and best bid, as determined by the board. The board of county commissioners shall have the right to reject any or all bids.

(b) If the board of county commissioners rejects all bids or if no bids are received, the board may proceed to sell or dispose of the property publicly, in the manner deemed prudent by the board, to the person or entity tendering the highest and best bid or offer as determined by the board. If the notice of sale or disposition has been previously published in the manner set forth in subsection (a), no further notice of sale shall be published before the property is sold or disposed of pursuant to this subsection. When property of the county is sold or disposed of pursuant to this subsection, the board shall cause to be published as a part of the statement required by K.S.A. 19-227, and amendments thereto, a detailed account of such sale or disposition which shall list such property, the person who acquired the property and the purchase price.

(c) If the value of the property does not exceed $1,000, such notice by publication shall not be required prior to the sale or disposition of such property. When property of the county having a value of more than $50 but not more than $1,000 is sold or disposed of, the board of county commissioners shall cause to be published as a part of the statement required by K.S.A 19-227, and amendments thereto, a detailed account of such sale or disposition which shall list such property, the person who acquired the property and the purchase price.

(d) Upon a finding by the board that any property is no longer required, or cannot prudently be used for public purposes of the county, the board, by a unanimous vote, may sell or dispose of such property, the value of which does not exceed $50,000, by public or private sale or by negotiation, as determined by the board. Notice of the board's intent to sell or dispose of such property shall be published at least two times in the official county newspaper. Such notice shall include the time, place and conditions of such sale or disposition.

(e) The board, by unanimous vote, may sell or dispose of any real property interest belonging to the county, including any interest derived through dedication, plat, condemnation, reversion, abandonment, reservation or tax foreclosure, which the board determines, after notice and public hearing, to be surplus property not required for public use, and to be unmarketable property. Such property interest may be sold or disposed of by the county by the adoption of a resolution providing that the interest of the county shall be vacated and transferring by quitclaim, without benefit of warranties of title, whatever right, title or interest the county has or may have in the property. The resolution shall provide for the reservation to the

county and the owner of any lesser property rights for public utilities, the rights-of-way and easements for public service facilities which are in existence and in use across the property. Upon adoption of the resolution, the property interests vacated and conveyed shall revert to and vest in the owners of the real estate immediately abutting thereon, in proportion to the frontage of such land, except in cases where such land may have been acquired for public use in a different proportion, in which event it shall revert and vest in the owner of the adjoining real estate in the same proportion that it was acquired.

Following the adoption of the resolution, the county clerk shall record the conveyance upon the transfer records of the county and shall cause a notice of the transfer to be published at least two times in the official county newspaper and to be sent by certified mail to each owner of the adjoining real estate to whom the property is being transferred, at the address where the owner's tax statement is sent. A copy of the transfer and the notice shall be recorded with the register of deeds of the county, and no fee shall be charged by the county clerk or the register of deeds recording the transfer.

(f) In the event of any sale or disposition of real property pursuant to the authority under this section, the board, in its discretion, may enter into and execute contracts for sale or lease-purchase agreements for a term of not more than five years.

(g) The provisions of this section shall not apply to or restrict the conveyance of real property by any county to the state of Kansas, the title to which was previously conveyed to such county by the state of Kansas.

(h) The provisions of this section shall not apply to or restrict the conveyance of real property by any county to a nonprofit corporation organized under the laws of Kansas if such real property is acquired and conveyed by the county for the purpose of development of an industrial or business park on such real property comprised of businesses engaged in: (1) Manufacturing articles of commerce; (2) conducting research and development; or (3) storing or processing goods or commodities. If the real property is to be conveyed for an amount which is less than the amount the county paid to acquire such property, the board of county commissioners shall publish a notice of its intent to convey such property. The notice shall include a description of the property, the cost of acquiring the property and the amount for which such property is to be conveyed. Such notice shall be published once each week for three consecutive weeks in the official county newspaper. If, within 45 days after the first publication of such notice a petition signed by not less than 2% of the qualified electors of the county is filed with the county election officer, such property shall not be conveyed unless the proposition of sale or disposal of such property is submitted to and approved by a majority of the qualified voters of the county at an election called therefor. The election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto, or at a general election.

