

MINUTES

SPECIAL COMMITTEE ON LOCAL GOVERNMENT

October 23-24, 2003
Room 519-S—Statehouse

Members Present

Representative Jene Vickrey, Chairperson
Senator Barbara Allen, Vice Chairperson
Senator Mark Gilstrap
Senator Kay O'Connor
Senator Jean Schodorf
Representative Ruby Gilbert
Representative Ralph Ostmeyer
Representative Roger Reitz
Representative Tom Thull
Representative Roger Toelkes
Representative Jim Yonally

Staff Present

Mike Heim, Kansas Legislative Research Department
Theresa Kiernan, Office of Revisor of Statutes
Ken Wilke, Office of Revisor of Statutes
Dennis Hodges, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Maureen Stinson, Committee Secretary

Others Present

Don Moler, League of Kansas Municipalities
Jim Edwards, Kansas Association of School Boards
Randall Allen, Kansas Association of Counties
Harriet Lange, Kansas Association of Broadcasters
John Montgomery, Kansas Press Association and Hays Daily News
Carissa McKenzie, Horse Creek Ranch, Alta Vista
Dane Hicks, Anderson County Review, Garnett, Kansas
Patrick Lowry, Atchison Daily Globe
John Lewis, The Legal Record, Olathe
Tom Throne, Leavenworth Times
Al Bonner, Lawrence Journal World

Thursday, October 23

Morning Session

Topic No. 3—Local Government Newspaper Publication Requirements

Ken Wilke, Office of Revisor of Statutes, reviewed SB 77 and HB 2085 ([Attachment 1](#)), concerning allowing cities and other municipalities to use the Internet for official legal notice publications. He noted that this bill was introduced by the Senate Committee on Elections and Local Government on February 4, 2003. Hearings were held at that time with proponents from various municipalities and opponents in attendance. Mr. Wilke reviewed SB 77. The bill imposes requirements if an Internet website is selected as the official publication source. Those requirements for the web site are the following:

- the Internet website shall not be password protected;
- it must be accessible to members of the general public; and
- no fee may be associated with or charged for access.

The Senate Elections and Local Government Committee tabled SB 77 on February 20, 2003. HB 2085 is a parallel bill with the main difference being that SB 77 uses the term “publication source” and HB 2085 uses “publication site” ([Attachment 2](#)).

Don Moler, Executive Director, League of Kansas Municipalities, presented background information concerning the two bills, SB 77 and HB 2085 ([Attachment 3](#)). He stressed that the impetus for the proposed legislation came from the need of local government in Kansas to cut costs and to look for ways to be as efficient as possible. He stated that a conservative estimate, based upon a survey which was conducted by the League, would suggest that a savings of up to \$3 million per year could be realized by cities and counties in Kansas if they are allowed to publish legal notices on the Internet. Mr. Moler presented a compromise option for the two bills. This option would require newspaper publication of the following for each legal notification:

- a heading;
- a short summary of ordinance, resolution, etc.; and
- the website location of the complete text of legal notice.

Mr. Moler said that this option responds to all of the concerns raised by the media about public notice in local newspapers. The League estimates that the savings would still be well over \$2 million per year for Kansas property taxpayers.

Jim Edwards, Kansas Association of School Boards, expressed support for the broad concept that would permit local units of government the option of using the Internet as a means of publishing their legal notices ([Attachment 4](#)). He said that increased “public notice” helps citizens to become better informed and in general, more supportive of the actions taken by the schools. Mr. Edwards stated that the proposed legislation would allow for much broader distribution of information to members of the public. He urged the legislators to look at ways that they can enhance the communications that the public receives from local governmental entities.

Representative Yonally asked whether schools boards are included in the current versions of SB 77 and HB 2085. Mr. Edwards stated that they are not, but that during the hearings held in the 2003 Session schools had made the request to be included.

Randall Allen, Executive Director, Kansas Association of Counties, urged that state law be amended concerning the publication of lists of delinquent real estate and personal property taxpayers to require county treasurers to publish notice of delinquent taxpayers only once, rather than three times as is currently required by statute. He said the Association supports the concepts in HB 2085 and SB 77 allowing for boards of county commissioners the authority to designate Internet sites as their official publication sites, *especially with* some continuation of a newspaper publication of a heading with a short summary of the document, the website location of the complete text of the legal notice, and the name and title of the specific custodian of the record and his/her address and office hours where a person could examine the document during regular office hours.

