

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairperson Barbara Allen at 1:30 p.m. on March 9, 2004 in Room 423-S of the Capitol.

All members were present except:

Senator Derek Schmidt- excused

Committee staff present:

Mike Heim, Legislative Research
Martha Dorsey, Legislative Research
Ken Wilke, Revisor of Statutes
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee:

Tom Winters, Chairman, Sedgwick County Commissioners
Jim Crowl, Assistant Shawnee County Counselor
Judy Moler, Kansas Association of Counties
Danielle Noe, Intergovernmental Relations Manager, Johnson County
Ed Jaskinia, The Associated Landlords of NE Kansas
Representative Jim Yonally
Representative Roger Toelkes
Barry Martin, Johnson County Rural Fire District
Ed Peck, Treasurer of Tecumseh Township
Larry McAulay, Director of Legal Services of Johnson County
Bob Hazelwood, Clerk, Topeka Township
James Kilmartin, Clark Monmouth Township
Representative JoAnn Freeborn
Senator Mark Taddiken
Roger Nelson, Member, Cloud County Commission
Terry Finch, Commissioner Chairman, Lincoln County
Representative Frank Miller
Rick Voelker, Fraternal Order of Police
Randy Rogers, Coffey County
Larry Bergstrom, Cloud County
Lamar McLeod, Lincoln County Sheriff
Donald Wilson, Sheriff, Lane County

Others attending:

See Attached List.

Hearing on:

HB 2774 - Township fire districts; procedure to create

Chairperson Allen opened the hearing on **HB 2774**.

Representative Toelkes recognized by the Chair, spoke in support of **HB 2774**. He presented testimony that **HB 2774** updates and clarified the statutory language regarding creation and governance of fire districts (Attachment 1).

Chairperson Allen welcomed Ed Peck to the committee. Mr. Peck's testimony was in support of **HB 2774** (Attachment 2).

Representative Yonally appeared before the committee in support of **HB 2774**. His testimony pertained to Section 4 of the bill (Attachment 3).

F. Lawrence McAulay, Jr., presented testimony in support of Section 4 of **HB 2774** (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE at 1:30 p.m. on March 9, 2004 in Room 423-S of the Capitol.

Testimony in support of **HB 2774** was presented by Bob Haselwood, Clerk of Topeka Township and Clerk of Topeka-Tecumseh Fire District in Shawnee County (Attachment 5).

Written testimony in support of **HB 2774** was handed out from James Kilmartin, Clerk of Monmouth Township (Attachment 6).

Chairperson Allen inquired if there were any other individuals who wished to testify on **HB 2774**, seeing none, closed the hearing.

After questions from committee, Chairperson Allen requested Representative Yonally to work with staff to come with language to address situation at hand dealing with townships with no residents.

HB 2712 - Fire district property tax levies

Chairperson Allen opened the hearing on **HB 2712** and recognized Representative Yonally. Representative Yonally presented testimony in support of Section 1 of **HB 2774** (Attachment 7).

Testimony in support of Section 2 of **HB 2712**, allowing township board to purchase land adjacent to shop area (Attachment 8) was given by Representative Toelkes.

Barry Martin, welcomed by the Chair presented testimony that would amend **HB 2712**. Mr. Martin stated 1) the 1992 amendment contained language which needed to be deleted to make K.S.A. 19-3610(a) read correctly and 2) Fire Protection Districts should be allowed to contract with other fire districts, townships or private entities with same parameters as contracts with cities (Attachment 9).

Chairperson Allen recognized proponent, Ed Peck, Treasurer of Tecumseh Township. Mr. Peck was in support of **HB 2712**, and asked the committee to remove the acreage limitations placed on townships (Attachment 10).

There being no others to testify on **HB 2712**, Chairperson Allen closed the hearing.

HB 2805 - Law enforcement consolidation; Lincoln and Cloud counties

Chairperson Allen opened the hearing on **HB 2805**. Mike Heim, Legislative Research handed out City-County Consolidated Law Enforcement Acts to the committee (Attachment 11).

Representative Freeborn recognized by the Chair presented testimony in support of **HB 2805**. Representative appeared in support on behalf of Lincoln and Cloud County Commissioners. She mentioned **HB 2805** would put the issue to a vote of the people (Attachment 12).

Senator Mark Taddiken welcomed to the committee by the Chair presented testimony in support of **HB 2805**. Senator Taddiken testified the bill would provide the authority for Cloud and Lincoln counties to consolidate law enforcement agencies with their respective counties (Attachment 13).

Chairperson Allen recognized Roger Nelson. Mr. Nelson appeared before the committee in support of **HB 2805**. Mr. Nelson stated it is important to keep a time honored tradition for self determination of local citizens to decide issues that have major input on their lives (Attachment 14).

Terry Finch, Chairman of the Lincoln County Board of Commissioners presented testimony in support of **HB 2805**. Mr. Finch noted his testimony had attached letters of support from the mayors of their two largest cities and from the county attorney. He stated this was county specific, not trying to get this law changed statewide. It is needed in Lincoln County where they are already are utilizing combined law enforcement service now (Attachment 15).

There being no others to testify as a proponent on **HB 2805**, Chairperson Allen asked for opponent testimony.

CONTINUATION SHEET

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE at 1:30 p.m. on March 9, 2004 in Room 423-S of the Capitol.

Chairperson Allen welcomed Representative Frank Miller who spoke in opposition of **HB 2805** (Attachment 16).

Testimony in opposition was given by Fredric (Rick) Voelker. He had attached a memo from a recent two year study which showed that law enforcement consolidation would not be a feasible option for Cloud County and costs would be greater than anticipated for the taxpayers (Attachment 17). Chairperson Allen made a request for Rick to submit an amendment when and if the committee takes action on **HB 2805**.

Larry Bergstrom, Cloud County Sheriff spoke in opposition of **HB 2805** (Attachment 18).

Lamar McLeod, Lincoln County Sheriff, appeared in opposition to **HB 2805**. Mr. McLeod stated they already have consolidation law enforcement service in Lincoln County. Also, included with testimony, Mr. McLeod included the Kansas Supreme Court decision 88, 844 (Attachment 19).

Testimony in opposition to **HB 2805** was given by Randy Rogers, Sheriff of Coffey County. Sheriff Rogers stated while **HB 2805** addresses Cloud and Lincoln Counties, he believes if **HB 2805** passed, other counties would be asking for voters to consider consolidated law enforcement (Attachment 20).

Donald Wilson, Sheriff, Lane County, submitted written testimony in opposition to **HB 2805** (Attachment 21).

Chairperson Allen asked for any other conferees to testify on **HB 2805**. There being none, Chairperson closed the hearing.

HB 2600 - Counties; sale or disposition of county property

Chairperson Allen recognized Tom Winters to speak to the committee. Mr. Winters appeared as a proponent of **HB 2600** and presented testimony in support (Attachment 22).

James Crowl, Assistant Shawnee County Counselor appeared as a proponent to **HB 2600** on behalf of Shawnee County (Attachment 23).

Judy Moler appeared as a proponent on **HB 2600**. Ms. Moler stated The Kansas Association of Counties supports legislation that would allow counties more flexibility in the sale and disposal of county owned property (Attachment 24).

Danielle Noe, recognized by Chairperson Allen spoke in support of **HB 2600** (Attachment 25).

There were no opponents to **HB 2600**.

There being no others to testify on **HB 2600**, Chairperson Allen closed the hearing.

HB 2615 - Abatement of nuisances, owner has not exceeding 40 days to abate nuisance; current law 10 days.

Chairperson Allen welcomed Ed Jaskinia to the committee. Mr. Jaskinia, President, The Associated Landlords of Kansas spoke in support of **HB 2615**. On the issue of the days to abate nuisance, the League of Kansas Municipalities and the Associated Landlords of Kansas (TALK) had reach a compromise that is agreeable to both groups. The Chair requested Ed Jaskinia to present to committee written testimony to that effect.

There being no others to testify on **HB 2615**, Chairperson Allen closed the hearing.

The Chair informed the committee it would be meeting Tuesday, March 11.

The meeting adjourned at 2:30 p.m.

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date 3/9/2004

PAT McGUIRE	SHAWNEE Co. SHERIFF OFF
Larry O. Bergstrom	Cloud Co. Sheriff
Randy Henderson	Ren Co. Sheriff
Martha Lutz	Shawnee Co Sheriff's Office
Scott Holladay	SHAWNEE County Sheriff's OFFICE
Jeff Botterby	Kansas Sher. & Ass'y
Carolyn Brock	A+R, Municipal Services
Richard Stuteman	CLOUD COUNTY SHERIFFS OFFICE
Dw E Forlman	JACKSON County Sheriff
Kenneth J. Crane	Shawnee Co. Sheriff
Wick Barta	SHAWNEE Co. SHERIFF
James Jarboe	Keary Co Sheriff
Randy L. Rogers	Butler Co. Sheriff

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date 3-9-04

Barry D Martin	
Tom Winters	Sedgwick County Commissioner
James M. Crowl	Asst. Shawnee County Counselor
Mike Repoon	Sedgwick County
Julie Molen	KAC
Der 2 2	Lincoln Co Commission
Dawn Harlow	Lincoln County Clerk
Larry K. Meitler	Sylvan Grove, Ks. Mayor
Dwight Heller	Lincoln County Commissioner
Mark Tomb	League of Kansas Municipalities
Brian Miller	Cloud County
Curt Bennett	Dickinson Co. Sheriff
Bryan Whipple	Ness Co. Sheriff
KIRK W. ROGERS	HARPER COUNTY SHERIFF

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date 3/9/04

Dooglas Daugherty	Mitchell Co. Sheriff
Byron L. Motter	Harvey Co. Sheriff
Roy DUNNAWAY	Jefferson Co. Sheriff, AR
Carrie Myers	Johnson Co. Sheriff
Lamar Shoemaker	Brown Co. Sheriff
Ron Blad	Republic Co. Sheriff
Jackie Stuart	Sedgwick Co.
DAVID W. MEKE	NEEMATHA Co. SO.
Jim Jensen	Henry County
Jim Woods	Sedgwick Co. Sheriff
Rick Hladky	Shawnee Co Sheriff's Office
Don Burns	Shawnee Co Sheriff Office
Lance Royer	Shawnee Co. Sheriff's Office
JOHN CALHOON	Atchison County SHERIFF'S OFFICE

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



COMMITTEE ASSIGNMENTS
ETHICS AND ELECTION
LOCAL GOVERNMENT
TRANSPORTATION
UTILITIES
CHAIRMAN: SHAWNEE COUNTY DELEGATION

STATE CAPITOL BUILDING—ROOM 284-W
TOPEKA, KANSAS 66612-1504
(785) 296-7665

TOPEKA

HOUSE OF
REPRESENTATIVES
**TESTIMONY FOR SENATE ELECTIONS AND LOCAL GOVERNMENT
COMMITTEE ON HB 2774**

Madam Chairman and Members of the Senate Local Government
Committee.

My name is Roger Toelkes and I will address Section 1,2 and 3 of Bill 2774.

HB 2774 updates and clarifies the statutory language regarding creation and governance of fire districts. This would allow an election process by which the residents would decide if they wished to combine 2 or more townships into a fire district.

This would expand the number of fire district members from each township to three (3) from each township instead of the current one (1) member.

Thank you for allowing me to testify. There will be others here today to give more information on this bill.

Senate Elec & Loc Gov
03-09-04
Attachment 1

Proponent for House Bill 2774
Before the Senate Committee for Local Government

Madam Chairperson and Committee Members:

My name is Edgar Peck. I am the treasure of Tecumseh Township and a member of the Topeka-Tecumseh Fire district board. Our district is located just east of Topeka, and serves not only Topeka and Tecumseh townships but we also serve two adjoining townships, Monmouth and Williamsport, by contract. Our current fire district board consists of the three board members from Topeka Township and the three board members from Tecumseh Township.

To help the committee understand the reasoning behind the proposed changes in KS 80-1540, KS 80-1541 and KS 80-1542, I would like to give you a very brief overview of Monmouth Township and the Topeka-Tecumseh Fire District.

Monmouth Township has been served, under contract, for several years by the Topeka-Tecumseh Fire District as previously stated. Over this period of time Monmouth Township has shown substantial growth through the building of many very nice homes. Because of this growth and the increase in their valuation, the Monmouth Township board has requested the Topeka-Tecumseh fire board to allow them to become a part of the Topeka-Tecumseh fire district, thus creating a new consolidated three township fire district. After long and careful deliberation and considering the advantages for all concerned, the Topeka-Tecumseh board would like to move forward with this proposal.

This brings me to the reason for the changes we are proposing. Currently KS80-1540 calls for a lengthy, tedious process calling for 51% of the landowners in the proposed new district to sign and file a petition with the township boards requesting creation of a new district. This method may work in a single township with a few hundred landowners that want to create a new district. Because of the number of housing areas that are involved we are looking at contacting several thousand landowners to assist them in filing a petition. We are not trying to circumvent our patron's rights from having a say, on the contrary, we are trying to simplify the process by allowing them to vote by ballot after proper notification of the proposition at the next general election.

The change in KS80-1541 would simply remove the provision, which allows for a landowner in the newly proposed district to be able to petition the county commissioners to hold a hearing and decide if a new district could be formed. This issue is addressed by allowing the voters to decide by ballot with a majority vote.

The change in KS 80-1542 would then allow for the newly formed fire district board to be comprised of all three members on each township board. As currently written, the statue calls for allowing only one member from each board to serve.

We encourage your adoption of the proposed changes that have been suggested by passing House Bill 2774.

Senate Elec & Loc Gov
03-09-04
Attachment 2

STATE OF KANSAS

JIM YONALLY
REPRESENTATIVE, 16TH DISTRICT
JOHNSON COUNTY



HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
ETHICS AND ELECTION
LOCAL GOVERNMENT
TRANSPORTATION

TESTIMONY FOR SENATE ELECTIONS AND LOCAL GOVERNMENT
COMMITTEE

ON HB 2774

March 9, 2004

Madam Chairman and members of the Senate Local Government Committee, my name is Jim Yonally and I appreciate this opportunity to appear before you to support the passage of HB 2774.

We will have something resembling a "tag team" here today as Rep. Roger Toelkes will address Sections 1, 2 and 3 of the bill and I will address Section 4 of the bill.

We currently have, in Johnson County, a township that has no residents. As the township was annexed by the cities of Lenexa and Shawnee, there was, by accident, some territory, mainly consisting of some right-of-way along the highway, that did not get annexed by either city. The township has approximately \$72,000 in the bank and they have debts of \$2,500 to the city of Lenexa for mowing weeds, and approximately \$20,000 to an attorney for legal services. However, with no residents in the township, therefore no township board of trustees, therefore no way to pay the obligations of the township and dispose of the remaining property formerly owned by the township.

What section 4 of HB 2774 does is allow, in those situations where there are no residents in a township, or if any township officer position is vacant due to a lack of candidates for the office for two consecutive township elections, the board of county commissioners may take control of the situation. They may also disorganize, or consolidate the former township as appropriate.

Senate Elec + Loc Gov
03-09-04
Attachment 3



JOHNSON COUNTY LEGAL DEPARTMENT

F. LAWRENCE MCAULAY, JR.
DIRECTOR OF LEGAL SERVICES
(913) 715-1901
LARRY.MCAULAY@JOCOGOV.ORG

TESTIMONY REGARDING HB 2774
SENATE ELECTIONS & LOCAL GOVERNMENT COMMITTEE
MARCH 9, 2004
F. LAWRENCE MCAULAY, JR.,
DIRECTOR OF LEGAL SERVICES

Chairman and Committee members, I am Larry McAulay, Director of Legal Services for Johnson County, Kansas. Thank you for the opportunity to speak to you today regarding this matter. I am here today to express the SUPPORT of the Johnson County Board of County Commissioners for Section 4 of HB 2774.

There currently exists a township in northwestern Johnson County, Monticello Township, which has no residents. This resulted from annexations by the cities of Lenexa and Shawnee, the most recent of which occurred in 1999 by Lenexa and in 2003 by Shawnee. Without residents, Monticello Township is unable to have a township board, and without a township board no township business can be conducted.

There are current statutes that provide for disorganization or consolidation of townships, but those statutes require that there be a township board to propose such action and that there be residents ("electors") to vote on the proposals. The current statutes also require consolidation or attachment to be to a "contiguous" township. There is no other township that is contiguous to Monticello Township, because the only land currently in Monticello Township is highway right of way that is totally surrounded by cities. Without residents and without a contiguous township, Monticello Township is unable to function or be consolidated with another functioning township.

Monticello Township has approximately \$72,000.00 cash in bank accounts and owns real estate in Lenexa, a decommissioned sewer lagoon, of undetermined value. The Township has known liabilities of \$2,550.00 to the City of Lenexa for weed mowing charges at the former sewer lagoon site and attorney fees of approximately \$20,000.00. The Township also owns small strips of right of way along K-10 highway just west of K-7 highway of no value. Efforts are underway to have Olathe annex these strips along the highway to clean up the city boundaries.

On February 18, 2004 a receiver was appointed for Monticello Township by the Johnson County District Court, pursuant to K.S.A. 60-1101. Under the general supervision of the court, the receiver intends to marshal and protect the assets of the township and pay the legitimate debts of the township. Prior to debts being paid, public notice will be given and a court hearing will be held.

House Bill 2774 gives boards of county commissioners the following powers, but only when there are no township residents or where there are office vacancies for two consecutive township elections:

The power to:

- Disorganize the township;
- Consolidate the township with another township that is the next geographically closest township within the same county that has a functioning township board and transfer assets to that other township;
- Take possession of all books, papers, records, moneys and other assets of the township;
- Pay township debts;
- Exercise all powers of the township until the disorganization or consolidation is completed;
- Dispose of excess assets in a manner determined by the board of county commissioners to be in the best interests of the former township residents or property owners;
- Prior to acting on a resolution to dissolve or consolidate a township, the board of county commissioners must conduct a public hearing on the advisability of adopting such resolution.

The Johnson County Board of County Commissioners asks for your support of Section 4 of House Bill 2774.

I will be happy to answer your questions or supply you with additional information.

F. Lawrence McAulay, Jr.
Director of Legal Services
Johnson County Legal Department
111 South Cherry St., Suite 3200
Olathe, KS 66061
913-715-1901
larry.mcaulay@jocogov.org

HOUSE BILL No. 2774

Bob Haselwood

Chairman Allen, members of the committee, I would like to thank you for the opportunity to speak before you today in favor of HB 2774.

My name is Bob Haselwood and I am clerk of Topeka Township and clerk of the Topeka-Tecumseh Fire District here in Shawnee County.

The fire district provides fire and first responder services to Topeka and Tecumseh townships. We also provide these same services to Monmouth and Williamsport townships on a contractual basis.

A few years back we were asked by the Monmouth Township board if they could join with us to form a new fire district that would be composed of Monmouth, Tecumseh, and Topeka townships. After many meetings and much discussion with the boards of these three townships, we decided that it would be beneficial to the residents of area if the three townships join to form one new fire district. But when we look into the procedure to form the new district, we discovered that it was going to be a lengthy and costly process.

We feel that HB 2774 allows for a simpler way for the townships to form a new fire district without taking away from the residents of the proposed district their ability to voice their opinion. We feel that the election process is a much simpler and quicker way to get the true feelings of the residents of the area as opposed to the petition process.

We also believe that the provisions of HB 2774 will be beneficial to other townships that might in the future want to form fire districts and will allow them to determine the size of the governing board that best fits their needs.

I would like once again to thank the committee for their time and ask you to vote favorably for this bill.

Senate Elec + Loc Gov
03-09-04
Attachment 5

March 9, 2004

Written Testimony: Proponent: HB 2774

Mr. Chairman and Members of the Committee:

My name is James Kilmartin. I am the Clerk of Monmouth Township, which is in Southeast Shawnee County. I apologize I am unable to attend today, but write to speak in support of this bill.

Monmouth Township has doubled in size over the past five years. Our community has grown to the point where fire protection and response times are of concern. Monmouth Township has been contracting for fire protection with the Topeka-Tecumseh Fire District for many years.

The Monmouth Township board has requested several times over the past five years, that the fire district welcome Monmouth as a member of the district. This request appears to be in the best interest of southeast Shawnee County. House Bill 2774 allows for a more constructive way for our boards to reorganize the fire district. I would refer you to the testimony of Mr. Ed Peck, Tecumseh Township, given to the House Committee on February 24, 2004, for a detailed description of our intent.

Monmouth Township has passed a resolution to form its own fire department. About 45% of the current district firefighters reside in Monmouth Township. Many of you may have heard of the past few weeks, about the struggles of the volunteer fire department. I would like to tell you that our department is not struggling, but looking to expand to serve the best interests of our community.

The Monmouth Township board believes that the public's best interest is served with the expansion of the current fire district, rather than the creation of a new entity.

I encourage you to support HB 2774.

Thank you for your consideration,

James Kilmartin,

Clerk, Monmouth Township

4140 SE 53rd Street

Berryton, Kansas 66409

785 862 3700

ttfd251@yahoo.com or jkilmart@stormontvail.org

*Senate Elec & Loc Gov
03-09-04*

Attachment 6

JIM YONALLY
 REPRESENTATIVE, 16TH DISTRICT
 JOHNSON COUNTY



HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: EDUCATION
 ETHICS AND ELECTION
 LOCAL GOVERNMENT
 TRANSPORTATION

TESTIMONY FOR THE SENATE ELECTIONS AND LOCAL GOVERNMENT
 COMMITTEE

ON HB 2712

March 9, 2004

Madam Chairman and members of the Senate Local Government Committee, my name is Jim Yonally and I appreciate this opportunity to appear before you to support the passage of HB 2712.

We will have something resembling a "tag team" here today as I will address Section 1 of the bill and Rep. Roger Toelkes will address Section 2.

Under current law, a fire district wishing to contract to provide fire protection, can only contract with a city. What this section of the bill would do is to allow the fire district to contract with another fire district, a township or a private entity within the vicinity of the fire district (this change found on page 1 lines 28 and 29).

In short, it is permissive legislation that simply grants a little more flexibility to local fire districts.

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



COMMITTEE ASSIGNMENTS
ETHICS AND ELECTION
LOCAL GOVERNMENT
TRANSPORTATION
UTILITIES
CHAIRMAN: SHAWNEE COUNTY DELEGATION

STATE CAPITOL BUILDING—ROOM 284-W
TOPEKA, KANSAS 66612-1504
(785) 296-7665

TOPEKA

HOUSE OF

REPRESENTATIVES

**TESTIMONY FOR SENATE ELECTIONS AND LOCAL GOVERNMENT
COMMITTEE ON HB 2712**

Madam Chairman and Members of the Senate Local Government

Committee.