(i) The provisions of this section shall not apply to or restrict the conveyance of real property by any county to a port authority if such real property is acquired and conveyed by the county for the purpose of development of an industrial, commercial or business park on such real property. The board of county commissioners shall publish a notice of its intent to convey such property. The notice shall include a description of the property, the cost of acquiring the property and the amount for which the property is to be conveyed. Such notice also shall include the time and date of the public hearing at which the board proposes to consider the conveyance of such property. Such notice shall be published at least once in the official county newspaper. Following the public hearing, the board of county commissioners may convey such property.

(j) Whenever it is required by this section that the board of county commissioners approve a sale or disposition of property by unanimous vote and a county has a five-member board, such board may approve a sale or disposition of property by a 4/5 majority.

(k) The provisions of this section shall not apply to the conveyance of property pursuant to K.S.A. 2-1319, and amendments thereto.

History: L. 1871, ch. 74, § 7; R.S. 1923, 19-211; L. 1953, ch. 138, § 1; L. 1957, ch. 160, § 1; L. 1977, ch. 86, § 1; L. 1978, ch. 89, § 1; L. 1985, ch. 95, § 1; L. 1987, ch. 96, § 1; L. 1989, ch. 82, § 1; L. 1993, ch. 198, § 1; L. 1994, ch. 80, § 2; July 1.

KANSAS ASSOCIATION OF COUNTIES

Written Testimony on HB 2600
Before the House Committee on Local Government
By Judy A. Moler
General Counsel/Legislative Services Director
February 10, 2004

The Kansas Association of Counties supports legislation that would allow counties more flexibility in the sale and disposal of county owned property. The proposed change in the law would modernize the statutes and put counties on an equal footing with cities in this arena.

County Commissioners are elected by their community to conduct business for the county. This change in the law would go a long way in creating a business like climate for counties wishing to dispose of property in an expeditious manner.

The Kansas Association of Counties asks for your support in the passage of HB 2600.

The Kansas Association of Counties, an instrumentality of member counties under K.SA. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

House Local Government
Date: 2-10-04
Attachment # 4

Hi my name is Johnni Vosseller I live at 510 S. Monroe, La Harpe, Kansas. My husband and I own property in 4 counties. I would like to explain what happened to us just a few months ago when the city of Garnett, Kansas gave us a 10-day notice. We contacted the head of the code enforcement department and explained that we were in the middle of a forceiable detainer with this tenant. In Garnett, Kansas district court is only held once a week, which makes getting a court date for an eviction take longer to get the tenant out. After explaining this to the head of the code enforcement department he explained to me that he could not wait that long for this property to be cleaned up, he said if the property was not cleaned up in 10-days he would bring us before the city judge and we would be fined a very large sum of money. This put my husband and myself in a difficult position. We had to violate the rights of the tenant by not giving him the proper 14/30 day notice required by the landlord tenant act. We did not have possition of the property and if the tenant choose to sue us he could have won a substantial amount of money because we removed his personal property without his permission.

My Husband and I are very much in favor of the 40 days for a nescience violation. That would allow the smaller communities to hold court and have possession of the property. This would allow the landlord to follow the Landlord Tenant Act without violating the rights of the tenant and not violating the 10-day rule.

Thank you very much for your time and I am in favor of this bill. Are there

any questions?

House Local Government
Date: 2-10-04
Attachment # 5

City of Garnett

Date: October 10, 2003

To: ~~Johnnie Vosseller~~ (Property Owner)

510 South Monroe

LaHarpe, Kansas 66751

Jerry W. Tate Jr. (Tenant/Occupant, if different)

1010 South Walnut #8

Garnett, Kansas 66032

Location of property:

1010 South Walnut #8
Garnett, Kansas

A recent inspection of this property reveals what may be a violation of Title 7, Chapter 2 entitled "Solid Waste Regulations" on the property. The specific violations appear to be: 3-7-2-8A,B & D

Loose trash scattered about yard. Shoes, cans, plastic containers, papers, numberious other items.

