

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on January 20, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Oletha Faust-Goudeau- excused
Representative Melody Miller- excused

Committee staff present:

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

Conferees appearing before the committee:

Chris Wilson, Kansas Building Association
Don Moler, League of Kansas Municipalities
Eric Sartorius, City of Overland Park
Scott Schneider, City of Wichita
Michael Boehm, City of Lenexa
Don Denny, Wyandotte County
Ron Fehr, City of Manhattan
Ray Toso, City of Emporia
Joan Wagnon, State Dept. Of Revenue

Others attending:

See attached list.

HB 2005 **Elections; disclosure of felony conviction**

Chairman Vickrey appointed a subcommittee to further discuss HB 2005 and asked them to report their recommendations back to the committee. Members of the subcommittee are:

Chair - Rep. Lane

Members - Rep. Goico, Rep. Holland, Rep. Yonally, Rep. Huebert

HB 2018 **Acquisition of rural water district by another district**

Rep. Holland made a motion for the favorable passage of HB 2018. Rep. Yonally seconded the motion. The motion carried.

HB 2027 **Library boards; reduction of waiting period for reappointment**

Rep. Yonally made a motion for the favorable passage of HB 2027. Rep. Huebert seconded the motion. The motion carried.

Bill Introductions

Chairman Vickrey advised that the Special Committee on Local Government (Interim Committee) had noted 12 statutes for further study in their Committee Report. He requested that the 12 statutes listed be drafted as committee bills.

Without objection, the requests will be accepted as committee bills.

Briefing - Kansas Advisory Council on Intergovernmental Relations

Pursuant to K.S.A. 12-4002, Michael Boehm, City of Lenexa, briefed the committee regarding the activities of the Kansas Advisory Council on Intergovernmental Relations (KACIR) (Attachment 1). He said the purpose of the KACIR as established in statute, is to engage in the continuous study of the services provided by the various types and levels of government in the state. He stated that the study topic for 2004-2005 is the following:

“What governmental structures will allow for and promote growth and sustain-ability for the future of Kansas communities?”

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on January 20, 2005 in Room 519-S of the Capitol.

Chairman Vickrey opened the hearing on:

HCR 5001 **Constitutional amendment providing for up to ten classes of cities for purposes of imposing limitations or prohibitions on taxes**

Chris Courtwright, Kansas Legislative Research Department, briefed the committee on **HCR 5001**. He also presented information from the Special Committee on Assessment and Taxation which met during the Interim Session (**Attachment 2**).

Joan Wagon, Secretary of the Kansas Department of Revenue, appeared before the committee and provided administration information relating to **HCR 5001**. No written testimony was provided.

Chris Wilson, Kansas Building Association, testified as a proponent of the bill (**Attachment 3**). She said the purpose of this legislation is to change the state constitution to allow for more than four classes of cities. She explained that this limit was inadvertently exceeded by the Legislature. Ms. Wilson testified that with the inadvertent exceeding of the current limit of four, cities may now charter out of statutes to do things the Legislature prohibited by statute.

Don Moler, League of Kansas Municipalities, testified as an opponent of the bill (**Attachment 4**). He said it is the opinion of the League of Kansas Municipalities that the bill is an unnecessary piece of legislation which subjects virtually all city authority to possible amendment or repeal.

Eric Sartorius, City of Overland Park, testified as an opponent of the bill (**Attachment 5**). He said they feel strongly that a constitutional amendment goes far beyond what is necessary to cure any problems seen by the Department of Revenue.

Scott Schneider, City of Wichita, testified as an opponent of the bill (**Attachment 6**). He said that the City of Wichita is opposed to any legislation that diminishes the Home Rule authority of cities and removes the rights of citizens, through their locally elected representatives, to decide the standards and issues that are uniquely appropriate to their community.

Michael Boehm, Mayor, City of Lenexa, testified as an opponent of the bill (**Attachment 7**). Mayor Boehm stated that the constitutional amendment, as proposed, could have significant, unintended consequences on such matters as Home Rule authority, other existing statutory provisions, and local government laws currently in effect.

Don Denney, Wyandotte County Unified Government, testified as an opponent of the bill (**Attachment 8**). He said that the proposed legislation is an unnecessary, unwarranted intrusion on the Home Rule and local control rights granted cities in the Kansas Constitution.

Ron Fehr, City of Manhattan, testified as an opponent of the bill (**Attachment 9**). He said that if the legislation is passed out of committee and heard on the house floor, all of the powers of cities will be on the table for debate, amendment, and repeal.

Ray Toso, Mayor, City of Emporia, testified as an opponent of the bill (**Attachment 10**). He said that there is no need for a constitutional amendment which opens up the Home Rule authority of cities.

John Zutavern, City Commissioner, submitted written testimony on behalf of the City Commission, City of Abilene (**Attachment 11**).

Chairman Vickrey closed the hearing on **HCR 5001**.

Rep. Yonally made a motion to approve the minutes of the January 11, 2005 meeting. Rep. Swenson seconded the motion. The motion carried.

The Chairman adjourned the meeting.

The next meeting is scheduled for Tuesday, January 25, 2005.

**Kansas
Advisory
Council on
Intergovernmental
Relations**

**2004 Annual Report
of the KACIR**

**Presented to
House Governmental
Organization & Elections Committee**

Pursuant to K.S.A. 12-4002

January 20, 2005

House Gov. Org. & Elections
Date: 1-20-05
Attachment # 1

Meetings: Since the reestablishment of the KACIR, there have been six meetings. During this two year period, the KACIR has meet at least once in each of the four congressional districts. As established in statute, the purpose of the KACIR is to engage in the continuous study of the services provided by the various types and levels of government in the state.

September 25, 2003	Topeka (2 nd Congressional District)
November 21, 2003	Wichita (4 th Congressional District)
August 27, 2004	Lawrence (3 rd Congressional District)
October 8, 2004	Topeka (2 nd Congressional District)
November 5, 2004	Abilene (1 st Congressional District)
November 29, 2004	Topeka (2 nd Congressional District)

Membership: The current membership of the KACIR is listed below.