My name is Roger Toelkes and I appear before you today in favor of passage of HB 2712.

Section 2 of HB 2712 states KSA 2003 is amended to allow the board of each township the power to acquire land for public purposes.

Any purchase of more than 2 acres would be subject to the vote of the electors of that county.

Some townships, because of expanding their equipment and more road maintenance materials, are running out of room.

This amendment would give them room for the needed expansion. Thank you for allowing me to testify.

Senate Elec & Loc Gov
03-09-04
Attachment 8



Johnson County Fire District No.2



Administrative Office 19495 Metcalf, P.O. Box 127 Stilwell, KS 66085
Phone # 913-681-2764 Fax # 913-681-2786

Barry D. Martin
Attorney for Johnson County Fire District No. 2

PROFFERED TESTIMONY

House Bill No. 2712, amending K.S.A. 19-3610 relating to fire districts.

History of Statute

K.S.A. 19-3610 was adopted in **1953** to authorize the Board of County Commissioners to levy for the cost of fire protection and/or payment to a **city** for providing fire protection to a fire protection district. (Limited to contracts with Cities for fire protection)

1961 law was amended to allow Board of County Commissioners to levy amount sufficient to pay **city** contracted for fire protection, without limit on levy.

1974 law was amended by adding subsection (b), allowing Board of County Commissioners, with approval of electors, to levy up to 7 mills for fire protection. (Previously limited to 5 mills)

1992 law deleted reference to specific use of levy, and replaced it with "All proceeds of such levy shall be used for the to carry out the powers, duties and functions of the governing body..." (Technical change)

Proposed Amendments

1. Statute needed "cleaned up," as the 1992 amendment included language that made reading difficult.
2. Expand the language of "**has contracted with a city**" to include contracts for fire protection with "**any other fire district, city or township or private entity within the vicinity of the district.**"

Reason for Amendments

1. 1992 amendment contained language which needs to be deleted to make K.S.A. 19-3610(a) read correctly.
2. Fire Protection Districts should be allowed to contract with other fire districts, townships or private entities with same parameters as contracts with cities.

Historically, many rural fire districts contracted with cities to provide fire protection to rural areas.

In recent years several rural fire districts have elected to establish their own fire protection services for safety of residences and property protection. (This is particularly true for areas such as Shawnee, Sedgwick and Johnson County, etc.). This has resulted in rural fire districts contracting with adjoining rural fire districts to provide fire protection.

This amendment allows a fire protection district to contract with "**other fire districts, townships or private entities**" on the same basis as they historically contracted with adjoining cities. (The proposed language is identical to that found in K.S.A. 19-3621)

Senate Elec & Loc Gov
03-09-04
Attachment 9

Proponent for House Bill 2712
Before the Senate Committee for Local Government

Madam Chairperson and Committee Members:

My name is Edgar Peck. I am the Treasurer of Tecumseh Township that is in the eastern part of Shawnee County. Our township serves approximately 7,000 patrons, many of them living in subdivisions. We maintain 71 miles of road within the township including snow removal during the winter. We have six full time employees and hire six additional persons during the summer on a part time basis.

To provide the service our patrons have come to expect requires numerous pieces of equipment and a fleet of 8 trucks. Our shop, garage and storage facilities are located on four acres that is located adjacent to the Kansas Turnpike on the north and Whetstone Creek on the east. As you are probably aware the Turnpike Authority is to expand the Turnpike from 4 lanes to 6 lanes from Topeka to Lawrence. This affects our township, as they will be taking ground from our Township in that expansion. Frankly, we are already running out of room with our present fleet of vehicles and losing additional ground will make the problem more critical.

There is an 8-acre tract of ground adjacent to us that can be purchased at a very favorable price. We don't need the full eight acres but the owner wants to sell it as is since there would not be a suitable area for a building site on any land the Township didn't purchase. Our township board feels very strongly that we have a wonderful opportunity to be able to buy this property at a time we really need it and at such a fair price.

Because of the quality of service our township has provided to the patrons, we feel they will approve of this purchase if they are given the opportunity to vote on this matter.

We ask that you remove the acreage limitations placed on townships with voter approval at the next General Election.

Senate Elec & Loc Gov
03-09-04
Attachment 10

January 20, 2004

City-County Consolidated Law Enforcement Acts

Three separate laws in Chapter 19, Article 44 of *Kansas Statutes Annotated*, authorize certain counties to adopt a consolidated city-county law enforcement agency if voters approve. To date, only Riley County in 1972 has adopted a city-county consolidated law enforcement agency under one of these laws. Consolidated law enforcement also has been adopted as part of the broader city-county consolidation of Wyandotte County and Kansas City, Kansas under KSA 12-340 *et seq.* Note a number of smaller cities also have entered into contracts with counties and county sheriff's to provide law enforcement services for the cities. The latter example is a contract for services rather than consolidation.

The three separate city-county law enforcement consolidation laws are described in the following narrative. There are currently 22 counties which fit the various brackets in the three laws. The number of counties vary due to the fact that the laws refer to the counties which are covered by population and assessed valuation brackets which change each year.

The reason for population and assessed valuation brackets no longer exists. The *Kansas Constitution* was amended by voters in 1974 to delete a prohibition against the enactment of "special laws". The courts had interpreted this prohibition to preclude the Legislature from naming a specific county or city in the statutes since this would be deemed "special legislation". The Legislature tried to avoid this constitutional obstacle by referring to counties or cities by population and assessed valuation brackets under the rationale that other cities or counties could be covered by a law enacted for one or a few local government entities. Generally, the courts upheld laws with this type of brackets. The anomaly in using population and assessed valuation brackets is reflected in the fact that Riley County is the only county where voters approved city-county consolidation law enforcement but Riley County no longer fits the population and assessed valuation brackets of the law under which it operates. Riley County, however, is actually mentioned by name in several other sections of this act.

The population and assessed valuation brackets no longer serve any practical purpose and are cumbersome in trying to discern which counties are actually covered by one of these laws.

Senate Elec + Loc Gov
03-09-04
Attachment 11

<u>County Population</u>	<u>Valuation (In Millions)</u>	<u>Election Required</u>	<u>Counties Included</u>
• 7,800—8,900	• \$35—\$45	Yes	None at this time.
• 15,000—20,000	• Not more than \$35	Yes	None at this time.
• 5,000—6,000	• \$21—\$28	Yes	None at this time.
• 9,600—10,500	• \$45—\$65	Yes	Wilson
• 20,000—23,000	• Over \$70	Yes	Cherokee, Seward, Labette

How Issue Gets Before Voters. The issue can be initiated: by board of county commissioners; by the governing body of any city within the county with a population of at least 25 percent of the county; or by petition of 5 percent of the by the qualified electors of the county.

Office of Sheriff. Retains responsibility for service of process, collection of delinquent taxes, and operation of the county jail.

County Law Enforcement Agency. A seven member county law enforcement agency shall be selected as follows: One member shall be a member of the board of county commissioners of the county, selected by the board of county commissioners; two members shall be members of the governing body of the largest city, selected by the governing body; one member shall be the county attorney; and three members shall be electors of the county, one of whom shall reside in each county commissioner district of the county, selected and appointed by the four members above.

A special provision applies to counties between 9,600 and 10,500 population regarding the membership of the agency. The three members appointed from county commissioner districts would be elected.

Financing. The law enforcement agency shall be funded by a countywide tax levy except in counties between 9,600 and 10,500 population in which case the largest city shall pay 62 percent of the cost, the unincorporated area of the county shall pay 32 percent of the cost, and the remaining cities shall pay 6 percent of the cost.

Table 2 KSA 19-4424 to 19-4445			
County Population	Valuation (In Millions)	Election Required	Counties Included
<ul style="list-style-type: none"> • 37,000—48,000 • 62,843 	<ul style="list-style-type: none"> • \$74—\$140 • \$299.78 	<ul style="list-style-type: none"> Yes Yes 	<ul style="list-style-type: none"> None at this time Riley

How Issue Gets Before Voters. Same as in the first law except the petition requires 10 percent of the county electors who voted for the office of Secretary of State.

Office of Sheriff. Abolished.

County Law Enforcement Agency. The county law enforcement agency shall consist of seven members who shall be selected in the following manner: (A) One member shall be a member of the board of county commissioners of the county, selected by the board; (B) one member shall be a resident of the county, to be selected by the board of county commissioners; (C) one member shall be a member of the governing body of the largest city located within the county, selected by the governing body; (D) two members shall be residents of the largest city within the county, to be selected by the governing body of the city; (E) one member shall be the mayor of the next largest city located within the county, or a member of the governing body of the city, designated by the mayor; and (F) one member shall be the county attorney.

The Riley county law enforcement agency shall have seven members who shall be selected in the following manner: (A) One member shall be a member of the board of county commissioners of the county, selected by the board; (B) one member shall be a resident of the county, to be selected by the board of county commissioners; (C) one member shall be a member of the governing body of the city of Manhattan, to be selected by the governing body; (D) two members shall be residents of the city of Manhattan, to be selected by the governing body of the city; (E) one member shall be the county attorney of the county; and (F) one member appointed, on alternating terms, by the governing body of the city of Manhattan and the board of county commissioners of Riley County.

Financing. Any county adopting this act and each incorporated city within the county shall share in the cost, exclusive of medical expenses of prisoners, of operating the law enforcement agency and department in the same proportion as the budget of each political subdivision for the operation of the sheriff's department or the police department in the fiscal year in which this act is adopted bears to the total of all budgets in the fiscal year.

In any county where only two cities and the county levy a tax and one city is a city of the first class and the other city is a city of the third class, each city and the county shall levy a tax for the costs of the law enforcement agency and department commencing with the levy for 1979, in an amount computed as follows: (1) When the budget for the law enforcement agency and department is established for the next year, the levy for the city of the first class shall be computed in accordance with the above; (2) the levy for the city of the third class then shall be fixed at a rate higher or lower than its previous mill levy for such purpose, by an amount equal to the net increase or decrease in the mill levy rate that the levy of the city of the first class bears to that of its levy for the previous year; (3) the county then shall levy a tax at a mill rate sufficient to pay the remaining portion of the budget.

When the budget for the Riley county law enforcement agency and department is established for 1998, the city of Manhattan shall levy a tax at a mill rate sufficient to fund 80 percent of the budget of the law enforcement agency and department and the county shall levy a tax at a mill rate sufficient to fund 20 percent of the budget of the law enforcement agency and department. Thereafter, the governing body of the city of Manhattan and the board of county commissioners of Riley county shall determine annually, by adoption of a joint resolution, the portion which the city and county shall pay to fund the budget of the law enforcement agency and department. If a joint resolution is not adopted by the second Monday in June each year, the funding formula adopted the previous year shall continue in effect.

<u>County Population</u>	<u>Valuation (In Millions)</u>	<u>Election Required</u>	<u>Counties Included</u>
• 5,000—12,000	• More than \$75 million	Yes	Rice, Linn, Pratt, Coffey, Kingman, Grant.
• 3,800—4,300	• \$21—\$24	Yes	None at this time
• 3,000—4,000	• \$28—\$50	Yes	Chase, Cheyenne, Decatur, Edwards, Gore, Jewell, Lincoln, Logan, Ness, Rush, and Trego.

How Issue Gets Before Voters. Same as the first law.

Office of Sheriff. Abolished.

County Law Enforcement Agency. The county law enforcement system board shall have five members selected in the following manner: One member shall be the chairman of the board of county commissioners, or his designee; one member shall be the mayor of the largest city located in the county, or his designee; one member shall be the county attorney of the county; and two members shall be elected by the qualified electors of the county to serve for terms of two years.

The elective members of the board shall be elected at the general election following the primary election at which the proposition for consolidated law enforcement in the county is adopted. Any person seeking election to the positions shall file a declaration of candidacy with county election officer within thirty days after such primary election, and the county election officer shall cause a special ballot to be prepared containing the names of those persons who have filed their declarations of candidacy with the time prescribed. Ballots for election of board members shall be prepared in the manner that each elector is instructed to vote for the same number of candidates as the number of positions to be filled, and the two candidates receiving the greatest number of votes shall be elected.

Financing. Any county and each incorporated city within the county shall share in the cost of operating the law enforcement agency as follows: Two-thirds of the operating cost shall be paid by the county and the remaining third shall be paid by the incorporated cities within the county in the proportion that the population of each city bears to the total population of all cities within the county.

JOANN LEE FREEBORN
 REPRESENTATIVE 107TH DISTRICT
 CLOUD, LINCOLN, OTTAWA
 AND PART OF DICKINSON COUNTIES
 1904 N 240TH RD.
 CONCORDIA, KANSAS 66901-6825
 785-446-3675



TOPEKA
 HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIR: ENVIRONMENT
 MEMBER: AGRICULTURE
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STATE CAPITOL, RM. 281-W
 TOPEKA, KS 66612-1504
 785-296-7645
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 e-mail: Freeborn@house.state.ks.us

March 9, 2004

To: Elections and Local Government Committee

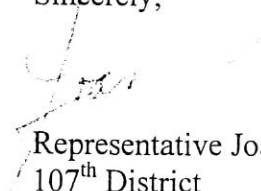
Re: Lincoln and Cloud County Law Enforcement Consolidation

I would like to thank Chairperson Allen for hearing this testimony, as well as Vice-Chairperson O'Connor, Ranking Minority Senator Gilstrap, and other committee members for your time today. I stand before you in support of HB 2805. This is a bill I support on behalf of Lincoln and Cloud County Commissioners. Both have written me letters signed by all county Commissioners in each of the two counties. I mention this to show the support of this bill from the local officials. I would like to mention that this bill, should it pass, would merely put this issue to a vote of the people, and is by no means deciding the fates of law enforcement in these counties.

Riley County has already tested the use of Law Enforcement Consolidation. However, HB 2805 is different, as it is written specifically to accommodate the two aforementioned counties currently interested in Law Enforcement Consolidation. At this time, there are no additional counties that have made it known that they wish to be included in the bill. I have checked with the Association of Counties, and they have recommended county-specific legislation in this matter.

With all of this in mind, I recommend to you HB 2805.

Sincerely,


 Representative Joann Freeborn
 107th District

Senate Elec + Loc Gov
 03-09-04
 Attachment 12



TOPEKA

SENATE CHAMBER

MARK W. TADDIKEN
SENATOR, 21ST DISTRICT
CLAY, CLOUD, MARSHALL
NEMAHA, WASHINGTON, RILEY
AND A PORTION OF
POTTAWATOMIE COUNTY
2614 HACKBERRY RD.
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COMMITTEE ASSIGNMENTS
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MEMBER: AGRICULTURE
ASSESSMENT & TAXATION
LEGISLATIVE EDUCATIONAL
PLANNING
UTILITIES

Testimony in Support of House Bill 2805

Consolidation of Law Enforcement Agencies (Cloud and Lincoln Counties)

by Senator Mark W. Taddiken

March 09, 2004

Thank you Madam Chairman for the opportunity to testify today in support of HB 2805 which would provide the authority for Cloud and Lincoln counties to consolidate law enforcement agencies within their respective counties. The goal is to provide an opportunity for increased efficiency in the operation of their law enforcement agencies.

This bill would permit these two counties to put the question of consolidated law enforcement before the voters of the county if requested by the governing board of any city in the county having a population of at least 25% of the county population, or if 10% of the people voting in the last Secretary of State's election present a petition requesting the consolidation vote.

If the ballot question is successful, a seven member board would be appointed for terms of two years to hire the chief law enforcement officer for the county and to oversee the operation of the new department. City police departments, if they exist, would have their powers removed, and the cities would be able to contract with the county wide department for services.

Senate Elec & Loc Gov
03-09-04
Attachment 13

Also, a petition signed by 10% of the people voting in the last Secretary of State's election, may be presented to the county commissioners calling for an election to determine if the members of the law enforcement board should be elected instead of appointed. The bill lays out the format for the elections if voters decide they desire an elected board.

In addition the bill provides that the same process could be used to abandon the county wide system if the people of the county prefer to return to the system used prior to the consolidation. The bill also has provisions regarding hiring, compensation, dismissals, record keeping, budgeting, and retirement pensions.

This bill is permissive in nature and provides an additional option for these two counties if voters approve it. This bill would give our local units of government a useful tool in trying to be responsible stewards of their local resources. I encourage your support of HB 2805 and am willing to attempt to answer any questions the committee may have.

Mark W. Taddiken

Kansas Senator, District 21

Tuesday, March 9, 2004

Testimony of Roger C. Nelson on House Bill 2805
before Senate Elections & Local Government Committee

Room 423-S 1:30 p.m.

Chairperson Allen, Vice-Chairperson O'Connor, Members of the Committee:

Thank you for allowing me the time to present information on and request your support for House Bill 2805. This bill is designed to allow the electorate of Cloud County and Lincoln County to voice their opinion on the creation of a consolidated law enforcement agency in place of the multiple departments currently in place in the respective counties.

In the spirit of cooperation and consolidation that we are currently experiencing, there is much reason for such legislation. Unfortunately, current statutes contain restrictions as to valuation and population that debar both Cloud and Lincoln Counties from offering such an option to their citizens.

House Bill 2805 sets out a simple, step-by-step plan for voting on the proposition, setting up a governing agency, listing responsibilities of such a governing agency, and, should the need or desire arise, abandonment of such an agency.

Senate Elec + Loc Gov
03-09-04
Attachment 14

The bill includes sections authorizing officers of the newly created law enforcement agency to become members of the Kansas Police and Firemen's Retirement System and providing protection for previous service. No officer should experience any loss of benefit by becoming an officer in the consolidated agency.

At Cloud County's request, an amendment has been added by the House which would insure that every officer and every staff member of any existing law enforcement department has the opportunity to apply for employment with the consolidated agency. Additional language states that every officer and every staff member meeting qualifications shall become employees of the consolidated agency should they wish to do so.

We believe that such law enforcement consolidation will eliminate duplication of law enforcement efforts and will promote and encourage efficiency and consistency in providing services as well as increased security for our citizens.

But the initial step must be to allow our citizens to express their opinion on the option of consolidated law enforcement. And that is what this bill is designed to do.

If any Committee Members have questions, I would be happy to discuss them.

Thank you for your time.

Roger C. Nelson, Cloud County Commissioner

HOUSE BILL No. 2805

By Committee on Local Government

2-10

Counties to which act applies
Cloud & Lincoln

Definition of "Director" and
"Law enforcement officer"

How the county can put the
proposition on the ballot

How a city with 25% or more of
the population can put the
proposition on the ballot

How the citizens of the county as
a whole can put the proposition
on the ballot

10 AN ACT concerning counties; relating to law enforcement.

11

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

13 Section 1. As used in this act:

14 (a) "Agency" means a county law enforcement agency established
15 under the provisions of this act.

16 (b) "County" means Cloud or Lincoln county.

17 (c) "Department" means a county law enforcement department es-
18 tablished under the provisions of this act.

19 (d) "Director" means the superintendent of a county law enforce-
20 ment department appointed under the provisions of this act.

21 (e) "Law enforcement officer" or "county law enforcement officer"
22 means a law enforcement officer who is a member of a county law en-
23 forcement department appointed under the provisions of this act.

24 Sec. 2. The provisions of this act shall apply to any county as defined
25 section 1, and amendments thereto, in which the question of the adoption
26 of the provisions of this act has been submitted to and approved by the
27 qualified electors of the county in the manner provided herein. The board
28 of county commissioners of any county, by resolution adopted not less
29 than 90 days preceding the date fixed for the holding of the general
30 election in November of an even-numbered year, may direct the county
31 election officer to place such proposition on the ballot at the next general
32 election, and the board shall direct its placement on the ballot at such
33 election whenever (1) the governing body of any city located within the
34 county, having a population equal to not less than 25% of the total pop-
35 ulation of such county shall request that the proposition be placed on the
36 ballot, by resolution adopted not less than 90 days preceding the date
37 fixed for the holding of the general election in the month of November
38 of an even-numbered year, or (2) the county election officer shall certify
39 that a petition, requesting that the proposition be placed on the ballot
40 and signed by qualified electors of the county equal in number to not less
41 than 10% of the electors of the county who voted for the office of the
42 secretary of state at the last preceding general election, has been filed in
43 such office not less than 90 days preceding the date fixed for the holding

When the question can be submitted

1 of a general election in the month of November of an even-numbered
2 year. Notice of any election held pursuant to this section shall be given
3 in the manner prescribed by K.S.A. 10-120, and amendments thereto.

Ballot language

4 Upon the ballot the proposition shall be stated as follows:
5 "Shall the county of _____ (name of county) adopt the provisions
6 of sections 1 through 21, and amendments thereto, providing for consol-
7 idated law enforcement in certain counties?"

What happens if the majority votes "Yes."

8 If a majority of the votes cast upon such proposition shall be in favor
9 of adopting the act, the provisions thereof shall govern the enforcement
10 of law and the providing of police protection within such county in the
11 manner hereinafter provided.

12 Sec. 3. (a) Subject to the provisions of subsection (b), there is hereby
13 established in all counties adopting the provisions of this act a county law
14 enforcement agency which shall be known as the
15 "_____ county law enforcement agency."
16 (name of county)

Membership and selection of the County Law Enforcement Agency

17 Each agency shall have seven members who shall be selected in the
18 following manner:

19 (A) One member shall be a member of the board of county commis-
20 sioners of the county, selected by such board of commissioners;

21 (B) one member shall be a resident of the county, to be selected by
22 the board of county commissioners;

23 (C) one member shall be a member of the governing body of the
24 largest city located within the county, selected by such governing body;

25 (D) two members shall be residents of the largest city located within
26 the county, to be selected by the governing body of such city;

27 (E) one member shall be the mayor of the next largest city located
28 within such county, or a member of the governing body of such city,
29 designated by such mayor; and

30 (F) one member shall be the county attorney of such county.

Time of selection

31 The board of county commissioners of the county and the governing
32 body of the two largest cities located within such county shall each meet
33 on the second Monday in January next following the adoption of the
34 provisions of this act and each two years thereafter and shall select and

Terms of members

35 designate the members of their respective bodies and the other appoint-
36 ive members as members of the agency. Appointive members of the
37 agency shall serve for a term of two years, and other members of the
38 agency who are members by virtue of their county or city office shall
39 remain eligible to serve as such only while holding such county or city
40 office. All members of such agency shall take and subscribe to an oath as
41 other county officials, and all vacancies occurring in the membership of
42 the agency shall be filled for the remainder of the unexpired term of the
43 member creating such vacancy in like manner as that provided for the

Members not to receive compensation but expenses will be reimbursed.

As an alternative to the appointive board, this section allows the voters to establish an elected board following the initial selection.

1 appointment of such member. Members of the agency shall not receive
2 compensation, but shall be reimbursed for their actual and necessary
3 expenses incurred in the performance of their official duties.