Mr. Allen said that about 35 of the 105 counties have official websites.

Chairperson Vickrey stated that Bill Meyer of the *Marion County Record* was not present at the meeting but written testimony from him had been received and was distributed to Committee members ([Attachment 6](#)).

John Montgomery, President, Kansas Press Association, and Editor/Publisher of *The Hays Daily News* stated that public notices are one of the key components of a healthy open government.

Dane Hicks, Publisher, *The Anderson County Review*, said that public notices in newspapers work because they inform people and because they are cost effective ([Attachment 7](#)). He stated that in regards to publishing three times the names of delinquent property taxpayers, the benefit is easily quantified by comparing the cost of those publications in a county to the amount of delinquent tax revenues recouped by the county treasurer in the weeks after the notice.

Patrick Lowry, Editor/Publisher, *Atchison Daily Globe*, stated that the reason that delinquent tax lists and other items run more than once in the newspaper is because the legislature accorded a high level of importance to them ([Attachment 8](#)). He requested that the Committee recommend no changes to the current public notice statutes.

Tom Throne, Publisher, *The Leavenworth Times*, said publishing delinquent tax lists more than one time brings greater attention to the problem that there are people out there who do not pay their taxes ([Attachment 9](#)).

Harriet Lange, Executive Director, Kansas Association of Broadcasters, said the Kansas Sunshine Coalition for Open Government of which she is a member, did not testify in the 2003 Session in regards to SB 77. On behalf of the Kansas Association of Broadcasters, she stated they believe the Internet would be an effective means for disseminating information to the public. She said this approach would be more effective in informing the public and it would save local taxpayers tens of thousands of dollars.

Carissa McKenzie, Horse Creek Ranch, Wabaunsee County, requested that the Committee not recommend reducing the publishing of delinquent tax notices from the current three times ([Attachment 11](#)). She expressed opposition to using Internet notification for public notices ([Attachment 12](#)). Mrs. McKenzie stated that rural residents may have computers but no on-line access to the Internet. She requested that the Committee not recommend Internet notification.

John Lewis, Publisher, *The Legal Record*, Olathe, said that in 1981, the Legislature decided that if publishing the county delinquent tax lists two times was beneficial for the purpose of collecting back taxes, then three times would be even better ([Attachment 13](#)). HB 2573 was passed at that time, signed into law, and Kansas joined other states that require publication of this list at least three

times. He distributed copies of *Public Notice: An American Tradition—An Examination of the Role of Newspapers in the Public Notice* (Attachment 14).

Al Bonner, Advertising Director, *Lawrence Journal World*, addressed the multiple publication issue of property tax delinquency notices. He said keeping the current requirements assures that the maximum number of people will have the opportunity to read the legal advertisement message. He suggested varying the days of the week when the legal advertisement is run.

Written testimony only from the following people was distributed to the Committee:

- Phil McLaughlin, Publisher, *The Miami County Republic*, (Attachment 15);
- Tom Bell, Publisher, *The Salina Journal*, (Attachment 16); and
- David Powls, Publisher, *The Holton Recorder*, (Attachment 17)

Afternoon Session

Mike Heim, Kansas Legislative Research Department, reviewed the charge to the Committee regarding the publication topic. The Committee was charged to study the publication requirements for local units of governments. The study was to include a review of the number of the publications or notices required to be published in local newspapers and their purposes. Mr. Heim distributed copies of a computer search done by the Revisor of Statutes Office (Attachment 18). He had asked that the search locate the statutes in only five different chapters of the statute books that deal primarily with units of local government. He distributed copies of a statute dealing with the publication of budgets (Attachment 19) and handed out a portion of a 1982 interim study on protest petitions (Attachment 20). Mr. Heim distributed copies of pertinent pages of a Legislative Post Audit Committee report from February, 2003 (Attachment 21) concerning the financing of local governments and determining how to avoid future problems cause by state revenue shortfalls. Table I-4 of the report notes potential new revenue sources. A non-tax option noted concerned legal notices and the proposal to allow the legal notices, such as new city ordinances, to be published on the Internet.