<u>KACIR Position</u>	<u>Term ending</u>	<u>Last Name</u>	<u>First Name</u>	<u>Title</u>
City Official (1 of 2)	30-Jun-06	Boehm	Michael	Mayor, City of Lenexa
City Official (1 of 2)	30-Jun-08	Jackson	Richard	Mayor Pro Tem, City of Ottawa
County Official (1 of 2)	30-Jun-06	Dixon	Wade	Greeley County Attorney
County Official (1 of 2)	30-Jun-08	Norton	Tim	Sedgwick Co. Commissioner
Exec Branch Official (1 of 2)	30-Jun-08	Harkins	Joseph	Nat Resources Policy Advisor
Exec Branch Official (1 of 2)	30-Jun-06	Wagnon	Joan	Secretary of Revenue
House Min. Ldr. Apptee	January, 2005	Gatewood	Doug	Representative
House Maj. Ldr Apptee	January, 2005	Sloan	Tom	Representative
Private Citizen (1 of 3)	30-Jun-06	Courtney	Laverne	Instructor, Seward Co CC
Private Citizen (1 of 3)	30-Jun-04	Johnston	Jocelyn	Professor, Univ of Kansas
Private Citizen (1 of 3)	30-Jun-06	Kinser	Sandi	Board member, Cloud Co. CC
School Board Member	30-Jun-08	Campbell	Carolyn	Member, USD 501 BOE
Sen. Min Ldr Apptee	January, 2005	Steiniger	Chris	Senator
Sen. President Apptee	January, 2005	Allen	Barbara	Senator
Township Official	30-Jun-08	Finney	Tom	Zeandale Township officer

Study Topic: After several meetings and much brainstorming about issues involving intergovernmental relations in Kansas, the KACIR has adopted the following as its study topic for 2004-2005:

“What governmental structures will allow for and promote growth and sustainability for the future of Kansas communities?”

Research Strategies: In order to address this study topic, the KACIR has selected four research questions. They are:

1. Are there current barriers which inhibit growth and sustainability for Kansas communities? The council has discussed both legal and political impediments to growth and sustainability. Chief among those impediments is the inability of local governments to merge. The Kansas Constitution leaves the issue of local government boundaries entirely in the hands of the Kansas Legislature. To date, there is no enabling legislation which would allow various local governments to merge (there is a process for cities which abut one another to consolidate into a single city). Therefore, even if the citizens in a particular area wanted different governments to consolidate, there is no established process for them to follow.

2. What models currently exist, in Kansas and elsewhere, for the efficient and effective delivery of public services? There are many examples of intergovernmental cooperation when it comes to specific governmental functions. Cities, counties, and school districts have a great deal of latitude and authority to consolidate functions and to work together on specific functions. When it comes to actual boundary consolidation, however, school districts have the authority to consolidate, but cities and counties do not.

3. How effective are existing incentives for changing the structure of government and what other incentives might be available for this purpose? Since 1969, there have only been 10 school district consolidations, despite the fact that school districts have the authority to consolidate with one another. A sense of losing one's community identity, financial challenges of combining funds, high school football scheduling, and a variety of other issues inhibit local districts from combining.

4. What are the political challenges which affect the implementation of structural change in government? There is a serious disincentive working against efficiency in government in that when local governments have been creative and have taken steps to provide certain services in a more efficient manner, they have been accused of “competing” with the private sector. A prime example of this phenomenon was found in the Greenbush School District which attempted to market a software program to offset the costs of development and save the district money.

Future Plans for the KACIR. The council is currently studying whether to recommend any legislation for the 2005 legislative session. As an initial step in this study, the KACIR is recommending two pieces of legislation for passage during the 2005 Legislative Session.

Legislative Proposals. The KACIR is recommending the following pieces of legislation be introduced and considered by the Kansas Legislature during the 2005 Session:

Legislative Proposal #1 – In order to promote efficiency in government, the KACIR believes that the citizens of Kansas ought to have the ability to reorganize local units of government to best suit local needs. To this end, we are recommending the passage of gateway legislation which would enable cities and counties to explore the possibility of consolidation. Voters in Shawnee County recently approved a ballot initiative to establish a commission to begin the process of consolidation. However, there is no enabling legislation which would allow the citizens of Shawnee County, or any other Kansas county, to begin this process. We believe that the Legislature should act quickly to authorize a process for the citizens of Shawnee County, and other counties where there is interest in the same issue, to pursue the reorganization of local governments. (See attachment)

Legislative Proposal #2 – The KACIR believes that the process for altering the boundaries of Kansas counties is antiquated and should be updated. We believe that the citizens of Kansas counties deserve the strongest measure of local control and self-determination. Therefore, we are recommending a change to K.S.A. 18-202 to make it feasible for the citizens of two or more counties to hold an election regarding their boundaries. (See attachment)

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Boehm', with a horizontal line extending to the right.

Chairman Michael Boehm, Mayor, Lenexa
December 1, 2004

Legislative Proposal #1
by the
Kansas Advisory Council on Intergovernmental Relations

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

New Section 1. As used in this act:

- (a) "Board" means the board of county commissioners.
- (b) "City" means any city.
- (c) "Commission" means a reorganization study commission selected pursuant to section 2, and amendments thereto.
- (d) "County" means any county.

New Sec. 2. (a) The board of county commissioners of a county and the governing body of any city or cities located within such county may adopt a joint resolution providing for the establishment of a reorganization study commission to prepare a plan for the reorganization of the county and such city or cities located in such county. If the governing body of a city within the county does not adopt such joint resolution, such city shall not be included within nor subject to the provisions of any reorganization plan in regard to the status of such city as a separate entity from the county.

Such resolution shall not be effective until the question has been submitted to and approved by a majority of the qualified electors of the county voting at an election thereon. Such election shall be called and held in the manner provided by the general bond law.

(b) Any resolution adopted pursuant to subsection (a) shall provide for the establishment of a reorganization study commission and shall provide either that the members be appointed or that the members be elected by the qualified electors of the county on a nonpartisan basis. If the commission is to be elected, the procedure for holding such election shall be determined by such resolution. The laws applicable to the procedure, manner and method provided for the election of county officers shall apply to the election of members of the commission except that such election shall be called in the manner provided by the general bond law.

(c) If a majority of the qualified electors of the county voting on a resolution submitted pursuant to subsection (a) vote in favor thereof, the commission shall be elected or appointed as provided by the resolution. The number of members on a reorganization study commission shall be determined by the resolution. At least 1/3 of the membership of a reorganization study commission shall be residents of the unincorporated area of the county.

New Sec. 3. (a) Within 30 days following the certification of the results of the election or appointment of members of the reorganization study commission, the chairperson of the board of county commissioners, acting as the temporary chairperson of the commission, shall call and hold an organizational meeting of the commission. The commission shall elect a chairperson, vice-chairperson and other officers deemed necessary. The

commission may adopt rules governing the conduct of its meetings.

(b) The commission shall be subject to the open meetings law and the open records law.

(c) Members of the commission shall be reimbursed for the actual and necessary expenses incurred in the performance of their official duties.

(d) The commission may appoint an executive director of the commission.

(e) The commission shall prepare and adopt a budget for the operation and functions of the commission and commission activities.

New Sec. 4. (a) The commission shall prepare and adopt a plan addressing the reorganization of the city or cities and county or certain city and county offices, functions, services and operations. The commission shall conduct such studies and investigations as it deems appropriate to complete its work. Such studies and investigations shall include, but not be limited to:

(1) Studies of the efficiency and effectiveness of the administrative operations of the city or cities and county.