Furniture in yard and on porch. Tables, table lamp, lamps, fan, broken lawn chairs and a school desk.
~~Tires in yard.~~

The overall condition of the yard with trash, tires and furniture scattered about is contrary to city ordinance.
The yard must be cleaned up. Trash kept in an approved containers. Trash pickup is provided once a week.

The purpose of this letter is to advise you of the City's findings and to give you an opportunity to correct the conditions.

5-2

131 West 5th P. O. Box H, Garnett, KS 66032
(785) 448-5496 Fax: (785) 448-5555

You have until October 20, 2003 to make such corrections. Failure to do so within this time limit can result in filing of a complaint in the Municipal Court and upon conviction the assessment of a fine. If a motor vehicle is involved, the City may itself have the vehicle (s) described in this notice removed from the property. In that case, you would be billed for the City's cost of removal and disposal of the vehicle (s). For your reference a copy of Title 7, Chapter 2 is enclosed.

I would appreciate your timely action of this matter. The City of Garnett is a very attractive city and we hope you will help us keep the town clean and attractive for our visitors, as well as residents, present and future.

If you have any questions concerning this letter, please do not hesitate to contact me at City Hall.

Sincerely,

Herb Waring

Herb Waring
Zoning Administrator

HW

Enclosure

Dear Committee members Re: HB 2615

We support a change in State law concerning nuisances. The reasons for this are very simple. That is when I lease property I own out to someone, I give up immediate control of the property.

The tenant I leased to now has the right to say who comes and goes on the property, I have given that right up. If there is violation of the lease. I can get control of the property back, but that is not immediate. (Most good leases contain a clause about following all local, State and Federal laws) If they violate a nuisance code that's a violation of the lease, and possible termination of lease agreement.

If a violation occurred, such as a nuisance violation, I as the landlord must give proper a notice to the tenant. Typically this is known as a 14/30 day notice. (It can be found under KSA 58-2564 Attached)

Basically, what a 14/30 notice does, is that it gives notice, spelling out exactly, what the problem is and says that must be corrected within 14 days or move in 30days. On the 15th day if the problem is not cured, then they must move, within 30 days of receiving this 14/30 day notice.

I cannot go into the property and toss away things that belong to the occupant or haul off to storage, stuff belonging to the tenant in that 30-day period. They still are in possession of the property, I am trespassing and perhaps even stealing if I do this, for it's not my stuff to be throwing away and making these decisions.

In Shawnee County, last year, Our current President Darrel Ecklund, of the Shawnee County Landlord Association, was threatened with arrest by the Topeka Police Department. Mr. Ecklund apparently received a notice of nuisance violation on a single family property he owned, which had been rented someone else. He was on the property clean up some kind of nuisance violation trying to cure the violations, caused by the occupant, on the notice from the city. The tenant did not like him cleaning up their stuff so they called the police on him. The police told him if he returns and cleans up any more they will arrest him and take him to jail. I believe he even had to remove some stuff from his vehicle which he had already picked up. This stuff, the police told him, did not belong to him, and he has no right to be on the property moving their stuff. (The Officers were right)

In order to comply with the State nuisance codes as currently written, Landlords many times have to directly violate another state law about giving proper notice under the Kansas Residential landlord tenant law. Even if this was not an issue with the Landlord tenant law how can we walk on some else's property and just take there stuff and throw it away? We are 3rd parties to this issue with little legal control, except we get the bill.

I have at times received notice of Nuisance violation caused by some of my tenants, most of the time I have gotten away with cleaning it up by yelling at my tenants, on what this is going to cost, the fines, cost of removal ect.. that I will charging them back for all this of this, plus. Many times they say they will take care of it, but never do and the 10 days are going by quickly. After

seeing me 3 times on this issue I sometimes get a consent to then clean up the problem when I offer a lower rate to do it than what the city will fine me. I'm put in a position of bulling them to clean it up, or for giving consent to me, to allow me to do it. Legally, at this time, I do need the occupants permission.