4 (b) Whenever there shall be presented to the county election officer
5 of any such county a petition, signed by qualified electors of such county
6 equal in number to not less than 10% of the electors of the county who
7 voted for the office of secretary of state at the last preceding general
8 election, requesting a special election on the proposition of electing the
9 members of the law enforcement agency of such county to be held at the
10 time of the next primary election in August of an even-numbered year,
11 such special election shall be held at the next such primary election which
12 occurs not less than 60 days after the date the petition is filed, and the
13 question submitted at such special election shall be as follows:

14 "Shall the law enforcement agency of _____
15 (Name of county)

16 be composed of seven elected members?"

17 If a majority of the electors voting at such election vote in favor of such
18 proposition, such county's law enforcement agency shall be elected at a
19 special election which shall be held at the time of the next succeeding
20 general election as follows: One member shall be elected from each of
21 the county commissioner districts in such county and the remaining mem-
22 bers shall be elected from the county at large, together with that portion
23 of any city within the county which is located in an adjacent county. Any
24 person seeking election to any such position shall file a declaration of
25 candidacy for the appropriate position with the county election officer
26 within 30 days after the special election at which the proposition for elect-
27 ing members of the county law enforcement agency is adopted. The
28 county election officer shall give notice of the special election to elect
29 members of the agency by publication once in a newspaper having general
30 circulation within the county. Such publication notice shall be made not
31 more than 14 nor less than seven days prior to the date of the special
32 election. If a portion of any city within such county is located in an ad-
33 jacent county, the county election officer also shall give written notice of
34 such special election to the county election officer of such adjacent county
35 as soon as the results of the special election on the proposition to elect
36 members of the agency are known.

37 Ballots for the special election to elect members of the agency shall be
38 prepared by the county election officer of the county to which this act
39 applies, including ballots for that portion of any city within such county
40 which is located in an adjacent county which ballots for the portion of
41 such city shall include only the names of the persons having declared
42 themselves to be candidates for the at large positions. All ballots for the
43 at large positions shall be prepared in such manner that each elector is

1 instructed to vote for the same number of candidates as the number of
 2 positions to be filled. So far as the same may be made applicable, the laws
 3 governing the election of county commissioners shall govern the election
 4 of such members to be elected within county commissioner districts, and
 5 the laws governing the election of other county officers shall govern the
 6 election of the members from the county at large, except that the election
 7 of members of the law enforcement agency shall be nonpartisan and in
 8 each instance the candidate receiving the greatest number of votes shall
 9 be elected. Where electors of an adjacent county residing in a city which
 10 is partly in such adjacent county and partly in a county to which this act
 11 applies are to vote on candidates for the at large positions, the county
 12 election officer of such adjacent county shall conduct the election and the
 13 board of canvassers of such adjacent county shall canvass the ballots cast
 14 at such special election by electors of such adjacent county who reside in
 15 such city. The board of canvassers of such adjacent county shall certify
 16 the results of the special election in the adjacent county to the board of
 17 canvassers of the county to which this act applies.

18 Sec. 4. Members of such agency shall meet in the office of the county
 19 attorney upon the call of such officer as soon after their appointment as
 20 possible and shall organize by electing a chairman, vice-chairman and
 21 secretary. Thereafter members of the agency shall meet at least once each
 22 month at a time and place which shall be fixed by resolution. Such res-
 23 olution shall specify the regular hour of commencement of the meeting,
 24 the day of the week and the week of the month, and shall provide that if
 25 the regular meeting date occurs on a legal holiday or on a holiday specified
 26 by the agency, such regular meeting shall be held on the following day at
 27 the same hour. Such resolution also shall specify the regular meeting
 28 place of the agency and may specify that any regular meeting may be
 29 adjourned to another time and place. Special meetings may be called at
 30 any time by the chairman. Written notice, stating the time and place of
 31 any special meeting and the purpose for which called, shall be given each
 32 member at least two days in advance of the meeting, unless such notice
 33 is waived by all other members of the agency. No business other than
 34 that stated in the notice shall be transacted at such meeting. A majority
 35 of the qualified members of the agency shall constitute a quorum for the
 36 purpose of conducting any business and the vote of a majority of the
 37 qualified members of such agency shall be required for the passage of
 38 any motion or resolution. No member shall be permitted to pass or to
 39 abstain from voting upon any measure properly before the members of
 40 such agency at any meeting except upon the basis of a conflict of interest
 41 announced by such member and made a part of the record of the meeting.
 42 The chairman, and in his absence or disability, the vice-chairman shall
 43 preside at all meetings and sign or execute all orders, contracts or docu-

Line 18, p. 4 to line 3, page 5

Organization of agency

Functioning

Meeting times

Officers

Line 4, page 5 through line 6 page 6

Duties of the agency

- 1 ments of any kind required or authorized to be signed or executed by the
 2 agency. The agency shall cause a proper record to be kept of its
 3 proceedings.
- 4 Sec. 5. The agency shall be responsible for the enforcement of law
 5 and the providing of police protection throughout the county and for this
 6 purpose is hereby authorized to:
- 7 (a) Appoint and establish the salary and compensation of a law en-
 8 forcement director for the county.
- 9 (b) Authorize and provide for the appointment of such law enforce-
 10 ment officers and other personnel as the agency shall deem necessary to
 11 carry out the intent of this act.
- 12 (c) Establish a job classification and merit rating system for law en-
 13 forcement officers and provide for the administration thereof.
- 14 (d) Establish a schedule of salaries for law enforcement officers and
 15 other personnel.
- 16 (e) Hear and affirm or revoke orders of the director providing for the
 17 suspension or dismissal of law enforcement officers.
- 18 (f) Authorize the acquisition and disposition of equipment and sup-
 19 plies necessary for the operation of the agency and department.
- 20 (g) Require the keeping of proper law enforcement records and files
 21 by the department.
- 22 (h) Adopt and certify to the board of county commissioners of the
 23 county a budget for the operation of the agency and department.
- 24 (i) Enter into contracts for and receive moneys from any private or-
 25 ganization or agency, the federal government or the state or any political
 26 or taxing subdivision thereof on behalf of the county for the use of the
 27 agency and department.
- 28 (j) Receive vehicles, equipment and supplies from the county sheriff's
 29 department for the use of the law enforcement department.
- 30 (k) Sell police vehicles belonging to the law enforcement department
 31 and credit the proceeds to a separate fund to be expended for the oper-
 32 ation of the county law enforcement agency and department.
- 33 (l) Enter into contracts with any political or taxing subdivisions or
 34 districts of the state located within such county, empowered to enter into
 35 a contract for such purpose, for providing special police protection within
 36 the boundaries of such political or taxing subdivision or district.
- 37 (m) Enter into contracts with cities located within the county for the
 38 enforcement of specified ordinances or the acquisition of city law en-
 39 forcement equipment and property for the use of the department.
- 40 (n) Adopt rules and regulations necessary for the organization and
 41 operation of the agency and department.
- 42 (o) Perform such other duties as may be provided by law.
- 43 Sec. 6. (a) There is hereby established in all counties adopting the

Director of agency - responsibilities

Appointment of assistant director

County Attorney as advisor

Qualifications of director

Term of director

Appointment of law enforcement officers by director

1 provisions of this act a county law enforcement department, which shall
2 be composed of a director, assistant director and such other officers and
3 personnel as the agency shall provide by resolution. Such department
4 shall be under the exclusive supervision and control of the director and
5 no member of the agency shall interfere by individual action with the
6 operation of the department or the conduct of any of the officers or other
7 personnel of such department. The director shall be responsible to the
8 agency for the operation and administration of the department and for
9 the enforcement of law and providing of police protection within the
10 county in conformance with rules and regulations adopted by such
11 agency. The director shall designate and appoint an assistant director who
12 shall serve in such capacity at the pleasure of the director.

13 (b) Upon request of the director of a county law enforcement de-
14 partment, the county or district attorney of the county in which such
15 department is established shall give legal opinions, advice and assistance
16 to such department upon all matters in which the department is inter-
17 ested or which relate to the powers or duties of the department or any
18 officer or employee thereof.

19 Sec. 7. On or before the first day of June next following the appoint-
20 ment of the first members of such agency, the agency shall appoint a law
21 enforcement director for such county. Persons appointed to the office of
22 director shall be citizens of the United States, not less than 25 years of
23 age, schooled and experienced in law enforcement supervision and shall
24 not have been convicted of felony under the laws of this state, or any
25 other state, or of the United States. The director shall serve at the plea-
26 sure of, and shall receive such salary and compensation as shall be fixed
27 by resolution of, the agency. Before entering upon the duties of office,
28 the director shall take and subscribe to an oath as other county officials
29 and shall give bond in such amount and subject to such conditions as shall
30 be fixed by resolution of the agency. The director shall assist the agency
31 in the preparation of the budget of the department and shall make such
32 reports and provide the agency with such other information as it shall
33 require. The director shall make recommendations to the agency on all
34 matters concerning the operation of the department.

35 Sec. 8. The director shall appoint such law enforcement officers as
36 deemed necessary for the proper enforcement of law and the providing
37 of police protection within the county. All officers regularly appointed
38 shall be qualified under the provisions of K.S.A. 74-5601 *et seq.*, and
39 amendments thereto, but an officer may receive a temporary appoint-
40 ment pending the completion of the requirements for a certificate there-
41 under. The agency shall determine and fix such additional minimum qual-
42 ifications to be required of persons appointed as law enforcement officers
43 as deemed necessary, and may provide for the examination of applicants

Director supervises
law enforcement officers

Other personnel authorized by
agency
Appointed by director

Agency assumption of duties of
city marshalls, chiefs of police

Contracts with cities for use of
city jail facilities

City police officers may become
members of law enforcement
department

Agency assumption of duties of
sheriff

(through line 7, page 8)

1 therefor. Law enforcement officers appointed under the provisions of this
2 act shall be responsible to and may be suspended or removed by the
3 director for cause. The director, within 24 hours thereafter, shall report
4 such suspension or removal and the reason therefor to the agency who
5 as soon thereafter as possible, shall hear and determine the matter and
6 affirm or revoke such suspension or removal.

7 Sec. 9. The agency by resolution shall authorize the appointment or
8 employment of such personnel other than law enforcement officers as
9 may be necessary for the proper operation of the department in carrying
10 out the intent of this act. The director shall appoint and may remove all
11 such personnel.

12 Sec. 10. On the first day of January next following the appointment
13 in any county of the first members of the agency under the provisions of
14 this act and thereafter, the department shall assume and shall exercise all
15 powers, duties and responsibilities of the city marshal or chief of police
16 and police officers of cities located within such county, relating to the
17 enforcement of ordinances prohibiting and prescribing penalties for the
18 commission of acts which have been declared to be crimes under the laws
19 of the state of Kansas. Any such city is hereby authorized to contract with
20 the agency for the enforcement of all or any of the remaining ordinances
21 of such city upon such terms and conditions as shall be agreed upon by
22 the agency and the governing body of such city. The city marshal or chief
23 of police of such cities shall transfer and deliver to the agency upon de-
24 mand all records of the police department relating to the violation of laws
25 of the state and ordinances of the city, responsibility for the enforcement
26 of which has been transferred to the county department, together with
27 the custody of all prisoners held for violations of such ordinances of the
28 city. Any law enforcement agency may enter into a contract with any city
29 located within the county for the use of jail facilities of such city and for
30 the acquisition of city police vehicles and property upon such terms and
31 conditions as shall be agreed upon by the agency and the governing body
32 of such city. On the date fixed for the transfer of law enforcement au-
33 thority, all police officers of cities located within the county holding law
34 enforcement training certificates and meeting the minimum qualifications
35 established by the agency may become members of the law enforcement
36 department. Upon application therefor, all officers serving in city de-
37 partments operating under civil service shall be appointed county law
38 enforcement officers in the department.

39 Sec. 11. On the first day of January next following the appointment
40 in any county of the first members of the law enforcement agency under
41 the provisions of this act and thereafter, the law enforcement department
42 shall assume and shall exercise all powers, duties and responsibilities pre-
43 viously exercised by the sheriff, deputies of the sheriff and constables.

Transfer of sheriff's duties
continued

City & sheriff staff may become
members of law enforcement agency

Amendment added at Cloud County's
request to assure all officers and
staff have opportunity to become
members of law enforcement agency

Duties of director and officers

Duty of county commissioners to
provide quarters and facilities

1 The sheriff, upon demand, shall transfer and deliver to the agency all
2 vehicles, property and records belonging to the sheriff's department. If
3 the provisions of this act are adopted in Cloud county, all property of the
4 city of Concordia police department shall be transferred to the agency.
5 A record of all property so transferred shall be prepared and copies
6 thereof filed in the office of the county clerk and with the secretary of
7 the agency. On the date fixed for the transfer of law enforcement au-
8 thority, ~~all~~: (a) All staff of any city police department and all staff in the
9 office of the county sheriff on such date, holding a law enforcement train-
10 ing certificate and meeting the qualifications established by the county
11 law enforcement agency, may become members of the law enforcement
12 agency, and upon application shall become members of the law enforce-
13 ment agency; and (b) **all other staff of any city police department
14 and all other staff in the office of the county sheriff on such date,
15 meeting the qualifications established by the county law enforce-
16 ment agency, may become staff of the law enforcement agency,
17 and upon application shall become staff of the law enforcement
18 agency.**

19 Sec. 12. It shall be the duty of the director and officers to keep and
20 preserve the peace, and, for such purpose such director and officers are
21 hereby vested with the power and authority of peace and police officers
22 in the execution of the duties imposed upon them under the provisions
23 of this act. All powers and duties now or hereafter conferred and imposed
24 upon the sheriff and deputies and constables of any county adopting the
25 provisions of this act are hereby conferred and imposed upon the director
26 and officers appointed under the provisions of this act. All the powers
27 and duties now or hereafter conferred and imposed upon the city marshal
28 or chief of police and police officers of cities located within such county
29 relating to the enforcement of the laws of the state and ordinances of
30 such cities, the authority for the enforcement of which has been trans-
31 ferred to and vested in the county department, are hereby conferred and
32 imposed upon the director and officers appointed under the provisions
33 of this act.

34 Sec. 13. The board of county commissioners of any county adopting
35 the provisions of this act shall provide the agency and department with
36 such quarters and facilities as the agency deems necessary. County law
37 enforcement agencies may utilize quarters and facilities previously used
38 by the sheriff of the county and may enter into contracts with cities lo-
39 cated within the county for the use by such agency of city jail facilities.
40 The board of county commissioners may construct or may acquire by
41 purchase, condemnation or lease, buildings and facilities for the use of
42 the agency and department in like manner as that provided by law for
43 the construction or acquisition of public buildings for the use of the

Sheriff relieved of all authority

1 county.
2 Sec. 14. The sheriff of any county adopting the provisions of this act
3 shall be and is hereby relieved of all power, authority and responsibility
4 now or hereafter prescribed by law from and after the date fixed for the
5 transfer of such authority and responsibility to the law enforcement de-
6 partment under the provisions of this act, including the power, authority
7 and responsibility of such sheriff relating to the enforcement of the laws
8 of this state, the service of process, collection of delinquent taxes, the
9 operation of the county jail and any other duty or authority now or here-
10 after imposed or conferred by law. On the date fixed for the transfer of
11 such power, authority and responsibility, the office of sheriff in such
12 county shall be and is hereby abolished, and at the general election next
13 following such abolishment, and all general elections thereafter, no sheriff
14 shall be elected in any such county.

Township constables relieved of all authority

15 Sec. 15. All constables elected in townships located within any
16 county adopting the provisions of this act, shall be and are hereby relieved
17 of all power, authority and responsibility now or hereafter prescribed by
18 law for the enforcement of the laws of this state from and after the date
19 fixed for the transfer of such authority and responsibility to the law en-
20 forcement department under the provisions of this act.

City marshalls and chiefs of police relieved of all authority

21 Sec. 16. The city marshal or chief of police and police officers of all
22 cities located within any county adopting the provisions of this act shall
23 be and are hereby relieved of all power, authority and responsibility now
24 or hereafter prescribed by law for the enforcement of laws of this state,
25 ordinances of such city, responsibility for the enforcement of which has
26 been transferred to the county department and ordinances of such city
27 the responsibility for the enforcement of which has by contract been
28 placed in the county law enforcement department, from and after the
29 date fixed for the transfer of such authority and responsibility to the law
30 enforcement department under the provisions of this act.

Agency is eligible employer for KPFRS (retirement) purposes

31 Sec. 17. (a) County law enforcement agencies established under the
32 provisions of this act are hereby declared to be "eligible employers" as
33 defined by subsection (3) of K.S.A. 74-4952, and amendments thereto,
34 for the purpose of affiliating with the Kansas police and firemen's retire-
35 ment system established under the provisions of K.S.A. 74-4951 *et seq.*,
36 and amendments thereto. All such agencies shall make application for
37 affiliation with such system in the manner provided by K.S.A. 74-4954,
38 and amendments thereto, to be effective on the first day of January next
39 following the appointment of the first members of such agency. Such
40 application shall cover all county law enforcement officers.

Officers shall become members of KPFRS

41 (b) Every person who shall be appointed a law enforcement officer
42 on or after the entry date of such agency shall become a member of the
43 Kansas police and firemen's retirement system on the date of such per-

Law enforcement officers termed
"policement" for KPFRS purposes

Protecting and computing
retirement benefits

through line 10, page 11

1 son's appointment.

2 (c) Law enforcement officers appointed under the provisions of this
3 act are hereby declared to be "policemen" as defined by subsection (12)
4 of K.S.A. 74-4952, and amendments thereto, for the purpose of partici-
5 pating in the Kansas police and firemen's retirement system.

6 (d) For the purpose of determining and computing retirement ben-
7 efits and death and disability benefits computed upon the basis of "cred-
8 ited service" of law enforcement officers appointed under the provisions
9 of this act, the term "credited service," as used in K.S.A. 74-4951 *et seq.*,
10 and amendments thereto, shall mean and include only "participating serv-
11 ice" with the agency, except that continuous prior service of any officer,
12 with the city police department or county sheriff's department from which
13 such officer transferred at the time of the establishment of the depart-
14 ment, for officers serving with the department upon the entry date of the
15 agency, shall be considered and included in determining if the death or
16 disability of such officer was "service connected" under the provisions of
17 subsection (10) of K.S.A. 74-4952, and amendments thereto, and for the
18 purpose of determining the eligibility of such officer for non-service con-
19 nected death and disability benefits under the provisions of subsection
20 (2) of K.S.A. 74-4959, and amendments thereto, and subsection (2) of
21 K.S.A. 74-4960, and amendments thereto.

22 (e) Notwithstanding the provisions of K.S.A. 74-4957 and 74-4963,
23 and amendments thereto, all service of any officer with a city police de-
24 partment or county sheriff's department prior to becoming a member of
25 the Kansas police and firemen's retirement system, shall be included and
26 counted together with credited participating service for the meeting of
27 requirements for completion of years of service fixed under the provisions
28 of such sections, except that no such service shall be considered "credited
29 service," for the purpose of computing years of service if such officer shall
30 have withdrawn such officer's contributions from any pension or retire-
31 ment system established under the provisions of K.S.A. 13-14a01 *et seq.*,
32 and amendments thereto, 14-10a01 *et seq.*, and amendments thereto, or
33 74-4901 *et seq.*, and amendments thereto. If any officer elects to leave
34 such officer's contributions for credited service, under the provisions of
35 K.S.A. 13-14a01 *et seq.*, and amendments thereto, 14-10a01 *et seq.*, and
36 amendments thereto, or 74-4901 *et seq.*, and amendments thereto, on
37 deposit with such system, such officer shall be granted a vested retirement
38 benefit in such system and all credited participating service in the Kansas
39 police and firemen's retirement system shall be included and counted
40 together with such prior vested service in fulfilling the requirements of
41 years of service for retirement benefits under such pension and retire-
42 ment systems.

43 (f) Notwithstanding the provisions of K.S.A. 74-4965 and 74-4966,

1 and amendments thereto, the employee contribution and the benefits
2 payable to members of the system appointed under the provisions of this
3 act, shall not be reduced by the amount of the contributions to or benefits
4 received by such member from social security.

5 (g) Any officer transferring from a city police department or sheriff's
6 department of such county and becoming a member of the system on the
7 "entry date" of the agency shall be considered a transferring member and
8 shall have the rights and benefits granted under the provisions of sub-
9 section (3) of K.S.A. 74-4957, and amendments thereto, and subsection
10 (3) of K.S.A. 74-4958, and amendments thereto.

11 Sec. 18. The board of county commissioners of any county adopting
12 the provisions of this act, for the purposes of carrying out the provisions
13 of this act from and after the date of the adoption of the provisions thereof
14 by such county, and prior to the time that moneys are available from the
15 tax levy authorized by section 19, and amendments thereto, is hereby
16 authorized for such purpose, whenever deemed necessary and fixed by
17 resolution of the agency, to issue no-fund warrants in an amount not to
18 exceed the amount which would be raised by the levy of a tax of one mill
19 upon all taxable tangible property in the county. Such no-fund warrants
20 shall be issued by the county in the manner and form and shall bear
21 interest and be redeemable in the manner prescribed by K.S.A. 79-2940,
22 and amendments thereto, except that they may be issued without the
23 approval of the state board of tax appeals, and without the notation re-
24 quired by said section. The board of county commissioners shall make a
25 tax levy at the first levying period after such warrants are issued, sufficient
26 to pay such warrants and the interest thereon. All such tax levies shall be
27 in addition to all other levies authorized or limited by law.

28 Sec. 19. (a) Except as provided in subsection (b), on or before the
29 first Monday in July of each year the agency shall prepare and submit to
30 the board of county commissioners of the county a budget of expenditures
31 for the operation of such agency and the department for the next budget
32 year, itemizing the expenses and amounts and the purpose. The board of
33 county commissioners of the county shall consider the budget and ap-
34 prove the same or by a unanimous vote of its members, upon the basis
35 of a written statement giving reasons therefor, may require the modifi-
36 cation or omission of any item from such proposed budget and approve
37 the same as modified. The board of county commissioners shall levy a tax
38 upon all taxable tangible property of such county sufficient to raise the
39 amount approved and to pay a portion of the principal and interest on
40 bonds issued under the authority of K.S.A. 12-1774, and amendments
41 thereto, by cities located in the county.

42 (b) During the first two years following consolidation pursuant to this
43 section, the amount of expenditures in a budget adopted pursuant to the

No fund warrants may be issued by
county commission in an amount
not to exceed amount raised by
one (1) mill for initial agency
costs.

