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MITCH HOLMES

33RD DISTRICT

BARTON, EDWARDS, HODGEMAN, KIOWA, LANE, NESS,
PAWNEE, PRATT, RICE, RUSH, SCOTT & STAFFORD COUNTIES

Testimony on SB 338

February 2, 2016

Proponent

The 3 main causes of abandoned properties:

- Death of owner and disinterested heir
- Owner moved out and does not pay taxes or respond to notices
- Mortgage firms accounting issues

Documentable problems:

- Magnet for criminal activity
 - Drug use
 - Theft
 - Gang "turf"
 - Sexual assault of children
- Problems for Cities
 - Can't arrest for trespassing unless posted
 - Concealment of criminal activity
 - Clock starts over with minimal payment
 - Fire hazard
 - Statewide Issue
- Problems for neighbors
 - Fear for selves and children
 - Devalued property

I would recommend an amendment for the committee to consider based on testimony and conversations on the subject. The first two items deal with the problems faced in the neighborhood, and the last one is meant to keep irresponsible owners from "re-setting the clock" concerning delinquent taxes.

- (a) Law enforcement officers shall have authority to place no trespassing sign on property;
- (b) Law enforcement officers shall have authority to remove visual impediments, including, but not limited to, trees and shrubs, that could conceal criminal activity; and
- (c) The county may require full redemption of delinquent property taxes owed on the vacant property instead of allowing partial redemption and extension of the time when a tax foreclosure sale may be commenced as provided by K.S.A. 79-2401a(b)

Report of the Special Committee on Ethics, Elections and Local Government to the 2015 Kansas Legislature

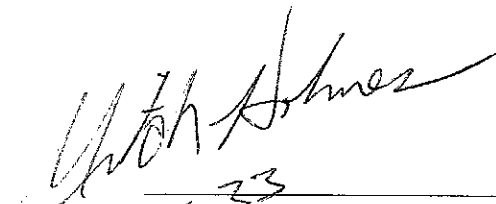
CHAIRPERSON: Senator Mitch Holmes

VICE-CHAIRPERSON: Representative Steve Huebert

OTHER MEMBERS: Senators Oletha Faust-Goudeau, Steve Fitzgerald, and Michael O'Donnell;
and Representatives John Barker, Keith Esau, Mike Kiegerl, and Tom Sawyer

STUDY TOPICS

- Review Issues Pertaining to Abandoned Properties. The study will include the following:
 - Review current statutes related to abandoned property;
 - Review economic and potential public safety issues for local communities; and
 - Review potential impact on state and local government revenues.
- Study Moving Elections to Fall and Consider 2014 SB 436 Concerning Consolidation of Law Enforcement Agencies
 - Study the subject of moving spring elections to the fall in order to increase voter turnout for local elections; and
 - Review 2014 SB 436 which addresses statutes that authorize Riley County to consolidate its law enforcement agencies and establish a Law Enforcement Director.


DIST 33

March 2015

Special Committee on Ethics, Elections and Local Government

ABANDONED PROPERTIES

Conclusions and Recommendations

The Committee makes no conclusions or recommendations.

Proposed Legislation: None.

BACKGROUND

The Legislative Coordinating Council (LCC) in 2014 created the Special Committee on Ethics, Elections and Local Government, which was composed of nine members. The LCC charge to the Committee included the following:

- Review issues pertaining to abandoned properties. The study is to include reviewing current relevant statutes, economic and potential public safety issues for local communities, and potential impact on state and local government revenues;
- Review 2014 SB 436 which addresses statutes that authorize Riley County to consolidate its law enforcement agencies and establish a Law Enforcement Director; and
- Study moving spring elections to the fall.

The Committee was granted three meeting days by the LCC. It met on October 10, November 21, and December 12, 2014. The issue of abandoned properties was addressed during the first and second Committee meetings.

KSA 12-1750 through 12-1756g govern cities' powers and duties regarding abandoned or dangerous properties. KSA 2014 Supp. 12-1750, subsection (c), defines "abandoned property" as:

(1) ☐ Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days; or

(2) ☐ commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties. "Commercial real estate" means any real estate for which the present use is other than one to four residential units or for agricultural purposes.

KSA 12-1751 grants cities the authority to do either of the following:

- Cause the repair or removal of, or to remove any structure located within the city, which may have become unsafe or dangerous; or
- Cause the rehabilitation of or to rehabilitate any abandoned property located within the city.

The remaining statutes prescribe the hearing process and response and remediation action process to be implemented and the time line of that process in the instance of a city's finding of unsafe or dangerous or abandoned property.

COMMITTEE ACTIVITIES

The Committee toured vacant or abandoned properties in Topeka and discussed with conferees several issues with respect to the problem of vacant, unsafe, and abandoned property. Among the issues are the following:

- Property rights, both of the owners of the vacant or abandoned property and of the neighbors;
- Neighborhood safety, with respect to both police and fire protection;
- Property values; and
- The definition of “abandoned” in statutes.

Led by a representative for the City of Topeka, the Committee visited two abandoned properties and also heard about issues regarding a third. The Topeka city representative explained each of the properties was an example of the kinds of problems abandoned housing represents.