The switch from 10days to 40days may give me enough time to get an eviction done and get control of the property back, and cure the nuisance, without breaking any law.

There maybe a problem if the occupants don't move when required at the end of the 30 days for non compliance, but at that point they are in unlawful hold. I could seek a safe harbor on that basis, when I clean up the mess.

What may work even better than just an over all change to 40 days from 10 days, is to just make that 40days, applicable to parties not in immediate possession of the property. City and local Governments could still give 10day notices to the party in possession, clean up the mess and charge the person who caused the problem, (the party in possession).

The only thing they will give up is the ability to charge a 3rd party not in possession, for the clean up, such as the owner of record, or landlord who legally cannot do anything about it in that short time period, except give notice that if its not taken care of, the lease is terminated.

State law under KSA 12-1,115 special assessments, such as nuisance cost, can be made a person debt and collected as such. Currently, it says the property owner. But with tweaking it could say the party in possession at the time of the nuisances. The city's time period for clean up would not change at all if they just went after the party in possession.

What would change though is now instead of billing the property owner, they would have to bill the party in possession.

A change is needed, I'm tired of walking that tight rope of violation the law, taking stuff that does not belong to me and throwing it away, because of a nuisance violation my tenant caused.

I've been lucky and been able to "bully" my tenants into letting me remove their stuff, when they aren't acting quick enough, and sometime even getting a small fee out of them.

But I don't want to bully them, I want to law to be on my side, when I clean up this stuff. Currently the law is not on my side and I am walking a tight rope when I clean it up. This proposed change will allow me to take the steps needed to legally get the job done even without the occupants cooperation.

Current law can be made better, this is a step toward that goal.

Patrick DeLapp
1013 SW 11th
Topeka, KS 66604
785-357-6007

6-2

58-2564

Chapter 58.--PERSONAL AND REAL PROPERTY
PART 6.--MISCELLANEOUSPROVISIONS
Article 25.--LANDLORDS AND TENANTS

58-2564. Material noncompliance by tenant; notice; termination of rental agreement; limitations; nonpayment of rent; remedies. (a) Except as otherwise provided in the residential landlord and tenant act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with K.S.A. 58-2555 and amendments thereto materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice, if the breach is not remedied in 14 days. The rental agreement shall terminate as provided in the notice regardless of the periodic rent-paying date, except that if the breach is remediable by repairs or the payment of damages or otherwise, and the tenant adequately initiates a good faith effort to remedy the breach prior to the date specified in the notice, the rental agreement will not terminate. However, in the event that such breach or a similar breach occurs after the 14-day period provided in this subsection, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice without providing the opportunity to remedy the breach. The rental agreement then shall terminate as provided in such notice regardless of the periodic rent-paying date.

(b) The landlord may terminate the rental agreement if rent is unpaid when due and the tenant fails to pay rent within three days, after written notice by the landlord of nonpayment and such landlord's intention to terminate the rental agreement if the rent is not paid within such three-day period. The three-day notice period provided for in this subsection shall be computed as three consecutive 24-hour periods. When such notice is served on the tenant or to some person over 12 years of age residing on the premises, or by posting a copy of the notice in a conspicuous place thereon, the three-day period shall commence at the time of delivery or posting. When such notice is delivered by mailing, an additional two days from the date of mailing should be allowed for the tenant to pay such tenant's rent and thereby avoid having the rental agreement terminated.

(c) Except as otherwise provided in the residential landlord and tenant act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or K.S.A. 58-2555 and amendments thereto.

(d) The provisions of this section shall not limit a landlord's or tenant's right to terminate the rental agreement pursuant to K.S.A. 58-2570, and amendments thereto.

