

## MINUTES

### JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

October 11-12, 2005  
Room 519-S—Statehouse

#### Members Present

Representative Lana Gordon, Chairperson  
Senator Nick Jordan, Vice Chairperson  
Senator Jim Barone  
Senator Karin Brownlee  
Senator Laura Kelly  
Senator David Wysong  
Representative Sydney Carlin  
Representative Don Dahl  
Representative Terri Huntington  
Representative Kenny Wilk  
Representative Jerry Williams  
Representative Valdenia Winn

#### Members Absent

None

#### Staff

Kathie Sparks, Kansas Legislative Research Department  
Audrey Dunkel, Kansas Legislative Research Department  
Helen Pedigo, Office of Revisor of Statutes  
Renaë Jefferies, Office of Revisor of Statutes  
Carlene Maag, Committee Secretary

#### Conferees

Bill Rich, Professor, Washburn University School of Law  
Rob Glicksman, Professor, University of Kansas School of Law  
Christy Caldwell, Topeka Chamber of Commerce  
Randall Allen, Executive Director, Kansas Association of Counties  
Terry Holdren, Kansas Farm Bureau  
Brent Haden, Kansas Livestock Association  
Clark Balderson, Film Producer  
Mike Wunch, Outpost Pictures  
Ben Meade  
Kris Kitchen, Kansas 1<sup>st</sup>, Kansas Department of Commerce

David Cleveland, Kansas Department of Commerce  
Blake Flanders, Kansas Board of Regents/Department of Commerce  
Paula Greathouse, Director of Workers' Compensation  
Keri Kish, Staff Attorney, Kansas Insurance Department

## **Others Attending**

See attached list.

## **Tuesday, October 11 Morning Session**

Chairperson Gordon called the meeting to order by welcoming the Committee and guests.

## **Eminent Domain**

Helen Pedigo, Revisor of Statutes Office, spoke about the current statutes pertaining to eminent domain, and explained that eminent domain is the inherent power of a governmental entity to take private property and convert it to public use without the owner's consent, conditioned upon the payment of just compensation. It is inherent in sovereignty and essential to the existence of government. The power of eminent domain belongs exclusively to the Legislative branch and to those entities or individuals authorized by statute to exercise the power. Local units of government in Kansas may exercise the power of eminent domain where the Legislature has delegated this authority to such unit or where the local government has home rule power ([Attachment 1](#)).

Ms. Pedigo also presented information about the U.S. Supreme Court decision in the *Kelo* case which was recently decided by the Court. This case is based on the Fifth Amendment of the *United States Constitution* that holds "nor shall private property be taken for public use, without just compensation." The decision was a 5-4 decision and the Court determined that New London's economic development plan served a "public purpose" under the "public use" provision of the *United States Constitution*. Those who govern the city were not confronted with the need to remove blight in the Fort Trumbull areas, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our defense. This area was a middle class area, not a blighted area that was being redeveloped. The tax revenues would be much greater with the redevelopment than with the properties and homes that were there.

In closing, the Court did not preempt additional state action. "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised" ([Attachment 2](#)).

Justice O'Connor's dissent stated there had to be a direct benefit to the public. The dissenters would have not decided this case this way, because there is not a direct benefit to the public with this project. They benefit from a larger tax base. There was concern that there was no harm in this particular area. Justice O'Connor's dissent basically said it needed to be a blighted area; an area that is in trouble in order to go in and have the ability or authority to take it.

Dr. Bill Rich, Professor of Law at Washburn University School of Law, was the next speaker. Dr. Rich pointed out that the language in the Fifth Amendment is typical of language that appears in the *Constitution*. It is typical in the sense that it is broad and does not necessarily lend itself to an easy interpretation. In fact, of the nine justices who participated in the *Kelo* case, it was clear that at least eight of those justices found that clause to be ambiguous. They found it needed something more from them in terms of interpretation beyond what appears in the language of the *Constitution*.

What role do the Supreme Court Justices play when making decisions? Chief Justice John Roberts compares his role to that of an “umpire.” He will call the “balls” and “strikes” while leaving it to others to make decisions about policy. At least eight members of the Supreme Court understood that in *Kelo*, the “Public Use Clause” was ambiguous and therefore required substantial analysis, including resolution of questions about the role of the courts and legislative bodies in making those determinations (Attachment 3).