(2) Studies of the costs and benefits of reorganizing the city or cities and county or certain city or cities and county offices, functions, services and operations.

(b) The commission shall hold public hearings for the purpose of receiving information and materials which will aid in the drafting of the plan.

(c) For the purposes of performing its studies and investigations, the commission or its executive director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commission or executive director deems relevant or material to its studies and investigation.

(d) The commission shall prepare and adopt a preliminary plan addressing the reorganization of the city or cities and county or certain city and county offices, functions, services and operations it deems advisable. Copies of the preliminary plan shall be filed with the county election officer, city clerk of each city to be reorganized and each public library within the county and shall be available to members of the public for inspection upon request. The commission shall hold at least two public hearings to obtain citizen views concerning the preliminary plan. At least seven days shall elapse between the holding of such hearings. Notice of such hearings shall be published at least once in a newspaper of general circulation within the county. Following the public hearings on the preliminary plan, the commission may adopt, or modify and adopt, the preliminary plan as the final plan.

(e) The final plan shall include the full text and an explanation of the proposed plan, and comments deemed desirable by the commission, a written opinion by an attorney admitted to practice law in the state of Kansas and retained by the executive director for such purpose that the proposed plan is not in conflict with the constitution or the laws of the state, and any minority reports. Copies of the final plan shall be filed with

the county election officer, city clerk of each city to be reorganized and each public library within the county and shall be available to members of the public for inspection upon request. The commission shall continue in existence at least 90 days following the submission of the final plan for approval at an election as provided by subsection (f).

(f) The final plan shall be submitted to the qualified electors of the county at the next general election of the county held at least 45 days following the adoption of the final plan by the commission. Such election shall be called and held by the county election officer in the manner provided by the general election law. A summary of the final plan shall be prepared by the commission and shall be published at least once each week for two consecutive weeks in a newspaper of general circulation within the county.

If a majority of the qualified electors of the county voting on the plan vote in favor thereof, the reorganization plan shall be implemented in the manner provided by the plan except that no city shall be reorganized with the county and no offices, functions, services or operations of a city shall be reorganized with the county unless such reorganization plan is approved by a majority of the qualified electors of such city voting at the election held on such plan.

There shall be printed on the ballots at any election called to approve the final plan the following statement:

"If the majority of the qualified electors of a county and the majority of the qualified electors of a city voting at the election to approve the final plan vote in favor of such plan, such city shall be included within and subject to the provisions of such plan.

If the majority of the qualified electors of a city voting at the election to approve the final plan, do not vote in favor of such plan, such city shall not be included within nor subject to the provisions of such plan in regard to the status of such city as a separate entity from the county."

If such a majority of the electors vote against such plan, the proposed reorganization plan shall not be implemented.

If the commission submits a final plan which does not recommend the reorganization of the city or cities and county or certain city and county offices, functions, services and operations, the provisions of this subsection shall not apply.

New Sec. 5. (a) Any plan submitted by the commission shall provide for the exercise of powers of local legislation and administration not inconsistent with the constitution or other laws of this state.

(b) If the commission submits a plan providing for the reorganization of certain city and county offices, functions, services and operations, the plan shall:

(1) Include a description of the form, structure, functions, powers and officers and the duties of such officers recommended in the plan.

(2) Provide for the method of amendment or abandonment of the plan.

(3) Authorize the election, appointment or elimination of elective officials and offices.

- (4) Specify the effective date of the reorganization.
- (5) In the case of multi-city reorganization with a county, the plan shall include provisions addressing the situation if the plan is approved by the electors of one, but not all cities to be reorganized under the plan.
- (6) Include other provisions determined necessary by the commission.
- (c) If the plan provides for the reorganization of the city or cities and county, in addition to the requirements of subsection (b) the plan shall:
 - (1) Fix the boundaries of the governing body's election districts, provide a method for changing the boundaries from time-to-time, any atlarge positions on the governing body, fix the number, term and initial compensation of the governing body of the reorganized city-county and the method of election.
 - (2) Determine whether elections of the governing body of the reorganized city-county shall be partisan or nonpartisan elections and the time at which such elections shall be held.
 - (3) Determine the distribution of legislative and administrative duties of the reorganized city-county officials, provide for reorganization or expansion of services as necessary, authorize the appointment of a reorganized city-county administrator or a city-county manager, if deemed advisable, and prescribe the general structure of the reorganized city-county government.
 - (4) Provide for the official name of the reorganized city-county.
 - (5) Provide for the transfer or other disposition of property and other rights, claims and assets of the county and city.

New Sec. 6. (a) If the voters approve a plan which provides for the reorganization of the city or cities and county, such reorganized city-county shall be subject to the provisions of this section.

- (b) The reorganized city-county shall be subject to the cash-basis and budget laws of the state of Kansas.
- (c) Except as provided in subsection (d), and in any other statute which specifically exempts bonds from the statutory limitations on bonded indebtedness, the limitation on bonded indebtedness of a reorganized city-county under this act shall be determined by the commission in the plan, but shall not exceed 30% of the assessed value of all tangible taxable property within such county on the preceding August 25.
- (d) The following shall not be included in computing the total bonded indebtedness of the reorganized city-county for the purposes of determining the limitations on bonded indebtedness:
 - (1) Bonds issued for the purpose of refunding outstanding debt, including outstanding bonds and matured coupons thereof, or judgments thereon.
 - (2) Bonds issued pursuant to the provisions of article 46 of chapter 19 of the Kansas Statutes Annotated, and amendments thereto.
 - (3) Bonds issued for the purpose of financing the construction or remodeling of a courthouse, jail or law enforcement center facility, which bonds are payable from the proceeds of a retailer's sales tax.
 - (4) Bonds issued for the purpose of acquiring, enlarging, extending

or improving any storm or sanitary sewer system.

(5) Bonds issued for the purpose of acquiring, enlarging, extending or improving any municipal utility.

(6) Bonds issued to pay the cost of improvements to intersections of streets and alleys or that portion of any street immediately in front of city or school district property.

(e) Any bonded indebtedness and interest thereon incurred by the city or cities or county prior to reorganization or refunded thereafter shall remain an obligation of the property subject to taxation for the payment thereof prior to such reorganization.

(f) Upon the effective date of the reorganization of the city or cities and county, any retailers' sales tax levied by the city or cities or county in accordance with K.S.A. 12-187 *et seq.*, and amendments thereto, prior to such date shall remain in full force and effect, except that part of the rate attributable to the city or cities to be reorganized shall not apply to retail sales in the cities which are not reorganized with the county. The reorganized city-county shall be a class A, B, C or D city as determined by the commission in the plan.

(g) Upon the effective date of the reorganization of the city or cities and county, the territory of the reorganized city-county shall include:

(1) All of the territory of the county for purposes of exercising the powers, duties and functions of a county.

