

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 11:05 a.m. on March 28, 2001, in Room 519-S of the Capitol.

All members were present except: Senators Allen and Jenkins – Excused

Committee staff present: April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Richard Cram, Kansas Department of Revenue
Senator Derek Schmidt

Others attending: See attached list.

Chairman Cobin opened a discussion on a previously heard bill, **HB 2221**, which was rereferred to the Committee after it reached the Senate floor at the request of the Department of Revenue who raised a question regarding the uniformity language put in the bill. He reminded the Committee that the bill dealt with Labette and Riley Counties and that provisions of **SB 311**, which was requested by the City of Coffeyville, were amended into it. He noted that the bill would authorize counties to impose a countywide sales tax for an economic development initiative or for infrastructure purposes, and it concerns health care service sales tax rates. With regard to the uniformity issue, he called the Committee's attention to additional amendments shown in a balloon of **HB 2221**, which was prepared by Richard Cram, Kansas Department of Revenue. (Attachment 1)

Mr. Cram pointed out language which he suggested be stricken on page 1, lines 38-40, and on page 3, lines 37-43 continuing to page 4, lines 1-2. As background information, he noted that the state constitution provides that, unless the sales tax statute is held to be uniformly applied to all cities within the same class and there are no more than four classes of cities, the sales tax statute is deemed to be nonuniform. He explained that, if the sales tax statute is nonuniform, cities can charter themselves out from under the sales tax statutes and enact whatever rates they want, and the action of the city would not necessarily be subject to the statutory election requirement for enacting local sales taxes. He noted that a both Kansas Supreme Court decision, *Clark v. the City of Overland Park* (226 K. 609), and a Court of Appeals decision, *Homebuilders Association v. City of Overland Park* (22 K. 649) indicate that, if the city's action is in some way dependent on what the county does, the courts tend to find nonuniformity. He explained that, with the current amendment to **HB 2221** under Section (a) (2) of K.S.A. 2000 Supp. 12-187, Class B cities can enact a local sales tax to fund health care facilities up to 1 percent, and Section (b) (5) authorizes counties to enact a 1 percent local sales tax to fund health care facilities. As the bill currently reads, the county and city together cannot enact more than a 1 percent total sales tax. He noted an argument has been raised that the rate is nonuniform if the city's rate would depend upon what the county's rate is. To address this issue of nonuniformity, Mr. Cram said the suggested amendments give both the city and the county the authority to enact up to a 1 percent local sales tax to fund health care facilities. With regard to his suggestion to delete lines 6-8 on page 6 of the bill, he explained that deleting the current language excepting "any such tax imposed by any class D city" would eliminate one more argument that the statute is not uniform.

Mr. Cram explained that his last suggested amendment would amend K.S.A. 2000 Supp. 12-192 to make it consistent with his suggested amendment to K.S.A. 2000 Supp. 12-187. He called attention to a copy of 12-192 included on the last three pages of his handout, noting that (d) (2) of 12-192, dealing with the interplay between a county tax and a city tax under 12-187 to fund a health care facility, would be deleted. He explained that, if both cities and counties are given the authority for a 1 percent sales tax in 12-187 as he suggested, (d) (2) of 12-192 is not necessary.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 11:05 a.m. on March 28, 2001, in Room 519-S of the Capitol.

Chairman Corbin noted that **HB 2221**, as amended and passed out of Committee, would have greatly affected a tax enacted by the City of Independence in November of 2000. The Department of Revenue authorized the City of Independence to begin collection of the tax on April 1, 2001; however, the committee amendments to the bill would make that authorization null and void. Senator Lee commented that part of the charter ordinance passed in Independence allows the city council to increase sales tax without a vote of the people.

Senator Schmidt, whose senatorial district includes Independence, stood to inform the Committee that, contrary to the opinion of the Revisor of Statutes, attorneys for the city are convinced that the effect of passing the language that was first in **SB 311** and then amended into **HB 2221** would have been to extinguish the city's legal authority to collect the two taxes the citizens of Independence voted on last November. In addition, he noted that, even if it did not actually negate the statute, it would have made the bonds the city intends to sell and then pay back with the stream of sales tax income virtually unmarketable because it would cast a shadow over the legitimacy of the income stream.