Mr. Heim distributed copies of an April, 2003 article from *Communications and the Law* concerning state laws mandating online posting of legal and public notices traditionally published in newspapers (Attachment 22). Included in the article is a table of states that allow or require alternatives to full-text newspaper publications of public or legal notices.

After Committee discussion, the meeting adjourned.

Friday, October 24 Morning Session

Topic No. 1 — Kansas Open Records Act (KORA)

Norm Furse, Revisor of Statutes, distributed a revised list of exceptions prepared by his office which fall within the provisions of KSA 45-229 (Attachment 23).

Rick Thames, Editor, *The Wichita Eagle* and Chair, Kansas Press Association's Legislative Committee, said that the one overarching message in the sunset provision for open records exemptions is "let more sunshine in." He asked whether the purpose of the exemptions truly trump the public's very critical role of keeping tabs on its government (Attachment 24). He said the following exemptions frequently stand in the way of information vital to the public:

- 45-217,(Kansas Open Records Act)
The definition of a public agency provision which effectively excludes the records of dozens of private agencies and firms that have contracts with tax dollars to do vital public business.
- 45-221 (Kansas Open Records Act)
(7),(8) These exceptions allow anonymous donations to public institutions.
(10) criminal investigation records.
(30) records broadly described as "a clearly unwarranted invasion of privacy."
- 38-1507 child abuse records and reports.
- 22-2302 (2) probable cause affidavits.
- 22-2502 search warrants.

Mike Merriam, a Topeka lawyer representing the Kansas Press Association said his clients include many newspapers, broadcasters, wire services, media associations, and other news gathering interests (Attachment 25). He described problems with three of the most troublesome exception provisions of KORA:

- KSA 45-2221 (a)(4) personnel records.
- KSA 45-221 (a)(10) criminal investigation records.
- KSA 45-221 (a)(30) personal privacy.

Harriet Lange, Executive Director, Kansas Association of Broadcasters, stated that the broad interpretation applied to many of the exceptions is counter to the stated public policy of openness in the KORA (Attachment 26). She proposed the following changes:

- The definition for "criminal investigation records" should be tightened in KSA 45-217. The exception for these records many times is too broadly interpreted to include arrest records and incident reports.
- The exemption for personnel records in 45-221 (4) also should be tightened so that it may not be so broadly interpreted to include, for example, severance agreements.
- The exemption in 45-221 (25) should be narrowed dealing with legal opinions or advice from an attorney or advice from an attorney in which an attorney-client relationship exists.
- The exemption in 45-221 (30) dealing with information of a personal nature and "invasion of privacy."

Ned Seaton, General Manager, *The Manhattan Mercury*, said that doing away with the exemptions to the public records law is an excellent public policy direction (Attachment 27). He noted the following three exemptions for the Committee's review along with his opinion of why they are problematic:

- 45-221 (20), (21), (22) these loopholes allow local government to hide from the public what it working on;
- Criminal Investigation Files keeps police work secret; and
- sale prices of homes prevents the public from knowing if the local property appraiser is being fair.

Randy Brown, President, Kansas Sunshine Coalition for Local Government, suggested that the intent of the KORA reform is that the burden of retaining exemptions should be on those who request them—not on those who wish them removed (Attachment 28). He said that a change in the law, championed by Representative Joanne Pottorff, seems especially worthy. He said that change would require that records of private companies doing business with state government to make public their records dealing with the spending of public money.

Written testimony only was received from the following:

- Susan B. Cunningham, General Counsel, Kansas Corporation Commission, (Attachment 29);
- A.J. Kotich, Chief Counsel, Kansas Department of Human Resources, (Attachment 30); and
- Roger Werholtz, Secretary, Kansas Department of Corrections, (Attachment 31).

After Committee discussion, the meeting adjourned.

The next meeting dates for the Committee will be November 17 and 18, 2003.

Prepared by Maureen Stinson
Edited by Mike Heim

Approved by Committee on:

November 18, 2003
(date)