(2) All of the territory of the county, except the territory of the cities which are not reorganized with the county and the unincorporated area of the county, for purposes of exercising the powers, duties and functions of a city.

(h) For the purposes of section 1 of article 5 of the constitution of the state of Kansas, the "voting area" for the governing body of the reorganized city-county shall include all the territory within the county.

(i) Except for the reorganized city-county and unless otherwise provided by law, other political subdivisions of the county shall not be affected by reorganization of the city or cities and county. Such other political subdivisions shall continue in existence and operation.

(j) Unless otherwise provided by law, the reorganized city-county shall be eligible for the distribution of any funds from the state and federal government as if no reorganization had occurred. Except as provided in this subsection, the population and assessed valuation of the territory of the reorganized city-county shall be considered its population and assessed valuation for purposes of the distribution of moneys from the state or federal government.

(k) The reorganized city-county shall be a county. The governing body of the reorganized city-county shall be considered county commissioners for the purposes of section 2 of article 4 of the constitution of the state of Kansas and shall have all the powers, functions and duties of a county and may exercise home rule powers in the manner and subject to the limitations provided by K.S.A. 19-101a, and amendments thereto, and other laws of this state.

The governing body of the reorganized city-county shall be responsible

for any duties or functions imposed by the constitution of the state of Kansas and other laws of this state upon any county office abolished by the reorganization plan. Such duties may be delegated by the governing body or as provided in the reorganization plan.

(l) The reorganized city-county shall be a city of the first, second or third class as determined by the commission in the plan. The governing body of the reorganized city-county shall have all the powers, functions and duties of a city of such class and may exercise home rule powers in the manner and subject to the limitations provided by article 12 of section 5 of the constitution of the state of Kansas and other laws of this state.

(m) The governing body of the reorganized city-county may create special service districts within the city-county and may levy taxes for services provided in such districts.

(n) Changes in the form of government approved by the voters in accordance with the reorganization plan are hereby declared to be legislative matters and subject to initiative and referendum in accordance with K.S.A. 12-3013 *et seq.*, and amendments thereto.

New Sec. 7. The board of county commissioners may levy a tax not to exceed one mill on all taxable tangible property of the county for the purpose of financing the costs incurred by the reorganization study commission while executing the powers, duties and functions of such commission. After the payment of such costs incurred by the commission any remaining moneys derived from such tax levy shall be transferred to the county general fund in the manner provided by K.S.A. 79-2958, and amendments thereto.

Sec. 8. K.S.A. 12-3909 is hereby amended to read as follows: 12-3909. Nothing in this act shall be construed as authorizing the reorganization of any political or taxing subdivision with any other political or taxing subdivision. Nothing in this act *K.S.A. 12-3901 through 12-3908, and amendments thereto*, shall be construed to authorize the closing or the change of use of any school or attendance facility.

Sec. 9. K.S.A. 2002 Supp. 19-205 is hereby amended to read as follows: 19-205. Except as provided by K.S.A. 12-344 and, 12-345, *sections 5 and 6, and amendments thereto*, no person holding any state, county, township or city office shall be eligible to the office of county commissioner in any county in this state.

Nothing in this section shall prohibit the appointment of any county commissioner to any state board, committee, council, commission or similar body which is established pursuant to statutory authority, so long as any county commissioner so appointed is not entitled to receive any pay, compensation, subsistence, mileage or expenses for serving on such body other than that which is provided by law to be paid in accordance with the provisions of K.S.A. 75-3223, and amendments thereto.

New Sec. 10. Sections 1 through 7, and amendments thereto, shall be known and may be cited as the efficiency in local government act.

Sec. 11. K.S.A. 12-3909 and K.S.A. 19-205 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Legislative Proposal #2
by the
Kansas Advisory Council on Intergovernmental Relations

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

Sec. 1. K.S.A. 18-202 is hereby amended to read as follows: That whenever the citizens of two or more counties desire a change in the boundaries thereof, they may petition their respective boards of county commissioners therefor, and each of said petitions shall designate the change desired, and shall be signed by none but legal voters of the county before whose board the same is presented, and shall be signed by at least ~~one-half~~ **5%** of such legal voters of each county respectively, to be ascertained from the last assessment rolls of the several township assessors in the county and accompanied by affidavits signed and sworn to by at least two credible witnesses, that the signatures to the petition are genuine, and that the persons signing the same are legal voters in said county: *Provided*, That before any petition shall be heard, satisfactory proof shall be made by affidavit, to said board, that at least three notices containing copies of such petition or petitions have been posted at least six weeks before the same shall be heard, in three public places in each township in the counties to be affected by such change of boundaries, one of which shall be kept posted upon the door of the office of the clerk of the district court of said counties, which notices shall contain a copy of the petition, and shall show the time of hearing: ~~*And provided further*, That if an equal number shall sign the remonstrances in each county where the petition is to be heard to the number signing the petitions, no election shall be held.~~ ***And provided further, that the boards of county commissioners for two or more counties may by resolution submit the question of a change in boundaries to an election in their respective counties without the prior submission of such petition.***

Sec. 2. K.S.A. 18-202 is hereby repealed.

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

Special Committee on Assessment and Taxation

EXCISE TAX AUTHORITY OF MUNICIPALITIES

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a two-fold approach to providing additional "breathing room" in order to assure that uniformity is restored to the local sales tax law on a permanent basis. The Committee recommends legislation which would reduce the number of classes in the local sales tax law to two by effectively extending additional sales tax authority to a number of cities. The Committee further recommends introduction of a proposed constitutional amendment that would expand to ten the number of classes the Legislature may utilize for the purpose of limiting or prohibiting taxation by cities. Finally, the Committee encourages cities to provide additional details with respect to the utilization of development excise tax revenues.

Proposed Legislation: The Committee recommends the introduction of one bill and one concurrent resolution on this topic.

BACKGROUND

At the conclusion of an interim study last fall, the 2003 Special Committee on Assessment and Taxation recommended a bill (SB 308) and a proposed constitutional amendment (SCR 1615) in order to assure that uniformity was restored to the local sales tax on a permanent basis as it relates to cities. (Neither of these measures ultimately was acted upon by the 2004 Legislature.)

The 2004 Legislature did consider a bill (HB 2834) which sought to impose certain requirements on the utilization of development excise taxes and impact fees by cities, but a subcommittee and the House Taxation Committee recommended the bill for interim study.

The 2004 Legislature also considered another proposal (HB 2935) which would have given cities, counties and school districts earnings and income tax surtax authority. The bill also would have granted sales tax and intangibles tax authority to school districts and eliminated sales tax rate caps currently applicable to cities and counties. Finally, various demand transfers for local units of government would have been repealed. This legislation also was

recommended by the House Taxation Committee for interim study.

