

Approved: 04/26/93
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Rochelle Chronister at 11:00 a.m. on March 31, 1993 in Room 514-S of the Capitol.

All members were present except: Rep. Keith Roe (excused absence)

Committee staff present: Diane Duffy, Legislative Research Department
Timothy Colton, Legislative Research Department
Jim Wilson, Revisor of Statutes
Jerry Cole, Committee Secretary
Sharon Schwartz, Administrative Assistant

Conferees appearing before the committee:

John Badger, Department of Social and Rehabilitation Services
Rep. Ed McKechnie, co-sponsor SB 350
Zoel Parenteau, KPTS-TV Wichita
Howard Miller, KANU-FM Lawrence
Jack Shipman, Department of Administration
Bob Wunsch, University of Kansas Medical Center (KUMC)
Dr. Roger Lambson, KUMC

Others attending: See attached list

Rep. Teagarden made a motion to adopt the minutes as presented for March 22 - March 26. Rep. Jennison seconded the motion and it carried.

John Badger, Department of Social and Rehabilitation Services, testified for the Secretary as a proponent of SB 317. (See Attachment 1). Rep. Teagarden moved to pass the bill favorably, seconded by Rep. Charlton and carried.

Rep. Ed McKechnie, co-sponsor of SB 350, explained the bill and offered a balloon amendment. (See Attachments 2 & 2a). Zoel Parenteau, KPTS-TV Wichita, and Howard Hill, KANU-FM Lawrence, made a joint presentation to the committee in favor of the bill. (See Attachment 3).

Bob Wunsch, KUMC, testified in support of SB 386 and offered amendments. (See Attachment 4). Jack Shipman, Department of Administration, also favored the bill offering testimony and amendments thereto. (See Attachments 5 & 5a). Dr. Roger Lambson, KUMC, offered comments favoring the legislation. (See Attachment 6). Rep. Kline made a motion to include a sunset provision in the bill. Rep. Heinemann seconded the motion and it carried. Rep. Heinemann moved the bill as amended. Rep. Gatlin seconded the motion and it carried.

Rep. Teagarden made a motion amending SB 350: (1) clarifying language changes to page 4 line 43 and page 5 line 1, that reductions were only appropriate if the legislature reduced sponsoring institutions (2) adoption of Rep. McKechnie's balloon amendment (See Attachment 2a), (3) making the effective date of the bill July 1, 1994. Rep. Gatlin seconded his motion and Rep. Heinemann called for a division of the proposed amendments. All three proposed amendments carried. Rep. Teagarden made a motion for favorable recommendation of the bill as amended. Rep. Blumenthal seconded the motion and it carried. Chairman Chronister adjourned the meeting at 1:00 p.m.

The next meeting is scheduled for April 01, 1993 at 11:00 a.m.

GUEST LIST

	NAME (Please print)	ADDRESS	COMPANY/ORGANIZATION
1	Robert Wunsch	Lawrence	KVMC
2	WARREN CORMAN	TOPEKA	BD. OF REGENTS
3	J DAVE DEBISTAN	TOPEKA	DIV. ARCH. SERVICES
4	ROGER O LAMBSON	Morrison	KVMC
5	MARY JANE BRADLEY	TOPEKA	private citizen
6	Andy Schauf	TOPEKA	DISC
7	Elaine Frisbie	TOPEKA	Div. of Budget
8	Dele Anderson	TOPEKA	KTWH
9	ZOE PARONTEAU	WICHITA	KPTS
10	Howard Hill	Lawrence	KANU
11	Linda Kosmussen	Topeka	Dept of Admin
12	B. mariani	Topeka	"
13	Karen Sparks	"	Div of Budget
14	Debbie Manuel	Topeka	Div. of Purchases
15	Jack R. Shipman	"	" " "
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KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

House Appropriations Committee
Testimony on Senate Bill 317

March 31, 1993

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

Mr. Chairman and members of the committee, thank you for this opportunity to address you on Senate Bill 317. The Department of Social and Rehabilitation Services requested this bill to prevent medical assistance applicants from disclaiming inheritances. We support passage of this bill.

Under K.A.R. 30-4-39(e), medical assistance recipients must meet their own needs insofar as they are capable. K.A.R. 30-4-55(e) and (f) provide that the client must cooperate with the agency in obtaining resources, and particularly third party resources for medical services. Under federal law, medicaid is to be the payor of last resort (42 U.S.C. Sec. 1396b[o]). Other medicaid rules provide that medical assistance recipients or applicants who transfer resources for inadequate consideration may be ineligible for up to 30 months from receiving nursing facility coverage under their medical card. Under Kansas law, people who stand to inherit money from a will may disclaim their interest in the inheritance.

The current policy of SRS is to consider a client who disclaims an inheritance ineligible due to having transferred a resource. Some states have, through legislation, declared that disclaimers will not serve to make a client eligible for medical assistance. As one example of a state which has decided this matter through case law, the New York Supreme Court, Appellate Division declared that disclaimers were the same as transfers. In re Scrivani, 455 N.Y.S.2d 505 (1982). However, there is no known Kansas case law on point.

The current SRS policy of finding ineligibility due to disclaimers is presently under attack in Court by a claim that it is contrary to Kansas common law. The purpose of this bill is to codify current SRS policy and to ensure that medical assistance recipients and applicants do not divert resources from being available to cover nursing facility care by signing a disclaimer of an inheritance.

SRS supported the senate committee amendment to remove some possible ambiguities, and we would support passage of this bill.

Donna L. Whiteman
Secretary
(913) 296-3271

ATTACHMENT 1

STATE OF KANSAS



ED McKECHNIE
REPRESENTATIVE, THIRD DISTRICT
224 W. JEFFERSON
PITTSBURG, KANSAS 66762
(316) 231-1669

COMMITTEE ASSIGNMENTS
CHAIRMAN OF THE DEMOCRATIC CAUCUS
MEMBER: EDUCATION
GOVERNMENTAL ORGANIZATION AND
ELECTIONS
INTERSTATE COOPERATION
LEGISLATIVE POST AUDIT

HOUSE OF
REPRESENTATIVES

March 31, 1993

The Honorable Rochelle Chronister
House Committee on Appropriations
Statehouse
Topeka, KS 66612

Dear Representative Chronister:

Attached you will please find the work product of the Kansas Public Broadcasting Commission's year-long effort to review and make recommendations of our current member structure and mission. This effort was undertaken by the Commission at the request of the 1992 Legislature. On behalf of the commission I am pleased to transmit this document to you and request the House Committee on Appropriations recommend S.B. 350 favorable for passage.

The report from Dr. Donald Mullally, titled "The Electronic Highway of Ideas, Education and the Arts in Kansas" (which is the study funded by the 1992 Legislature) makes several recommendations, the most significant of which abolishes the current Commission and replaces it with a Council of station managers. Senate Bill 350 also sets in statute a funding formula for all stations that seeks to end the end-run efforts by some stations to seek funding by the Legislature and present a unified, long-range vision of all stations. Senate Bill 350 basically reflects the report with a few minor changes.

For the first time in memory, the Commission members and the stations are unified their support for a revision of member structure and mission. I urge your favorable consideration.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Ed McKechnie".

ED McKECHNIE
State Representative

cc: Members, House Committee on Appropriations

ATTACHMENT 2

DONALD P. MULLALLY, Ph.D.

**228 Gregory Hall
810 S. Wright Street
Urbana, IL 61801
217-333-0850**

December 6, 1992

The Kansas Public Broadcasting Commission
c/o Mr. Andy Scharf
Room 751-S, Landon State Office Building
900 Jackson St.
Topeka, KS 66612

To The Commission:

I submit herewith my final report and recommendations concerning public broadcasting in Kansas. There are relatively few changes in the report since we reviewed it in draft form. But there are a few changes which I believe are significant:

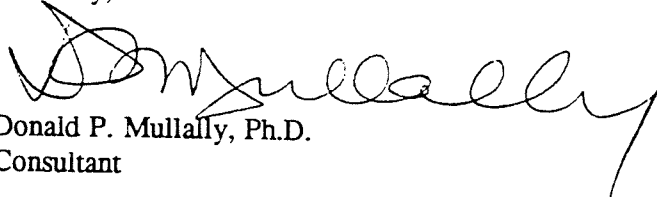
I have made some changes in the draft legislation to correct a few errors of intent which crept in during the process of redrafting by the legislative drafting office. The most significant of these is to emphasize that the proposed Kansas Public Broadcasting Council is not a state agency. There has been some simplification of the funding formulae, and occasional strengthening of the language in other sections to clarify intent.

As you requested, I also added recommendations concerning the addition of a public member to the Board of the Kansas Public Broadcasting Council.

I recognize that you may not feel entirely comfortable with all my recommendations; I have, perhaps, given you a prescription for greater change than you had expected. But I feel that it is my duty as a consultant to give you my best thinking based on my more than thirty-eight years experience in public broadcasting and more than two decades of public policy development. If I give you only advice with which you easily agree, I have not served you well. In this case, the consultancy was precipitated by an act of the legislature; I feel that I owe to them--and to the people of Kansas--the best advice and counsel I can provide, whether or not it is easy to accept.

I thank you for your cooperation and especially for your courtesy and hospitality. I stand ready to discuss this report with the Legislature at any time they wish to consider it. Please let me know if I can be of further service.

Sincerely,



Donald P. Mullally, Ph.D.
Consultant

**THE ELECTRONIC HIGHWAY
OF IDEAS, EDUCATION, AND THE ARTS
IN KANSAS**

**A REVIEW OF THE CURRENT STATUS OF
PUBLIC BROADCASTING IN KANSAS
WITH RECOMMENDATIONS FOR CHANGE**

Prepared by
Donald P. Mullally, Ph.D.
December, 1992

I. The Issues

This consultant was engaged to study the system of public broadcasting in Kansas and answer a number of questions relating to the future of the Kansas Public Broadcasting Commission and the future of Kansas public broadcasting itself:

1. What is the appropriate role of State Government in public broadcasting?
2. What reforms in oversight of public broadcasting should be proposed?
3. Should the Public Broadcasting Commission continue in existence, or be replaced by some other entity or by another reformed state agency?
4. What statutory changes should be proposed?
5. How will the proposals make the oversight body more effective at carrying out state policy?
6. How will the proposals benefit public broadcasting, the State of Kansas, and Kansas citizens?

