

To: House Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: January 29, 2020

RE: Opposition to HB 2461

I want to thank Chairman Patton and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide testimony in opposition of HB 2461.

HB 2461, as proposed by the Attorney General, would preempt cities from contracting for legal services on a contingent fee basis without written permission from the attorney general. While it appears the intent of the bill is to coordinate class action litigation such as the opioid litigation being pursued by local government units, the bill is far broader.

The bill defines contingent as “a fee or other compensation contingent on the outcome of the matter for which the legal service is rendered.” This would prohibit cities not only from entering class actions, which are rare, but also far more common legal agreements such as payment arrangements for bond counsel, collections attorneys for things such as past due utilities, demolition costs, mowing, and some real estate transactions for the sale of excess governmental property.

Cities are unique as a local unit of government in that they are constitutionally empowered by Article 12 §5 to determine their local affairs and government. HB 2461 strips that power from local elected officials when deciding to enter certain legal arrangements and instead places that power solely in the hands of one elected official. The bill does not require the attorney general to give a basis for his or her denial, nor does it give a timeframe for which the attorney general must issue a denial, and gives no right to appeal any denial.

However, believing in the power of dialogue, once this bill was introduced, our organization held several productive meetings with the Attorney General to voice our concerns with this bill. While we continue to question the need to include cities in this legislation as it is rare for Kansas cities to enter these types of class actions, we can also understand the Attorney General’s goal of

coordinating the settlement of these types of massive class actions and recouping the maximum benefits for our state. Our preference would be for cities to simply be excluded from this legislation due to our unique constitutional governance authority. However, if this committee, in its wisdom, believes this bill should be pursued, we would ask that the bill be amended to reflect the concerns our organization has raised with the Attorney General. These amendments would add in a defined timeframe for the attorney general to respond to a city's request for waiver, criteria for when a waiver can be denied, a requirement for the attorney general to provide any denial in writing with an explanation of how the waiver would harm the interests of the state, a process for appeal of denials, and finally language making it clear this legislation is intended to deal with class actions and not interfere with a city's arrangement with bond counsel or other common contingent legal services employed by cities.

We would ask that these key amendments be made before the Committee passes HB 2461 to the full House for its consideration.