The Legislative Coordinating Council therefore directed the Special Committee to study HB 2834 and the issues related to excise taxes versus impact fees, as well as HB 2935 relating to taxing authority of cities, counties, and school districts. The charge also included the study of the uniformity of current law as it relates to the taxing authority of cities. The Special Committee was asked to make any recommendations deemed appropriate to the 2005 Legislature.

Uniformity Issues—2003 Interim Study

The 2003 Special Committee observed that the people of Kansas, in 1960, had explicitly granted the Legislature the power to uniformly limit or prohibit taxation by cities and to establish up to four classes of cities for that purpose. (Local sales taxes subsequently were not authorized by the Legislature until the early 1970s.) That Committee also found that the Legislature in the early 1990s had inadvertently exceeded the permissible four classes of cities, an oversight which resulted in a 1996 court decision (*Home Builders Ass'n v. City of Overland Park*) that effectively granted cities

the power to charter out of many of the provisions in the local sales tax law. In recent years, a number of cities have in fact relied upon *Home Builders* as well as guidance from the Attorney General to approve charter ordinances and raise their local sales tax rates above the maximum authorized by state law.

The 2003 report expressed concern over the possibility that a city could subsequently decide to charter out of other provisions of the local sales tax statutes requiring state administration; barring multiple rates within a single jurisdiction; requiring an identical tax base with the state; or stipulating when rates and boundaries may change. Any such charter ordinance by a single city could conceivably cause the entire State of Kansas to be out of substantial compliance with the multistate Streamlined Sales and Use Tax Agreement. Moreover, cities also could theoretically opt out of the mandatory-election requirement prior to the imposition of taxes.

The Committee therefore recommended that, because of the complexity of the local sales tax provisions and the likelihood that additional arguments could be made in court with respect to the lack of uniformity, and because of the propensity of cities to request additional local sales tax authority from the Legislature, the Legislature adopt a two-fold approach to providing additional "breathing room" in order to assure that uniformity is restored on a permanent basis. This approach included SB 308, which reduced the number of classes of cities for sales tax purposes to two (while simultaneously expanding local taxing authority); and SCR 1615, a proposed constitutional amendment that would have expanded to ten the number of classes the Legislature may utilize for the purpose of limiting or prohibiting taxation by cities.

A number of cities in Johnson County sought to charter out of local sales tax requirements in 1992 in an effort to not have the tax on original construction labor services as part of their tax bases. But the Department

of Revenue refused to enforce those ordinances on administrative grounds. Officials from the Department have stated that from a legal standpoint, its ability to refuse to enforce similar charter ordinances in the future may be much weaker in the wake of the declaration of nonuniformity by the courts.

The City of Wamego, for example, has reportedly recently (June 2004) been considering a charter ordinance authorizing the imposition of a special 25-cent "entertainment" tax that would be applicable only for certain venues and events.

To the extent that cities have the ability to continue to charter out of KSA 12-194, which generally prohibits them from imposing most excise taxes other than sales and use taxes, it also is conceivable that they could attempt to impose various liquor, cigarette, severance or even corporation franchise taxes.

Development Excise Taxes

One type of tax that has been successfully imposed by cities in the wake of the nonuniformity of the excise tax prohibition has been development excise taxes (the subject of the *Home Builders*' case). HB 2834 is one of several pieces of legislation considered in recent years which would have made the development excise tax authority visible statutorily and would seek to impose certain requirements on cities imposing the taxes (including a document detailing development costs and the rational basis for the tax and its rate be prepared prior to imposition or modification of an existing tax; and an annual report be prepared detailing revenues generated and how they are expended). Proponents complained that the rate of development excise taxes levied by cities does not necessarily bear a rational basis to the added costs of development. Opponents argued that the legislation as written tended to confuse the development tax with an excise fee. A subcommittee comprised of Representatives O'Malley, Brunk, and Flora asked that the issue be

referred for interim study, a recommendation also made by the House Taxation Committee.

Additional Taxing Authority for Cities, Counties, USDs

Another bill (HB 2935) would have given cities, counties and school districts earnings and income tax surtax authority. The bill also would have granted sales tax and intangibles tax authority to school districts and eliminated sales tax rate caps currently applicable to cities and counties. Uniformity also would have been restored with respect to the application of the local sales tax law to cities. Attempts to utilize any of the new taxing authority would have required 2/3 majority votes of governing bodies and subsequent approval by voters at mandatory elections. Moreover, voters would have protest petition authority to seek elections to repeal any such taxes. Finally, various demand transfers for local units of government would have been permanently repealed. The House Taxation Committee also approved a motion recommending this legislation for interim study.

COMMITTEE ACTIVITIES

At the September meeting, the Committee received briefings on all the bills from staff and from staff of the Department of Revenue. During the public hearings, the Department expressed some concerns about additional administrative costs associated with the additional local taxing authority provided in HB 2935. A conferee from the Kansas Chamber of Commerce and Industry also testified in opposition to authorizing new local taxes as provided in HB 2935. A conferee from the Kansas Association of Counties said that while HB 2935 has a number of components that it could support, the organization could not at this time endorse the complete bill. The conferee suggested that restoration of revenue sharing and demand transfer moneys would be a more attractive option for rural counties than would additional local taxing authority. The League testified in opposition to HB 2834

regarding the attempt to regulate development excise taxes. Conferees representing builders testified as proponents to HB 2834. A conferee from the Kansas Association of School Boards asked that school districts be removed from the list of local units receiving additional taxing authority pursuant to HB 2935. The conferee stated that the matter of K-12 school finance and the responsibility of the state versus local units was the subject of litigation.

The Chairperson subsequently appointed a subcommittee to divide the issues into three distinct subtopics: uniformity; development excise tax authority; and additional taxing authority in general for local units. The members of the subcommittee met in October and discussed all three areas with various conferees. Proponents of HB 2834 said that they would sit down with officials from the City of Overland Park to see what sort of detail was visible in budget documents relating to the use of development excise tax revenues. The subcommittee chairperson asked that the proponents report back in November as to whether they felt the need to continue to push for visible statutory requirements relative to the excise tax.

At the November meeting, the proponents of HB 2834 indicated that they were not satisfied with what appeared in the city budget documents with respect to the use of development excise tax revenues; and that the two sides had agreed to disagree about the need to pursue the legislation.

CONCLUSIONS AND RECOMMENDATIONS

With respect to the uniformity issue, the Committee agrees with the approach recommended by the 2003 Special Committee about the importance of reestablishing uniformity on a permanent basis. The lack of state control over city sales and excise taxes authority, control which had been granted to the Legislature by the people of Kansas in 1960 before being removed in the 1990s when the permissible number of classes of cities was inadvertently exceeded

statutorily, represents a serious level of uncertainty for taxpayers, businesses, and the Department of Revenue.