Aside from these specific questions, this consultant was asked to prepare an outline for the State's involvement in public broadcasting, including funding mechanisms which will facilitate the achievement of the State's goals and objectives for public broadcasting. Under the terms of the contract with this Consultant, this report (in its final form) is to be presented to the Kansas Legislature.¹

For reasons which will become clear subsequently, this consultant believes that the relevant issues are not precisely those stated above; he will therefore raise a number of other issues before drawing conclusions.

¹ Request for Proposals (Contract #28990), pp. 10-11.

The consultant emphasizes that this report is a DRAFT, and is not in its final form. Further interviews and research are necessary before the consultant is prepared to release the report to the Legislature or the public. This DRAFT should be considered a discussion paper pointing to the conclusions which seem appropriate at this stage of the research. The consultant reserves the right to make corrections, to strengthen sections, and to make revisions as necessary.

II. Methodology

In pursuit of facts which would support answers to the questions raised above--and to determine whether there were other relevant issues which should be called to the attention of the Commission and the Legislature, this consultant engaged in the following activities:

1. There was a thorough review of the statutes creating the Kansas Public Broadcasting Commission, and other relevant statutes. Careful consideration was given to a summary of the responsibilities and powers of the Commission prepared by the former Chairperson of the Commission.²
2. A previous study of the Commission, done by the Department of Information Systems and Communications, was thoroughly reviewed.³
3. Several legislators were interviewed to solicit their opinions concerning the past work of the Commission and their hopes for the future.

² Virgil F. Basgall, *Outline of Current Responsibilities and Powers of the Public Broadcasting Commission*, 1990.

³ Division of Information Systems and Communications, *State Government and Telecommunications: A Study of Organizational and Policy Issues Surrounding the Public Broadcasting Commission*, January, 1989.

4. The consultant attended public hearings in all parts of the state, asking questions of citizens and interested professionals who appeared at those hearings. The consultant drove more than 2,000 miles on Kansas highways.⁴
5. All public radio and television stations in the state were monitored by the consultant for the purpose of forming an impression of the character and quality of the service and the adequacy of the signal in various parts of the state. During the consultant's extended visits to Kansas, citizens he encountered were asked about public broadcasting and their impressions of the service.
6. All Kansas public broadcasters were invited to attend a meeting at which they were questioned about their aspirations for the future and their impressions of the current arrangement with respect to the Kansas Public Broadcasting Commission.
7. A number of leaders in business, education, and the arts were invited to discuss public broadcasting with the consultant; those discussions offered an opportunity for the consultant to raise policy issues and solicit opinions. (NOTE: these discussions are incomplete as this draft report is prepared; several more interviews are scheduled for the near future.)
8. A number of Kansas public radio and television stations were visited, largely to gather a sense of the quality of the facilities and the capabilities for serving the citizens of Kansas through those facilities.

⁴ Public hearings were held in Topeka, Kansas City, Pittsburg, Coffeyville, Wichita, Salina, Hays, Colby, Garden City, Great Bend, and Dodge City.

9. There was a thorough review of funding patterns in other states, particularly with regard to the amount of funding for public broadcasting and the commitments made by other state governments.⁵
10. There was a careful study of census data for the State of Kansas, particularly with respect to population density by county and the distribution of minority populations throughout the State. An analysis was done of the signal coverage patterns for each of the public radio and television stations in Kansas to determine which areas of the state may not now be receiving adequate coverage. (Further data is being gathered at this time to relate state financial commitments to various kinds of infrastructure and social services. This data will be integrated into the final draft of this report.)

⁵ Specifically, the following sources were consulted:

Timothy Colton: *Memorandum to the Special Committee on Ways and Means/Appropriations from the Kansas Legislative Research Department*, "Re: 1991 Interim Proposal #26--Oversight and Funding of Public Broadcasting in Kansas," November 1, 1991.

Corporation for Public Broadcasting, *Research Notes*, No. 51, August, 1992
Hezel Associates, *Planning for Educational Telecommunications: A State by State Analysis*, Third Edition, 1992.

III. Conclusions

1. **What is the appropriate role of State Government in public broadcasting?**

The Kansas legislature was very much on target when it declared, in K.S.A. 75-4905 that "it is necessary and appropriate for the state government to complement, assist, and support a policy that will most cost effectively make noncommercial public television and radio service available to the people of the state." The legislature wisely understood that "the expansion of noncommercial public television and radio and its programming diversity depend on freedom, imagination and initiative," and that "it furthers the general welfare to encourage such programming which will be responsive to the interests of people throughout the state and which will constitute an expression of diversity and excellence."

Largely on the basis of direct communication with Kansas citizens--through public hearings and in many less-formal contacts, one can see that Kansas citizens agree with the position taken by the legislature, for public broadcasting has become an important part of the lives of Kansans.

Listening to ordinary people express their views on public broadcasting convinces one that these public media have become for many an essential amenity of life. They describe public television and radio as bringing even to isolated and remote areas a service which is enriching, entertaining, and informing. They perceive it to be a service of quality, a service worthy of their time, a service worthy of support by individual users and by the State.

Public broadcasting is especially valued in rural, thinly-populated areas of Kansas. There is the sense that without public broadcasting, rural Kansas would be a backwater, an area isolated from the mainstream of American arts, ideas, and culture. For rural Kansans, public radio and television have become an electronic

highway of ideas, education, and the arts reaching into even the smallest towns. Public broadcasting delivers its rich mix of programming even to isolated farms. School districts rely on the instructional services for important teaching materials. Even the mainstream public television programming delivered in the evening is considered to be a resource which can be tapped by teachers. A smalltown music teacher reported using the classical music on public radio as a teaching resource in her work with students. A well-educated lawyer, now a judge in a small town in Kansas, relates the fact that in the absence of public broadcasting, it would be difficult to attract qualified professionals to serve rural communities. A rural mother reports that only on public broadcasting does she have the opportunity to see and hear extended discussions of Kansas issues and reports from her representatives in Topeka. Yet another citizen observed that aside from public broadcasting, "we don't have any institution we all share, east and west, urban and rural. We all need to be in the same discourse community." This recounting of testimony is representative rather than exhaustive; there are similar stories from many counties of the state.

The basic reasons for state involvement in public broadcasting are these:

- * It is in the best interest of the State of Kansas to assure that all citizens, no matter where they may live in the state, have access to a basic level of information, culture, and education (particularly in the sense that education is a lifelong process which encourages personal growth and the ability to participate in public affairs).
- * Public broadcasting offers a forum for serious discussion of issues which directly affect the future of Kansas; it is a medium which has both the capacity and the will to offer extended treatment of complex issues. It is the electronic connection between ordinary citizens and elected representatives. It empowers citizens to play their role in governance through informed participation in the political process. Fostering this participation is an appropriate role for State Government.

- * Public broadcasting plays an important support role in the State's system of public education; hundreds of rural schools participate in educational programs delivered through the facilities of public broadcasting.
- * Public broadcasting plays an important role in stabilization of the economic climate of the State; it may be essential for further economic development, particularly in thinly-populated areas of the state. Professionals and business executives are reluctant to locate in an area in which good public broadcasting is unavailable.
- * Public broadcasting plays a major role in advancing the Governor's challenging "Creating Tomorrow: An Agenda for the Future of Kansas." Public broadcasting can play a major role in virtually every area identified as important in that agenda: education, health, social issues, economic development, telecommunication, and quality of life.
- * Public broadcasting is uniquely able to reflect the character and aspirations of Kansas to its citizens, and to provide an inexpensive way of preserving and transmitting to a new generation the state's history, its indigenous culture, its art, and the remarkable diversity of its people.

The unique population distribution in Kansas is an essential issue for Kansas policy makers in determining whether the State should fund public broadcasting and at what level funding should be provided. The state as a whole has one of the lowest average population densities of any part of the United States; overall, there are only 30.3 people per square mile--2,478,000 people scattered over 81,823 square miles. Significantly, 84 of the state's 103 counties--the vast majority--are much below the average. This pattern of low population density is not solely a phenomenon of western Kansas; such eastern counties as Linn, Wilson, Anderson, Brown, and Woodson all have a population density of less than twenty people per square mile.

The situation in western Kansas is somewhat worse, however. There are 23 counties in western Kansas with a population density of less than five people per

square mile--six of them with less than three people per square mile.⁶ If the state had not built highways in those rural areas, those people would be isolated--unable to interact with other Kansans, unable to obtain the necessities of life, unable to market the produce of their farms and feedlots, unable to transport their children to school. And recognizing the necessity of education for every citizen, the State of Kansas supports schools in these thinly-populated areas. The largely deserted ribbons of cement on which the state spends enormous amounts of money are an essential connection between the rural areas of Kansas and the larger population of the major cities.

Public broadcasting is the electronic highway which transports ideas, education, and the arts to rural areas, and which connects Kansas citizens to their government and to their roots as Kansans. This is a busy highway with enormously important traffic. How well has Kansas funded the electronic highway in comparison with the traditional highway of cement? In FY 1992 Kansas spent \$715,255 on public broadcasting and \$714,852,086 on highways. (Kansas spent more than *\$1.1 BILLION* on education in FY 1992.)⁷

It is clear that while the Legislature understands the benefits public broadcasting confers on Kansas citizens, particularly in its service to very thinly populated areas, the level of funding necessary to achieve the State's goals has not been forthcoming.

How does State funding of public broadcasting in Kansas compare with funding in other states? The attached table compares the funding of several states on the basis of "dollars per citizen" provided directly by the state. Some states also

⁶ See Illustration "A"--Population Densities in Kansas Counties.

⁷ A total of \$710,682 actually went to stations in the form of grants. Financial information supplied by the Kansas Bureau of the Budget.

**STATE FUNDING OF PUBLIC BROADCASTING:
PER-CAPITA APPROPRIATIONS FOR PUBLIC TV AND RADIO
IN SELECTED STATES--FY 1991**

The financial data below excludes indirect income and income flowing through the budgets of universities and colleges. Including such income would greatly increase state funding levels.