Preparation of budget by director,
approval by agency for
submission to county commission
for approval to be included in
county budget

Sets budgets for first two (2) years
not to exceed combined budgets of
Concordia & Cloud County in last
year of independent operation.
Through line 3, page 12

1 provisions of this section shall not exceed the combined total of the
2 amount of expenditures budgeted by the city of Concordia and Cloud
3 county in the year preceding such consolidation.

4 Sec. 20. The board of county commissioners shall approve all ex-
5 penditures to be made by and claims to be paid on behalf of such agency
6 and the law enforcement department. When medical expenses have been
7 paid for a prisoner held within such county, the agency may seek reim-
8 bursement of such expenses from the prisoner. If the agency determines
9 that a prisoner of the county jail is covered under a current individual or
10 group accident and health insurance policy, medical service plan contract,
11 hospital service corporation contract, hospital and medical service cor-
12 poration contract, fraternal benefit society or health maintenance organ-
13 ization contract, the agency may require the prisoner of such county jail
14 or the provider rendering health care services to the prisoner to submit
15 a claim for such health care services rendered in accordance with the
16 prisoner's policy or contract.

17 Sec. 21. Any county operating under the provisions of this act may
18 abandon such operation in the same manner as that provided in section
19 2, and amendments thereto, for the adoption of the provisions of the act,
20 except that the word "abandon" instead of the word "adopt" shall be used
21 in the petition or resolution and upon the ballot and in the election pro-
22 clamation. If a majority of the votes cast at the election upon such prop-
23 osition shall be in favor of abandoning operations under the provisions of
24 this act, the law enforcement agency and department shall be abolished
25 on January 1, next following the date of such election. All equipment and
26 supplies purchased by such agency and department shall be transferred
27 to the county, and all other moneys, equipment and supplies donated or
28 contributed to or acquired by such agency and department shall be dis-
29 posed of pursuant to an agreement entered into by the board of county
30 commissioners of such county and the governing body of each city within
31 such county. In cities having no city marshal or chief of police such officer
32 shall be appointed in like manner as that now provided by law for the
33 filling of vacancies in such office. A sheriff shall be appointed in such
34 county in the manner prescribed for the filling of vacancies for such office
35 who shall hold office until a successor is elected at the next succeeding
36 general election and is qualified. Such sheriff shall have the power, au-
37 thority and responsibility prescribed by law for such officer. All records
38 of the agency shall be filed in the office of the county clerk. All records
39 of the department relating to the enforcement of city ordinances of any
40 city within such county shall be transferred to the city marshal or chief
41 of police of such city. All records of the department relating to the en-
42 forcement of the laws of the state shall be duplicated, and one copy of
43 all such records shall be furnished to the city marshal or chief of police

County commission approval of
agency expenditures

Provisions for abandonment
of agency plan and return to
sheriff, chief of police, etc.

Disposal of records, assets, etc.
of agency in abandonment procedure

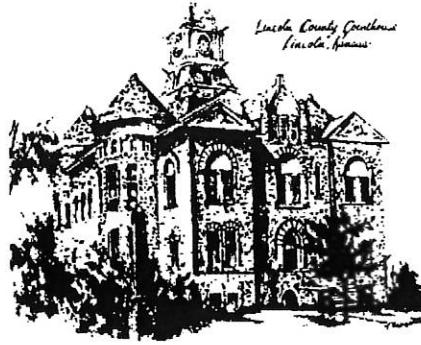
1 of each city within such county, and the original records shall be trans-
2 ferred to the county sheriff. All moneys derived from the tax levies made
3 by any city within the county pursuant to section 19, and amendments
4 thereto, may be used by the governing body of such city for law enforce-
5 ment purposes in the budget year following the year in which operations
6 under the act of which this section is amendatory are abandoned, not-
7 withstanding that the same were not included in the city's budget of
8 expenditures for such budget year, and the board of county commission-
9 ers of such county may use all moneys derived from the tax levies made
10 by the county pursuant to section 19, and amendments thereto, for the
11 office of sheriff of such county in the budget year following the year in
12 which such operations are abandoned, notwithstanding that the same
13 were not included in the county's budget of expenditures for such budget
14 year.

Effective date of act

15 Sec. 22. This act shall take effect and be in force from and after its
16 publication in the statute book.

*Lincoln County Board
of Commissioners*

*Terry L. Finch
Dwight Heller
Doug Gomet*



*216 E. Lincoln
Lincoln, KS 67455
785-524-4335
785-524-5008 - Fax*

March 9, 2004

House Bill 2805
Lincoln County

Presentation to: Senate Elections and Local Government Committee Members,

My name is Terry Finch, Chairman of the Lincoln County Board of Commissioners.

Lincoln County, located in the North Central area of the state, is typically a small rural Kansas county. With an assessed valuation of \$31,269,705, the County has four small cities and a vanishing population of 3,542. The largest community is the City of Lincoln, the county seat, with a population of 1,328 and the second largest is Sylvan Grove with a population 316. Real per capita income for Lincoln County residents measures notably below the Kansas County average. Consequently, real county revenues and expenses per capita notably exceeds the Kansas County average.

Today, I am here in an effort to step up long term relationships between officials representing our Cities, County, Law Enforcement organization and the citizens of Lincoln County. House Bill 2805, prepared specifically for each Lincoln and Cloud Counties, allows citizens a choice as such:

- 1st) elect to retain the current "sheriff as the chief law enforcement officer", a one-size-fits-all system, -or-
- 2nd) Elect to establish a new city/county consolidated law enforcement agency, within the framework of HB 2805.

The proposed consolidated law enforcement agency would be comparable to Riley County's, which was approved by the legislature and has been operating since 1974.

Historically, during the past 30 years Lincoln County has shared joint law enforcement services with the City of Lincoln. On May 1, 1995 the City of Lincoln believed that they lacked adequate law enforcement service provided by the County Sheriff, so they formed their own City Police Department. Two years later, at the request of the Sheriff and the City's Governing Board, the County and the City entered into a formal written contract for the County to provide law enforcement services to the City. A number of factors lead to this arrangement: 1) the City realized that the cost to provide 24 hour per day, 7 days per week law enforcement coverage was unaffordable, 2) costs to house, feed and pay medical expenses for prisoners was beyond their means, 3) the city desired more coverage and protection, which was also more than they could afford, and 4) with a small population the County needed to utilize City law enforcement officers for its own rural coverage. Consequently, the City transferred to the County all law enforcement equipment, including vehicles.

Additionally, the City of Sylvan Grove, on October 17, 1997, entered into a law enforcement contract with the County to provide law enforcement services in their community. Sylvan Grove transferred all of their law enforcement equipment including vehicles to the County.

In the 1980's the Cities of Barnard and Beverly discontinued the position of City Marshall with the Sheriff assuming that role.

In the preceding seven years Lincoln County has elected or appointed three separate Sheriffs. The staffing level for the Department has consisted of the Sheriff, Undersheriff, 6 full-time deputies, 4 full-time dispatchers and 2 part-time dispatchers. In this seven year period the Sheriff's Department has experienced a turnover rate of 86 employees. This amounts to 12.2 employees per year or 1.02 employees per month, a rate that is unacceptable.

House Bill 2805 not only benefits the county in terms of expediency, but also assists employees, by offering increased job security. Employees will not have to fear losing their job each time a new sheriff assumes office. A majority of turnovers occur after an election. Currently, the Department's employee with the longest tenure is one that has been employed for less than two years.

The Lincoln County Board of Commissioners have been constantly fielding citizen's requests to improve city and county law enforcement services. Commissioners would like for citizens to have the opportunity to choose between a consolidated law enforcement agency or continue with a sheriff led law enforcement organization. House Bill 2805 would be the first step for commissioners to take, allowing Lincoln County citizens a choice.

With experience in consolidated law enforcement for a number of years, House Bill 2805 would allow for a formalized structure of Lincoln County's law enforcement services. The creation of a board to appoint a law enforcement administrator would benefit members of each community as they would have a say in the assets, operations and finances of the agency. Currently the Mayors and Council Members of the cities of Lincoln and Sylvan Grove have voiced concerns over the lack of coverage being provided to their communities. These concerns would perhaps be resolved with a board governing assets, operations and finances of law enforcement.

Once again I would like to emphasize that your passage of HB 2805 would allow Lincoln County citizens a choice in the type of law enforcement services that they believe will fulfill their future needs.

In closing, on behalf of our citizens, the Lincoln County Commissioners would appreciate your consideration, support and passage of House Bill 2805.

Thank you for your time and attention.

Sincerely,

Terry Finch, Chairman, Lincoln County Board of Commissioners
Dwight Heller, Vice-Chairman, Lincoln County Board of Commissioners
Doug Gomel, Member, Lincoln County Board of Commissioners

Attachments: City of Lincoln – Letter of Support
City of Sylvan Grove – Letter of Support
Lincoln County Attorney – Letter of Support



CITY OF LINCOLN CENTER

Phone 785-524-4280
Fax 785-524-3408
E-mail: rmgourley@nckcn.com

153 W. Lincoln Ave.
P.O. Box 126
Lincoln, Kansas 67455

February 18, 2004

Lincoln County Board of Commissioners
216 E Lincoln Ave
Lincoln, Ks 67455

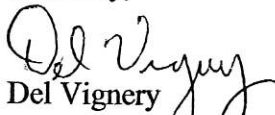
Honorable Board of Commissioners,

As Mayor of the City of Lincoln I am writing this letter in support for passage of House Bill 2805. I support the Lincoln County Commissioners' efforts in posing a question to the residents of Lincoln and Lincoln County to form a consolidated law enforcement agency within Lincoln County and create a board, which would consist of a representative from the City's governing body.

The City of Lincoln entered into a law enforcement contract with Lincoln County on May 5, 1997, and transferred all ownership to equipment and vehicles to the Lincoln County Sheriff's Department. I believe as a representative of the City of Lincoln that the city does not have the resources available or the desire to operate a police department.

In closing, as Mayor of the City of Lincoln, I feel that House Bill 2805 would greatly benefit the citizens of Lincoln.

Sincerely,


Del Vignery
City of Lincoln Mayor

CITY OF SYLVAN GROVE

118 S. MAIN
P.O. Box 68
SYLVAN GROVE, KS 67481

TELEPHONE: 785/526-7188
FAX: 785/526-7189
E-Mail: sylvanch@wtciweb.com

February 18, 2004

Lincoln County Board of Commissioners
216 E Lincoln Ave
Lincoln, Ks 67455

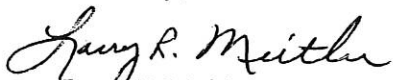
Honorable Board of Commissioners,

The City of Sylvan Grove is writing this letter in support for passage of House Bill 2805. The City of Sylvan Grove's governing body supports the Lincoln County Commissioners' efforts in posing a question to the residents of Sylvan Grove and Lincoln County to form a consolidated law enforcement agency within Lincoln County and create a board, which would consist of a representative from this governing body.

The City of Sylvan Grove entered into a law enforcement contract with Lincoln County on October 17, 1997, and transferred all ownership to equipment and vehicles to the Lincoln County Sheriff's Department. The City of Sylvan Grove does not have the resources available or the desire to operate a police department.

In closing the City of Sylvan Grove believe that House Bill 2805 would greatly benefit the citizens of Sylvan Grove.

Sincerely,



Larry R Meitler
City of Sylvan Grove Mayor

LINCOLN COUNTY ATTORNEY
116 S. Fourth – P.O. Box 36
Lincoln, Ks 67455-0036

JENNIFER R. O'HARE
Lincoln County Attorney

(785)524-4380
FAX:(785)524-5191

February 18, 2004

Lincoln County Board of Commissioners
216 E Lincoln Ave
Lincoln, Ks 67455

Honorable Board of Commissioners,

As Lincoln County Attorney, I am writing this letter in support for passage of House Bill 2805. I support the Lincoln County Commissioners' efforts in posing a question to the residents of Lincoln County to form a consolidated law enforcement agency within Lincoln County.

As you may be aware, we have faced several problems in law enforcement over the past year, many of which, has affected my ability to effectively prosecute cases in Lincoln County. House Bill 2805 is a chance for Lincoln County to change the operation of law enforcement in this community.

Sincerely,



Jennifer O'Hare

Lincoln County Attorney

STATE OF KANSAS

C. FRANK MILLER
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY, CHAUTAUQUA, AND
ELK COUNTIES
HOME ADDRESS: P.O. BOX 665
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM 431-N
TOPEKA, KANSAS 66612
(785) 296-7646



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
HEALTH AND HUMAN
SERVICES
ETHICS AND ELECTIONS
LEGISLATIVE POST AUDIT

March 9, 2004

Honorable Senator Barbara Allen - Chairman
Senate Elections and Local Government Committee

Ref: HB 2805 County law enforcement consolidation and abolition of the elected position of County Sheriff.

Testimony by: Representative Frank Miller - 12th District

Thank you Madam Chairman and members of the Elections and Local Government Committee for the opportunity to come before you today to **testify in opposition of HB 2805.**

Unfortunately, when this bill was discussed in the House during calendar review February 24, 2004 the description given was minimal. The brief stated "HB 2805 authorizes the consolidation of the law enforcement services in Cloud and Lincoln counties. The bill outlines the provisions for this consolidation".

I did not look up the bill and further investigate some of the "provisions" mentioned in the bill. Shame on me! To my recollection even on the floor of the house the description of the bill was very brief and I for one believed the bill to be noncontroversial. On February 27, the House voted in favor of the bill by an overwhelming majority of 114 yeas, to 11 nays, Frank Miller voting yea.

A second item that I found disturbing was the bill brief did not list any opponents to the bill. However, when I read the Supplemental Note on House Bill No. 2805 it clearly stated that the bill was opposed by the Kansas Sheriffs' Association. This alone would have alerted many members of the House to question why this association opposed the bill.

Never did I hear that this bill would do away with the position of the ELECTED COUNTY SHERIFF. Many members in the House would have been very reluctant to replace elected officials with appointed individuals or committees. I believe many members of the House would have voted "NO" had they realized that this bill provides for the abolition of the elected office of sheriff!

The way the bill is written it would be very easy to change the definition of "County" to "all counties in the State of Kansas". This would then open the opportunity under Sec. 2. for any Board of County Commissioners to adopt a resolution to vote on the matter at the next general election. I think this over generalization of the bill is unwise, unfair to the voters, and an infringement upon the right of voters to decide who will be the County Sheriff.

The bill would be more acceptable if the office of Sheriff continued somehow to exist within the context of the bill as an elected official, otherwise I would ask members of this committee not to support moving this bill out of committee favorable for passage.

Thank you and I stand for questions.

Respectfully yours,

A large, stylized handwritten signature in black ink, appearing to read "Frank Miller". The signature is written over the typed name "Representative Frank Miller".

Representative Frank Miller

Senate Elec + Loc Gov
03-09-04
Attachment 16

My name is Fredric Voelker. I am a voter and I live in Concordia, Kansas. The reason that I am speaking to you is in reference to House Bill 2805, concerning law enforcement consolidation in Cloud County. This bill is of particular interest to me, because I am a law enforcement officer for the City of Concordia and an officer for the North Central Kansas Law Enforcement Lodge of the Fraternal Order of Police. I have several concerns about this bill, and I would like to address them with you today.

I have with me the final memo from a recent two year study completed by an impartial consolidation committee which showed that law enforcement consolidation would not be a feasible option for our county and that the costs would be greater than anticipated for the taxpayers. Furthermore, the committee recommended that the consolidation effort be abandoned.

The following members were on the committee: Cloud County Commissioners; Sheriff, Larry Bergstrom; Concordia City Manager, Stanley L. Smith; Police Chief, Burl Maley; Mayor of Clyde, Harold J. George, Jr.; Mayor of Jamestown, Judy Zimmerman; Mayor of Glasco, Carl Adkins; Mayor of Aurora, Johnny Lee Adams; Mayor of Miltonvale, Jon Puckett; Clerk of the District Court, Jeri Palmer; Cloud County Community College Business Manager, Dan Erbert; Cloud County Attorney, Robert Walsh; Concordia City Attorney, David Retter; Legislator, JoAnne Freeborne; At Large, Bill Martin. The memo was addressed to the same commissioners that currently preside at this time. How can they believe

that consolidation will work now, when a few years ago the same commission was advised not to proceed with the consolidation effort?

Yet the county commission has already voted to place the issue on the November 2004 election ballot. House Bill 2805 has been written on assumptions; for instance, the assumption that it will save money for the tax payers. However, no new research has been done on the pros and cons of consolidation, nor on what the cost will be to the taxpayers on an annual basis. If the commissioners have, they have definitely not made those findings available to anyone, including the citizens of Cloud County.

One of the many things that will take place is a budget freeze for two years. If the budget is frozen and the departments have to operate at the budgets set for the 2004 fiscal year, where will the funds to start up the new department come from? Typically department budgets do not have a lot of room for error in the budgeted year. That means that the money will have to come from another source. Since the development of a consolidated department must include a new building large enough to house both county and city officers, personnel, and dispatchers; not to mention, new uniforms, vehicles, and equipment, it easy to see that the start up for this project will cost in the hundreds of thousands, if not millions of dollars. There is only one place that the money could come from THE TAXPAYERS OF CLOUD COUNTY!!! That means raised taxes as indicated in the bill for the citizens who are being promised tax breaks.

If the county commission is to keep their promise to the public to cut costs, then they will do it in one to three ways. First, in order to save money they will cut officers from the departments; therefore, leaving the county with fewer officers per capita for the area that will require police protection.

If they cut the number of officers, then your response time will greatly increase for the citizens of Cloud County.

Currently in Concordia the average response time is approximately 2 minutes. However, if the number of officers is reduced, and the remaining officers are assigned to patrol the County, response time is going to skyrocket. The nearest officer could be in Glasco responding to a Crime in Progress in Clyde. Response time in this instance is going to be well over 30 minutes, which doesn't seem like a long time until you or your family is the victim of a violent crime and every second counts.

Second, they will reduce the hourly wage down to a lower level, causing a loss of currently trained and dedicated officers. These officers and their families will be forced to leave due to their inability to survive on such low wages and the increased cost of benefits. Cloud County will also not be able to attract decent officers into the area with these wages to replace those who have left.

A final way to cut costs is to eliminate current programs that are beneficial to the community. Loss of programs, such as COPs, DARE, the Tactical Team, and the Drug Task Force will greatly affect the community as a whole.

I feel that the cost of consolidation is too great for both the law enforcement community and the citizens of Cloud County.

Next is the issue of control. If consolidation takes place, control of the new department will fall to the county. If I understand the bill correctly, a majority of the expense for the new law enforcement department will be funded by the citizens of the most populated city in the county. That would be Concordia, Kansas. However, the house bill has the law enforcement board setup as follows: one member of the Concordia City Commission, two citizens of Concordia, one member of the County Commission, the Mayor of the next largest city, the County Attorney, and a Citizen from the county. If my math is correct, that leaves the board at 4 members from Cloud County, and 3 members from the City of Concordia. That means that the citizens of the City of Concordia will be paying more for something that they will not have majority control. The board will then chose a secondary board consisting of members of the three districts of the county commission and the remaining four slots will be filled by members of Cloud County or members of adjacent counties leaving law enforcement decisions to be made by people who could live outside of the jurisdictional area.

Also, outlined in House Bill 2805 is the issue of contracting law enforcement for police coverage, inmate housing, and enforcements of city ordinances in the communities of Cloud County. This truly is a double jeopardy situation for the residents of Cloud County. Since I have already stated that taxes will be raised for the citizens, I feel that this is an important issue. With the

county contracting law enforcement, they will be charging the citizens twice for services that they are already sworn to do.

The way contracting works is that the cities will enter a contract that states for "X" number of dollars, the consolidated department will guarantee a law enforcement officer will be in their town at least 40 hours a week. Now if the department is contracted to be in Miltonvale, Glasco, Aurora, Clyde, and Jamestown, and the department only has 3 officers on duty, who will be covering the city of Concordia? I add again that the City of Concordia is footing a majority of the bill for consolidation, but with contracting, the taxpayers of Concordia will have to pay even more to guarantee an officer in the city limits at all times.

Since we are on the subject of the cost to the community for consolidation, I would like to add that when a business is trying to find a place to develop, they look at many things about the community. For instance, let's say, that a major corporation was looking into placing an industry or distribution center into Concordia. What are the factors that they will be looking at? Among them, police response time and the crime rate will be determining factors. If consolidation takes place, and response time is increased, crime rate is increased, cases go unsolved because officers are busy with "contract hours", and the city does not have its own law enforcement entity, the businesses will not be able to get decent insurance and the businesses will not come. This not only affects the citizens of Cloud County, but also affects the State of Kansas. No new businesses mean increased unemployment and no new tax dollars coming into the county and state.

Another concern, as KBI Director Larry Welch stated on a study during 2000 in regards to State Wide Law Enforcement consolidation, Consolidation would cause a loss of Checks and Balances between the two departments. Right now with two departments, cooperation exists that if there is a conflict of interest for one of the departments, the case can be referred to the other department for investigation. If consolidation took place, the case would have to be referred to the KHP or KBI for investigation, both cases costing the State of Kansas more money. Instead of the Trooper or the KBI Agent working a case or accident for the State, they will be tying up manpower, funding, and time to work a case that normally our two departments could handle through our own checks and balance system.

My next concern is the qualifications for the Administrator of the Consolidated Law Enforcement entity. After reviewing the house bill it is my understanding that the only qualifications for the job are as follows: the applicant must be 25 years of age, with law enforcement experience, and supervisory experience.

Our police department requires 5 years of experience just to become a Sergeant for our department. This means at a minimum an officer has to be 26 years of age, and typically, the officer has 7 plus years experience before they get the opportunity to apply for a first line supervisory position. I am afraid this low standard for minimum qualifications will be setting the future of law enforcement

up for disaster in Cloud County, since the applicant will be less qualified than their staff.

One of the biggest concerns is that the issue of consolidation is not being made available to the citizens of Cloud County. That the details of consolidation have been sketchy at best, and the county commissioners have been dancing around the issue of pay, benefits, and cost to the taxpayers of Cloud County. It is impossible to make an educated decision about a subject that no information has been released on. Once informed, several citizens, business owners, city employees, Fire Department personnel, and every Law Enforcement Officer in Cloud County (Sheriff's Department and City Police Department) oppose consolidation of Law Enforcement in Cloud County.

In closing, I have a draft from the same consolidation committee that states that law enforcement in our county is operating at an above average to an exceptional level. I agree with their decision that consolidation is not what is best for Cloud County and I, along with the other officers in Cloud County and the City of Concordia, would appreciate your vote against house bill number 2805. Thank you!

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Introduction

Cloud County, located in north central Kansas, is typical of rural Kansas counties. It has a stable to shrinking population base and a higher than average median age. It has one major community, its county seat, with a number of smaller communities originally located along railroad lines. Approximately three fourths of the people live in communities and the remainder live on rural homesteads. In sum, Cloud County faces many of the same dilemmas typical of rural Kansas.