Senator Schmidt explained that the City of Independence put two separate city sales tax questions on the ballot last November, and both passed with approximately 70 percent of the vote. One question was for a one-half cent sales tax to finance a new waste water treatment plant the city is required to build under an environmental law. An additional three-fourths cent sales tax is for the city's quality of life initiative (library and swimming pool). The one-half cent was to have taken effect more or less immediately, and the three-fourths cent is to take effect as soon as an existing county three-fourths cent sales tax comes off.

Senator Schmidt went on to explain that the problem the City of Independence found with proposing the two city sales taxes was that both of the taxes added together exceeded the statutory cap for the city. Therefore, the city sought the advice of a bond counsel, who advised that the statute appeared to be nonuniform; therefore, the city should enact the city sales taxes through a charter ordinance. The citizens of Independence actually voted on a charter ordinance to charter out and raise one of the taxes. Assuming that the tax passed, the city would then have the authority to raise the second tax. He acknowledged that, with the passage of the charter ordinance, perhaps the city could continue raising sales taxes without a vote of the people, but he assured the Committee that the city has no intention of doing that. He pointed out that the city acted lawfully under current law, and the attempt now is to change the law in a manner which would make the action the city has already taken unlawful. In conclusion, Senator Schmidt emphasized that it is very important to the City of Independence that whatever is done with the bill does not have the effect of rendering their sales taxes uncollectible or their bonds unsaleable because it undermines investor confidence in the revenue stream.

Senator Lee began a discussion regarding the City of Independence being the only city in the state which has a charter ordinance allowing the collection of an additional local sales tax without a vote of the people. Don Hayward, Revisor of Statutes Office, noted that Overland Park and Bonner Springs chartered out of K.S.A. 12-194, which is a prohibition on excise taxes. In his opinion, none of the three cities could do more. He clarified that, under current law, the only instance in which the county shuts out the city is the health care arena. In his opinion, because the bill is post effective in nature with no retroactive application intended, Independence's charter would stand. In addition, he explained that the issuance of bonds with the revenue stream being from the sales tax revenue is a contract. Under the U.S. Constitution, the Legislature is prohibited from impairing that contract. In response to Senator Lee's concerns, he confirmed that the amendments proposed by Mr. Cram would allow both the city and county to increase local sales taxes by one percent but only by a vote of the people.

Senator moved to amend **HB 2221** as suggested by Richard Cram, Kansas Department of Revenue, seconded by Senator Praeger. The motion carried.

Senator Corbin began a discussion relating to the Committee's decision to amend a portion of **SB 311** into **HB 2221**. He informed the Committee that the City of Coffeyville has now requested that the bill be amended to allow the city to impose another one-half cent sales tax above two cents, not to expire for 20 years. Mr. Hayward recalled that, at the hearing on **SB 311**, Coffeyville proposed a one-half cent local sales tax as a Class D city for the purpose of providing financial assistance for the unified school district. When

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 11:05 a.m. on March 28, 2001, in Room 519-S of the Capitol.

SB 311 was amended into **HB 2221**, that provision was not included. The City of Coffeyville would like the one-half cent local sales tax provision without the school language and, in addition, would like the length of the sales tax extended from a maximum of 10 years to a maximum of 20 years. If allowed, the local sales tax would be increased by two and one-fourth cents. Following discussion, there was no motion to amend **HB 2221** as requested by the City of Coffeyville.

Chairman Corbin informed the Committee that a request had been made to remove Riley County from **HB 2221**. He said that he checked with Riley County representatives in the Senate and in the House, and they have no problem with the request. In addition, he had confirmed that the Riley County Commission has no problem with eliminating the county from the bill. He noted that Riley County can be returned to the bill through a floor amendment if for some reason the county changes its mind.

Senator Lee moved to delete Riley County from **HB 2221**, seconded by Senator Donovan. The motion carried.

Mr. Hayward explained that K.S.A. 12-189 was once again amended in **SB 253**; therefore, a technical amendment to **HB 2221** is needed to correct that conflict. Senator Pugh moved to conceptually amend **HB 2221** as suggested by Mr. Hayward, seconded by Senator Lee. The motion carried.

Senator Lee moved to recommend **HB 2221** favorably for passage as amended, seconded by Senator Praeger. The motion carried.

The minutes of the March 27, 2001, meeting were approved.

The meeting was adjourned at 11:45 a.m.

The next meeting date is to be announced.