STATE	STATE APPROPRIATION		TV + RADIO	STATE	\$ PER
	TV	RADIO	TOTAL	POPULATION	CITIZEN
Alabama	4,497,873	922,009	5,419,882	4,040,581	1.34
Alaska	3,587,277	4,610,096	8,257,373	550,043	15.01
Colorado	634,422	556,170	1,190,592	3,294,394	.36
Florida	10,087,624	2,248,090	12,335,714	12,937,926	.95
Georgia	10,021,454	39,000	10,060,454	6,478,216	1.55
Hawaii	6,261,340	-0-	6,261,340	1,108,229	5.65
Iowa	6,627,933	1,068,972	7,696,905	2,776,755	2.77
KANSAS	658,658	34,741	693,399	2,477,574	.27
Kentucky	12,888,865	31,452	12,920,317	3,685,296	3.51
Louisiana	5,164,271	-0-	5,164,271	4,219,973	1.22
Miss'ippi	6,526,735	652,042	7,178,777	2,573,216	2.79
Nebraska	7,576,165	298,731	7,874,896	1,578,385	4.99
N'Jersey	12,664,727	230,685	12,895,412	7,730,188	1.67
New York	26,192,032	2,561,394	28,753,426	17,990,455	1.60
Oklahoma	3,169,442	35,000	3,204,442	3,145,585	1.02
Oregon	2,243,220	700,902	2,944,122	2,842,702	1.04
S Car'lna	30,456,161	661,957	31,118,118	6,628,637	4.69
S Dakota	2,566,105	327,805	2,893,910	696,004	4.58
Utah	3,655,813	85,056	3,729,869	1,722,850	2.16
Vermont	1,366,912	-0-	1,366,912	562,758	2.43
W Virginia	4,938,200	917,464	5,855,664	1,793,477	3.26

Sources:

Financial data from Corporation for Public Broadcasting Research Notes, August, 1992, No. 51.

Population data from U.S. Dept. of Commerce, 1990 U.S. Census.

provide funding through university budgets, but this analysis excludes such funding--both for Kansas and for other states. In the case of Missouri, funding is provided through a number of different mechanisms, including the state's Department of Education, University budgets, and other sources.

Of all the states, the ones closest to Kansas in land area and population (and thus in population density) are Oregon, Utah, and Nebraska. The following comparison is instructive:

STATE:	POPULATION	DENSITY	\$/CITIZEN
Kansas	2,478,000	30.3/sq.mi.	0.27
Oregon	2,842,000	29.6/sq.mi.	1.04
Utah	1,723,000	21.0/sq.mi.	2.16
Nebraska	1,578,000	20.5/sq.mi.	4.99

It is clear that the legislatures of these comparable states also understand the value of the services public broadcasting brings to citizens in thinly-populated areas. They have similar goals for bringing education, culture, and the arts to their citizens, and for empowering citizens to participate in the political processes of their states. But they have supplied significantly greater resources to the effort.

Thus, it is fairly easy to draw the conclusion that Kansas should make a stronger effort to fund the electronic highway of ideas, education, and the arts--perhaps an effort which compares reasonably with the effort of other states and with its own spending for the highways of cement.

2. What reforms in oversight of public broadcasting should be proposed?

3. Should the Public Broadcasting Commission continue in existence, or be replaced by some other entity or by another reformed state agency?

This consultant believes these two questions are related, and are an imprecise formulation of a somewhat broader question: Given the system of independent licensees which has developed in Kansas, what is it possible for a state agency like the Public Broadcasting Commission to do?

We must begin by reviewing the roles expected of the Commission. Reduced to their most elemental form, the Commission has four roles: oversight, advocacy, coordination, and planning. To accomplish these tasks (assuming they were possible), the Commission has been given no staff and a budget only large enough to reimburse small expenses. The Commission has a long history of very short-term membership, so that there has been no continuing expertise on the subject at hand and no means of keeping policy initiatives alive over a long period of time. Thus, there are serious structural problems in the Commission itself.

Aside from those structural problems, it is clear that the four tasks mentioned above may be impossible for legal and political reasons. Kansas has developed a system of public broadcasting in which there are numerous independent licensees. Some are educational institutions; others are not-for-profit community corporations with boards of directors and bylaws. *Under the rules of the Federal Communications Commission, licensees are totally responsible for the operation of their stations. This is a non-delegable responsibility which cannot be assumed by a state agency.* Thus, notwithstanding any Kansas statute, the Commission has no power of "oversight," and no ability to plan the course to be taken by the licensees or to coordinate their actions--or even to require that the stations fit in with some broader plan for telecommunications in Kansas.

But, one might argue, if the State provides funding, does that not give the State a right to regulate the conduct of licensees, or at least to require that they provide the kinds of program services the Commission or the administration of the state wishes them to? The answer is clearly negative: The responsibility of individual licensees is absolute: they have no right to accept the control of another agent or agency--even if that control is accompanied by the lubricant of generous grants.

Aside from the legal issue posed by FCC rules, there is also the public policy issue of whether it is appropriate for politicians or political appointees to

attempt to control important media. Indeed, the Legislature recognized this difficulty in K.S.A. 75-4905 when it recognized the need for freedom and imagination on the part of licensees. For any official or officer or employee of the state to attempt to control what programs are broadcast--or which are not broadcast--would be an egregious infringement on the first amendment rights of licensees and an error political judgement which would cost public broadcasting its credibility in the eyes of its audience. The freedom of the First Amendment and the imagination encouraged by the Kansas Legislature must, of course, be accompanied by responsibility and integrity--but that is expected of every public station whether it receives state funds or not. The point, however, is that *the Commission has no power to exercise oversight or to coordinate or even to affect planning by independent licensees*. This would be true even if the Commission had the staff and the resources to undertake such an effort.

The above discussion is somewhat theoretical: the level of funding currently provided is scant. No licensee would accept the funding if there were significant strings attached to that funding.

There remains the task of advocacy: is it possible for the Commission to be an effective advocate for public broadcasting? It would seem not. If funding is one measure of the power of the Commission's advocacy, we can see that Kansas is near the bottom of the list of states providing funding for public broadcasting. In 1985, Kansas public television stations received \$600,000 in state grants. In FY 1992, the same stations received a total of \$6,547 more. One could not characterize that growth of about a thousand dollars a year as the result of effective or inspired advocacy. It is not enough to assert that the Commission has not been an effective advocate; one must determine whether, under any circumstances, the Commission *could* become an effective advocate.

In examining the reasons for the Commission's ineffective advocacy, one must first take note of the fact that there has rarely been on the Commission an appointee who is expert in the field of public broadcasting. Most members of the current Commission, for example, might have a hard time explaining how the national program services of public radio and television work--how programs evolve from idea to actual broadcasts. They may not understand the funding mechanisms which sustain that process. They may not have been able to compare the level of funding in Kansas with that in other states--the content of the chart presented above. In short, because the Commissioners serve for relatively short terms and because they are not experts in public broadcasting, they never develop the expertise which would allow inspired, passionate, effective advocacy. They do not have a staff to perform the advocacy function. They do not really have the financial resources to muster an effective presentation of the facts.

But even if they had the expertise and the resources, does the Commission have the respect and confidence of public broadcasters and key members of the Legislature? Without that confidence (which would typically develop over a period of years of effective work), even a reorganized Commission could not be expected to be successful. It seems likely that public broadcasters themselves are skeptical about the Commission's potential for effective advocacy (given their \$6,000 progress since 1985).⁸ But what of the legislature--the decision-makers who represent the people of the State?

Asked to comment on the Commission, one senior legislator said "Little policy development. No sense of purpose. Doesn't have the respect of public broadcasters." Another said "Ineffective, weak, a real lack of direction." A third legislator described the Commission as "fumbling, ineffective, well meaning but no

⁸ "Skeptical" is perhaps a restrained and professionally respectful characterization of their feelings.

sense of direction. A lot of wasted money." With those comments from opinion leaders in the Legislature, it seems difficult to imagine how simply reorganizing the Commission could result in confidence, trust, and a willingness to accept the Commission as a credible advocate for a public broadcasting system of excellence. And while it is possible there is a bit of political tension in their response to the Commission, there is no reason to believe that such tension would vanish if the Commission were somehow reorganized.

There are those who argue that the Commission should be disbanded and its authority and responsibility transferred to the Kansas Board of Regents. In the opinion of this consultant, such a move would scarcely improve the situation and, in fact, might worsen it considerably. There are four reasons for this conclusion:

1. The Board of Regents has a very large agenda, including pressing problems of funding and operation of institutions of higher education. Public broadcasting is not high on that agenda; it seems likely that advocacy for public broadcasting would be substantially less vigorous than advocacy for faculty pay increases (for example).
2. The Board of Regents is the licensee of several public broadcasting stations; it would be inappropriate to give the impression that one licensee is "first among equals" or more influential in setting policy than other licensees not so well connected to the "oversight" body.
3. The Board of Regents has not demonstrated adequate oversight and control of one of its own stations. There is currently a proposal to seriously weaken the station in Wichita by withdrawing all University funds. This would undercut the level of program service to a major urban area allegedly served by an institution with a distinctive urban mission, and might well disqualify the station for federal grants. It remains to be seen whether the Board of Regents has a firm commitment to public service through broadcasting.

4. The level of "oversight" or control or planning which could be imposed on other independent licensees by the Board of Regents is no greater than that which could be imposed by any other state agency, including the existing Commission.

For these reasons, this consultant believes that the Commission's responsibilities should not be transferred to the Board of Regents.

4. What statutory changes should be proposed?

5. How will the proposals make the oversight body more effective at carrying out state policy?

6. How will the proposals benefit public broadcasting, the State of Kansas, and Kansas citizens?

The answers to these questions will largely be determined by what the state wants to accomplish with public broadcasting. This consultant offers a number of goals for consideration and discussion:

A) The state should encourage availability of public television and radio signals to all citizens of Kansas.