With respect to the provision of law enforcement and auxiliary law, Cloud County is again typical, and in some respects, already well above the norm in terms of service delivery efficiency.

The focus of this study is to assess the current level of law enforcement in Cloud County. The levels of law enforcement and spending on law enforcement are compared to national averages for similar sized counties and to similarly situated counties in Kansas. This study also considers alternative law enforcement and public safety models with regard to level of service, cost, and governance.¹

Sources of data

Most of the financial data for Cloud County and Concordia were supplied by the County Clerk's office and the City Clerk's office. These data represent actual expenditures from 1993 through 1996. Budgeted data for 1997 and 1998 were also provided to the research team. Comparative national data came from the 1990 Law Enforcement Management and Administrative Statistics (LEMAS) program of the Bureau of Justice

A-K J. [Signature]

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CLOUD COUNTY COMMISSIONERS

811 Washington Concordia, Kansas 66901

785-243-8135

Richard Chartier

Gary E. Fraser

Roger C. Nelson

September 22, 1997

The Cloud County Commission has contracted with the Docking Institute, Hays, KS. Conducting a law enforcement consolidation study that will provide Cloud County Citizens with a written summary of our present situation and recommendations that would provide guidelines for future efforts for law enforcement consolidation should that be desired.

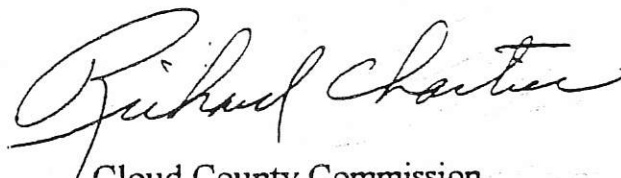
Mr. Joe Aistrup, Associate Director for the Docking Institute, will be in charge of the program. Preston Gilson, and Robert Scott will be assisting with the program.

We need the assistance of several county citizens to be on a committee to assist these previously mentioned facilitators in this endeavor. The County Commission has established a committee and requests your participation and does by this letter appoint you to the committee. Should you choose not to serve please notify the Cloud County Commission, 811 Washington, Concordia, KS 66901, of who you designate to represent you or your entity. The Committee appointments are:

1. Cloud Co Commission
2. Sheriff, Larry Bergstrom
3. Concordia City Manager or Mayor
4. Police Chief, Berl Maley
5. Mayor of Clyde, Harold J George, Jr
6. Mayor of Jamestown, Judy Zimmerman
7. Mayor of Glasco, Carl Adkins
8. Mayor of Aurora, Johnny Lee Adams
9. Mayor of Miltonvale, Jon Puckett
10. Clerk of District Court, Jeri Palmer
11. Cloud Co Community College, Business Manager, Dan Ebert
12. Cloud Co Attorney, Robert Walsh
13. Concordia City Attorney, David Retter
14. Legislator, JoAnne Freeborne
15. At Large, Bill Martin

The first meeting will be 5:30 p.m., Wednesday, October 1st, 1997 meeting room Courthouse, Concordia, Kansas.

We look forward to seeing you there.



Cloud County Commission
Richard Chartier, Chairman



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CLOUD COUNTY LAW ENFORCEMENT CONSOLIDATION STUDY COMMITTEE CLOUD COUNTY COURTHOUSE

May 14, 1999

Cloud County Commission
Cloud County Courthouse
8th and Washington Streets
Concordia, KS 66901

SUBJECT: Cloud County Law Enforcement Consolidation Study and Analysis

REFERENCES:

1. Letter, Judge Thomas M. Tuggle, dated June 6, 1997
2. Cloud County Law Enforcement Consolidation Study, The Docking Institute of Public Affairs, December 5, 1997
3. Law Enforcement Consolidation Study Committee Questionnaire, October 1, 1997
4. Statistical Information, Concordia Police Department, November 23, 1998
5. Statistical Information, Cloud County Sheriff's Department, November 23, 1998

Honorable Commissioners:

Nearly two years ago a proposal was presented to the Cloud County Commissioners requesting you consider consolidating the various law enforcement agencies in Cloud County. That request specifically asked that the review consider ways in which those essential services could be provided to County residents more cost effectively.

A Law Enforcement Consolidation Study Committee was designated that included representatives from the diverse communities of the County. Guidance was provided to that committee asking for a comprehensive review of all aspects of Law Enforcement, and bringing a recommendation back to the County Commissioners. Based upon your guidance, the committee initially met and established goals to help them focus upon the problem and draw conclusions. Those goals were:

- Maintain quality of service at current level - or better
- Maintain cooperation between law enforcement entities
- Maintain high level of efficiency

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- Strive for representation from all entities within the county
- Agree to disagree agreeably within the committee - with frank discussion
- Maintaining affordability in whatever the committee decides

The process used to achieve the goals and render a sound recommendation included a study conducted by The Docking Institute of Public Affairs (and its comprehensive report). Additionally, an analysis of the public needs and requirements for law enforcement in Cloud County; issues known to be present within the law enforcement community; and an in-depth review of law enforcement operations were studied. Specific review and discussion included the following areas and items:

COMMUNITIES:

- City government responsibilities
- Community needs
- Legislation or authority needed to effect consolidation

ISSUES:

- Salary disparity (city vs. county)
- Response time (for each city and throughout the county)
- Cost savings to taxpayer

GENERAL ANALYSIS AND DISCUSSION:

- Overall Public Safety within the County
- Budget(s), and Cost Effectiveness
- Effective Enforcement of Laws and Codes
- Nuisance Abatement
- Traffic Control
- Crime Prevention
- Investigations
- Communications
- Court System, and Crime Clearance Percentages
- Coordination with Outside Agencies
- Elimination of Conflict Between Law Enforcement Agencies
- Response Times
- Personnel and Compensation
- Enforcement Practices
- Facilities, Equipment and Training
- Interaction and Improved Relations with the Public

Following the comprehensive review, the Committee developed several conclusions leading toward a recommendation. It was decided by the group that improvements in

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Law Enforcement could – and should be made. The recommendation offered for consideration is as follows:

The committee's consensus is not to continue efforts toward consolidation at the present time. The general belief is that there should be a greater amount of coordination, cooperation and sharing of services among the existing law enforcement agencies in the county. Additionally, the committee, in consideration of improved law enforcement, offers several suggestions. Those suggestions (including agencies believed to be responsible for the improvement) are:

1. **Improve the wages of the County Sheriff's Department, reducing the disparity between that agency and the Concordia Police Department. (County Commission/Sheriff)**
2. **Encourage Development of Interlocal Agreements for increased law enforcement between the County Sheriff's Department and individual cities that desire increased law enforcement. (County Commission/interested Cities)**
3. **Collaborate training exercises, programs and events. Consolidate training programs and facilities as often as possible. (County Sheriff's Department/Concordia Police Department)**
4. **Work toward retention of officers in each department. (County Sheriff/Concordia Police Department/County Commission/City of Concordia)**
5. **Develop a new correction facility, large enough to accept some overload from neighboring cities and counties to help offset the costs of construction. (County Commission)**
6. **Create a Law Enforcement Advisory Board from the diversity of the County that would recommend solutions to Law Enforcement issues within the County. (County Commission/City of Concordia)**
7. **Develop an expanded public education program surrounding Law Enforcement in Cloud County. (All entities)**

If you have any questions or concerns surrounding the recommendation we would be most happy to respond. If you have other work you wish us to do, please let us know. If

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you believe our work to be concluded, we thank you for the opportunity to offer suggestions for the improvement of our county.

Thank you for your confidence in us, and support you provided us in completing this task.

Respectfully,

<hr/>	Concur	Non Concur	<hr/>	Concur	Non Concur
William Martin Glasco	<hr/>	<hr/>	Johnny Adams Aurora	<hr/>	<hr/>
<hr/>	Concur	Non Concur	<hr/>	Concur	Non Concur
H. J. George, Jr. Clyde	<hr/>	<hr/>	Isadore Bombardier Concordia	<hr/>	<hr/>
<hr/>	Concur	Non Concur	<hr/>	Concur	Non Concur
Carl Adkins Glasco	<hr/>	<hr/>	Judy Zimmerman Jamestown	<hr/>	<hr/>
<hr/>	Concur	Non Concur	<hr/>	Concur	Non Concur
Jon Puckett Miltonvale	<hr/>	<hr/>	Stanley L. Smith Concordia	<hr/>	<hr/>
<hr/>	Concur	Non Concur		Concur ✓	Non Concur
Larry Bergstrom County Sheriff	<hr/>	<hr/>	Burl Maley Chief of Police, Concordia	<hr/>	<hr/>
<hr/>	Concur	Non Concur	<hr/>	Concur	Non Concur
Jeri Palmer Clerk of the District Court	<hr/>	<hr/>	Carl Franklin Cloud County Community College	<hr/>	<hr/>
<hr/>	Concur	Non Concur	<hr/>	Concur	Non Concur
Robert Walsh County Attorney	<hr/>	<hr/>	JoAnn Freeborn State Representative, District 107	<hr/>	<hr/>

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Memorandum

TO: KPOA WEBSITE

FROM: JEFFERY S. BOTTENBERG

RE: TASK FORCE ON CONSOLIDATION OF PUBLIC SAFETY AGENCY MEETING- AUGUST 23-24

DATE: SEPTEMBER 5, 2000

As you may be aware, a legislative committee, the Task Force on Consolidation of Public Safety Agencies ("Task Force") is currently studying the topic of consolidation of public safety agencies this summer and fall. The charge of the committee is to research the issue through testimony by **law enforcement** and public safety officials on the advantages and **disadvantages** of consolidation, and to make recommendations to the Legislature when it reconvenes in January. The topic of consolidation is not new, as the issue has been discussed for over a decade.

The Task Force met this past August 23-24 in Topeka. The committee heard testimony from representatives of the state agencies that would be **consolidated** into a Department of Public Safety. The agencies and the conferees are:

Department of Corrections-Secretary Chuck Simmons

Juvenile Justice Authority- Commissioner Albert Murray
Parole Board- Chairperson Marilyn Scafe
Sentencing Commission- Executive Director Barbara Tombs
Kansas Bureau of Investigation- Director Larry Welch
State Fire Marshall- Marshall Glen Haag
Adjutant General- General John Small
Emergency Medical Services Board- David Lake
Ombudsman of Corrections- Gwen Sims

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Highway Patrol- Colonel Don Brownlee

Alcoholic Beverage Control Division- Director Robert Longino

The conferees were asked to give an overview of their organizations and to answer two questions:

1. In what way does your agency interact with other state public safety agencies?
2. What are the advantages/**disadvantages** to consolidation?

Although the conferees were to list both the advantages and **disadvantages** of consolidation, almost all conferees focused on the **disadvantages** of consolidation of state agencies into the Department of Public Safety. For instance, the conferee for the Ombudsman of Corrections

explained that the function of her office is to investigate prisoner complaints, and such independent investigative powers would be lost if the office was **consolidated** into an organization that included the Department of Corrections. The State Fire Marshall and the Kansas Bureau of Investigation also strongly opposed consolidation. The State Fire Marshall stated that agency personnel already are performing above expectations, as the Kansas conviction rate is 10 percent higher than the national average. Furthermore, a Kansas arson investigator was recently recognized as the Missouri Fire Investigator of the Year by the Missouri Chapter of the International Association of Arson Investigators for solving a string of arsons across four states, including Missouri and Kansas. The Fire Marshall also noted that arson investigators in the Iowa Department of Public Safety are routinely pulled from routine investigations to work high profile cases, and that such political use of the investigators' morale.

Director Welch of the KBI noted that the KBI, highway patrol, and local law enforcement agencies already work well with each other and that there is no need to change the existing structure. He also stated that the independent checks and balances of law enforcement agencies need to be preserved, as currently the KHP is under the supervision of the Governor and the KBI is under the supervision of the Attorney General. He noted that the KHP has called to investigate misconduct by its employees and that the KBI has asked the KHP to investigate a traffic accident involving a KBI agent. Commissioner Murray of the Juvenile Justice Authority noted that consolidation of the JJA into a larger agency would create needless additional bureaucracy and would diminish the success of Juvenile Justice Reform. Finally, Director Longino stated that the ABC should stay within the Department of Revenue, as it is economically feasible to have both liquor revenue collection and liquor law enforcement in the same state agency.

Even conferees that were neutral on consolidation recognized several pitfalls to the move. For instance, Secretary Simmons of the Department of Corrections noted that training for DOC officers is different than training for law enforcement personnel, and that consolidation could not bring about one central training facility in order to consolidate public safety training. Colonel Brownlee also noted that some of his officers are trained at KLETC instead of at

facility in Salina, and that consolidation could bring about inter-agency competition for public safety funding.

Concerning the attitudes and opinions of the members of the Task Force, although

too early to gauge their final opinions on consolidation, many of the members were que the reason for the study of the topic since no one so far has testified in favor of consolid: Indeed, several nonlegislator members of the Task Force inquired from the legislator me to where the push for consolidation came from, since at present they have not seen a nee such a move.

The Task Force will meet again on September 5th at the KLETC in Y
September 6th at the KHP Training Center in Salina.

JSB

Enclosures

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2805

By Committee on Local Government

2-10

10 AN ACT concerning counties; relating to law enforcement.

11

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

13 Section 1. As used in this act:

14 (a) "Agency" means a county law enforcement agency established
15 under the provisions of this act.

16 (b) "County" means Cloud or Lincoln county.

17 (c) "Department" means a county law enforcement department es-
18 tablished under the provisions of this act.

19 (d) "Director" means the superintendent of a county law enforce-
20 ment department appointed under the provisions of this act.

21 (e) "Law enforcement officer" or "county law enforcement officer"
22 means a law enforcement officer who is a member of a county law en-
23 forcement department appointed under the provisions of this act.

24 Sec. 2. The provisions of this act shall apply to any county as defined
25 section 1, and amendments thereto, in which the question of the adoption
26 of the provisions of this act has been submitted to and approved by the
27 qualified electors of the county in the manner provided herein. The board
28 of county commissioners of any county, by resolution adopted not less
29 than 90 days preceding the date fixed for the holding of the general
30 election in November of an even-numbered year, may direct the county
31 election officer to place such proposition on the ballot at the next general
32 election, and the board shall direct its placement on the ballot at such
33 election whenever (1) the governing body of any city located within the
34 county, having a population equal to not less than 25% of the total pop-
35 ulation of such county shall request that the proposition be placed on the
36 ballot, by resolution adopted not less than 90 days preceding the date
37 fixed for the holding of the general election in the month of November
38 of an even-numbered year, or (2) the county election officer shall certify
39 that a petition, requesting that the proposition be placed on the ballot
40 and signed by qualified electors of the county equal in number to not less
41 than 10% of the electors of the county who voted for the office of the
42 secretary of state at the last preceding general election, has been filed in
43 such office not less than 90 days preceding the date fixed for the holding

1 of a general election in the month of November of an even-numbered
2 year. Notice of any election held pursuant to this section shall be given
3 in the manner prescribed by K.S.A. 10-120, and amendments thereto.

4 Upon the ballot the proposition shall be stated as follows:

5 “Shall the county of _____ (name of county) adopt the provisions
6 of sections 1 through 21, and amendments thereto, providing for consol-
7 idated law enforcement in certain counties?”

8 If a majority of the votes cast upon such proposition shall be in favor
9 of adopting the act, the provisions thereof shall govern the enforcement
10 of law and the providing of police protection within such county in the
11 manner hereinafter provided.

12 Sec. 3. (a) Subject to the provisions of subsection (b), there is hereby
13 established in all counties adopting the provisions of this act a county law
14 enforcement agency which shall be known as the

15 “_____ county law enforcement agency.”

16 (name of county)

17 Each agency shall have seven members who shall be selected in the
18 following manner:

19 (A) One member shall be a member of the board of county commis-
20 sioners of the county, selected by such board of commissioners;

21 (B) one member shall be a resident of the county, to be selected by
22 the board of county commissioners;

23 (C) one member shall be a member of the governing body of the
24 largest city located within the county, selected by such governing body;

25 (D) two members shall be residents of the largest city located within
26 the county, to be selected by the governing body of such city;

27 (E) one member shall be the mayor of the next largest city located
28 within such county, or a member of the governing body of such city,
29 designated by such mayor; and

30 (F) one member shall be the county attorney of such county.

31 The board of county commissioners of the county and the governing
32 body of the two largest cities located within such county shall each meet
33 on the second Monday in January next following the adoption of the
34 provisions of this act and each two years thereafter and shall select and
35 designate the members of their respective bodies and the other appoint-
36 ive members as members of the agency. Appointive members of the
37 agency shall serve for a term of two years, and other members of the
38 agency who are members by virtue of their county or city office shall
39 remain eligible to serve as such only while holding such county or city
40 office. All members of such agency shall take and subscribe to an oath as
41 other county officials, and all vacancies occurring in the membership of
42 the agency shall be filled for the remainder of the unexpired term of the
43 member creating such vacancy in like manner as that provided for the

1 appointment of such member. Members of the agency shall not receive
2 compensation, but shall be reimbursed for their actual and necessary
3 expenses incurred in the performance of their official duties.

4 (b) Whenever there shall be presented to the county election officer
5 of any such county a petition, signed by qualified electors of such county
6 equal in number to not less than 10% of the electors of the county who
7 voted for the office of secretary of state at the last preceding general
8 election, requesting a special election on the proposition of electing the
9 members of the law enforcement agency of such county to be held at the
10 time of the next primary election in August of an even-numbered year,
11 such special election shall be held at the next such primary election which
12 occurs not less than 60 days after the date the petition is filed, and the
13 question submitted at such special election shall be as follows:

14 "Shall the law enforcement agency of _____
15 (Name of county)
16 be composed of seven elected members?"

17 If a majority of the electors voting at such election vote in favor of such
18 proposition, such county's law enforcement agency shall be elected at a
19 special election which shall be held at the time of the next succeeding
20 general election as follows: One member shall be elected from each of
21 the county commissioner districts in such county and the remaining mem-
22 bers shall be elected from the county at large, together with that portion
23 of any city within the county which is located in an adjacent county. Any
24 person seeking election to any such position shall file a declaration of
25 candidacy for the appropriate position with the county election officer
26 within 30 days after the special election at which the proposition for elect-
27 ing members of the county law enforcement agency is adopted. The
28 county election officer shall give notice of the special election to elect
29 members of the agency by publication once in a newspaper having general
30 circulation within the county. Such publication notice shall be made not
31 more than 14 nor less than seven days prior to the date of the special
32 election. If a portion of any city within such county is located in an ad-
33 jacent county, the county election officer also shall give written notice of
34 such special election to the county election officer of such adjacent county
35 as soon as the results of the special election on the proposition to elect
36 members of the agency are known.

37 Ballots for the special election to elect members of the agency shall be
38 prepared by the county election officer of the county to which this act
39 applies, including ballots for that portion of any city within such county
40 which is located in an adjacent county which ballots for the portion of
41 such city shall include only the names of the persons having declared
42 themselves to be candidates for the at large positions. All ballots for the
43 at large positions shall be prepared in such manner that each elector is

1 instructed to vote for the same number of candidates as the number of
2 positions to be filled. So far as the same may be made applicable, the laws
3 governing the election of county commissioners shall govern the election
4 of such members to be elected within county commissioner districts, and
5 the laws governing the election of other county officers shall govern the
6 election of the members from the county at large, except that the election
7 of members of the law enforcement agency shall be nonpartisan and in
8 each instance the candidate receiving the greatest number of votes shall
9 be elected. Where electors of an adjacent county residing in a city which
10 is partly in such adjacent county and partly in a county to which this act
11 applies are to vote on candidates for the at large positions, the county
12 election officer of such adjacent county shall conduct the election and the
13 board of canvassers of such adjacent county shall canvass the ballots cast
14 at such special election by electors of such adjacent county who reside in
15 such city. The board of canvassers of such adjacent county shall certify
16 the results of the special election in the adjacent county to the board of
17 canvassers of the county to which this act applies.

18 Sec. 4. Members of such agency shall meet in the office of the county
19 attorney upon the call of such officer as soon after their appointment as
20 possible and shall organize by electing a chairman, vice-chairman and
21 secretary. Thereafter members of the agency shall meet at least once each
22 month at a time and place which shall be fixed by resolution. Such res-
23 olution shall specify the regular hour of commencement of the meeting,
24 the day of the week and the week of the month, and shall provide that if
25 the regular meeting date occurs on a legal holiday or on a holiday specified
26 by the agency, such regular meeting shall be held on the following day at
27 the same hour. Such resolution also shall specify the regular meeting
28 place of the agency and may specify that any regular meeting may be
29 adjourned to another time and place. Special meetings may be called at
30 any time by the chairman. Written notice, stating the time and place of
31 any special meeting and the purpose for which called, shall be given each
32 member at least two days in advance of the meeting, unless such notice
33 is waived by all other members of the agency. No business other than
34 that stated in the notice shall be transacted at such meeting. A majority
35 of the qualified members of the agency shall constitute a quorum for the
36 purpose of conducting any business and the vote of a majority of the
37 qualified members of such agency shall be required for the passage of
38 any motion or resolution. No member shall be permitted to pass or to
39 abstain from voting upon any measure properly before the members of
40 such agency at any meeting except upon the basis of a conflict of interest
41 announced by such member and made a part of the record of the meeting.
42 The chairman, and in his absence or disability, the vice-chairman shall
43 preside at all meetings and sign or execute all orders, contracts or docu-

1 ments of any kind required or authorized to be signed or executed by the
2 agency. The agency shall cause a proper record to be kept of its
3 proceedings.

4 Sec. 5. The agency shall be responsible for the enforcement of law
5 and the providing of police protection throughout the county and for this
6 purpose is hereby authorized to:

7 (a) Appoint and establish the salary and compensation of a law en-
8 forcement director for the county.

9 (b) Authorize and provide for the appointment of such law enforce-
10 ment officers and other personnel as the agency shall deem necessary to
11 carry out the intent of this act.

12 (c) Establish a job classification and merit rating system for law en-
13 forcement officers and provide for the administration thereof.

14 (d) Establish a schedule of salaries for law enforcement officers and
15 other personnel.

16 (e) Hear and affirm or revoke orders of the director providing for the
17 suspension or dismissal of law enforcement officers.

18 (f) Authorize the acquisition and disposition of equipment and sup-
19 plies necessary for the operation of the agency and department.

20 (g) Require the keeping of proper law enforcement records and files
21 by the department.

22 (h) Adopt and certify to the board of county commissioners of the
23 county a budget for the operation of the agency and department.

