



Jim Howell
Chairman

*Commissioner – Fifth District
Board of County Commissioners
Sedgwick County, Kansas*

STATEMENT IN OPPOSITION TO SB 338

TO: Chairperson Julia Lynn, Vice-Chairperson Susan Wagle and members of the Senate Commerce Committee

FROM: James Howell, Chairman, Board of County Commissioners, Sedgwick County, KS

SB 338 should not become law. Although there are numerous reasons to oppose this bill, as outlined below, the reasons all boil down to this: SB 338 would expand a city's authority to take private property for nonpublic purposes (e.g. "economic development"). **As one person testifying on a prior version of this bill said, this is "eminent domain light."**

After the *Kelo* decision by the United States Supreme Court, the Kansas Legislature took steps to protect private property from being taken for economic development purposes. It does not make sense to now backtrack and allow private property to be used by a nonprofit organization for economic development purposes. This bill is an updated version of SB 84, which got out of your committee last year but never voted on by the full Senate and was eventually stricken from the calendar.

Proponents of prior versions of this bill say the city needs another tool for their toolbox. **Cities already have enough tools in their toolbox for dealing with problem properties.** If the property presents safety concerns, or is not up to code, cities already have ways of dealing with those problems. If weeds are too high, cities can deal with that as well. The problems with giving the city another tool for their toolbox that they don't need is they will want to use it. And like handing a child a hammer, everything will begin to look like a nail.

Proponents of prior versions of this bill have also raised the claim that often owners cannot be located. That may be true for properties where the taxes are not current; but the statute already covers that situation. If taxes are current, the county treasurer must have a valid address to send the tax statements to; it would seem that the owner could be easily located in those cases. The definitions in this bill are too broad and often subjective. First, and foremost, adding the new condition to what constitutes an "abandoned property" of residential real estate not occupied for 365 days (and also which has a "blighting influence" see below) has no limiting conditions. Under the proposed definition, even if the property taxes are being paid, the residence can still be considered abandoned. There may be very good reasons why an owner has not occupied a residence for 365 days. They may be on extended business assignments; serving our country overseas, the list could go on and on.

When that condition is coupled with the term "blighting influence" the potential for taking of private property exponentially expands. If a city official or employee thinks a property may be injurious to the "welfare" of other residents in the city, or that could have an adverse impact on other properties in "the area," what is injurious to the welfare, or what is an adverse impact? How could one property in one part of the city have any possible adverse impact to other residents of the city who live nowhere near the property? What constitutes the area that might suffer adverse impacts? Is it that block, two blocks away, a mile away?

Finally, the definition of "blighting influence" is somewhat confined by a (rather lengthy) list of conditions such as safety hazards, "uncleanliness," aesthetic concerns, etc. The initial concern is the subjective nature of some of these conditions. What would be "unclean"? What is "dilapidated" or "in disrepair"? When are growths or appearances "unsightly"? Do they have to be very unsightly, or perhaps just slightly unsightly? And again, who gets to determine that these conditions exist?

More importantly, this laundry list of conditions is preceded by the phrase: "including, but not limited to." Courts would interpret that phrase to allow the city to assert other possible "conditions" that in the city's view are similar to the condition expressly limited. Cities will certainly take this opportunity and stretch it as far as they can. There are so many reasons to oppose this bill. There are no defensible reasons to support the bill. The Sedgwick County Commission urges this bill not be passed.