Moreover, this concern over lack of state control over city sales taxes is magnified further by the fact that the lack of uniformity in the local sales tax statutes could imperil Kansas' participation in the multi-state streamlined sales tax effort—participation that is expected to greatly benefit cities in addition to the state.

Because of the complexity of the local sales tax provisions and the likelihood that additional arguments could be made in court with respect to the lack of uniformity; and because of the propensity of cities to request additional local sales tax authority from the Legislature, the Committee once again recommends a two-fold approach to providing additional "breathing room" in order to assure that uniformity is restored on a permanent basis. The Committee recommends legislation which would redefine the existing classes in the local sales tax law to create only two classes by effectively extending additional sales tax

authority to a number of cities. Enactment of this legislation would accomplish this recommendation. The Committee further recommends introduction of a proposed constitutional amendment that would expand to ten the number of classes the Legislature may utilize for the purpose of limiting or prohibiting taxation by cities. Adoption of a concurrent resolution would accomplish this recommendation.

With respect to development excise taxes, the Committee encourages cities to keep meeting with proponents of HB 2834 in order to provide assurances about the appropriate use of development excise taxes. The Committee notes that the use of such taxes in the future may well be restricted or curtailed by the Legislature as it addresses the broader questions of uniformity and city taxing authority in general.

Finally, the Committee makes no recommendation at this time regarding HB 2935 on the expansion of city, county, and school district taxing options.



OFFICERS

President
RON HAGEMAN
3401 Churchill
Manhattan, Ks 66503
785-537-4424
Fax 785-565-9793
hageman@networksplus.net

Vice-President
MIKE FLORY
813 Fairdale Road
Salina, KS 67401
785-825-5230
Fax: 785-820-8768
mflory@tri.net

Treasurer
GARY PASHMAN
6354 S.W. 10th Avenue
Topeka, KS 66615
785-273-1294
gpconst@earthlink.net

Secretary
FARROL BROWN
16514 S. Old Stage Road
Pretty Prairie, KS 67570
620-459-6629

H.B.A. ASSOCIATIONS
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STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS
COMMITTEE

REPRESENTATIVE JENE VICKREY, CHAIR

JAUNARY 20, 2005

REGARDING HCR 5001

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). KBIA is the statewide professional and trade association of the home building industry, representing approximately 3000 members.

We are in support of HCR 5001, which was recommended by the interim Special Committee on Assessment and Taxation. The purpose of this legislation is to change the state constitution to allow for more than four classes of cities. This limit was inadvertently exceeded by the Legislature. Ten classes will allow for more classes to be established by the Legislature for various reasons.

With the inadvertent exceeding of the current limit of four, cities may now charter out of statutes to do things the Legislature prohibited by statute. Of particular interest to home builders is the prohibition against excise taxes put in place in KSA 12-194. Excise taxes are being established by municipalities because they can charter out and do so due to the inadvertent exceeding of four classes of cities.

As a result, cities are establishing excise taxes on home building rather than impact fees. The difference is that impact fees must be rationally related to the activity on which they are collected and go through a public participation process. Excise taxes may be assessed by the passage of an ordinance by the city council and do not have to be spent on what they are collected for and may be established at any amount. They do not have to be justified by the cost of the development.

We would appreciate your support for HCR 5001.

House Gov. Org. & Elections

Date: 1-20-05

Attachment # 3



CHRISTINA M. WILSON, Executive Director

212 S.W. 8th Avenue, Suite 201 • Topeka, Ks 66603 • (785) 232-2131 • FAX (785) 232-3680



League of Kansas Municipalities

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

TO: House Governmental Organization and Elections Committee
FROM: Don Moler, Executive Director
RE: Opposition to HCR 5001
DATE: January 20, 2005

First I would like to thank the Committee for allowing the League to testify today in strong opposition to HCR 5001. Before discussing the merit, or in this case lack of merit, of HCR 5001, I would like to briefly discuss with the Committee a history of Constitutional Home Rule in Kansas and its effect on the people of Kansas.

The history of Constitutional home rule in Kansas is long and storied. In 1959 the Kansas Legislature passed legislation which would allow for the people of Kansas to decide whether they wished to have Constitutional home rule and the ability to locally govern their own affairs rather than having them controlled by Topeka. A statewide election was held on November 8, 1960 and at that time the people of Kansas voted for local control and Constitutional home rule in Kansas. The constitutional amendment, which is Article 12, Section 5 of the Kansas Constitution, became effective July 1, 1961. As a result, we have had Constitutional home rule, and local control by cities, and their citizens, for almost 44 years in Kansas. This system has worked extremely well and there have been a number of Kansas Supreme Court decisions interpreting the language of the Amendment.

On those issues where there is no overarching state position and one size does not fit all for cities across the state of Kansas, the ability to use Constitutional home rule is essential and is the cornerstone of local control. With that as a background, I hope it is clear to the Committee why the League of Kansas Municipalities is so concerned about any amendment to this portion of the Kansas Constitution.

I am here today to tell the Committee that the League of Kansas Municipalities opposes this piece of legislation as strenuously as we have ever opposed any piece of legislation in the 95 year history of the League. We are of the opinion that this is an unnecessary piece of legislation which subjects virtually all city authority to possible amendment or repeal. There are other, more viable methods for creating uniformity in the local sales tax act than to amend the Kansas Constitution. I would point out the existence of HB 2023, which currently resides in the House Taxation Committee. That bill is meant to create uniformity in the local sales tax act, and would achieve what is the stated goal of this legislation. As a result, the League is perplexed as to the true underlying motives for this legislation. We certainly hope that this is not an attempt to limit the people's right to local self control and government.

House Gov. Org. & Elections
Date: ~~1~~ 1-20-05
Attachment # 4

We hear repeatedly that local control is important to our citizens. The one size fits all attitude does not work when dealing with 627 cities throughout the State of Kansas, with the largest Wichita and the smallest Freeport, population six. Our citizens deserve, and I would suggest demand, that they are able to govern their own affairs at the city level throughout Kansas. Any effort to remove this autonomy and to try and centralize governmental control in Topeka is inappropriate and should be dismissed out of hand. As a result, the League of Kansas Municipalities is urging this Committee to overwhelmingly reject this legislation as unnecessary, and potentially harmful to the cities and citizens of Kansas.

Thank you for allowing the League to testify today concerning HCR 5001.