24 (i) Enter into contracts for and receive moneys from any private or-
25 ganization or agency, the federal government or the state or any political
26 or taxing subdivision thereof on behalf of the county for the use of the
27 agency and department.

28 (j) Receive vehicles, equipment and supplies from the county sheriff's
29 department for the use of the law enforcement department.

30 (k) Sell police vehicles belonging to the law enforcement department
31 and credit the proceeds to a separate fund to be expended for the oper-
32 ation of the county law enforcement agency and department.

33 (l) Enter into contracts with any political or taxing subdivisions or
34 districts of the state located within such county, empowered to enter into
35 a contract for such purpose, for providing special police protection within
36 the boundaries of such political or taxing subdivision or district.

37 (m) Enter into contracts with cities located within the county for the
38 enforcement of specified ordinances or the acquisition of city law en-
39 forcement equipment and property for the use of the department.

40 (n) Adopt rules and regulations necessary for the organization and
41 operation of the agency and department.

42 (o) Perform such other duties as may be provided by law.

43 Sec. 6. (a) There is hereby established in all counties adopting the

1 provisions of this act a county law enforcement department, which shall
2 be composed of a director, assistant director and such other officers and
3 personnel as the agency shall provide by resolution. Such department
4 shall be under the exclusive supervision and control of the director and
5 no member of the agency shall interfere by individual action with the
6 operation of the department or the conduct of any of the officers or other
7 personnel of such department. The director shall be responsible to the
8 agency for the operation and administration of the department and for
9 the enforcement of law and providing of police protection within the
10 county in conformance with rules and regulations adopted by such
11 agency. The director shall designate and appoint an assistant director who
12 shall serve in such capacity at the pleasure of the director.

13 (b) Upon request of the director of a county law enforcement de-
14 partment, the county or district attorney of the county in which such
15 department is established shall give legal opinions, advice and assistance
16 to such department upon all matters in which the department is inter-
17 ested or which relate to the powers or duties of the department or any
18 officer or employee thereof.

19 Sec. 7. On or before the first day of June next following the appoint-
20 ment of the first members of such agency, the agency shall appoint a law
21 enforcement director for such county. Persons appointed to the office of
22 director shall be citizens of the United States, not less than 25 years of
23 age, schooled and experienced in law enforcement supervision and shall
24 not have been convicted of felony under the laws of this state, or any
25 other state, or of the United States. The director shall serve at the plea-
26 sure of, and shall receive such salary and compensation as shall be fixed
27 by resolution of, the agency. Before entering upon the duties of office,
28 the director shall take and subscribe to an oath as other county officials
29 and shall give bond in such amount and subject to such conditions as shall
30 be fixed by resolution of the agency. The director shall assist the agency
31 in the preparation of the budget of the department and shall make such
32 reports and provide the agency with such other information as it shall
33 require. The director shall make recommendations to the agency on all
34 matters concerning the operation of the department.

35 Sec. 8. The director shall appoint such law enforcement officers as
36 deemed necessary for the proper enforcement of law and the providing
37 of police protection within the county. All officers regularly appointed
38 shall be qualified under the provisions of K.S.A. 74-5601 *et seq.*, and
39 amendments thereto, but an officer may receive a temporary appoint-
40 ment pending the completion of the requirements for a certificate there-
41 under. The agency shall determine and fix such additional minimum qual-
42 ifications to be required of persons appointed as law enforcement officers
43 as deemed necessary, and may provide for the examination of applicants

1 therefor. Law enforcement officers appointed under the provisions of this
2 act shall be responsible to and may be suspended or removed by the
3 director for cause. The director, within 24 hours thereafter, shall report
4 such suspension or removal and the reason therefor to the agency who
5 as soon thereafter as possible, shall hear and determine the matter and
6 affirm or revoke such suspension or removal.

7 Sec. 9. The agency by resolution shall authorize the appointment or
8 employment of such personnel other than law enforcement officers as
9 may be necessary for the proper operation of the department in carrying
10 out the intent of this act. The director shall appoint and may remove all
11 such personnel.

12 Sec. 10. On the first day of January next following the appointment
13 in any county of the first members of the agency under the provisions of
14 this act and thereafter, the department shall assume and shall exercise all
15 powers, duties and responsibilities of the city marshal or chief of police
16 and police officers of cities located within such county, relating to the
17 enforcement of ordinances prohibiting and prescribing penalties for the
18 commission of acts which have been declared to be crimes under the laws
19 of the state of Kansas. Any such city is hereby authorized to contract with
20 the agency for the enforcement of all or any of the remaining ordinances
21 of such city upon such terms and conditions as shall be agreed upon by
22 the agency and the governing body of such city. The city marshal or chief
23 of police of such cities shall transfer and deliver to the agency upon de-
24 mand all records of the police department relating to the violation of laws
25 of the state and ordinances of the city, responsibility for the enforcement
26 of which has been transferred to the county department, together with
27 the custody of all prisoners held for violations of such ordinances of the
28 city. Any law enforcement agency may enter into a contract with any city
29 located within the county for the use of jail facilities of such city and for
30 the acquisition of city police vehicles and property upon such terms and
31 conditions as shall be agreed upon by the agency and the governing body
32 of such city. On the date fixed for the transfer of law enforcement au-
33 thority, all police officers of cities located within the county holding law
34 enforcement training certificates and meeting the minimum qualifications
35 established by the agency may become members of the law enforcement
36 department. Upon application therefor, all officers serving in city de-
37 partments operating under civil service shall be appointed county law
38 enforcement officers in the department.

39 Sec. 11. On the first day of January next following the appointment
40 in any county of the first members of the law enforcement agency under
41 the provisions of this act and thereafter, the law enforcement department
42 shall assume and shall exercise all powers, duties and responsibilities pre-
43 viously exercised by the sheriff, deputies of the sheriff and constables.

1 The sheriff, upon demand, shall transfer and deliver to the agency all
2 vehicles, property and records belonging to the sheriff's department. If
3 the provisions of this act are adopted in Cloud county, all property of the
4 city of Concordia police department shall be transferred to the agency.
5 A record of all property so transferred shall be prepared and copies
6 thereof filed in the office of the county clerk and with the secretary of
7 the agency. On the date fixed for the transfer of law enforcement au-
8 thority, ~~all:~~ **(a) All staff of any city police department and all staff in the**
9 **office of the county sheriff on such date, holding a law enforcement train-**
10 **ing certificate and meeting the qualifications established by the county**
11 **law enforcement agency, may become members of the law enforcement**
12 **agency, and upon application shall become members of the law enforce-**
13 **ment agency; and (b) all other staff of any city police department**
14 **and all other staff in the office of the county sheriff on such date,**
15 **meeting the qualifications established by the county law enforce-**
16 **ment agency, may become staff of the law enforcement agency,**
17 **and upon application shall become staff of the law enforcement**
18 **agency.**

19 Sec. 12. It shall be the duty of the director and officers to keep and
20 preserve the peace, and, for such purpose such director and officers are
21 hereby vested with the power and authority of peace and police officers
22 in the execution of the duties imposed upon them under the provisions
23 of this act. All powers and duties now or hereafter conferred and imposed
24 upon the sheriff and deputies and constables of any county adopting the
25 provisions of this act are hereby conferred and imposed upon the director
26 and officers appointed under the provisions of this act. All the powers
27 and duties now or hereafter conferred and imposed upon the city marshal
28 or chief of police and police officers of cities located within such county
29 relating to the enforcement of the laws of the state and ordinances of
30 such cities, the authority for the enforcement of which has been trans-
31 ferred to and vested in the county department, are hereby conferred and
32 imposed upon the director and officers appointed under the provisions
33 of this act.

34 Sec. 13. The board of county commissioners of any county adopting
35 the provisions of this act shall provide the agency and department with
36 such quarters and facilities as the agency deems necessary. County law
37 enforcement agencies may utilize quarters and facilities previously used
38 by the sheriff of the county and may enter into contracts with cities lo-
39 cated within the county for the use by such agency of city jail facilities.
40 The board of county commissioners may construct or may acquire by
41 purchase, condemnation or lease, buildings and facilities for the use of
42 the agency and department in like manner as that provided by law for
43 the construction or acquisition of public buildings for the use of the

1 county.

2 Sec. 14. The sheriff of any county adopting the provisions of this act
3 shall be and is hereby relieved of all power, authority and responsibility
4 now or hereafter prescribed by law from and after the date fixed for the
5 transfer of such authority and responsibility to the law enforcement de-
6 partment under the provisions of this act, including the power, authority
7 and responsibility of such sheriff relating to the enforcement of the laws
8 of this state, the service of process, collection of delinquent taxes, the
9 operation of the county jail and any other duty or authority now or here-
10 after imposed or conferred by law. On the date fixed for the transfer of
11 such power, authority and responsibility, the office of sheriff in such
12 county shall be and is hereby abolished, and at the general election next
13 following such abolishment, and all general elections thereafter, no sheriff
14 shall be elected in any such county.

15 Sec. 15. All constables elected in townships located within any
16 county adopting the provisions of this act, shall be and are hereby relieved
17 of all power, authority and responsibility now or hereafter prescribed by
18 law for the enforcement of the laws of this state from and after the date
19 fixed for the transfer of such authority and responsibility to the law en-
20 forcement department under the provisions of this act.

21 Sec. 16. The city marshal or chief of police and police officers of all
22 cities located within any county adopting the provisions of this act shall
23 be and are hereby relieved of all power, authority and responsibility now
24 or hereafter prescribed by law for the enforcement of laws of this state,
25 ordinances of such city, responsibility for the enforcement of which has
26 been transferred to the county department and ordinances of such city
27 the responsibility for the enforcement of which has by contract been
28 placed in the county law enforcement department, from and after the
29 date fixed for the transfer of such authority and responsibility to the law
30 enforcement department under the provisions of this act.

31 Sec. 17. (a) County law enforcement agencies established under the
32 provisions of this act are hereby declared to be "eligible employers" as
33 defined by subsection (3) of K.S.A. 74-4952, and amendments thereto,
34 for the purpose of affiliating with the Kansas police and firemen's retire-
35 ment system established under the provisions of K.S.A. 74-4951 *et seq.*,
36 and amendments thereto. All such agencies shall make application for
37 affiliation with such system in the manner provided by K.S.A. 74-4954,
38 and amendments thereto, to be effective on the first day of January next
39 following the appointment of the first members of such agency. Such
40 application shall cover all county law enforcement officers.

41 (b) Every person who shall be appointed a law enforcement officer
42 on or after the entry date of such agency shall become a member of the
43 Kansas police and firemen's retirement system on the date of such per-

1 son's appointment.

2 (c) Law enforcement officers appointed under the provisions of this
3 act are hereby declared to be "policemen" as defined by subsection (12)
4 of K.S.A. 74-4952, and amendments thereto, for the purpose of partici-
5 pating in the Kansas police and firemen's retirement system.

6 (d) For the purpose of determining and computing retirement ben-
7 efits and death and disability benefits computed upon the basis of "cred-
8 ited service" of law enforcement officers appointed under the provisions
9 of this act, the term "credited service," as used in K.S.A. 74-4951 *et seq.*,
10 and amendments thereto, shall mean and include only "participating serv-
11 ice" with the agency, except that continuous prior service of any officer,
12 with the city police department or county sheriff's department from which
13 such officer transferred at the time of the establishment of the depart-
14 ment, for officers serving with the department upon the entry date of the
15 agency, shall be considered and included in determining if the death or
16 disability of such officer was "service connected" under the provisions of
17 subsection (10) of K.S.A. 74-4952, and amendments thereto, and for the
18 purpose of determining the eligibility of such officer for non-service con-
19 nected death and disability benefits under the provisions of subsection
20 (2) of K.S.A. 74-4959, and amendments thereto, and subsection (2) of
21 K.S.A. 74-4960, and amendments thereto.

22 (e) Notwithstanding the provisions of K.S.A. 74-4957 and 74-4963,
23 and amendments thereto, all service of any officer with a city police de-
24 partment or county sheriff's department prior to becoming a member of
25 the Kansas police and firemen's retirement system, shall be included and
26 counted together with credited participating service for the meeting of
27 requirements for completion of years of service fixed under the provisions
28 of such sections, except that no such service shall be considered "credited
29 service," for the purpose of computing years of service if such officer shall
30 have withdrawn such officer's contributions from any pension or retire-
31 ment system established under the provisions of K.S.A. 13-14a01 *et seq.*,
32 and amendments thereto, 14-10a01 *et seq.*, and amendments thereto, or
33 74-4901 *et seq.*, and amendments thereto. If any officer elects to leave
34 such officer's contributions for credited service, under the provisions of
35 K.S.A. 13-14a01 *et seq.*, and amendments thereto, 14-10a01 *et seq.*, and
36 amendments thereto, or 74-4901 *et seq.*, and amendments thereto, on
37 deposit with such system, such officer shall be granted a vested retirement
38 benefit in such system and all credited participating service in the Kansas
39 police and firemen's retirement system shall be included and counted
40 together with such prior vested service in fulfilling the requirements of
41 years of service for retirement benefits under such pension and retire-
42 ment systems.

43 (f) Notwithstanding the provisions of K.S.A. 74-4965 and 74-4966,

1 and amendments thereto, the employee contribution and the benefits
2 payable to members of the system appointed under the provisions of this
3 act, shall not be reduced by the amount of the contributions to or benefits
4 received by such member from social security.

5 (g) Any officer transferring from a city police department or sheriff's
6 department of such county and becoming a member of the system on the
7 "entry date" of the agency shall be considered a transferring member and
8 shall have the rights and benefits granted under the provisions of sub-
9 section (3) of K.S.A. 74-4957, and amendments thereto, and subsection
10 (3) of K.S.A. 74-4958, and amendments thereto.

11 Sec. 18. The board of county commissioners of any county adopting
12 the provisions of this act, for the purposes of carrying out the provisions
13 of this act from and after the date of the adoption of the provisions thereof
14 by such county, and prior to the time that moneys are available from the
15 tax levy authorized by section 19, and amendments thereto, is hereby
16 authorized for such purpose, whenever deemed necessary and fixed by
17 resolution of the agency, to issue no-fund warrants in an amount not to
18 exceed the amount which would be raised by the levy of a tax of one mill
19 upon all taxable tangible property in the county. Such no-fund warrants
20 shall be issued by the county in the manner and form and shall bear
21 interest and be redeemable in the manner prescribed by K.S.A. 79-2940,
22 and amendments thereto, except that they may be issued without the
23 approval of the state board of tax appeals, and without the notation re-
24 quired by said section. The board of county commissioners shall make a
25 tax levy at the first levying period after such warrants are issued, sufficient
26 to pay such warrants and the interest thereon. All such tax levies shall be
27 in addition to all other levies authorized or limited by law.

28 Sec. 19. (a) Except as provided in subsection (b), on or before the
29 first Monday in July of each year the agency shall prepare and submit to
30 the board of county commissioners of the county a budget of expenditures
31 for the operation of such agency and the department for the next budget
32 year, itemizing the expenses and amounts and the purpose. The board of
33 county commissioners of the county shall consider the budget and ap-
34 prove the same or by a unanimous vote of its members, upon the basis
35 of a written statement giving reasons therefor, may require the modifi-
36 cation or omission of any item from such proposed budget and approve
37 the same as modified. The board of county commissioners shall levy a tax
38 upon all taxable tangible property of such county sufficient to raise the
39 amount approved and to pay a portion of the principal and interest on
40 bonds issued under the authority of K.S.A. 12-1774, and amendments
41 thereto, by cities located in the county.

42 (b) During the first two years following consolidation pursuant to this
43 section, the amount of expenditures in a budget adopted pursuant to the

1 provisions of this section shall not exceed the combined total of the
2 amount of expenditures budgeted by the city of Concordia and Cloud
3 county in the year preceding such consolidation.

4 Sec. 20. The board of county commissioners shall approve all ex-
5 penditures to be made by and claims to be paid on behalf of such agency
6 and the law enforcement department. When medical expenses have been
7 paid for a prisoner held within such county, the agency may seek reim-
8 bursement of such expenses from the prisoner. If the agency determines
9 that a prisoner of the county jail is covered under a current individual or
10 group accident and health insurance policy, medical service plan contract,
11 hospital service corporation contract, hospital and medical service cor-
12 poration contract, fraternal benefit society or health maintenance organ-
13 ization contract, the agency may require the prisoner of such county jail
14 or the provider rendering health care services to the prisoner to submit
15 a claim for such health care services rendered in accordance with the
16 prisoner's policy or contract.

17 Sec. 21. Any county operating under the provisions of this act may
18 abandon such operation in the same manner as that provided in section
19 2, and amendments thereto, for the adoption of the provisions of the act,
20 except that the word "abandon" instead of the word "adopt" shall be used
21 in the petition or resolution and upon the ballot and in the election pro-
22 clamation. If a majority of the votes cast at the election upon such prop-
23 osition shall be in favor of abandoning operations under the provisions of
24 this act, the law enforcement agency and department shall be abolished
25 on January 1, next following the date of such election. All equipment and
26 supplies purchased by such agency and department shall be transferred
27 to the county, and all other moneys, equipment and supplies donated or
28 contributed to or acquired by such agency and department shall be dis-
29 posed of pursuant to an agreement entered into by the board of county
30 commissioners of such county and the governing body of each city within
31 such county. In cities having no city marshal or chief of police such officer
32 shall be appointed in like manner as that now provided by law for the
33 filling of vacancies in such office. A sheriff shall be appointed in such
34 county in the manner prescribed for the filling of vacancies for such office
35 who shall hold office until a successor is elected at the next succeeding
36 general election and is qualified. Such sheriff shall have the power, au-
37 thority and responsibility prescribed by law for such officer. All records
38 of the agency shall be filed in the office of the county clerk. All records
39 of the department relating to the enforcement of city ordinances of any
40 city within such county shall be transferred to the city marshal or chief
41 of police of such city. All records of the department relating to the en-
42 forcement of the laws of the state shall be duplicated, and one copy of
43 all such records shall be furnished to the city marshal or chief of police

1 of each city within such county, and the original records shall be trans-
2 ferred to the county sheriff. All moneys derived from the tax levies made
3 by any city within the county pursuant to section 19, and amendments
4 thereto, may be used by the governing body of such city for law enforce-
5 ment purposes in the budget year following the year in which operations
6 under the act of which this section is amendatory are abandoned, not-
7 withstanding that the same were not included in the city's budget of
8 expenditures for such budget year, and the board of county commission-
9 ers of such county may use all moneys derived from the tax levies made
10 by the county pursuant to section 19, and amendments thereto, for the
11 office of sheriff of such county in the budget year following the year in
12 which such operations are abandoned, notwithstanding that the same
13 were not included in the county's budget of expenditures for such budget
14 year.

15 Sec. 22. This act shall take effect and be in force from and after its
16 publication in the statute book.

SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2805

As Amended by House Committee on
Local Government

Brief*

HB 2805 establishes a new city-county consolidated law enforcement act for Cloud and Lincoln counties. Consolidation would occur only following approval of the proposition by the electorate at a general election in November. The proposition can be put before the voters by resolution adopted by the board of county commissioners, by resolution adopted by a city having not less than 25 percent of the population of the county, or by petition of 10 percent of the voters who voted for the office of Secretary of State.

The bill provides for the appointment of a seven-member county law enforcement board (Section 3), the appointment of a county law enforcement director, and the abolition of the office of sheriff.

Background

The bill was supported by Representative Joann Freeborn, the Cloud and Lincoln county board of commissioners, and by the cities of Lincoln and Sylvan Grove. The Lincoln County attorney also submitted a letter of support.

The bill was opposed by the Kansas Sheriffs' Association.

Two counties currently have a consolidated city-county law enforcement department—Riley County where the office of sheriff was abolished and the Unified Government of Wyandotte County, Kansas City, where the office of sheriff continues to be elected but on a non-partisan basis with more limited duties.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill has no fiscal impact on the state.

2-2805



Larry D. Bergstrom
Cloud County Sheriff

Cloud County Sheriff's Department
9th & Broadway
Box 402
Concordia, Kansas 66901-0402

Sheriff
(913) 243-3636
785

February 19th, 2004

To: Senate Elections and Local Government

**Reference – House Bill 2805 consolidation of Lincoln and
Cloud County's Law Enforcement**

Room 423-S 1:30 p.m.

First, thank you for allowing me the time to address this committee.

House Bill 2805 is nothing more than about control. It should be noted that Lincoln County has no other Law Enforcement in their county other than the County Sheriff and his Department. Lincoln County Sheriff McCloud is a good man, person and Sheriff coming to Lincoln County with over 20 years of experience in Law Enforcement. This current bill would put the control of the county Law Enforcement into the hands of 5 individuals, possible with no Law Enforcement experience and not knowing the needs and limitations of law Enforcement.

Myself, the Kansas Sheriff's Association and Sheriff's representing their respective counties are here today to encourage you to not pass the current bill H-2805 out of committee. This would allow citizens in their counties to keep their Sheriff and allow the Sheriff to represent them in Law Enforcement. This system has worked for more than 100 years and there are checks and balances in this position with current statutes. The position of Sheriff makes him accountable to all citizens in the County I have personally been approached by numerous individuals saying that they want to elect their Sheriff. The citizen by electing a Sheriff has a choice to re-elect that individual or elect another party who may represent them better.

If this committee feels they do need to pass this bill, myself, the Kansas Sheriff's Association and Sheriff's today would encourage you to amend house bill 2805. This would allow the

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03-09-04
Attachment 18

citizens to have an option to keep their Sheriff or place the Sheriff in a position of running the law enforcement in that county.

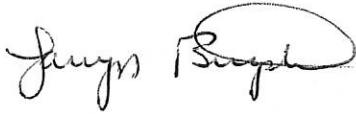
If you have any questions feel free to contact me.

Home 785-243-3754

Cell 785-243-9009

I want to again Thank you for your time.

Sincerely,

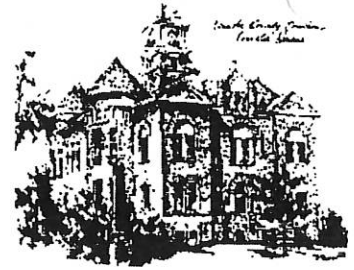
A handwritten signature in cursive script, appearing to read "Larry D. Bergstrom". The signature is written in black ink and is positioned above the typed name.

Sheriff Larry D. Bergstrom



Lincoln County Sheriff's Office

116 N 2nd • Lincoln, Kansas 67455
Phone 785-524-4479
Fax: 785-524-4108
e-mail: lcsd@nckcn.com



J. Lamar McLeod
Sheriff

Gordon Krueger
Undersheriff

To: Senate Committee

Re: House Bill 2805

My name is J. Lamar McLeod, Sheriff of Lincoln County, Lincoln, Kansas.