Robert L. Glicksman, Professor of Law at the University of Kansas, spoke in regard to using eminent domain to promote economic development after *Kelo*. According to Professor Glicksman, the *Constitution* does not define what it means when it refers to a “public use.” There are at least two possibilities. First, under the so-called narrow view, a public use is one that gives the public the right to use the condemned property. Second, under the so-called broad view, a use of condemned property is “public” if the use benefits or provides advantages to the public, even if the public does not actually possess or use the land. The courts wavered between these two conceptions of public use limitations throughout the early 19<sup>th</sup> century. More recently, the Supreme Court has strongly endorsed the broad view.

Since the U.S. Supreme Court’s decision in *Kelo*, the legislatures of other states have considered the adoption of statutory restrictions on the use of the power of eminent domain, and, in particular, on the power to use eminent domain to promote private economic development. There are at least five different types of legislation that have been or are being considered in the wake of *Kelo*.

Each of them restricts the use of eminent domain for economic development purposes to some extent.

- Bills that only make procedural changes to the eminent domain process;
- Bills that impose political obstacles to the use of eminent domain for economic development purposes;
- Bills that allow eminent domain to be used only for a “state public purpose” or a “recognized public use without defining what constitutes such purposes or uses;
- Bills that limit the use of eminent domain for economic development purposes to blighted properties only, or to areas where the majority of properties are blighted and the remaining parcels are necessary to complete a redevelopment plan; or
- Bills that prohibit the use of eminent domain for economic development, for the primary purpose of generating additional tax revenue, or to transfer private property to another private use, sometimes with exceptions for blighted properties.

The U.S. Congress also is considering bills that would restrict the use of eminent domain (Attachment 4).

Christy Caldwell, Vice President for Governmental Relations, Greater Topeka Chamber of Commerce, spoke about the recent use of eminent domain for economic development purposes in Shawnee County. The Chamber's position is that the taking of property for economic development was indeed for the good of the citizens in Shawnee County and even citizens from surrounding counties. We understand that taking private property through eminent domain is a very serious issue, and try to avoid it until it is the only option available.

During the 2004 Session, legislation was considered but failed to pass which would have eliminated the use of eminent domain for economic purposes, a group of interested people held discussions about eminent domain. This group met a number of times but were unsuccessful in coming to agreement on the use of eminent domain for economic development purposes (Attachment 5).

Some of the points the group did agree upon were:

- The scope of debate does not focus on the use of eminent domain for economic development purposes within city limits.
- The issue is not with the use of eminent domain when TIF financing is used.
- The Cowley County lake concept was cause for the most recent legislation (SB 547) regarding eminent domain.
- In order to alleviate some confusion and reduce intimidation or the perception of intimidation, the state should develop a brochure in "plain language" that describes the process of eminent domain.

Some issues the group did not agree upon were:

- There is not a problem with current law regarding eminent domain.
- There is a problem with determination of value of property being taken.
- It is in Kansas' best interest to hold off changes to state laws governing the use of eminent domain for economic development purposes until the U.S. Supreme Court renders a decision.

When asked what prevented the group from coming to an agreement on some issues, it was thought that at the time, there were a number of philosophical reasons. There were those in the group who believed that there should be no change, and those who felt there should be significant change. Common ground could not be reached at that time.

Randall Allen, Executive Director, Kansas Association of Counties, was introduced by Chairperson Gordon and spoke about eminent domain as currently used by the counties in Kansas. Mr. Allen stated that counties are one of the entities of local government that has eminent domain power. The local boards of county commissioners take the power of eminent domain very seriously. There are only a couple of instances in the past 10 years in which boards of county commissioners have used eminent domain for purposes of economic development. One being the speedway case in Wyandotte County, and the other being the Target Distribution Center in Shawnee County. Both of the projects for which counties have utilized eminent domain for economic development have been an unqualified success.

Mr. Allen quoted Secretary Fricke in saying the ability to utilize eminent domain, after other options have been exhausted, is very important to retain so that communities are able to complete major economic development projects. The Kansas Association of Counties urges caution to the Legislature in considering proposals changing current eminent domain law. Finally, the Association respectfully requests that no legislation be enacted which would deprive counties of the right to exercise eminent domain for public purposes, including economic development (Attachment 6).

Terry Holdren, Director of Governmental Relations, Kansas Farm Bureau (KFB), spoke about eminent domain and how it affects farm and ranch families. Members have long been outspoken about intrusion and interference with private property rights by governments, especially when that action results in land being taken from one owner and subsequently conveyed to another under the auspices of economic development. Kansas Farm Bureau policy states that eminent domain procedure should be used only for legitimate governmental purposes. It is our belief that economic development practices are not legitimate uses of the power.