There are now at least three (and possibly as many as five) counties which receive inadequate coverage by public television, notwithstanding the existence of cable systems in much of the state. Citizens in Greenwood, Elk, and Chautauqua counties are strong in their desire to have a Kansas-based public television signal available. While it would be prohibitively expensive to affirmatively assure that an off-air signal is available to every citizen of Kansas, very modest expansion of the existing television system is required, probably through the use of low-power transmitters in the population centers of the neglected counties, re-transmitting signals of existing Kansas stations.

- B) Kansas citizens should have access to signals which will provide a very rich mix of Kansas-oriented programming, including vigorous coverage of Kansas public policy issues. The service should reflect Kansas' unique character and culture, including the diversity of Kansas' population.

For the most part, public broadcasters have made very good progress toward this goal. But there are those who advocate that unserved areas should simply pick up signals from neighboring states. In the long run, such a course of action would probably not produce the desired "connection" between the citizens of Kansas. The remarkable cohesiveness of the Kansas City metropolitan area and the strong performance by the station serving that area is evidence, however, that the meandering course of a river need not determine that citizens on one side of the river will receive inadequate service.

- C) The State of Kansas should provide sufficient base funding for all stations to assure that the service is of consistently high quality and is financially viable, even in remote and thinly-populated areas of the state.

This consultant recommends that the electronic highway of ideas, education, and the arts be funded at a level consistent with that of other states. A reasonable goal might be one dollar per citizen within two years and two dollars per citizen within five years. This level of funding would allow grants to radio as well as to television stations, and, if the proper formula were devised, it would supply additional funding where it is most needed--in thinly populated areas where listener and viewer support can never reach the levels achieved in major cities.

- D) There should be a mechanism to assure that new stations are not created unless they are truly needed, simply because state funding is available.

There must be some method of "birth control" to assure that state funding is not dissipated uselessly by increasing the number of radio or television stations beyond the number necessary to assure quality service. A determination of this sort

requires considerable professional expertise and the ability to see through carefully-crafted pseudo-justifications for system growth.

- E) There should be incentives which encourage stations to work together in the public interest, sharing equipment, sharing programming, and encouraging cost-effective use of scarce resources.

There is no evidence that the current arrangement has fostered a climate of sharing and work toward a common purpose. It seems unlikely that such an arrangement could emerge from the Commission structure.

- F) There should be incentives for stations to serve the public so well that individual and business contributions provide a high level of support. Such service incentives should be complemented by incentives toward effective fundraising and development activities.

It seems appropriate to assure that state funding is, in the words of the legislature, "complementary," and that stations rely first of all upon direct contributions by those who are served. Fundraising expertise and efficiency should be rewarded through incentives.

- G) Institutions which now provide support to stations should be discouraged from withdrawing that funding--in effect transferring the burden of primary support to the State and abdicating the responsibility of an institutional licensee. There should be mechanisms to prevent institutional licensees from using for other purposes money intended by the state for public broadcasting, or dissipating the state's funding initiative by charging "institutional overhead" or "endowment management charges" to their station budgets.

In tight financial times, institutions often look only at short term goals. If substantial funding for public broadcasting were available and unrestricted, institutions would have a great incentive to shift responsibility to the state or, through fiscal

legerdemain, manipulate budgets to the disadvantage of public broadcasting and the citizens the State intends it to serve.

- H) The "oversight" link between the legislature and public broadcasters should be strengthened. Public broadcasters should be made directly responsible for the level of service provided, for the expenditure of State funds, for good planning and good management, for cost-effective common efforts, for controlling un-needed growth, and for providing accurate, timely, and helpful information to the legislature.

Under the current system, the Commission is the party responsible to the Legislature--a responsibility which is impossible to perform. Even at current (inadequate) levels of funding, the Commission cannot exercise adequate planning, oversight, and coordination authority. It cannot delegate that responsibility to staff. A mechanism must be found not only to make the broadcasters feel responsible, but to force them to answer hard questions about their plans and their performance. Only a direct link to the legislature will allow this level of responsibility and oversight without intruding on the legitimate freedom and imagination which the legislature has stated it wishes to encourage in public broadcasting. The legislature must be satisfied that stations are adequately serving the citizens of the state as a condition of continued or increased funding. While this last situation is true now, the legislature is clearly not satisfied with the quality, cohesiveness, and persuasiveness of the information which the Commission is able to provide.

- I) The responsibility for advocacy must be placed squarely on the shoulders of those who are most able to tell the story of public broadcasting because they know the facts, those who have the strongest incentive to present that story most effectively and persuasively. The story should be told by those who have the strongest incentive to make the story a good one--to back the story with demonstrably high-quality, responsive service to the citizens.

There is no reason to filter the testimony of public broadcasters through a state bureaucracy. The legislature is well-equipped to ask hard questions and to satisfy itself that those to whom it gives funds are performing a public service which justifies the investment. The complement of "oversight" in this situation is "advocacy," and it seems clear that a strong link between public broadcasters and a legislative committee would benefit both parties.

J) A mechanism must be found to distribute state funds equitably, and to present the Legislature with a single request which represents the needs of all stations. The legislature should not be faced with multiple, uncoordinated, sometimes conflicting requests for funds. The legislature deserves assurance that the funding requested is directed to accomplishment of a long range plan which has the full support of the stations and their community advisory boards.

There is currently no "system" of funding in Kansas. There is no rational formula for the distribution of funds. There have been occasions on which more than one request for funding was made. The legislature has expressed concern about the lack of a coherent plan. Whatever plan emerges, it should result from a very high level of participation by the people who must execute the plan: it cannot be devised by the Commission and then imposed on stations. It cannot be developed by a consultant and then adopted by the Commission. And it must have a strong connection to the local citizens who are the intended beneficiaries of State funding for public broadcasting in Kansas. The plan itself must be evidence of the worthiness of the projects and services it proposes.

* * * * *

If a mechanism could be devised which would accomplish all or many of the goals set forth above, considerable progress would have been made. Some of the goals are very challenging (increasing funding to a level of \$1 per year per

citizen in two years, and a further increase to \$2 in five years to fund the electronic highway, for example). But such an increase in funding cannot be accomplished unless the entire system is restructured and the legislature becomes convinced that there is a real plan for public broadcasting in Kansas and that there will be real responsibility for its execution. Moreover, legislators must examine priorities: considering the benefits to citizens, is it reasonable to spend \$289 per citizen per year on traditional highways and only twenty-seven cents per year on an electronic highway service which could have impact in every household in Kansas?

This kind of major change will probably require new legislation (as the Commission's charge to the consultant implied). This consultant submits the following draft legislation for consideration by the Commission, the Legislature, and by those affected by it:

Reg. M. 10/12/92

_____**BILL NO.**_____

By

AN ACT creating the Kansas Public Broadcasting Council; providing for the powers, duties and functions thereof; authorizing state grants to certain public radio and television broadcasting stations serving Kansas and for related purposes; abolishing the Kansas Public Broadcasting Commission; amending K.S.A. 1992 Supp. 75-4912 and repealing the existing section; also repealing K.S.A. 75-4901, 75-4905, 75-4906, 75-4910 and 75-4911 and K.S.A. 9112 Supp. 75-4907.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1: Legislative Findings and Intent

The Legislature of the State of Kansas hereby finds and declares that:

- (1) public radio and television stations provide a valuable educational, cultural, and informational service to the People of Kansas, and
- (2) such stations offer an essential forum for public discourse on important issues of public policy and the conduct of government, and
- (3) the presence of a sound public broadcasting system enhances the quality of life for Kansas citizens, and
- (4) the provision of a public broadcasting service at a level of quality comparable to that available in other states is important for economic development and stability of the tax base of the State of Kansas, and

1 (5) public broadcasting can be a cohesive force as it explores and celebrates
2 the diversity of cultures, lifestyles, and traditions of the people of Kansas,
3 and

4 (6) high quality public broadcasting service should be provided to every
5 part of the State of Kansas, and

6 (7) encouragement of public broadcasting furthers the general welfare of the
7 people and the State of Kansas.

8 Having made those findings, the Legislature declares their accomplishment
9 to be an objective of public broadcasting stations in Kansas and wishes to establish
10 a system for encouraging the accomplishment of that objective.

11 **SECTION 2. Definitions:**

12 As used in this act:

13 (a) "Kansas public television station" or "television station" means a
14 noncommercial public television broadcasting station licensed as such by the
15 Federal Communications Commission which operates from a community located in
16 Kansas and meets the minimum criteria for receipt of a Community Service Grant
17 set by the Corporation for Public Broadcasting. This term also includes public
18 television station KCPT, which provides primary service to five Kansas counties.

19 (b) "Kansas public radio station" or "radio station" means a noncommer-
20 cial public radio broadcasting station licensed as such by the Federal Communica-
21 tions Commission which operates from a community located in Kansas and meets
22 the minimum criteria for receipt of Community Service Grants as set by the
23 Corporation for Public Broadcasting.

24 (c) "Eligible station" means a public radio or television station as
25 defined hereinabove which has been fully-qualified under the grant criteria of the
26 Corporation for Public Broadcasting for a period of four years prior to applying for
27 a grant under this act. Any station seeking to become eligible after the effective

1 date of this Act must comply with the requirements of Section 11 of this Act as a
2 condition of eligibility.

3 In the event the Corporation for Public Broadcasting should cease to exist,
4 or its Community Service Grant program should terminate, or the eligibility criteria
5 for Community Service Grants should be lowered, then the criteria for eligibility
6 for such grants which were extant on July 1, 1992 shall prevail for purposes of this
7 Act and the methods of calculating and reporting financial information for all
8 purposes shall be those extant on that date.

9 (d) "Station" unless otherwise qualified, means any eligible radio or
10 television station.

11 (e) "Non-Federal, Non-Licensee Financial Support" means the total sum
12 of Non-Federal Financial Support reported to the Corporation for Public Broadcast-
13 ing under its Community Service Grant program, minus any amount of non-cash or
14 in-kind funds included, and minus any cash support provided by the licensee of the
15 station, and minus any grants received from State sources.

16 (f) "Population covered" means the total population in the counties
17 covered by each eligible station and its associated transmitters or translators as
18 reported in the most recent United States Decennial Census. The counties covered
19 by each station are to be determined as set forth in Section 12(e) of this Act.