History: L. 1975, ch. 290, § 25; L. 1978, ch. 218, § 1; L. 1978, ch. 217, § 1; L. 1992, ch. 306, § 1; July 1.

12-1,115

Chapter 12.--CITIES AND MUNICIPALITIES
Article 1.--GENERAL PROVISIONS

12-1,115. Collection of certain unpaid special assessments; action in district court for debt. If any special assessments levied by the city in accordance with K.S.A. 12-1617e, 12-1617f or 12-1755, and amendments thereto, remain unpaid for a period of one year or more after their initial levy, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the district court of the county in which the city is located. Such actions may be maintained, prosecuted, and all proceedings taken, including any award of postjudgment interest in accordance with K.S.A. 16-204, and amendments thereto, to the same effect and extent as for the enforcement of an action for debt. All provisional remedies available in such actions shall be and are hereby made available to the city in the enforcement of the payment of such obligations. In such actions, the city also shall be entitled to recover interest at the rate provided in K.S.A. 79-2004, and amendments thereto, from and after the date a delinquency occurs in the payment of special assessments levied in accordance with K.S.A. 12-1617e, 12-1617f or 12-1755, and amendments thereto. The city may pursue collection both by levying a special assessment and in the manner provided by this section, but only until the full cost and any applicable interest has been paid in full.

History: L. 1985, ch. 73, § 4; L. 1992, ch. 319, § 12; July 1.

From: "G Hefley" <ghefley@cox.net>
To: <Maureens@house.state.ks.us>
Date: 2/11/04 8:19AM
Subject: HB2615 Revise nuisance abatement from 10 days to 40 days

Re: HB2615 Revise nuisance abatement from 10 days to 40 days.

Testimony given at committee hearing, Rm 519S, on 2/10/04.

Gary Hefley P.O.Box 771163, Wichita, Ks. 67277
Member of Rental Owners Inc. (Wichita)
V.P. "The Associated Landlords of Kansas" (TALK)

Last year a nuisance abatement law was passed which gave property owners 10 days to correct problems cited by city inspection departments. This seems a very short period to correct problems even for a person who owns and occupies a property. (say the weather is freezing cold and the requirement is to paint.)

However, in the case of a rental property it becomes a whole different scenario. When a tenant rents a property, the landlord gives up certain rights of access to the property. Not only because of the rental agreement, but by Kansas "landlord tenant law". Kansas law gives tenants and landlords certain rights and responsibilities. One of the requirements of the law is that the landlord give the tenant 14 days to correct any violations of the contract, or they must move out of the property within 30 days after notification. (A form commonly known as a 14/30 would be given the tenant). If a landlord would attempt to correct a problem before the 30 days is up, he could be held liable by the tenant for disturbing the tenants right to a peaceable existence.

The scenario I cited was where a neighbor turned in a person for leaning the endgate from his pickup truck against the side of the garage of the house he was renting. A city inspector was sent to the property and put a "Request for Correction" citation on the door to the rental unit. The tenant of course ignored the paper. So approximately 15 days later the landlord (property owner) is summoned to night court because the problem has not been resolved. The landlord explains to the judge that this is his first knowledge of the problem and is given a 10 day extension to abate the problem. The landlord calls the tenant to resolve the "simple" problem. But the tenant gets belligerent and says I have the right to this property and I'm not moving it. At this point the only legal thing a landlord can do is give the tenant a 14/30 and hope it will resolve the problem. However if the tenant doesn't move the endgate, the landlord has no legal right to move it until the 30 days has passed. As you can see we are now 45 days into the process.

This case may seem a bit far fetched, but just such a case was cited in Wichita Kansas. Central Inspection Departments for Kansas cities are tasked with citing people for "health and safety" violations. However most of their time in Wichita is spent answering citizens complaints, such as the above, which really have little to do with health and safety, but more to do with the cosmetics, or the politics of the neighbors.

So far the local judges have been sympathetic to the landlords cause, but they are not required to give us any relief from the 10 days. Changing the abatement time to 40 days would at least give the landlord a chance at correcting the problem within the law.