I first would like to thank you for giving me the opportunity to speak to the committee.

A little history of Lincoln County. Historically the County Commissioners have dictated to the Sheriff's Office how the budget is spent and who is hired and fired. The recent Kansas Supreme Court decision took this decision making away from the commissioners and rightfully restored it back to the Sheriff.

The Lincoln County Commissioners have been unhappy with this decision. This is a back door attempt to regain control of the Office of Sheriff.

One of the Lincoln County Commissioners has stated that the Commissioners need to retake control of the Sheriff's Office. He has also stated that the City of Lincoln wants more control of the Sheriff's Office. These comments are a clear indication that the Commissioners and City want control of the Sheriff's Office.

No one from either office has had any open discussions with the citizens of Lincoln County to obtain input as to how the voters feel over this issue.

I have also included a copy of the Kansas Supreme Court decision 88,844.

Representative Joann Freeborn testified that out of the 104 counties only Lincoln and Cloud have expressed any interest in this bill. As I stated the other counties see that this is not a good bill.

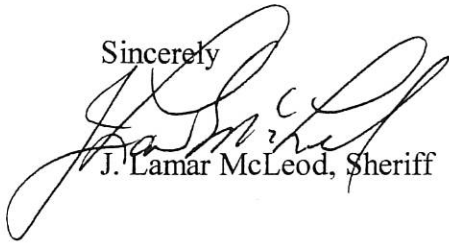
The board as presented will favor the City of Lincoln as far as representation is concerned. The bulk of citizens live in the unincorporated portion of Lincoln County. Any additional taxes will also impact the majority who live in the unincorporated portion of the county.

A Representative from Ellsworth was recently quoted that he voted the way his community would want him to vote. This is truly representative government

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03-09-04
Attachment 19*

I would ask that this Committee vote against this bill as it is written. It is the right thing to do for the voters.

Sincerely

A handwritten signature in black ink, appearing to read "J. Lamar McLeod". The signature is written in a cursive style with a large initial "J" and "M".

J. Lamar McLeod, Sheriff



Kansas Supreme Court Summaries of Selected Cases -- January 31, 2003

For more information, contact: Ron Keefover, Office of Judicial Administration, Kansas Judicial Center, 301 West 10th, Topeka, KS 66612-1507 (785-296-2256), e-mail: keefover@kscourts.org.

RE: Appeal No. 88,844: *Board of County Commissioners of Lincoln County, Kansas, v. Wray Nielander and Jack Jackson*

The Supreme Court today ruled that sheriffs, not boards of county commissioners, have the authority to hire and fire deputies and assistants and further that county commissioners may not require sheriffs to obtain advance approval for purchases within the department's approved budget "regardless of the amount."

The rulings came in a closely watched lawsuit in which the sheriff of Lincoln County appealed a district court decision that permitted the Board of County Commissioners to fire a deputy sheriff and required the sheriff to secure advance approval by the commissioners for expenditures in excess of \$250.

Amici curiae (or friends of the court) briefs were filed in support of Sheriff Wray Nielander and deputy Jack Jackson's appeal on behalf the Kansas County Treasurers Association, the Kansas Register of Deeds Association, the Kansas County Clerks and Election Officials Association and the Kansas County Sheriff's Association.

Justice Bob Abbott, writing for the Court, said: "Where a board of county commissioners has approved a budget including necessary expenses, the sheriff cannot be required to obtain advance approval for purchases within the limits of the approved budget regardless of the amount.

"If an expenditure falls outside of the budget, i.e., over budget, then the sheriff must request advance approval of the board regardless of the amount. The board must approve the expenditure if it is necessary for a sheriff to carry out his or her statutory duties. If a board fails to approve a necessary expenditure, the the sheriff's remedy is to [file an action in court]," Justice Abbott wrote.

The case arose after Jack Jackson, who resided in Salina, was employed by Sheriff Nielander as a deputy, beginning as a part-time deputy in November 2001.

The county commissioners twice took action to discharge Jackson for the stated reason of unsatisfactory job performance. The second attempt by the board followed adoption of a personnel policy purporting to grant the board exclusive authority to hire and fire county employees. He was formally discharged pursuant to the new personnel policy on February 28, 2002.

The sheriff ignored the county commission policy and continued Jackson in his job. The commissioners then filed suit seeking an injunction to prohibit Nielander from employing Jackson as a deputy and from making any purchase in excess of \$250 without board approval.

Nielander and Jackson successfully contended on appeal that the "Board did not have the constitutional or statutory authority to hire or fire the duly appointed assistant to an elected county official."

####



| Keyword | Name » SupCt - CtApp | Docket | Date | Summaries |

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IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 88,844

THE BOARD OF COUNTY COMMISSIONERS OF

THE COUNTY OF LINCOLN, KANSAS,

Appellee,

v.

WRAY NIELANDER and JACK JACKSON,

Appellants.

SYLLABUS BY THE COURT

1. Interpretation of a statute is a question of law in which appellate review is unlimited.
2. Home rule powers are those granted by the Kansas Constitution or by legislative act to units of local government to transact local business and perform such local and administrative duties as these local units may deem appropriate, subject to certain limitations imposed upon such grant of power. Home rule powers were granted to cities by constitutional amendment in 1961. Kan. Const. art. 12, § 5. In 1974, the legislature passed an act granting powers of home rule to counties. Counties in Kansas are now empowered to transact all county business and perform such powers of local legislation and administration as may be appropriate, subject, however, to the restrictions and prohibitions set forth in K.S.A. 2001 Supp. 19-101a.
3. Interpretation of a statute is a question of law, and it is the function of the court to interpret a statute to give it the effect intended by the legislature. It is a fundamental rule of statutory construction, to which all other rules are subordinate, that the intent of the legislature governs if that intent can be ascertained.
4. In determining legislative intent, courts are not limited to consideration of the language used in the statute, but may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. In construing statutes, the legislative intent is to be determined from a general consideration of the entire act.
5. The legislative history of S.B. 46 and K.S.A. 19-805(a) demonstrates the legislature's intent to vest sheriffs, not boards of county commissioners, with the authority to appoint, promote, demote, or dismiss additional deputies and assistants. Moreover, under the plain language of K.S.A. 2001 Supp. 19-101a(a) (15), boards of county commissioners are prohibited from effecting changes to the provisions of K.S.A. 19-805(a).
6. The introductory phrase of K.S.A. 19-805(d), "[a]ny personnel action taken by the sheriff," must not be ignored. While personnel actions taken by sheriffs are "subject to" personnel policies, payment plans, collective bargaining agreements, and budgets established by boards of county commissioners, K.S.A.

-805(d) does not give county commissioners the ability to supersede a sheriff's power to appoint, promote, demote, or dismiss his or her personnel.

7. Where a board of county commissioners has approved a budget including necessary expenses, the sheriff cannot be required to obtain advance approval for purchases within the limits of the approved budget regardless of the amount. If an expenditure falls outside of the budget, *i.e.*, over budget, then the sheriff must request advance approval of the board regardless of the amount. The board must approve the expenditure if it is necessary for a sheriff to carry out his or her statutory duties. If a board fails to approve a necessary expenditure, then the sheriff's remedy is to mandamus the board.

Appeal from Lincoln district court; THOMAS M. TUGGLE, judge. Opinion filed January 31, 2003. Affirmed in part and reversed in part.

David R. Cooper, of Fisher, Patterson, Sayler & Smith, L.L.P., of Topeka, argued the cause, and *Julie A. McKenna*, of McKenna & Trochek, of Salina, was with him on the brief for appellants.

Wendall F. Cowan, of Shook, Hardy & Bacon L.L.P., of Overland Park, argued the cause, and *Michael T. Jilka*, of the same firm, was with him on the brief for appellee.

Alan F. Alderson, of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C., of Topeka, was on the brief for *amici curiae* Kansas County Treasurers Association, Kansas Registers of Deeds Association, Kansas County Clerks and Election Officials Association, and Kansas County Sheriffs Association.

The opinion of the court was delivered by

ABBOTT, J.: This is an appeal from an injunction that permitted a board of county commissioners to fire a deputy sheriff and enjoined the sheriff to secure advance approval by the board of county commissioners for expenditures in excess of \$250.

Jack Jackson, who resided in Salina, Kansas, was employed by Lincoln County Sheriff Wray Nielander as a part-time deputy from November 3, 2001, until January 1, 2002, at which time Jackson became a full-time deputy. The Board of Lincoln County Commissioners (Board) twice took action to discharge Jackson for the stated reason of unsatisfactory job performance. The second attempt by the Board followed adoption of a personnel policy purporting to grant the Board exclusive authority to hire and fire county employees.

Nielander disputed the Board's authority to discharge a duly appointed deputy sheriff and continued Jackson's employment. The Board sought and obtained an injunction prohibiting Nielander from employing Jackson and enjoining Jackson from holding, or seeking to hold, employment with Lincoln County.

On January 22, 2002, the Board terminated Jackson's employment pursuant to Lincoln County Employee Rules and Regulations. Minutes from the January 22 Board meeting stated: "John Kobbeman moved to terminate Law Enforcement Officer Jack Jackson, for unsatisfactory job performance, effective immediately, seconded by Doug Gomel. Motion carried unanimously."

Nielander continued Jackson's employment.

On February 28, 2002, the Board amended its Employee Rules and Regulations to read:

EMPLOYMENT RELATIONSHIP

"All employees of Lincoln County are employees at will unless an employee has an express, written contract of employment with Lincoln County. As an employee at will, the employee can be discharged at any time, with or without cause. Similarly, an employee can resign at any time, with or without notice or cause. Only the Board of County Commissioners can make exceptions to this policy or enter into employment contracts, which must be in writing and signed by the Chairperson of the Board.

"These Employee Rules and Regulations do not constitute in any way a contract of employment. Lincoln County reserves the right to amend its personnel policies and procedures at any time, for any reason, with or without advance notice.

"The authority to hire or discharge any Lincoln County employee is vested solely in the Board of County Commissioners of Lincoln County. Elected officials and department heads may recommend the hiring or discharge of an individual, but approval by the Board of County Commissioners is required, and no personnel action is effective unless and until such approval is granted. The board of County Commissioners may also effect personnel actions without elected official or department head recommendation."

Immediately after it passed the amended Employee Rules and Regulations, the Board again terminated Jackson's employment for unsatisfactory job performance, effective February 28, 2002. The same day, the Board released Jackson's February 2002 gross payroll warrant in the amount of \$2,304.83.

Nielander resisted the efforts of the Board to terminate Jackson and continued to employ him. Jackson continued to work full-time throughout the litigation at the district court level and asserted that he would continue to do so until Nielander decided otherwise.

Prior to the commencement of Nielander's service, the Board adopted a purchase policy on September 10, 2001. The Board's purchase policy stated:

"All county departments, except the highway department, must receive approval from the County Commissioners prior to the purchase of any equipment and/or supplies if said purchase should exceed \$250.00. County department heads should complete a purchase request form, forms located in the County Clerk's Office, with all appropriate [sic] items and an expected purchase costs. *Note- Department head must present at least two cost quotations for purchases exceeding \$250.00.

....

"All Lincoln County departments will abide by their fiscal year budget, if a department appears to be exceeding their budget limitations, the following actions will be mandated:

"The department head **must** have **all** purchases pre-approved, *regardless of the cost*, prior to ordering such equipment and/or supplies. Purchase request forms can be located at the County Clerk's Office."

The Board and Nielander stipulate that Nielander exceeded his calendar year 2001 budget by approximately \$37,000. Nielander also stipulates that despite his knowledge of the purchase policy, "there have been occasions when he has not obtained approval from the County Commissioners prior to the purchase of equipment and/or supplies in excess of \$250."

The Board filed a verified petition for an ex parte restraining order and a temporary and permanent injunction against Nielander and Jackson on March 6, 2002. In the petition, the Board sought injunctive

ief from the Lincoln District Court, prohibiting Nielander from employing Jackson as a deputy and from making any purchase in excess of \$250 without prior Board approval.

The district court concluded that Nielander was subject to the Lincoln County Employee Rules and Regulations and that the Board acted within its authority when it discharged Jackson on February 28, 2002. The district court also found that the Board's purchase policy requiring prior approval for purchases of supplies or equipment in excess of \$250 was reasonable. The court ordered Jackson discharged as an employee of Lincoln County and enjoined him from working or attempting to work there. The district court in like manner enjoined Nielander from attempting to continue Jackson's employment. In addition, the district court entered an order mandatorily enjoining Nielander to comply with the Lincoln County purchasing policy.

Nielander and Jackson timely appealed the decision of the district court and moved for a stay pending the outcome of the appeal. After listening to arguments of counsel by conference call, District Judge Thomas M. Tuggle found that no compelling reason was presented justifying the grant of a stay. Therefore, the district court denied Nielander and Jackson's application for stay. On appeal, Nielander and Jackson challenge the authority of the Board to terminate a deputy's employment and to require preapproval of expenditures by a sheriff.

For their first assertion of error on appeal, Nielander and Jackson contend that the Board did not have the constitutional or statutory authority to hire or fire the duly appointed assistant to an elected county official.

The sheriff is an independently elected officer whose office, duties, and authorities are established and delegated by the legislature. The sheriff is not a subordinate of the board of county commissioners and neither are the undersheriff or the sheriff's deputies and assistants. Rather, the sheriff is a state officer whose duties, powers, and obligations derive directly from the legislature and are coextensive with the county board. The undersheriff and the sheriff's deputies and assistants are subordinates of the office of sheriff. The board of county commissioners is the means by which the legislature finances the operation of the office of the sheriff. The board of county commissioners is not free to usurp the powers of the office of sheriff by controlling the hiring or firing of the deputies and assistants appointed by the sheriff.

The parties agree that the issue before this court involves statutory interpretation. "Interpretation of a statute is a question of law in which appellate review is unlimited." *In re Marriage of Phillips*, 272 Kan. 202, Syl. ¶ 1, 32 P.3d 1128 (2001).

The Board argues that K.S.A. 2001 Supp. 19-101a(a) authorizes boards of county commissioners to "transact all county business and perform all powers of local legislation and administration it deems appropriate." In addition, the Board maintains that K.S.A. 19-805(d) vests boards of county commissioners with the authority to supersede personnel decisions of sheriffs.

Nielander and Jackson state that Article 2, § 1 and Article 9, § 2 of the Kansas Constitution vest the legislature with the power to establish necessary county officers. They note that the legislature has created counties, corporate entities with boards of county commissioners to transact county business, as well as the offices of county clerk, county treasurer, register of deeds, and sheriff by way of various statutes. See K.S.A. 19-101; K.S.A. 2001 Supp. 19-101a; K.S.A. 19-201; K.S.A. 19-301; K.S.A. 19-501; K.S.A. 19-1201; K.S.A. 19-801a. Nielander and Jackson maintain that, although the Board is authorized to transact all county business and to engage in local legislation subject to certain statutory exceptions in K.S.A. 2001 Supp. 19-101a(a), sheriffs are expressly authorized by K.S.A. 19-805(a) to appoint, promote, demote, and dismiss deputies and assistants as the sheriff deems necessary to carry out the mandatory duties and obligations of his or her office. See K.S.A. 19-810; K.S.A. 19-811; K.S.A. 19-812; K.S.A. 19-813. Nielander and Jackson contend that the district court's conclusion that there

There are no statutes that would restrict the Board from "being the only word on hiring and discharging" is incorrect in that it conflicts with the powers of appointment provided to the sheriff by the legislature in K.S.A. 19-805(a) and K.S.A. 19-810. In addition, they argue that the district court's construction of K.S.A. 19-805(d), which begins "[a]ny personnel action taken by the sheriff under this section shall be subject to the following," reads the introductory clause out of the statute. Nielander and Jackson argue that the Board's personnel policy and the district court's injunction neglect the separation of powers and duties provided by the legislature and, thus, contend that the district court has unconstitutionally and unlawfully expropriated the powers of the office of sheriff in favor of the Board.

The Kansas County Treasurers Association, the Kansas Registers of Deeds Association, the Kansas County Clerks and Election Officials Association, and the Kansas County Sheriffs Association, as *amici curiae*, seek to preserve what they believe is clear statutory authority giving their members the power to control the operation of their respective offices with regard to appointment, hiring, firing, promotion, and demotion of their deputies and assistants. The *amici curiae* assert that a decision upholding the district court's injunction will lead boards of county commissioners to adopt rules or regulations that would place them in complete control of personnel issues for all county employees. According to the *amici curiae*, this would render meaningless the statutory authority of elected county officials. The *amici curiae* ask this court to find that the Board acted in conflict with K.S.A. 19-805 when it passed the February 28, 2001, resolution and voted to terminate Jackson.

The legislature by statute has given elected officials, including the county clerk, treasurer, sheriff, and register of deeds, similar if not equivalent discretion and authority over employees and personnel matters. *Cf.* K.S.A. 19-302(a); K.S.A. 19-503(a); K.S.A. 19-805(a); K.S.A. 19-1202(a); Att'y Gen. Op. No. 93-64. Employing identical statutory language, the legislature also subjected personnel action taken by county clerks, sheriffs, registers of deeds, and treasurers to certain restrictions. See K.S.A. 19-302(c); K.S.A. 19-503(c); K.S.A. 19-805(d); K.S.A. 19-1202(c). The issues on appeal highlight the potential conflict between the Board's general home rule authority under K.S.A. 2001 Supp. 19-101a(a) and the sheriff's authority to appoint, promote, demote, and dismiss undersheriffs, deputies, and assistants under K.S.A. 19-805(a) and 19-810.

K.S.A. 19-805 provides:

"(a) In addition to the undersheriff, the sheriff also may appoint, promote, demote and dismiss additional deputies and assistants necessary to carry out the duties of the office, for whose official acts the sheriff is responsible. Persons may also be deputized by such sheriff or undersheriff, in writing, to do particular acts. The sheriff and sureties of the sheriff shall be responsible, on the official bond of the sheriff, for the default or misconduct of the undersheriff and deputies.

"(b) Within the limitations of the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners, the sheriff may attend and may require the undersheriff, deputies and any assistants to attend any meeting or seminars which the sheriff determines will be beneficial to the operation of the sheriff's office.

"(c) The sheriff shall submit a budget for the financing of the operation of the sheriff's office to the board of county commissioners for their approval.

"(d) Any personnel action taken by the sheriff under this section shall be subject to the following: (1) Personnel policies and procedures established by the board of county commissioners for all county employees other than elected officials; (2) any pay plan established by the board of county commissioners for all county employees other than elected officials; (3) any applicable collective bargaining agreements or civil service system; and (4) the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners."

sheriff's authority to hire and fire personnel must be juxtaposed against a board of county commissioners' authority to determine local affairs. In general, a board of county commissioners may exercise its powers of home rule to determine its local affairs in the manner and subject to the limitations provided by K.S.A. 2001 Supp. 19-101a and other laws of this state. See K.S.A. 19-101; K.S.A. 2001 Supp. 19-101a.

"Home rule powers are those granted by the Constitution or by legislative act to units of local government to transact local business and perform such local and administrative duties as these local units may deem appropriate, subject to certain limitations imposed upon such grant of power. [Citation omitted.] Home rule powers were granted to cities by constitutional amendment in 1961. Kan. Const. art. 12, § 5. In 1974, the legislature passed an act granting powers of home rule to counties. L. 1974, ch. 110. [See K.S.A. 19-101 *et seq.*] 'Counties in Kansas are now empowered to transact all county business and perform such powers of local legislation and administration as may be appropriate, subject, however, to the restrictions and prohibitions set forth in K.S.A. 19-101a.' [Citation omitted.]" *Board of Trego County Comm'rs v. Kansas Dept. of Revenue*, 261 Kan. 927, 930, 933 P.2d 691 (1997).

K.S.A. 2001 Supp. 19-101a contains a list of limitations, restrictions, and prohibitions on boards of county commissioners' powers of local legislation and administration. That statute reads, in pertinent part: "(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."

Thus, a board of county commissioners may not exempt from or effect changes to the provisions of K.S.A. 19-805(a), which allow a sheriff to "appoint, promote, demote, and dismiss additional deputies and assistants necessary to carry out the duties of the office."

This court has indicated that a county sheriff "is the official responsible for his department and is subject to follow personnel policies of the county in relation to the county employees under his supervision. See K.S.A. 19-805(d)." See *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 372, 22 P.3d 124 (2001).

In 1983, K.S.A. 19-805 was amended to its present form by S.B. 46. See L. 1983, ch. 91, § 6.

The *amici curiae* point to statements made by legislators about S.B. 46 and by others testifying before the Senate Committee as evidence of the lawmakers' intent to give elected county officials power over hiring and firing while limiting boards of county commissioners' authority to budgetary concerns.

"Interpretation of a statute is a question of law, and it is the function of the court to interpret a statute to give it the effect intended by the legislature. It is a fundamental rule of statutory construction, to which all other rules are subordinate, that the intent of the legislature governs if that intent can be ascertained.

"In determining legislative intent, courts are not limited to consideration of the language used in the statute, but may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. In construing statutes, the legislative intention is to be determined from a general consideration of the entire act." *In re Tax Exemption Application of Lietz Construction Co.*, 273 Kan. ___, Syl. ¶¶ 3, 4, 47 P.3d 1275 (2002).

Mike Billinger, Ellis County Treasurer, distributed copies of his testimony to the Senate Committee and stated that "Senate Bill 46 was important to all County Treasurers in Kansas because it would effectively make them the administrators of their employees." *Hearings on S.B. 46 before the S. Comm. on Gov't Org.*, 1983 Kan. Leg. (Feb. 10, 1983).

mery Rome, Ellis County Clerk, presented testimony addressing Section 2 of S.B. 46 "in which the Clerk is given the authority to appoint a deputy and hire and/or fire any additional help the Clerk would deem necessary." He expressed the feeling that "someone who worked with employees on a daily basis would be the best qualified to evaluate their performance." *Hearings on S.B. 46 before the S. Comm. on Gov't Org.*, 1983 Kan. Leg. (Feb. 10, 1983).

Harold Kraus, Ellis County Commissioner, testified concerning the lack of "statutory guidelines to insure County Commissioners of their rights to control the budgetary processes in the various elective offices in the counties." *Hearings on S.B. 46 before the S. Comm. on Gov't Org.*, 1983 Kan. Leg. (Feb. 10, 1983).

We find that the legislative history of S.B. 46 and K.S.A. 19-805(a) demonstrates the legislature's intent to vest sheriffs, not boards of county commissioners, with the authority to "appoint, promote, demote and dismiss additional deputies and assistants." Moreover, under the plain language of K.S.A. 2001 Supp. 19-101a(a)(15), boards of county commissioners are prohibited from effecting changes to the provisions of K.S.A. 19-805(a).