20 (g) "Per-Capita Earned Revenue" for each station is its Non-Federal /
21 Non-Licensee financial support divided by the total population in the counties of
22 its coverage area, yielding the revenue that station has generated per capita.

23 **SECTION 3: Certification**

24 Each eligible station shall certify to the Secretary of Administration of the
25 State of Kansas, in such form and at such time as the Secretary shall require, its
26 Non-Federal/Non-Licensee Financial Support for the second prior fiscal year. Upon
27 acceptance by the Secretary of Administration, such certification shall constitute

1 the basis for grants provided under this Act. The Secretary of Administration shall
2 have the authority to ascertain that the amounts certified as Non Federal / Non-
3 Licensee Financial Support are accurate, audited, and comparable in method of
4 calculation.

5 Funds appropriated for the purposes and under the terms of this Act shall
6 be appropriated to the budget of the Kansas Department of Administration for
7 distribution.

8 **SECTION 4. Division of Funds Between Radio and Television**

9 Funds appropriated for the purpose of making grants under this Act shall be
10 divided into two grant pools, with 75% of such appropriated funds constituting a
11 grant pool for public television stations and 25% of such appropriated funds
12 constituting a grant pool for public radio stations.

13 **SECTION 5. Allocation of Funds to Stations; Basic Service Grants**

14 Two basic service grant funds shall be established for basic service grants:
15 a television basic service grant fund consisting of 50% of the grant pool for
16 television, and a radio basic service grant fund consisting of 50% of the grant pool
17 for radio. Each basic service grant fund shall be divided into as many units as
18 necessary to provide basic service grants to each eligible station as follows:

19 (a) If the population density within an eligible station's service area, as
20 determined by the average population density of all counties within that area, is
21 50% or more of the mean population density of the State, that station shall receive
22 a basic service grant of five units.

23 (b) If the average population density within an eligible station's service
24 area, as determined by the mean population density of all counties within that area,
25 is less than 50% of the mean population density of the State, that station shall
26 receive a basic service grant of ten units.

27 (c) KCPT-TV shall receive a basic service grant of four units.

1 The service areas of each station and the counties to be included in each service
2 area shall be certified to the Secretary of Administration in the manner set forth in
3 Section 12(e) of this Act.

4 **SECTION 6. Incentive Grants**

5 Two incentive grant funds shall be established: a television incentive grant
6 fund consisting of 50% of the grant pool for television, and a radio incentive grant
7 fund consisting of 50% of the grant pool for radio. Each eligible station shall
8 receive an annual incentive grant amounting to a pro-rata share of the incentive
9 grant fund for which it is eligible. This share shall bear the same ratio to the grant
10 pool from which it came as the station's per-capita earned revenue bore in the
11 second prior fiscal year to the aggregate per-capita earned revenue of all eligible
12 stations in the grant pool.

13 **SECTION 7. Cooperative Project Grants**

14 Appropriations may be made in any year for specific projects to be under-
15 taken by more than one eligible station. Such Cooperative Project Grants are to be
16 distributed by the Department of Finance and Administration to the Kansas Public
17 Broadcasting Council under the terms of Section 11 of this act and amendments
18 thereto.

19 **SECTION 8. Equipment Grants**

20 Appropriations may be made in any year for the purchase of equipment to
21 be used by an eligible station, or by several such stations, or by the Kansas Public
22 Broadcasting Council, provided, however, that any grant made to an individual
23 station must be in compliance with Section 11 of this Act and amendments thereto.

24 **SECTION 9. Limitation on Grants**

25 (a) Notwithstanding any other provision of this act, no station shall be
26 allocated more than 33% of the total funds in its grant pool. Those funds not
27 obligated by virtue of this limitation shall be returned to the incentive grant pool

1 for distribution to the remaining stations in accordance with the provisions of
2 Section 6 of this Act and amendments thereto.

3 (b) Institutional licensees eligible to receive grants under this Act shall not
4 use funds provided under this Act to supplant funds currently provided from other
5 sources. **SECTION 10. Required Assurances**

6 Each eligible station and its station licensee shall certify to the Secretary of
7 Administration when applying for a grant under this Act that any funds received
8 pursuant to the provisions of this Act shall not supplant or cause to be reduced any
9 other sources of funding for the station, and that the licensee is in compliance with
10 the provisions of Section 9 of this Act with respect to reduction of funding from
11 institutional sources. Applicants shall also certify that funds received pursuant to
12 the provisions of this Act will be used solely for the operation of a public broad-
13 casting station and not for general institutional overhead, parent organization
14 expenses, or for any other purpose not directly related to the operation of a public
15 broadcasting station.

16 **SECTION 11. Kansas Public Broadcasting Council Created**

17 There is hereby created a not-for-profit public corporation to be called the
18 Kansas Public Broadcasting Council whose directors shall consist of one represen-
19 tative of each station eligible to receive grants under this Act. This Corporation
20 shall function under such bylaws as shall be written by its initial directors and
21 amended from time to time, provided, however, that such bylaws shall be in
22 conformity with the applicable laws of the State of Kansas.

23 **SECTION 12. Kansas Public Broadcasting Council; Powers and Duties**

24 (a) The Kansas Public Broadcasting Council shall have the responsibility
25 for reporting annually to the appropriate committees of the Legislature on the
26 following matters:

1 1) The services provided to the citizens of Kansas with funds appropriated
2 under this Act in the prior fiscal year, particularly with respect to the stated goals
3 of public broadcasting as set forth in Section 1 of this Act.

4 2) The need and justification for appropriations in the current and future
5 years.

6 3) The need and justification for construction of any new public broadcast-
7 ing facilities.

8 4) The methods used to assure the financial integrity of any station receiv-
9 ing a grant under the provisions of this Act.

10 5) The ways in which the members of the Kansas Public Broadcasting
11 Council have, in the previous fiscal year, cooperated to provide a more efficient,
12 relevant, and cost-effective service for the people of Kansas.

13 (b) The Kansas Public Broadcasting Council shall present as a part of its
14 annual report to the Legislature a comprehensive plan setting forth the service
15 goals and operational plans for public broadcasting in Kansas during the subse-
16 quent three years, such plans having been developed by and voted upon by the
17 Directors of the Kansas Public Broadcasting Council. This plan shall be updated
18 each year to take into account changing needs, technologies, and operational
19 circumstances.

20 (c) The Kansas Public Broadcasting Council shall certify to the Secretary of
21 Administration, following a vote of the Council's Directors, that any station
22 seeking eligibility for a grant under this Act and which was not in operation prior
23 to the effective date of this Act, is essential and necessary for the provision of
24 service to the people of Kansas. This requirement for certification shall also apply
25 to any station eligible for a grant on the effective date of this Act if such station
26 subsequently becomes ineligible and later seeks to again become eligible for a

1 grant. No station for which such certification is required shall be eligible to receive
2 a grant under the terms of this Act unless such certification has been provided.

3 (d) In the event of any conflict between stations with respect to eligibility
4 for grants or the amount of such grants, the issue shall be studied and resolved by
5 the Directors of the Kansas Public Broadcasting Council. The decision of that body
6 shall be binding on the Secretary of Administration with respect to distribution of
7 grants.

8 (e) The Kansas Public Broadcasting Council shall provide to the Secretary
9 of Administration a list of the counties covered by each station eligible to receive a
10 grant under this Act, together with the population in each county and the popula-
11 tion density of each county as reported in the most recent United States Decennial
12 Census. This report shall be the basis for calculation of each station's Basic
13 Service Grant and Incentive Grant.

14 (f) The Kansas Public Broadcasting Council shall also have the responsibili-
15 ty of reviewing the proposal of any station or group of stations seeking an equip-
16 ment grant under the terms of Section 8 of this Act, and prioritizing all requests
17 for equipment grants, taking into account the costs of such equipment, the benefits
18 such equipment would supply to the citizens of Kansas, the urgency of the request
19 with respect to maintenance of existing services, the relevance of the equipment
20 grant request to the provisions of the long range plan submitted by the Council,
21 and such other factors as may be relevant. The Kansas Public Broadcasting
22 Council shall present its prioritized list of equipment grant requests to the Legisla-
23 ture as a part of the annual budget process, and shall support those grant requests
24 in its annual report to the Legislature.

25 (g) The Kansas Public Broadcasting Council shall have the power to accept
26 grants or appropriations from the Federal government or the State of Kansas, or
27 any agency or instrumentality thereof, to be used for the purchase of equipment for

1 use by the members of the Kansas Public Broadcasting Council as its directors
2 shall determine. Nothing in this Act shall preclude the Kansas Public Broadcasting
3 Council from utilizing such equipment for the generation of revenue for the
4 support of Kansas public broadcasting activities, nor shall the Kansas Public
5 Broadcasting Council be precluded from raising funds from other sources for the
6 support of its activities.

7 (h) The Kansas Public Broadcasting Council shall have its financial
8 operations audited annually by a Certified Public Accountant, and shall make its
9 audited financial statement available to the Legislature upon request.

10 (i) The Kansas Public Broadcasting Council shall have no power or
11 authority to compel any Kansas public television or radio station to carry any
12 program or programs, whether or not funded in whole or in part by the Council,
13 nor shall the Council have any power to forbid any station to carry any program
14 acquired from any other source. The Kansas Public Broadcasting Council shall
15 have no regulatory authority over individual stations, their programming, or
16 program scheduling.

17 **SECTION 13. Prohibition of Interference by State Authority**

18 Funds appropriated to the Department of Administration under this Act are
19 provided on a ministerial basis only, and are to be distributed under the formulae
20 set forth herein upon compliance with the eligibility criteria set forth in this Act.