Another approach to solve the problem would be to cite the tenant or the person residing on the property. However the inspectors I've spoken to say this doesn't work because they have the same problem with tenants ignoring the request as we landlords do. What if I just move?

I along with the Rental Owners of Wichita, and The Associated Landlords of Kansas are in favor of increasing the abatement time to 40 days, in lieu of 10 days.

House Local Government
Date: 2-10-04
Attachment # 7

Thomas R. Benaka
1050 SW Jewell
Topeka, KS 66604
Home Phone 785.234.0053
Email tbenaka@swbell.net

February 09, 2004

RE: HB2615

As a landlord I am writing in support of this bill. I would also add it is only a step in the right direction. My most recent experience would increase it to 60 days or make the tenant responsible for the situation they created.

The most recent experience I am referring to is a Topeka Code Compliance violation. I received a certified letter regarding a junked and abandoned vehicle parked in driveway in violation of city code section 66-57.

I made every effort to resolve the situation and the Code Compliance Officer cooperated, but there was no way we could have done it that was in compliance with the law.

FYI: this is the steps that we took

---I received the certified letter for the Code Compliance Officer

-- I gave a 14/30 notice to the tenant to remove the vehicle

-- I gave the tenant names and numbers of people to remove the vehicle

-- On the 30th day I gave my attorney the information for eviction

-- Tenant did not show up for eviction so I got immediate possession

-- Sheriff came 10 days later to give me possession

--Topeka Police tagged the car the next day after I called them

--One week later Topeka Police called to have me sign a ticket and the car was removed that day..

--I then had to store other property left by tenant and give them notice las required by law.

The only way to resolve this situation is to make the tenant responsible for their actions.

Tom Benaka

House Local Government
Date: 2-10-04
Attachment # 8

2-10-04

Dear Committee Members

I am in favor of expanding the days from 10 to 40 on HB 2615. Since the city of Topeka doesn't believe in the concept of going after the citizens that actually made the mess, then it becomes imperative that property owners be given the opportunity to follow due process.

Over the years I have witnessed citizens stripped further and further of their rights. I really wish this would be a year lawmakers would give back to the citizens and ignore the wish lists of local municipalities. The quality of life is greatly reduced when local governments treat citizens badly and/or unconstituitionally, confidant that nothing will happen as most people do not have the money to sue and there is no agency to help citizens.

Marcia Lessenden
P.O. Box 3883
Topeka, Kansas 66604-6883
785 233 9994

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Local Government Committee

From: Mark Tomb, Intergovernmental Relations Associate

Re: Opposition to HB 2615

Date: February 10, 2004

Thank you for the opportunity to appear before you today on behalf of the League of Kansas Municipalities and our 556 member cities. The League appears today in opposition to the change included in HB 2615. This bill increases the response time to address abatement of nuisances from 10 days to 40 days.

This bill creates an unnecessary delay for cities to effectively deal with health and public safety concerns. According to K.S.A. 12-1617e, a nuisance is something that is considered to be "a menace and dangerous to the health of the inhabitants of the city, or of any neighborhood, family or resident of the city."

This bill would prevent cities from dealing with potentially dangerous situations in a timely manner. Under the change included in this bill:

- Stagnant water, deemed a public health concern, could continue to be a breeding ground for mosquitoes and other pests for an additional 30 days.
- Abandoned refrigerators could continue to be unattended for an additional 30 days creating a considerable public safety threat to children.
- Dead animals could remain in place for an additional 30 days causing further environmental concerns.

Delaying the enforcement of health and safety ordinances can also have additional financial costs for property owners and the city. Allowing pollutants and other environmental hazards to remain in place can often transfer problems to adjacent property owners and increase the overall costs for dealing with the situation.

For these reasons, LKM respectfully requests that you do not recommend HB 2615 favorably for passage. Again, thank you for allowing LKM to comment on this proposed legislation. I would be happy to stand for questions.

House Local Government
Date: 2-10-04
Attachment # 10