Here, the Board attempted to vest itself with the sole authority to hire or discharge any Lincoln County employee and to limit the power of elected county officials to recommending the hiring or discharging of an individual. Immediately after the Board passed the amended Employee Rules and Regulations, the Board terminated Jackson's employment. The Board's actions were an attempt to effect changes to the sheriff's grant of authority under K.S.A. 19-805(a) to appoint, promote, demote, and dismiss deputies, and under K.S.A. 2001 Supp. 19-101a(a)(15), the Board was prohibited from effecting such a change.

The language of K.S.A. 19-805(d) indicates that boards of county commissioners may establish personnel policies and procedures for all nonelected county personnel, pay plans for all nonelected county personnel, collective bargaining agreements or a civil service system, and the budget for the financing of the operation of the sheriff's office. The introductory phrase of K.S.A. 19-805(d), "[a]ny personnel action taken by the sheriff," however, must not be ignored. While personnel actions taken by sheriffs are "subject to" personnel policies, payment plans, collective bargaining agreements, and budgets established by boards of county commissioners, K.S.A. 19-805(d) does not give county commissioners the ability to supersede a sheriff's power to appoint, promote, demote, or dismiss his or her personnel.

We hold that the district court erred when it concluded that the Board acted within its authority when it discharged Jackson on February 28, 2002. We vacate the district court's injunction discharging Jackson as a deputy, enjoining Jackson from working or attempting to work as an employee of Lincoln County, and enjoining Nielander from attempting to continue Jackson's employment.

Next, Nielander and Jackson argue that the district court erred by issuing an injunction mandating Nielander's compliance with the Lincoln County purchasing policy requiring advance Board approval for the purchase of any equipment or supplies in excess of \$250. Nielander and Jackson contend that the district court's injunction upholding the Board's purchase policy conflicts with a sheriff's statutory obligation to fulfill his or her duties within the limits of the approved budget.

The Board maintains that by virtue of home rule powers and authority to manage the financial affairs of the county, boards of county commissioners possess exclusive control over county expenditures, subject only to the limitation that such boards may not use their powers to deny elected officials the means to carry out the statutory duties of their office. The Board concedes in its brief that its authority to veto purchases of optional or discretionary items must yield in the case of expenditures necessary for an elected official to fulfill statutory duties. The Board maintains that the injunction issued by the district court is consistent with the general principles articulated in Attorney General Opinion 99-29.

Nielander and Jackson agree that boards of county commissioners have general authority over their county purse and that an exception to this general power is triggered when the expenditure or obligation is necessary in order for an elected official to carry out statutorily imposed duties. However, Nielander and Jackson contend that the district court's injunction enjoining the sheriff to secure advance approval from the Board before expending more than \$250 conflicts with statutes requiring him to fulfill his duties within the limits of the approved budget.

In addition, Nielander and Jackson state that "[t]here is no contention here that Nielander exceeded the budget approved by the [Board] or that the expenditures in excess of \$250 were not necessary for the Sheriff to fulfill the obligations of his office." The Board requested the equitable remedy of injunctive relief, seeking protection from *prospective* injury. See *Empire Mfg. Co. v. Empire Candle, Inc.*, 273 Kan. ___, ___, 41 P.3d 798, 808 (2002). Nielander's past expenditures in excess of \$250 are not at issue.

The Board argues on appeal that boards of county commissioners, not sheriffs, must be given the final authority to decide which expenditures are necessary and which are discretionary in order to enable those boards to control discretionary spending. This argument is outside the purview of the district court's order and was not raised below. Issues not raised before the trial court cannot be raised on appeal. *Dalmasso v. Dalmasso*, 269 Kan. 752, 765, 9 P.3d 551 (2000).

The issue before this court is whether the district court correctly concluded that the Board has statutory authority to require Nielander to obtain advance approval for purchases in excess of \$250.

We hold that where a board of county commissioners has approved a budget including necessary expenses, the sheriff cannot be required to obtain advance approval for purchases within the limits of the approved budget regardless of the amount. If an expenditure falls outside of the budget, *i.e.*, over budget, then the sheriff must request advance approval of the board regardless of the amount. The board must approve the expenditure if it is necessary for a sheriff to carry out his or her statutory duties. If a board fails to approve a necessary expenditure, then the sheriff's remedy is to mandamus the board.

Kansas Attorney General Opinions, although not binding, serve as persuasive authority. See *CPI Qualified Plan Consultants, Inc. v. Kansas Dept. of Human Resources*, 272 Kan. 1288, Syl. ¶ 3, 38 P.3d 666 (2002). For Attorney General opinions generally addressing this issue, see Attorney General Opinion Nos. 99-29; 87-37; 86-166; 84-53; 82-85; 80-69.

After examining the statutes in question, this court finds that where the expenditure in question is optional or discretionary, a board of county commissioners' authority over county expenditures will generally control. K.S.A. 19-212, K.S.A. 19-229, and K.S.A. 2001 Supp. 19-101 permit boards of county commissioners to require preapproval for discretionary purchases over \$250 which are outside the sheriff's budget. A board of county commissioners may not require an elected official to obtain prior approval by the board for expenditures that are necessary for the elected official to carry out statutory duties, however.

In this case, the district court entered an order mandatorily enjoining Nielander to comply with the Lincoln County purchasing policy. The district court failed to find that Nielander need not obtain the Board's preapproval for expenditures within the sheriff's budget. This court reverses the district court and vacates the district court's injunction as being inconsistent with our holding.

For their final assertion of error, Nielander and Jackson argue that the district court's injunction is beyond the scope of the relief sought by the Board in that it enjoins Jackson from "working or attempting to work as a Lincoln County employee," while the Board only sought to enjoin Jackson "from working as a Deputy Sheriff in the Lincoln County Sheriff's Department."

Here a trial court's decision regarding an injunction is based on undisputed facts, an appellate court reviews the scope of the injunction de novo. *State Bd. of Nursing v. Ruebke*, 259 Kan. 599, 610-11, 913 P.2d 142 (1996).

The Board contends that the tenor of the district court's opinion makes it clear that the focus of the injunction was directed toward Jackson's activities as deputy sheriff and that the discrepancy in the phrasing employed by the district court is harmless error. According to the Board, the wording of the injunction is purely academic because Jackson has not worked in any other capacity for Lincoln County, nor has he applied to do so.

K.S.A. 60-906 mandates that "[e]very order granting an injunction . . . shall set forth the reasons for its issuance; shall be specific in terms; *shall describe in reasonable detail*, and not by reference to the petition or other document" (Emphasis added.)

If the injunction enjoining Jackson from "working or attempting to work as a Lincoln County employee" refers to Jackson's employment as a deputy, it fails to describe in reasonable detail the activity to be enjoined. If the phrase is read literally as prohibiting Jackson from "working or attempting to work as a Lincoln County employee," it exceeds the scope of the relief sought by the Board. Viewed either way, the district court's injunctive order fails to meet the requirements of K.S.A. 60-906.

This court, however, has vacated the district court's injunction discharging Jackson as deputy and enjoining Jackson from working or attempting to work as an employee of Lincoln County. Due to our holding, the issue is moot. Pursuant to the general rule, appellate courts do not decide moot questions or render advisory opinions. *In re T.D.*, 27 Kan. App. 2d 331, 333, 3 P.3d 590, *rev. denied* 269 Kan. 933 (2000).



Affirmed in part and reversed in part.

DAVIS, J., not participating.

CAROL A. BEIER, J., assigned.¹

¹**REPORTER'S NOTE:** Judge Beier, of the Kansas Court of Appeals, was appointed to hear case No.88,844 vice Justice Larson pursuant to the authority vested in the Supreme Court by K.S.A. 20-3002 (c).

END

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Updated: January 31, 2003; revised: January 31, 2003.
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LAW ENFORCEMENT BEYOND 2000

RANDY L. ROGERS

SHERIFF

KENNETH RONEY, UNDERSHERIFF

JOHN LIDDELL, CHIEF DEPUTY

To: Elections and Local Government Committee
Re: House Bill 2805

Dear Committee Members,

I come before you today to speak in opposition of HB #2805 as it has been passed by the House and presented to you for your consideration. While this bill only addresses Cloud and Lincoln Counties, it has a more far reaching impact. I believe that if passed this year, in the future there will be more bills come before the Legislature asking for other counties to have the voters consider consolidated law enforcement. Before this happens we should take a look at the fiscal impact this will create for local government, how we got to this point and explore all the options available to the voters.

The first issue is the fiscal impact. If consolidation were to occur there would have to be many items to consider, such as uniforms, vehicles, equipment, etc. Currently across the state Sheriff's and Chiefs uniform their officers differently. What uniform would you provide and what would be the cost to change the uniforms? I would estimate that the average cost for me to Initially outfit an officer with uniforms is approximately \$1,000 per officer.

Vehicles, many Sheriff's provide take home vehicles for their Deputies, this provides the Sheriff with the ability to call out Deputies in time of need and the Deputy has the equipment with him that is needed to do the job. Many cities do not provide take home vehicles, instead the officer reports to the Police Dept. And is assigned a car for their shift. Would take home cars be provided or pool vehicles be used? Either way there is a price tag, if take home cars are provided you would need to figure the cost of the vehicle, radios, and equipment. If pool cars were used you limit your ability to respond and provide the manpower you would need at a critical time.

These few fiscal issues I have mentioned are brief, but are provided to simply create thought about the fiscal impact created to the local taxpayers if consolidation were to occur. Taxpayers would pay the price through tax dollars being spent to initiate consolidation and then to maintain consolidation or there will be a reduction in the level of services that are provided to the taxpayers in order to reduce the financial impact.

Senate Elec + Loc Gov

03-09-04

Attachment 20

10-17

COFFEE COUNTY SHERIFF'S OFFICE

605 NEOSHO ST., PO BOX 226
BURLINGTON, KANSAS 66839
PHONE (620) 364-2123
FAX (620) 364-5758
IN KANSAS TOLL FREE (800) 362-0638



RANDY L. ROGERS

SHERIFF

KENNETH RONEY, UNDERSHERIFF

JOHN LIDDELL, CHIEF DEPUTY

LAW ENFORCEMENT BEYOND 2000

How have we gotten here? Consolidation is not a new issue. It has simply resurfaced as an issue for many reasons to include politics and financial hard times. Consolidation first occurred in Riley County many years ago. Since that time there has been counties that have placed Law Enforcement consolidation on the ballot and the voters have voted to not consolidate.

There have been studies conducted concerning consolidated law enforcement in Kansas and the studies that I am aware have shown that there is not a financial savings to be had. That the main benefit of consolidation is reduction of miscommunication and the consolidation of resources and equipment.

Politics, I will be brutally honest on this issue. This bill comes before you involving Lincoln County. The controversy in Lincoln County surfaced when differences occurred between the past Sheriff and the County Commission. This controversy resulted in a Supreme Court ruling defining duties and responsibilities of the Sheriff and County Commission for all counties in Kansas. While there are 2 sides to every issue and there are many opinions and arguments on both sides we must take a look at the impact that this bill could potentially have statewide.

I have heard the argument that if consolidation were to occur politics would be eliminated. I would disagree and would offer the argument that you simply change the arena in which politics occur.

Through consolidation as presented the political process occurs starting with the Director appointed by and answering to a board, the board answering to the County Commission and City Councils and then the County Commissions and City Councils answering to the citizens. This process adds more layers of government and I believe decreases the level of responsiveness to the needs of the citizens as to law enforcement.

Currently as an elected Sheriff I am elected by the people every 4 years. I am directly accountable to the citizens and when I respond to their concerns, problems or needs I deal with the issue and am held directly accountable. I believe in the electoral process because I believe that it gives the citizens a direct voice in the type of law enforcement that is provided to them.

I am not saying that politics does not occur under the electoral process because it does. However, there are those that say that the Sheriff or an elected official has to play politics and that politics gets in the way of doing a job. I however take a different approach and would offer this analogy of an elected Sheriff. I choose to describe the political process differently and do not call it politics; instead I call it being a team player and team builder. An elected official must have the ability to work well with other elected officials, appointed officials and the citizens we serve. By being a team player we have the ability to negotiate budgetary issues, policy issues, and weigh out decisions we make based on what will best serve the citizens we serve.

20-7
19-15

COFFEY COUNTY SHERIFF'S OFFICE

605 NEOSHO ST., PO BOX 226
BURLINGTON, KANSAS 66839
PHONE (620) 364-2123
FAX (620) 364-5758
IN KANSAS TOLL FREE (800) 362-0638



RANDY L. ROGERS
SHERIFF
KENNETH RONEY, UNDERSHERIFF
JOHN LIDDELL, CHIEF DEPUTY

LAW ENFORCEMENT BEYOND 2000

My personal experience is this. I am blessed to have the support of my County Commission and the priority they place on law enforcement in Coffey County. Many Sheriff's across the state are able to say the same and have good relationships with their elected officials, appointed officials and their citizens.

When consolidation has been discussed or voted on to date citizens have only been given one option and that is to consolidate law enforcement in their county or leave it as is with an elected Sheriff for the county and municipalities having their own police department. I would offer another option and that would be to allow the voters in a county to have the option of consolidating law enforcement under an elected Sheriff. Financing could occur the same as has been proposed under current consolidation legislation. This option would allow the voters to consolidate law enforcement and yet maintain their right to vote and determine their elected officials. I can tell you locally that the citizens I have talked to have overwhelmingly said that they want to maintain their right to vote for their Sheriff.

I would conclude by stating that first I ask that this bill not be passed as presented and secondly if it were passed then amend the bill to include the option of allowing citizens to vote to consolidate under an elected Sheriff. This would truly give the citizens a voice and input in the future of law enforcement in their county.

I do come before you today as a stakeholder in this issue and I am passionate in my position to oppose consolidated law enforcement as presented. As I have chosen to place myself in the position of being an elected Sheriff. I have placed my faith in the electoral process and would if this legislation were amended to allow all options respect the outcome as voted on by the citizens no matter what the outcome were. Thank you for your time and I would answer any questions you may have.

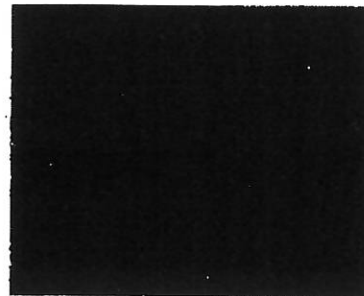
Sincerely,

Randy L. Rogers
Coffey County Sheriff

20-3
19-16

Lane County Sheriffs Office
144 South Lane
Dighton, KS. 67839
620-397-5648 620-397-5933 fax

Donald L Wilson, Sheriff



March 5, 2004

Barbara Allen
Comitttee Chairperson

Ref: **HB2805**

Dear Madam:

I am writing this letter to voice my concern over the above mentioned bill. I am opposed to the passage of this bill that would no longer allow the voters to elect their County Sheriff but for a director of law enforcement to be chosen by a board of seven. This bill only applies to Lincoln and Cloud counties at this time but, if passed, it will only be a matter off time before it will affect all remaining 104 counties in this state.

I am asking for your support in opposition to this bill. We should not allow the will of the voting public to be ignored.

Sincerely,

Donald L. Wilson
Sheriff, Lane County KS

Senate Elec & Loc Gov
03-09-04
Attachment 21



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 Senate Committee on Elections and Local Government
March 9, 2004

Honorable Chairperson Allen 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:

For 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.

For 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."

For property in excess of \$50:

- Each item has to be recorded in a county's year-end statement that published in the official county newspaper.

The statute also provides for procedures for selling or disposing of real property interests, such as easements; again only after notice and a public hearing. And even though the County is limited on who can acquire these real property interests, we must once again publish notice of the conveyance and provide adjoining landowners with such notice by certified mail.

RESPONSIBLE LOCAL GOVERNMENT

Senate Elec & Loc Gov
03-09-04
Attachment 22

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.

One of the benefits that would be achieved by repealing this statute is the greater flexibility that a county would have in hiring professionals to assist in disposing of surplus property. We could hire realtors or other industry experts in the area of technology, heavy equipment or agriculture 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); trade magazines ads; and joint networking, advertising and disposal efforts with other municipalities. Sedgwick County's 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. Sedgwick County's Fleet Manager would like the flexibility of taking vehicles to public auctions, when he thinks that will save money and achieve a better price than holding his own public sales. Sedgwick County's Purchasing Director would like the flexibility to create an internet site, similar to eBay, where she could 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 obviously 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 submitted a 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 counties shouldn't be able to establish their 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 for a petition and election to overturn the decision of an 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 adds unnecessary cost to the process, but the official county newspaper might not even have the largest circulation in the county or be the best publication to 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 for radio time.

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 more money. The repeal of K.S.A. 19-211 would be one significant 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: Chairperson Allen and the Members of the Senate Committee on Elections and Local Government

FROM: James M. Crawl, Assistant Shawnee County Counselor

DATE: March 9, 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 for you any examples of extreme problems Shawnee County has experienced 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/

Senate Elec + Loc Gov
03-09-04
Attachment 23



KANSAS
ASSOCIATION OF
COUNTIES

Testimony on HB 2600
Before the Senate Committee on Elections and Local Government
By Judy A. Moler
General Counsel/Legislative Services Director
March 9, 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.S.A. 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.

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email kac@ink.org

Senate Elec & Loc Gov
03-09-04
Attachment 24



Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

Testimony in support of HB 2600

presented to the

Senate Elections and Local Government Committee

by

Danielle Noe

Intergovernmental Relations Manager

March 9, 2004

Madam Chair 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. The requirement to publish notice multiple times is not only costly, but it adds significant time to the process.

As you can see, the logistics for keeping the surplus organized for the appropriate auction is extremely tedious. We 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.

Senate Elec + Loc Gov
03-09-04
Attachment 25

Another challenge that we face is the requirement for a unanimous vote of the Board of County Commissioners in order to dispose of property. If one member of the BOCC is absent at a meeting, we cannot hold a vote. Our Board currently has seven members on it, and while they take their job seriously and attempt to make every meeting, occasionally at least one member is absent. Just a few weeks ago, the BOCC had to delay acting on the disposal of surplus property because one member was unable to attend due to an illness.

We realize that any repeal of the current statute would only require the County 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.

2004 Surplus Auction Schedule

These are anticipated dates that could change due to problems or other unforeseen circumstances.

JANUARY

- ❖ January 8 - briefing sheet to BOCC for February auction
- ❖ January 16 - last date for adding items to list for March auction
- ❖ January 17 - Auction
- ❖ January 19 - start April auction list
- ❖ January 22 - BOCC approval on February auction
- ❖ January 30 - cut-off date to claim items for March auction

February

- ❖ February 5- briefing sheet to BOCC for March auction
- ❖ February 13 - last date for adding items to list for April auction
- ❖ February 16 - start May auction list
- ❖ February 19 - BOCC approval on March auction
- ❖ February 21 - Auction
- ❖ February 27 - cut-off date to claim items for April auction

March

- ❖ March 4- briefing sheet to BOCC for April auction
- ❖ March 12 - last date for adding items to list for May auction
- ❖ March 15 - start June auction list
- ❖ March 18 - BOCC approval on April auction
- ❖ March 20 - Auction
- ❖ March 26 - cut-off date to claim items for May auction

April

- ❖ April 1- briefing sheet to BOCC for May auction
- ❖ April 9 - last date for adding items to list for June auction
- ❖ April 12- start July auction list
- ❖ April 15 - BOCC approval on May auction
- ❖ April 17 - Auction
- ❖ April 23 - cut-off date to claim items for June auction
- ❖ April 29 - briefing sheet to BOCC for June auction

May

- ❖ May 13 - BOCC approval on June auction
- ❖ May 14 - last date for adding items to list for July auction
- ❖ May 15- Auction
- ❖ May 17- start August auction list
- ❖ May 28 - cut-off date to claim items for July auction

June

- ❖ June 3 - briefing sheet to BOCC for July auction
- ❖ June 11 - last date for adding items to list for August auction
- ❖ June 14- start September auction list
- ❖ June 17- BOCC approval on July auction
- ❖ June 19- Auction
- ❖ June 25 - cut-off date to claim items for August auction

July

- ❖ July 1 - briefing sheet to BOCC for August auction
- ❖ July 15- BOCC approval on August auction
- ❖ July 16 - last date for adding items to list for September auction
- ❖ July 17- Auction
- ❖ July 19- start October auction list
- ❖ July 30 - cut-off date to claim items for September auction

- ❖ August 5- briefing sheet to BOCC for September auction
- ❖ August 13- last date for adding items to list for October auction
- ❖ August 16 - start November auction list
- ❖ August 19- BOCC approval on September auction
- ❖ August 21- Auction
- ❖ August 27 - cut-off date to claim items for October auction

- ❖ September 2- briefing sheet to BOCC for October auction
- ❖ September 10- last date for adding items to list for November auction
- ❖ September 13 - start December auction list
- ❖ September 16- BOCC approval on October auction
- ❖ September 18- Auction
- ❖ September 24 - cut-off date to claim items for November auction
- ❖ September 30 - briefing sheet to BOCC for November auction

- ❖ October 14- BOCC approval on November auction
- ❖ October 15- last date for adding items to list for December auction
- ❖ October 16- Auction
- ❖ October 18 - start January 2005 auction list
- ❖ October 29- cut-off date to claim items for December auction

- ❖ November 4 - briefing sheet to BOCC for December auction
- ❖ November 5- last date for adding items to list for January auction
- ❖ November 8- start February 2005 auction list
- ❖ November 18 BOCC approval on December auction
- ❖ November 19 - cut-off date to claim items for January auction
- ❖ November 20- Auction

- ❖ December 2- briefing sheet to BOCC for January auction
- ❖ December 3- last date for adding items to list for February auction
- ❖ December 6- start March 2005 auction list
- ❖ December 16 BOCC approval on January auction
- ❖ December 17 - cut-off date to claim items for February auction
- ❖ December 18- Auction

Information on Nationwide Auction Systems

Johnson County auctions will be held at Nationwide Auction Systems, 2101 Manchester Trafficway, Kansas City, Missouri per the attached 2004 auction schedule. Items can be reviewed at the auction site on Thursdays and Fridays prior to the Saturday auction dates from 8:00 a.m. until 4:30 p.m. and until all items are gone. All such property shall be sold "as is and where is", without any representations and warranties, to the person or entity tendering the highest and best bid. Payment is required to be made with a minimum of 25% deposit in cash, certified or cashiers check, of each successful bidder upon award of bid. Company checks will be accepted only if accompanied by a bank letter of guarantee. Balance of all purchases must be paid by the Monday following the sale. All such property purchased must be removed from the auction site within six (6) days of the sale. Items to be sold are subject to transfer to County agencies prior to auction.

If looking for additional information about the auction site, please refer to Nationwide Auction's website at: www.nationwideauction.com.