21 Nothing in this act shall give any officer, employee, agent, political
22 appointee, elected official of the State of Kansas or any other person or persons
23 acting under color of law any authority to influence or attempt to influence the
24 content or scheduling of any program produced or broadcast by any eligible
25 station, whether or not such influence is intended to be related in any way to
26 receipt of a grant under this Act.
27

SECTION 14. Bonding

K.S.A. 1992 Supp. 75-4912 is hereby amended to read as follows: 75-4912

(a) The activities of the Kansas Public broadcasting council in making grants to noncommercial public television stations and public radio stations serving Kansas for the purpose of providing money for the public television station or public radio station to match Federal funds for capital equipment purchases with the proceeds of revenue bonds issued for such purpose by the Kansas Development Finance Authority are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of such bonds by the Kansas Development Finance Authority in accordance with that statute except that no such bonds shall be issued unless the issuance of such bonds is specifically approved by an appropriation or other act of the legislature, other than this act. The provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto shall not prohibit the issuance of bonds for such purposes and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto. Bonds issued under this section shall be financed from money appropriated for the public television stations and public radio stations.

SECTION 15. Kansas Public Broadcasting Commission Abolished

On the effective date of this Act, the Kansas Public Broadcasting Commission is hereby abolished.

SECTION 16. Repeal of Other Acts

K.S.A. 75-4901, 75-4905, 75-4906, 75-4909, 75-4910 and 75-4911, and K.S.A. 1992 Supp. 75-4907 and 75-4912 are hereby repealed.

SECTION 17. Effective Date

This Act shall take effect and be in force from and after its publication in the statute book.

DISCUSSION

This draft legislation represents substantial change from the existing system. It abolishes the Public Broadcasting Commission and, by forcing licensees to work together, increases the likelihood that state funding will be used in a cost-effective way. It assures that the legislature has a very direct mechanism for oversight, but that such oversight is accompanied by strong advocacy which provides the legislature with the necessary information to justify funding.

The reader will note that the Kansas Public Broadcasting Council is *not* constituted as a state agency, but rather as a not-for-profit corporation created to serve a public purpose. This prevents interference in public broadcasting by state officials or political appointees, and makes it possible for the Council to act in an efficient, businesslike way---while being directly responsible to the representatives of the people: the legislature. It makes professionals responsible for dealing with the issues they are uniquely qualified to work on. At the same time, it forces their accountability because they must report to the Legislature on their progress toward mandated goals annually. Moreover, the Council is required to present a long range plan to the legislature on an annual basis and to direct funding provided by the legislature to the accomplishment of the goals in that plan.

From the perspective of a member of the legislature, one of the greatest benefits of the Council is that it provides a mechanism for peer review of funding requests which must be supported by the Council. No longer must legislators expect to have several conflicting funding requests which are difficult to evaluate and which may well serve one part of the State while being detrimental to the needs of other parts of the State. There is created here a single source for prompt, authoritative answers on any questions concerning public broadcasting in Kansas.

Can a system like the one proposed here actually work? There is strong evidence that it can: this mechanism has been in place in Illinois for many years. The circumstances are strikingly similar to those which prevail in Kansas. In Illinois:

- * There is a single dominant population center and several other reasonably large cities. But there are also many rural areas.
 - * There are many kinds of licensees, all of whom wish to provide service of quality to a unique service area with distinctive needs.
 - * Broadcasters are forced to work together as directors of a not-for-profit corporation.
 - * The not-for-profit corporation undertakes projects which are too large or too complex for any one station. This includes intensive coverage of the legislature at the end of each term (when mountains of legislation are passed quickly), and such coverage is broadcast statewide. Also included are major addresses by the Governor. Daily newsfeeds which combine the best daily output of all participating stations allow sharing.
 - * A satellite uplink truck purchased with state funds is leased to commercial users (when not needed by the public stations), providing both revenue to support public broadcasting and an important service for commercial broadcasters.
 - * There is no wrangling about how much money is needed or deserved by each station; financial issues are formula-driven. Disagreements among broadcasters are settled in a professional way or arbitrated by peers.
- That this system can work over a long period of time without the necessity of a state bureaucracy and without the expenditure of large amounts of money to administer it is worthwhile in itself. Moreover, there are built-in mechanisms to assure integrity. (For example, the grants to stations are based on audited financial

statements prepared by licensed Certified Public Accountants. This is not an additional burden for stations, since such audited statements are already needed for submission to the Corporation for Public Broadcasting.)

The reader will note that the draft legislation abolishes the Kansas Public Broadcasting Commission. It does not transfer to the public broadcasting Council all the powers, duties, and responsibilities of the Commission which is abolished. The two bodies have different purposes. The Council is not an oversight body, and it does not purport to coordinate activities other than public broadcasting (as was in the charge to the Commission). It is not clear that matters other than public broadcasting ever formed a substantial part of the work of the Commission, and it seems likely that most of the duties of the Commission may not be of such high priority that a separate state body must exist to accomplish them. If there are remaining duties (other than public broadcasting) which can be shown subsequently to be absolutely essential, those duties can be administratively assigned to the appropriate state agency.

There has been a suggestion from some members of the Kansas Public Broadcasting Commission that there should be one or more public members on the Board of Directors of the Council. This is a suggestion which the consultant has considered thoroughly--and discussed with a number of other people in public broadcasting. It is not a suggestion this consultant supports--for the following reasons (previously shared with the Chairperson of the Kansas Public Broadcasting Commission):

1. The vast majority of issues which will be worked on by the members of the Council will require very substantial professional expertise. These will be matters of technology, of signal distribution, of marketing, of cost-benefit analysis, of fundraising strategy, of correct allocation of resources between stations, and of reconciling disputes between the stations. Much of the work

would be done in committees which might meet more frequently than the Board itself. No public member could possibly have the expertise to participate meaningfully in these tasks. The public will be primarily concerned with programming--and that is a decision which *must* be made at the local station level for reasons which I made clear in my draft report: this is not a matter which local stations can delegate to the Council or any oversight board. In the face of discussions of issues and problems which are outside the expertise of a public member, such members would become at best "monitors" and at worst impediments to progress--no matter how good their intentions.

2. The Council will probably meet intensively during certain times of the year--and particularly at the beginning of its existence. After that it will probably meet monthly or quarterly, depending on the issues which need work and the quality of the relationships between the stations. It will probably meet in several locations, with each of its station members paying their own way to the meetings without any reimbursement from the Council. It would be a very great burden for a member of the public to take time off from work and to invest money in a trip to a distant city, possibly for two days at a time. I suspect the longevity and consistency of attendance would be about as good as the historical pattern of members of the Kansas Public Broadcasting Commission, or worse.
3. We must remember that the Council is neither an oversight organization nor a regulatory body. It has no power to deny funding to any eligible station and no power to dictate program policy. You will note that the Council itself has no budget aside from grants tied to specific projects. If we were honest, we would agree that with respect to the issues of oversight and regulation, the Council is similar to the Commission. I can assure you that

membership on the Board of the Council would not be the best mechanism for influencing program content or the policies of individual stations.

4. We must also remember that the amount of money which is now being provided by the State of Kansas is insignificant--and that even under the proposals in my draft report the State will be providing a minuscule part of the funding for each station (indeed, not enough to pay for the basic infrastructure of equipment and not even enough to pay for electricity!). The overwhelming proportion of funding for each station comes directly from the people who use the services of those stations--the listeners and viewers. That makes it clear that it is in the stations' best interest to serve the public as well as they can, making decisions which reflect the character of the population in their coverage area.

There is yet another reason why it would be inadvisable for a public member to have a seat on the Board of Directors of this professional organization. Any member of the public comes from the coverage area of one of the stations represented on the Board. There would be suspicion that one station has more-than-equal representation through this mechanism, thus destroying the delicate balance of peer trust which must be at the core of Council operations. Even worse, some managers may believe that the public member's understanding of public broadcasting is based on the narrow picture presented in his/her own community. But just as every area of Kansas is different, the character, needs, and service plans of each station need to be different; it is unhelpful when one member of the board lacks the perspective to see public broadcasting in institutional terms rather than in terms of a single station with its own unique problems and potentials.

How, then, are stations accountable to the public for the quality of the program service they provide, and especially for the expenditure of the funds

which reach individual stations through the mechanisms in the proposed legislation? It seems clear that the stations are directly responsible to the representatives of the people: the legislature. They must be prepared to answer annually for the quality of their service to the public, and to rebut any charges that they are inadequately serving Hispanics, African-Americans, Asian-Americans, or others.

I must also emphasize that the Kansas Public Broadcasting Council would not operate in secret. Its meetings would be public, and at each meeting there would be time for members of the public to address the Board. This opportunity might be far more useful to members of the public than being expected to attend numerous meetings and do work for which they may be ill-prepared or ill-suited.

For all these reasons and others, I see nothing to be gained by adding a public member to the Board of the Kansas Public Broadcasting Council, and much to be lost in terms of wasted time and energy, loss of professional accountability, inefficiency of operation, additional cost, personal burden, and potential conflict.

This consultant is aware that not all clients take the advice of consultants on every point. I am therefore compelled to suggest ways of minimizing the damage if the Legislature is persuaded that a public member should be added to the Board of the Council.

1) The public member should not be a state employee, an elected official, or any other agent of government. The point of the Council is to disengage public broadcasting from government and make it directly responsible to the representatives of the people. Moreover, appointment of a state employee would be contrary to Section 13 of the Act.

2) The public member should not be a political appointee. Many of the same reasons apply in this case, plus the potential for suspicion of indirect or covert attempts to influence public broadcasting through the selection of sympathetic cronies. Even worse is the common perception that often appointments are

made not because of special expertise or competence, but in payment of political debts. It is not the reality, but the public perception which would harm public broadcasting and the State of Kansas.

3) The public member should not be a commercial broadcaster. The mission of commercial broadcasting is entirely different than the mission of public broadcasting. The two systems operate under entirely different philosophical rubrics; it would be unwise to attempt to mix the two philosophies on one Board.

A special caution to the legislature on the issue of funding is in order. The legislature should be aware that any attempt to fund public radio stations without increasing the total level of funding could cause a crisis for public television stations, particularly those in areas of sparse population. The consultant strongly recommends adoption of the funding goals set forth in the report ("a buck a year per citizen within two years, two bucks within five years"). This is a level which most citizens felt very comfortable with when they were questioned in public hearings. Indeed, most citizens seemed shocked to learn that Kansas funds its public broadcasting system at a level well below that which prevails in Mississippi, Alabama, Louisiana, or Georgia--and at ten percent of the level in Iowa and five percent of the level in neighboring Nebraska.