Kansas Farm Bureau supports exceptions in the statutes for condemnation of property that is unoccupied, unused, or constitutes waste or that is known to be controlled by a hospital or utility. Finally, KFB is in support of the bill that has been drafted recently by Senators Schmidt and Goodwin (Attachment 7).

Brent Haden, Assistant Counsel, Kansas Livestock Association (KLA), was the next speaker. Mr. Haden said that KLA recognizes that there are legitimate exercises of eminent domain, such as for roads, sewers, utilities, and hospitals. KLA is in support of the bill proposed by Senator Goodwin and Senator Schmidt (Attachment 8).

The final conferee on eminent domain was John Todd, a real estate broker and land developer from Wichita. Mr. Todd is in support of the proposition to amend Article 15 of the *Kansas Constitution* by adding language that states: "Private property shall not be taken except for public use, and private property shall not be taken without just compensation. The taking of private property with the intent to or in anticipation of selling, leasing or otherwise transferring any interest in the property to any private entity is not a valid public use and is prohibited."

Mr. Todd went on to say that in an economically free society, the fundamental function of government is the protection of private property and the provision of a stable infrastructure for a voluntary exchange system (Attachment 9). Written testimony was provided to the Committee members (Attachments 10 and 11).

*Senator Barone made a motion and Senator Jordan seconded that the minutes of the September 20-21, 2005, meeting be approved. A vote was taken. The minutes were approved.*

## **Film Industry in Kansas**

Chairperson Gordon introduced a bill and asked that Helen Pedigo explain the bill. The purpose of this bill is to facilitate the availability of equity investment in film production businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas film production business as job and wealth creating enterprises, by granting tax credits against the Kansas income tax liability of those investing in film production businesses. An investor is an accredited individual investor of high worth. A Kansas film production business is one that is domiciled in Kansas or that does film production primarily in Kansas. Determination of a business that is a qualified Kansas film production business would be made by the Secretary of Commerce. Criteria would include gross revenue of more than \$5 million during the most recent tax year and business operation of less than five years.

The incentive provided in the bill, which would end after 2011, is a 50 percent tax credit toward Kansas income tax, with a cap of \$50,000 investment to a single qualified Kansas film production business. The credit for investment could be received by no more than five Kansas film production businesses. The maximum amount of tax credits allowed per year shall not exceed \$1 million. The bill also requires reporting of financial data and provides a clawback provision (Attachment 12).

*A motion was made by Representative Winn to accept this bill as a committee bill, seconded by Representative Carlin. A vote was taken, motion passed.*

## **Afternoon Session**

### **Film Industry**

The afternoon portion was held at Westar Energy Auditorium. Clark Balderson, Producer of the movie, "Wamego: Making Movies Anywhere," gave the Committee an overview of film making in Kansas. The movie and two other promotional films were viewed by the Committee members.

Mr. Balderson stated that incentives from the state would be helpful. Government does not need to step up, however, the business community needs to step up. If the business community steps up, government will follow. Government would be best served to help students and the educational community, which in turn will create an inspiring atmosphere where people will want to stay. A detective series that will take six months to shoot has been given clearance by his client that, if they land the job, can be filmed in Kansas. He believes that this is a step in the right of direction.

Mike Wunsch, Outpost Pictures, spoke briefly to the Committee. He stated that the competition needs to be Kansas against the world, and not Kansas against itself. Outpost Pictures is built around a core team of experienced broadcast production professionals, equipped with digital equipment and essential support gear. Outpost Pictures actively partners with other creative professionals on co-production opportunities for distribution and television programming. Outpost Pictures supports independent film and television production business in this region (Attachment 13).

The Committee received written testimony from Howard Fricke, Secretary, Department of Commerce, which updated the Committee members on the Kansas Film Industry Task Force (Attachment 14).

The meeting was adjourned until Wednesday, October 12.

## **Wednesday, October 12 Morning Session**

The meeting was reconvened by the Chairperson, who introduced Ben Meade, a film professor and film maker, who spoke on film development and film making in Kansas. Mr. Meade stated that it is not the Committee's job to make him successful as a film maker. He believes independent film has a lot to do with being economically independent.