The first property was located in a moderate-income neighborhood considered “healthy” by the city in terms of poverty, crime, and property values. However, the owner is deceased, there is a reverse mortgage on the property, and the property was foreclosed upon and sold in 2013.

The first property did not meet the legal definition of “abandoned property” because a minimal amount of taxes had been paid. Topeka city officials indicated the property is not inhabited, lighting around it is poor, vegetation overgrowth makes it difficult to watch the property, and police have no legal grounds to question trespassers because the property is not posted for no trespassing. Officials stated homeless persons look for places to get out of the weather, and, if someone were to light a fire inside this vacant home, the fire could spread. They explained firefighters must fight a house fire assuming the structure is occupied. As of 2013, the appraised value had dropped by nearly 46 percent, and the condition of the house depreciates surrounding property values.

The second property, located in a low-income neighborhood ranking as “needing intensive care” in terms of neighborhood health, is vacant, has been boarded up, and has been cited for 21 violations since 2010. The house has been in foreclosure several times and the current mortgage owner is in California and has not responded when contact attempts have been made. A neighbor indicated the property had been stripped of assets such as copper pipe, two doors were open, the cellar is not secure, and people have been seen entering and leaving. City officials said there is a large homeless population in the area due to the proximity of the Rescue Mission, the house has been used by people consuming alcohol and drugs, children might frequent the house in the summer, and the property is unsafe for young children to walk by on their way home from school in large part due to danger of sexual assault. Also, the second story is not structurally sound, the dilapidated structure hinders and endangers firefighters, and neighboring structures are close enough to be in danger if the property were to catch fire.

After the tour, Topeka city officials and citizens emphasized the above-mentioned, as well as additional issues. For example, vacant and abandoned properties involve the issue of private property rights—of the owner, as well as of the owners of neighboring properties—and the protection of neighbors. One official noted vacant and abandoned properties fall into several categories related to ownership and safety. For example, some, as indicated by the first property visited, do not meet the statutory definition of “abandoned.” The question of how to address the issues posed by such properties becomes complicated, and a property can be vacant for five or six years before a city can take action. A Topeka neighborhood association representative stated, among other things, members of his association estimated three or four abandoned properties exist on each street in that Topeka area. A police representative discussed crime prevention issues, such as partnering with neighbors and “environmental design” plans such as boarding up windows and perhaps painting over such boarding to indicate the property is under care and make use of such a structure by unauthorized people easier to detect.

A representative of the Topeka Police Department noted a Florida study indicates blocks with abandoned properties have 3.2 times as many drug calls, 1.8 times as many theft calls, and twice the number of violence calls than neighborhood blocks without abandoned buildings. Each police call means fewer resources available for other parts of the city.

With respect to fires, a Topeka Fire Department representative stated in the past three years, there had been 41 fires in vacant structures in Topeka—20 percent of all fires investigated. Code violations are frequently sent after investigation of such fires; what happens after that depends on the extent of damage to the structure.

A City of Wichita representative echoed the concerns explicated by the Topeka officials when he distributed a map of an area within Wichita with high incidence of delinquent property tax; the map was color coded to show the varying amounts of taxes owed and time of delinquency status. He said there are some intense areas of blight.

A League of Kansas Municipalities (LKM) representative summarized the findings of a survey LKM distributed to Kansas municipalities. Forty-eight cities responded about the number of abandoned properties. The LKM representative said the respondent cities represented cities from the smallest to the largest. The survey results constitute evidence abandoned properties appear to be a problem with cities of all sizes but particularly in cities with declining populations. The median time of the respondent cities' properties being abandoned was four years. Survey respondents indicated the most common type of owner was an individual who has moved away. Other owners were banks and mortgage companies, landlords, and non-local investors.

The LKM representative testified this topic is a priority with LKM, and organization representatives plan to meet with concerned

individuals to address the issue. Usually the city's inability to find the property owner is the biggest problem. The LKM representative reiterated an earlier observation that owners will pay enough of the delinquent tax bill so the property is not legally abandoned, so no action can be taken, and stated a change in the definition of "abandoned property" could help the cities.

A Kansas Association of Realtors representative testified from the perspective of property owners. In reference to KSA 12-1750, subsection (c), paragraph (1), he stated there should always be two factors used to determine whether a home is abandoned. He indicated support for continuing two years of delinquent ad valorem taxes as one factor; however, he questioned the part of the "abandoned property" definition stating the property must be vacant for 90 days, noting an owner could be absent for that period of time on a work assignment, for example. While agreeing the issues presented by city officials were problematic, the representative requested the Committee weigh carefully the need for an additional tool to address the issues related to deteriorating properties against the potential erosion of private property rights.

Representative Stan Frownfelter distributed a copy of the aforementioned statutes (with language from proposed 2013 HB 2075 inserted) and concluded the October hearing on this issue by quoting from a Kansas City Star editorial that stated vacant properties had become a major problem in Kansas City that "can create a chronic downdraft in property values," as well as creating other issues of safety and sanitation.

CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no conclusions or recommendations.