Public broadcasting could be one of the most significant elements in the quality of life enjoyed by Kansas citizens, in the ability of Kansas to stabilize economic development, in the ability of Kansans to participate in government, and in the education of both younger and older people. If public broadcasting is adequately funded and properly managed, it can be more than an electronic highway which reaches directly into every Kansas home and farm. It can be a significant contributor to achievement of the most important items on the state's agenda for the future.

1 in conformity with the applicable laws of the state of Kansas and
2 this act.

3 ~~(e)~~ (d) The provisions of K.S.A. 75-4317 through 75-4320a and
4 amendments thereto, which relate to open meetings, and the open
5 records act are applicable to the Kansas public broadcasting council.

6 New Sec. 13 12. (a) The Kansas public broadcasting council shall
7 report annually to the appropriate committees of the legislature on
8 the following matters:

9 (1) The services provided to the people of Kansas with funds
10 appropriated pursuant to this act ~~in the, or the law in effect prior~~
11 ~~to the effective date of this act, in the second~~ prior fiscal year,
12 particularly with respect to the goals of public broadcasting as set
13 forth in section 2 and amendments thereto subsection (j);

14 (2) the need and justification for appropriations in the current
15 and future years;

16 (3) the need for justification for construction of any new public
17 broadcasting facilities;

18 (4) the methods used to assure the financial integrity of any
19 station receiving a grant under the provisions of this act; and

20 (5) the ways in which the members of the Kansas public broad-
21 casting council have cooperated, in the previous fiscal year, to pro-
22 vide a more efficient, relevant and cost-effective service for the
23 people of Kansas.

24 (b) The Kansas public broadcasting council shall present, as a
25 part of its annual report to the legislature, a comprehensive plan
26 setting forth the service goals and operational plans for public broad-
27 casting in Kansas during the ensuing three years, such plans having
28 been developed by and voted upon by the directors of the Kansas
29 public broadcasting council. This plan shall be updated each year to
30 take into account changing needs, technologies and operational
31 circumstances.

32 (c) The Kansas public broadcasting council shall certify to the
33 secretary of administration, following a vote of the council's directors
34 thereon, that any station seeking eligibility for a grant under this
35 act and which was not in operation prior to the effective date of this
36 act, is essential and necessary for the provision of service to the
37 people of Kansas. This requirement for certification shall also apply
38 to any station eligible for a grant on the effective date of this act,
39 if such station subsequently becomes ineligible and later seeks to
40 again become eligible for a grant. No station for which such certi-
41 fication is required shall be eligible to receive a grant under the
42 terms of this act unless such certification has been provided.

43 (d) In the event of any conflict between stations with respect to

PROPOSED AMENDMENT For Consideration
by House APPROPRIATIONS
3-31-93

The bylaws of the Kansas broadcasting
council shall provide for (1) the election
of a chair of the council of directors
and a vice-chair of the council of
directors from among the members
of the council of directors, (2)
terms of office for the chair and
vice-chair of not longer than two
years, and (3) the rotation of the
offices of chair and vice-chair
between representatives of television
stations and representatives of
radio stations among the members
of the council of directors.

ATTACHMENT 2a

Testimony of
The Public Broadcasting Stations serving Kansas
on Senate Bill 350
before the House Committee on Appropriations

THE ASSIGNMENT

In the Fall of 1991, the Special Committee on Ways and Means/Appropriations recommended that:

1. "... the Public Broadcasting Commission should undertake a study which will have as its objective, the formulation of plans, policy, and goals for the state's involvement and investment in public broadcasting."

2. "The Commission should seek input from as many interested parties as possible in this study. The Commission should take testimony from groups representing, among others, the arts, humanities, universities and colleges, school districts and educational consortia, libraries, boards of directors of public radio and television stations, and business leaders, especially those that underwrite public broadcasting programming. The Commission should see that people from all areas of the state, especially those that are unserved or underserved by public broadcasting, are heard from during the hearings process."

3. "... the Commission should present to the Legislature a report on the appropriate role, if any, of the state in public broadcasting."

4. "The report should address the issue of whether the Public Broadcasting Commission should continue in existence or be replaced by another reformed agency. The report will also propose reforms, including statutory changes, ... to make the Commission or its successor agency, if any, a more effective instrument for carrying out state policy."

5. "... The Commission should also present to the Legislature the outline for a long-range plan for the state's involvement in public broadcasting."

6. "The plan should suggest funding mechanisms that will allow the goals and objectives of the plan to be achieved."

7. "The plan should be one that can be updated annually and presented to the Legislature, the executive branch, and to all parties with an interest in public broadcasting."

THE STUDY

In his report to the Commission, entitled, *The Electronic Highway of Ideas, Education, and the Arts in Kansas: A Review of the Current Status of Public Broadcasting in Kansas with Recommendations for Change*, Dr. Donald P. Mullally, the consultant to the Commission, summarized his methodology which included the following:

In pursuit of facts which would support answers to the questions raised above--and to determine whether there were other relevant issues which should be called to the attention of the Commission and the Legislature, this consultant engaged in the following activities:

1. There was a thorough review of the statutes creating the Kansas Public Broadcasting Commission, and other relevant statutes. Careful consideration was given to a summary of the responsibilities and powers of the Commission prepared by the former Chairperson of the Commission.

2. A previous study of the Commission, done by the Department of Information Systems and Communications, was thoroughly reviewed.

3. Several legislators were interviewed to solicit their opinions concerning the past work of the Commission and their hopes for the future.

4. The consultant attended public hearings in all parts of the state, asking questions of citizens and interested professionals who appeared at those hearings.

5. All public radio and television stations in the state were monitored by the consultant for the purpose of forming an impression of the character and quality of the service and the adequacy of the signal in various parts of the state. During the consultant's extended visits to Kansas, citizens he encountered were asked about public broadcasting and their impressions of the service.

6. All Kansas public broadcasters were invited to attend a meeting at which they were questioned about their aspirations for the future and their impressions of the current arrangement with respect to the Kansas Public Broadcasting Commission.

7. A number of leaders in business, education, and the arts were invited to discuss public broadcasting with the consultant; those discussions offered an opportunity for the consultant to raise policy issues and solicit opinions.

8. A number of Kansas public radio and television stations were visited, largely to gather a sense of the quality of the facilities and the capabilities for serving the citizens of Kansas through those facilities.

9. There was a thorough review of funding patterns in other states, particularly with regard to the amount of funding for public broadcasting and the commitments made by other state governments.

10. There was a careful study of census data for the State of Kansas, particularly with respect to population density by county and the distribution of minority populations throughout the State. An analysis was done of the signal coverage patterns for each of the public radio and television stations in Kansas to determine which areas of the state may not now be receiving adequate coverage.

THE FINDINGS

The consultant reported that:

The Kansas legislature was very much on target when it declared, in K.S.A. 75-4905 that "it is necessary and appropriate for the state government to complement, assist, and support a policy that will most cost effectively make noncommercial public television and radio service available to the people of the state." The legislature wisely understood that "the expansion of noncommercial public television and radio and its programming diversity depend on freedom, imagination and initiative," and that "it furthers the general welfare to encourage such programming which will be responsive to the interests of people throughout the state and which will constitute an expression of diversity and excellence."

Largely on the basis of direct communication with Kansas citizens--through public hearings and in many less-formal contacts, one can see that Kansas citizens agree with the position taken by the legislature, for public broadcasting has become an important part of the lives of Kansans.

Listening to ordinary people express their views on public broadcasting convinces one that these public media have become for many an essential amenity of life. They describe public television and radio as bringing even to isolated and remote areas a service which is enriching, entertaining, and informing. They perceive it to be a service

of quality, a service worthy of their time, a service worthy of support by individual users and by the State.

Public broadcasting is especially valued in rural, thinly-populated areas of Kansas. There is the sense that without public broadcasting, rural Kansas would be a backwater, an area isolated from the mainstream of American arts, ideas, and culture. For rural Kansans, public radio and television have become an electronic highway of ideas, education, and the arts reaching into even the smallest towns. Public broadcasting delivers its rich mix of programming even to isolated farms. School districts rely on the instructional services for important teaching materials. Even the mainstream public television programming delivered in the evening is considered to be a resource which can be tapped by teachers. A small town music teacher reported using the classical music on public radio as a teaching resource in her work with students. A well-educated lawyer, now a judge in a small town in Kansas, relates the fact that in the absence of public broadcasting, it would be difficult to attract qualified professionals to serve rural communities. A rural mother reports that only on public broadcasting does she have the opportunity to see and hear extended discussions of Kansas issues and reports from her representatives in Topeka. Yet another citizen observed that aside from public broadcasting, "we don't have any institution we all share, east and west, urban and rural. We all need to be in the same discourse community." This recounting of testimony is representative rather than exhaustive; there are similar stories from many counties of the state.

THE ROLE OF THE STATE

On page 8, New Section 12 (j) of SB 350, the state's involvement in public broadcasting is delineated. The consultant presented the following rationale:

The basic reasons for state involvement in public broadcasting are these:

- * It is in the best interest of the State of Kansas to assure that all citizens, no matter where they may live in the state, have access to a basic level of information, culture, and education (particularly in the sense that education is a lifelong process which encourages personal growth and the ability to participate in public affairs).

- * Public broadcasting offers a forum for serious discussion of issues which directly affect the future of Kansas; it is a medium which has both the capacity and the

will to offer extended treatment of complex issues. It is the electronic connection between ordinary citizens and elected representatives. It empowers citizens to play their role in governance through informed participation in the political process. Fostering this participation is an appropriate role for State Government.

* Public broadcasting plays an important support role in the State's system of public education; hundreds of rural schools participate in educational programs delivered through the facilities of public broadcasting.

* Public broadcasting plays an important role in stabilization of the economic climate of the State; it may be essential for further economic development, particularly in thinly-populated areas of the state. Professionals and business executives are reluctant to locate in an area in which good public broadcasting is unavailable.

* Public broadcasting plays a major role in advancing the Governor's challenging "Creating Tomorrow: An Agenda for the Future of Kansas." Public broadcasting can play a major role in virtually every area identified as important in that agenda: education, health, social issues, economic development, telecommunication, and quality of life.