8500 Santa Fe Drive
Overland Park, Kansas 66212
• Fax: 913-895-5003
www.opkansas.org

Testimony Before The
House Governmental Organization and Elections Committee
HCR 5001

January 20, 2005

The City of Overland Park appreciates the opportunity to share with the committee its opposition to House Concurrent Resolution 5001. The City feels strongly that a constitutional amendment goes far beyond what is necessary to cure any problems seen by the Department of Revenue. Among the points to keep in mind when considering this issue are the following:

- The existing language of Kansas' constitutional Home Rule Amendment dates from 1960, forty-four years ago. Voters approved this language.
- If the motivation for HCR 5001 is to protect the State's participation in Streamlined Sales Tax Act, HCR 5001 is unnecessary because HB 2023 takes care of that situation.
- If the motivation for HCR 5001 is to return the local sales tax statutes to uniform applicability, HCR 5001 again is unnecessary because HB 2023 returns the local sales tax statutes to uniform applicability.
- Increasing the number of permissible tax classifications is an invitation to creating even greater non-uniformity.
- HB 2023 is evidence that the Legislature can legislate within the boundaries of the current Home Rule Amendment. There is no need to change the rules when HB 2023 shows the Legislature can live within the existing rules.

We respectfully request that the committee not recommend HCR 5001 favorably for passage.

House Gov. Org. & Elections
Date: 1-20-05
Attachment # 5



Testimony Before The

House Government Organizations and Elections Committee Opposing HCR 5001

January 20, 2005

Presented by Scott J. Schneider J.D.

The City of Wichita opposes HCR 5001 for both general and specific reasons. Generally, The City of Wichita is opposed to any legislation that diminishes the Home Rule authority of cities and removes the rights of citizens, through their locally elected representatives, to decide the standards and issues that are uniquely appropriate to their community. The City of Wichita has opposed legislation in the past that would preempt local control over certain issues of local concern and will continue to do so. In our view, HCR 5001 poses a threat to the very foundation of Home Rule for cities.

Home Rule is the power given to cities directly by Article 12, Section 5 of the Kansas Constitution to provide them “the largest measure of self government.” Simply put, Kansans voted in 1961 for a constitutional amendment endorsing the concept that government closest to the people governs best.

We oppose the specific measure because it will not bring about the desired outcome. To address the concerns raised by the Interim Special Committee on Assessment and Taxation, the question should be raised: What will change if the Constitution allows “10 classes of cities” rather than the current “4”? Even if adopted, HCR 5001 would not substantively change the way the Department of Revenue or the Legislature address local taxation.

Reviewing the larger picture, this issue arrives at this committee today because a hypothetical scenario was developed in the 2003 interim tax committee. That scenario read, “if any such charter ordinance by a single city could *conceivably* cause the entire State of Kansas to be out of *substantial* compliance with the multi-state Streamlined Sales and Use Tax Agreement.” The City of Wichita is not willing to risk their Home Rule authority over an unproven hypothetical scenario. The risk versus reward is both unfair and unnecessary.

While the City of Wichita will oppose legislation that seeks to remove local control over local sales and excise taxes, we believe the Legislature should honestly address tax issue directly through regular legislation, rather than open up a broadside against Home Rule by this proposed constitutional amendment.

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House Gov. Org. & Elections
Date: 1-20-05
Attachment # 6

Opponent

TESTIMONY BEFORE THE KANSAS HOUSE GOVERNMENTAL
ORGANIZATION AND ELECTIONS COMMITTEE

HCR 5001

Presented by Mayor Michael Boehm
City of Lenexa, Kansas

To: The Honorable Jene Vickrey, Chair
The Honorable Bonnie Huy, Vice Chair
Members of the House Governmental Organization & Elections Committee

The City of Lenexa strongly opposes HCR 5001, providing for a constitutional amendment to Article 12, Section 5 of the Kansas Constitution regarding Cities' Powers of Home Rule.

As this Committee will recall, over 43 years ago, in 1961, Kansas voters approved the Home Rule Amendment to the Constitution codified in Article 12, Section 5 of the Kansas Constitution. Home Rule is the foundation of local government and is to be liberally construed to empower cities the greatest latitude in determining local affairs. Home Rule allows cities the power to enact laws governing local concern, but maintains a balance with the State's authority to legislate matters of statewide concern.

HCR 5001 proposes to amend Article 12, Section 5 of the Kansas Constitution to increase the number of classes the Legislature may establish for the purpose of taxation. However, to Lenexa's knowledge, there has been no specific purpose articulated for this change. Constitutions are drafted with a certain degree of flexibility so they may adapt to societal changes and judicial interpretation. Amendments should be recommended only of necessity and not convenience. If the purpose of this constitutional amendment is to address a specific concern in current state law, have alternative statutory provisions or amendments been considered to address such concerns before resorting to a constitutional solution? As proposed, this constitutional amendment could have significant, unintended consequences on such matters as Home Rule authority, other existing statutory provisions and local government laws currently in effect.

Recommending a constitutional amendment is a significant step with potentially far-reaching consequences. The City of Lenexa is not convinced that a problem necessitating such a change has been established, or more importantly, that non-constitutional solutions have been explored. Therefore, the City respectfully requests this Committee decline HCR 5001 a favorable recommendation.

House Gov. Org. & Elections
Date: 1-20-05
Attachment # 7



Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director 913.573.5565
Don Denney, Media Relations Specialist 913.573.5544

HCR 5001 Uniform Sales Tax

Delivered January 20, 2005
House Governmental Organization and Elections Committee

The Unified Government of Wyandotte County/Kansas City opposes HCR 5001. The 160,000 citizens of Wyandotte County and the leaders they elect... including the Unified Commission and City Councils in Edwardsville and Bonner Springs... are capable and responsible enough to determine local taxing and spending policies without mandated limitations and restrictions imposed by the State Legislature.

Make no mistake... HCR 5001 is a Constitutional Amendment born out of suspicion and distrust of local government. It has been billed by staff and some legislators as a necessary measure to prevent all kinds of imagined ills... from being thrown out of compliance with the Streamline Sales Tax to the ability of cities to impose development excise taxes. HCR 5001 is an unnecessary... unwarranted intrusion on the Home Rule and local control rights granted Cities in the Kansas Constitution.

It is unfortunate many legislators believe their role as elected officials should extend well beyond being stewards of State Government. Many are eager to be watchdogs over local governments... restricting and preempting decisions made by citizens and local elected officials. What should be partnership between Local and State elected officials is too often transformed into punitive paternalism by the Legislature. HCR 5001 is yet another example.

Article 12... Section 5 of the Kansas Constitution begins: "Cities are hereby empowered to determine their local affairs and government... including the levying of taxes, excises, fees, charges and other extractions..." That's the Home Rule Amendment. It is the foundation of local government in Kansas and the benchmark of the right to determine our own destiny.

The local elected leaders in Kansas City, Edwardsville and Bonner Springs are committed to making Wyandotte County a great place to live...work and visit. They are also committed to making it an affordable community and to make sure taxpayers receive an excellent value for the tax dollars they pay. The State Legislature has its own budget problems to deal with... there is no need or reason for it to meddle in local affairs. And that is exactly what HCR 5001 is... legislative meddling under the guise of solving a problem that does not exist.