The conferee hoped we could concentrate on how to support people who bring something to the table, who invest their own time and resources. Mr. Meade does not think it is necessary to

have money thrown his way. A lot of emphasis needs to be put in the film program at KU. A great model is the one employed by Pittsburgh, Pennsylvania. This model may not be the answer for Kansas; however, there are alternative methods. Mr. Meade stated that methods to market and utilize space and locations would be helpful for independent film makers. In addition, to attract film makers to Kansas or to stay in Kansas, Mr. Meade made the following suggestions.

- Smaller tax incentives for small independent film makers, such as deductibility of production costs on a state level and possibly on a limited bases, or a case-by-case basis.
- Grants from the government for small loans for production costs that allow for the films to be distributed prior to repayment would also be of benefit.

Finally, he stated that it is more important to have film companies in Kansas than film projects. If film companies and film makers stay in Kansas, the money also will stay in Kansas.

The Committee was given a handout listing the film incentives offered in all 50 states ([Attachment 15](#)).

## **Workforce Development**

Kris Kitchen, Executive Director of Heartland Works and also a consultant for the Kansas Department of Commerce, talked about the federally funded Workforce Investment Act programs in Kansas. The State of Kansas is divided into five local workforce investment areas. Local areas are administered by different groups or individuals and local workforce boards are established in each area. They are appointed by chief elected officials and the criteria are established by the Governor. The Chair of each local workforce board must be from the private sector.

The role of the local workforce investment boards is to develop and submit a two-year local plan, select local one-stop operators, and identify eligible providers for training services and youth activities. The local workforce investment boards provide oversight of funded programs, negotiate local performance measures, and develop budgets. However, federal law mandates how funds are distributed. The adult and youth formula funds are allocated by three areas.

Dave Cleveland, Kansas Department of Commerce, spoke about the Kansas 1<sup>st</sup> Initiative; and Kansas Industrial Training, Kansas Industrial Retraining, and Investments in Major Projects and Comprehensive Training programs.

Blake Flanders spoke about the Kansas Board of Regents Workforce Development Kansas 1<sup>st</sup> Career and Technical Education (CTE) program ([Attachment 16](#)).

Written testimony from Dave Geist, Executive Director, Southwest Kansas Area Agency on Aging, was given to the Committee members ([Attachment 17](#)).

The Committee members had several questions regarding Workforce Development, some of which included the following:

- Who in Kansas are involved in Workforce Development and how does the money flow?

- Where do the federal Workforce Investment Act (WIA) funds enter the State and who appropriates it?
- What workforce funding is made available for the State Board of Regents and how is it spent?
- What portions of the WIA funding is spent by the local workforce boards in Kansas?
- What are the guidelines on WIA spending?
- How are our senior citizens funded? What type of programs and where are these programs?
- How many people served? What are the federally mandated statistics?
- What is the difference between Workforce Development prior to Commerce and after administered by Commerce?
- How are "One Stop" Centers funded? How do citizens rate these centers?
- What percent of WIA funds are spent on administration?

### **Afternoon Session**

The meeting was reconvened by the Chairperson.

### **Workers' Compensation**

Paula Greathouse, Director of Workers' Compensation, Kansas Department of Labor, spoke to the Committee about the Workers Compensation Fund Oversight Committee.

Ms. Greathouse provided the Committee with a handout discussing the role of the Workers Compensation Fund Oversight Committee (Attachment 18). Ms. Greathouse stated the Committee was formed to make sure expenditures were reasonable and make sure the Fund was run in a business-like manner. The Committee would meet on additional issues as they came up.

In addition, a representative of the Kansas Insurance Department provided a handout about the Fund performance (Attachment 19).

Staff presented a bill draft pertaining to abolishment of the Workers Compensation Fund Oversight Committee and delegation of responsibilities and duties to the Kansas Insurance Department (Attachment 20).

*A motion was made by Senator Jordan and seconded by Senator Brownlee to introduce the bill as presented by staff as a house bill for the next session. A vote taken, motion passed.*



There was discussion on items pertaining to the Committee Report.

*A motion was made by Senator Brownlee and seconded by Senator Jordan that the Committee recommends to the Legislative Coordinating Council that they authorize Jeff Russell to pursue the project of a film documentary of the Capitol renovation project and that he be encouraged to pursue public/private partnerships to accomplish it. A vote taken, motion passed.*

In addition, the Chairperson was asked to request two additional meeting days from the Legislative Coordinating Council, to further discuss the Workforce Development Act and other state agencies.

The meeting was adjourned at 3:15 p.m.

Prepared by Carlene Maag  
Edited by Kathie Sparks

Approved by Committee on:

December 14, 2005  
(date)