Since the early 1990's, the Kansas Legislature has ignored state law and refused to return to local governments the amount of revenue sharing and demand transfer funds spelled out in statute. Now those revenue sharing dollars are likely gone for good. Despite this erosion of funding... the Unified Government has cut taxes more than 20% in the last three years. The Unified Government Board of Commissioners has exhibited exemplary stewardship over the financial resources it is entrusted with managing.

The Unified Government urges the Kansas Legislature to defend and protect the Home Rule Rights and authority guaranteed to citizens and local governments in the Kansas Constitution.

House Gov. Org. & Elections
Date: 1-20-05
Attachment # 8



TRANSMITTAL/ACTION NOTE

DATE: January 19, 2005
TO: House Governmental Organization and Elections Committee
FROM: Ron R. Fehr, City Manager, City of Manhattan
SUBJECT: Constitutional Home Rule Amendment - Statement of Position

The City of Manhattan is requesting your support in voting "no" on HCR 5001.

- Streamlined Sales Tax Issue. There is no need for a constitutional amendment which opens up the Home Rule authority of cities.

Passing this legislation out of committee means that when HCR 5001 is heard on the House Floor, ALL of the powers of cities will be on the table for debate, amendment, and repeal. This is simply not acceptable in our view. If there is a problem with the Streamlined Sales Tax provisions, then the Legislature should fix that problem statutorily without opening up the Constitution.

The City of Manhattan appreciates your support and time to consider this important issue.

House Gov. Org. & Elections
Date: 1-20-05
Attachment # 9



**BEFORE THE HOUSE
GOVERNMENTAL ORGANIZATIONS & ELECTIONS COMMITTEE**

TESTIMONY IN OPPOSITION TO HCR 5001

**RAYMOND A. TOSO, MAYOR OF EMPORIA
JANUARY 20, 2005**

CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

My name is Ray Toso. I live in the City of Emporia, Kansas, and I have been the Mayor or a City Commissioner for a total of 18 years. I am also a Director of the Governing Board of the League of Kansas Municipalities. By profession, I am a certified real estate appraiser. Although I am not necessarily opposed to adding tax classifications, I am opposed to tinkering with the Home Rule Amendment. The state Constitution requires that the Legislature establish not more than 4 classes of cities for tax purposes (or the act is deemed non-uniform). Some believe that this may threaten the State's participation in the Streamlined Sales Tax project IF a city decided to charter out of some of the provisions of the sales tax act. However, it is currently within the power of the Legislature to statutorily reduce the number of sales tax classifications for cities with the passage of a simple bill. There is no need for a constitutional amendment which opens up the Home Rule authority of cities.

Section 5 of Article XII of the Kansas Constitution has to be one of the greatest innovations the legislature has ever passed to help local government. After July 1, 1961, cities no longer have to come to the legislature to obtain enabling legislation each time a city wants to undertake a new program. Home Rule is a grant of power to the cities to enable them to address local problems and concerns and to allow the state legislature to work on major, statewide issues such as school finance, and other state issues. Home Rule gives local government the flexibility it needs to address local issues brought to us by our constituents. If we can't solve the problem or concern locally, then it may be advanced to the state level for a possible legislative fix.

I am sure that many of you may have come up in local government either on a city council, county commission or a school board; so you know what I am talking about. Let the local governments solve those problems which they can do by leaving Home Rule intact. If I get a phone call from a citizen asking why the trash isn't picked up more than once a week, I can do something about it. I can obtain information from the City Manager. I can find out what the cost would be. I can, if I choose, introduce an ordinance to solve the problem. I have the flexibility to propose novel solutions. In that sense, the cities can be considered laboratories where innovative solutions can be tested; and, if successful, may result in a statewide application.

Let me give you one example: Keg Registration. The City of Emporia was the first

city in Kansas to try a Keg Registration Ordinance. We found that it could be implemented; it was possible. From our experience, our local State Senator introduced a statewide Keg Registration bill which was passed by the legislature and signed by the Governor. This is an example of how the cities can become laboratories for the testing of public policy, which can later be adopted statewide. Home Rule allows cities to innovate.

The problem with the proposed Resolution No. 5001, as I see it, is that it could become a Trojan horse. Once the Resolution reaches the floor of the House, or later the Senate, it could be amended to dilute Home Rule. Even if everyone on this committee believes in the concept of Home Rule, there is no guarantee that amendments would not be added. That's why I am urging you not to take that chance if you don't have to. If there is a problem with the Streamlined Sales Tax provisions, then the Legislature should fix that problem statutorily without opening up the Constitution. It would make sense to amend a statute to solve a problem rather than going through the lengthy and expensive process of amending the State Constitution.

Finally, I want to thank you for your work on the House Governmental Organization & Elections committee.



Ray Toso
Mayor
Emporia, Kansas



P.O. BOX 519
419 N. BROADWAY
ABILENE, KANSAS 67410-0519
PHONE: 785-263-2550
FAX: 785-263-2552
email: cityhall@jc.net
www.jc.net/~cityhall

January 20, 2005

To: Honorable Representative Jane Vickrey
Chair of the House Governmental Organization and Elections Committee
and Committee Members
State Capitol, Topeka, Kansas

This written testimony is presented by the City of Abilene to support the oral testimony regarding HCR 5001 by Mr. Don Molar the Executive Director of the League of Kansas Municipalities. As a representative of our city, I, too will be in attendance at your hearing regarding the bill on January 20th.

The City of Abilene governing body has concerns over the proposed Constitutional Home Rule Amendment to change the number of tax classifications that the State can establish for cities. It is our understanding that the legislature can change these classifications statutorily without amending the Constitution which would allow them to meet the requirements of the Streamlined Sales Tax Project.

Home rule was granted to cities in Kansas in 1961 by an amendment to the Kansas Constitution. This allows cities to pass ordinances without the need for legislative authorization except in regard to certain subjects which the home rule amendment reserves to the legislature. The home rule amendment also restricts the power of the legislature to treat cities differently by empowering cities to elect not to be bound by legislative enactments which do not apply uniformly to all cities.

Home rule allows the citizens of any city, through their elected representatives, the power to govern themselves. Local issues and problems are best dealt with at the local level by locally elected citizens. Cities need the flexibility to deal with each of their individual issues as no two cities are alike.

Examples of how home rule has allowed the City of Abilene to enact charter ordinances to meet the needs of the community include: 1) increasing the transient guest tax for promoting tourism and conventions and 2) allowed the City to establish, operate and maintain our storm water utility.

Cities home rule authority is democracy by the people to govern themselves at the local level. The existing home rule authority for Kansas cities should not be changed.

Please help cities maintain this local authority and vote "NO" on HCR 5001.

Sincerely,


John Zutavern - City Commissioner
For the Abilene City Commission

pc: Representative Shari Weber, Senator Pete Brungardt

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