* Public broadcasting is uniquely able to reflect the character and aspirations of Kansas to its citizens, and to provide an inexpensive way of preserving and transmitting to a new generation the state's history, its indigenous culture, its art, and the remarkable diversity of its people.

These then summarize the overall goals of the state in being involved in and supportive of public broadcasting services to Kansans.

GOALS TO CARRY OUT THE POLICY

The consultant suggested the following operational goals for the state in order to achieve the overall goals:

A) The state should encourage availability of public television and radio signals to all citizens of Kansas.

There are now at least three (and possibly as many as five) counties which receive inadequate coverage by public television, notwithstanding the existence of cable systems in much of the state. Citizens in Greenwood, Elk, and Chautauqua counties are strong in their desire to have a Kansas-based public television signal available. While it would be prohibitively expensive to affirmatively assure that an off-air signal is available to every citizen of Kansas, very modest expansion of the existing television system is required, probably

through the use of low-power transmitters in the population centers of the neglected counties, re-transmitting signals of existing Kansas stations.

B) Kansas citizens should have access to signals which will provide a very rich mix of Kansas-oriented programming, including vigorous coverage of Kansas public policy issues. The service should reflect Kansas' unique character and culture, including the diversity of Kansas' population.

For the most part, public broadcasters have made very good progress toward this goal. But there are those who advocate that unserved areas should simply pick up signals from neighboring states. In the long run, such a course of action would probably not produce the desired "connection" between the citizens of Kansas. The remarkable cohesiveness of the Kansas City metropolitan area and the strong performance by the station serving that area is evidence, however, that the meandering course of a river need not determine that citizens on one side of the river will receive inadequate service.

C) The State of Kansas should provide sufficient base funding for all stations to assure that the service is of consistently high quality and is financially viable, even in remote and thinly-populated areas of the state.

This consultant recommends that the electronic highway of ideas, education, and the arts be funded at a level consistent with that of other states. A reasonable goal might be one dollar per citizen within two years and two dollars per citizen within five years. This level of funding would allow grants to radio as well as to television stations, and, if the proper formula were devised, it would supply additional funding where it is most needed--in thinly populated areas where listener and viewer support can never reach the levels achieved in major cities.

D) There should be a mechanism to assure that new stations are not created unless they are truly needed, simply because state funding is available.

There must be some method of "birth control" to assure that state funding is not dissipated uselessly by increasing the number of radio or television stations beyond the number necessary to assure quality service. A determination of this sort requires considerable professional expertise and the ability to see through carefully-crafted pseudo-justifications for system growth.

E) There should be incentives which encourage stations to work together in the public interest, sharing equipment, sharing programming, and encouraging cost-effective use of scarce resources.

There is no evidence that the current arrangement has fostered a climate of sharing and work toward a common purpose. It seems unlikely that such an arrangement could emerge from the Commission structure.

- F) There should be incentives for stations to serve the public so well that individual and business contributions provide a high level of support. Such service incentives should be complemented by incentives toward effective fundraising and development activities.

It seems appropriate to assure that state funding is, in the words of the legislature, "complementary," and that stations rely first of all upon direct contributions by those who are served. Fundraising expertise and efficiency should be rewarded through incentives.

- G) Institutions which now provide support to stations should be discouraged from withdrawing that funding--in effect transferring the burden of primary support to the State and abdicating the responsibility of an institutional licensee. There should be mechanisms to prevent institutional licensees from using for other purposes money intended by the state for public broadcasting, or dissipating the state's funding initiative by charging "institutional overhead" or "endowment management charges" to their station budgets.

In tight financial times, institutions often look only at short term goals. If substantial funding for public broadcasting were available and unrestricted, institutions would have a great incentive to shift responsibility to the state or, through fiscal legerdemain, manipulate budgets to the disadvantage of public broadcasting and the citizens the State intends it to serve.

- H) The "oversight" link between the legislature and public broadcasters should be strengthened. Public broadcasters should be made directly responsible for the level of service provided, for the expenditure of State funds, for good planning and good management, for cost-effective common efforts, for controlling un-needed growth, and for providing accurate, timely, and helpful information to the legislature.

Under the current system, the Commission is the party responsible to the Legislature--a responsibility which is impossible to perform. Even at current (inadequate) levels of funding, the Commission cannot exercise adequate planning, oversight, and coordination authority. It cannot delegate that responsibility to staff. A mechanism must be found not only to make the broadcasters feel responsible, but to force them to answer hard questions about their plans and their performance. Only a direct link to the legislature will allow this level of responsibility and oversight without intruding on the legitimate freedom and imagination which the legislature has stated it wishes to encourage in public broadcasting. The legislature must be satisfied that stations are adequately serving the citizens of the state as a condition of continued or increased funding. While this last situation is true now, the legislature is clearly not satisfied with the quality, cohesiveness, and persuasiveness of the information which the Commission is able to provide.

- I) The responsibility for advocacy must be placed squarely on the shoulders of those who are most able to tell the story of public broadcasting because they know the facts, those who have the strongest incentive to present that story most effectively and persuasively. The story should be told by those who have the strongest incentive to make the story a good one--to back the story with demonstrably high-quality, responsive service to the citizens.

There is no reason to filter the testimony of public broadcasters through a state bureaucracy. The legislature is well-equipped to ask hard questions and to satisfy itself that those to whom it gives funds are performing a public service which justifies the investment. The complement of "oversight" in this situation is "advocacy," and it seems clear that a strong link between public broadcasters and a legislative committee would benefit both parties.

- J) A mechanism must be found to distribute state funds equitably, and to present the Legislature with a single request which represents the needs of all stations. The legislature should not be faced with multiple, uncoordinated, sometimes conflicting requests for funds. The legislature deserves assurance that the funding requested is directed to accomplishment of a long range plan which has the full support of the stations and their community advisory boards.

THE PROPOSED LEGISLATION

SB 350 would implement and support the operational goals by:

1. Setting forth distribution mechanisms for operational support grants, equipment grants, and grants for special projects to Kansas stations in Sections 2 through 10 (pages 1 through 5).

- Section 2 defines stations eligible for state support and defines terms necessary for formula calculations of operating grants for television and radio stations. In order to support the goals of high-quality and comparable quality as expressed in Section 12.(j) at the top of page 8, the five institutional public radio stations are included as eligible grantees.

- Section 3 sets forth certifications required by each station to provide the basis for grants under the act.

- Section 4 establishes the 75%-25% television-radio split of the single operating appropriation for the 10 stations.

- Section 5 establishes the basic grant fund amounts for radio and television, consisting of 85% of the total amount for radio and 85% of the total amount for television respectively, and setting forth the allocation of basic grants, with special attention to stations serving areas of sparse population.

- Section 6 establishes the incentive grant fund amounts for radio and television, consisting of the remaining 15% in each pool, providing per capita support based on each station's fund-raising record. (See attached OPERATING GRANTS FORMULA chart.)

- Section 7 provides for state grants for special cooperative projects by more than one station, which would be appropriated to the new council of stations.

- Section 8 provides for state grants for capital equipment.

- Section 9 limits operating grants to a single station to 45% of the total grant pool for which the station is eligible. It also prohibits institutional licensees, such as colleges or universities, from using these operating grants for non-station purposes.

- Section 10 requires certification by each station and its licensee that funds received will not supplant or cause to be reduced other sources of licensee funding for the station. However, as amended by the Senate, it is confusing in its intent, and needs further clarification in order to prevent conflicting interpretations and inconsistency with the preceding Section 9 (b).

2. Setting forth planning and reporting requirements for public broadcasting stations and a suitable mechanism (the public broadcasting council) to implement those requirements in Sections 11 and 12 (a) through 12 (i) (pages 5 through 8).

- Section 11 establishes a non-profit corporation, governed by station representatives, the Kansas public broadcasting council. It provides that the bylaws for the council shall be written by the initial board of directors. In the former subsection (c), stricken by the Senate at the request of the stations, it prescribed the election of a chairperson and vice-chairperson, whether they should represent radio or television stations, two-year terms for each, and required alternating eligibility for those offices. This stricken subsection was inconsistent with the now subsection (c) and was amended into the proposed legislation by the Kansas public broadcasting commission at its last

meeting. This was the only portion of the commission's recommendation not supported by all stations for several reasons.

- Section 12 (a) sets forth annual reporting requirements of the council on: (1) services provided with respect to state goals, (2) need and justification for continued and future appropriations, (3) justification for new facilities construction, (4) methods used to insure financial integrity of eligible stations, and, (5) the ways in which stations have cooperated to provide a more efficient, relevant and cost-effective service to Kansans.

- Section 12 (b) requires submission of a three-year comprehensive plan for service goals and stations' plans as adopted by the council, taking into account changing needs, technologies and operational circumstances.

- Section 12 (c) requires the council to certify a station seeking eligibility which is not currently eligible at any given time as essential and necessary for the provision of service to Kansans.

- Section 12 (d) requires the council to settle any disputes between or among stations.

- Section 12 (e) requires the council to provide population figures for counties served by the stations needed for grant calculations.

- Section 12 (f) requires that the council submit a prioritized list of station equipment needs, taking into account costs, benefits, urgency, relevance to the long-range plan, and other salient considerations.

- Section 12 (g) permits the council to accept grants from the federal government or from state agencies for the purchase of equipment for use by the council stations, even for the generation of revenue to provide services by council members. The council is also empowered to raise funds from other sources to support more services by the council.

- Section 12 (h) requires an annual independent audit of the council's financial operations.

- Section 12 (i) prohibits the council from interfering with programming or scheduling decisions of its member stations.

- Again, Section 12 (j) sets forth the goals of public broadcasting in the state.

3. Clarifying the relationships between the state, its agencies, its officials, and its employees regarding the programming or scheduling of public broadcasting stations in Section 13 (page 8).

4. Carrying forward the pertinent powers of the Kansas Public Broadcasting Commission and its administrative records to the new station mechanism and abolishing the former in Sections 14 and 15 (pages 8 and 9).

- Section 14 transfers authority to utilize KDFA funding from the Kansas public broadcasting commission to the council.

- Section 15 abolishes the commission and transfers the files. The attached chart compares the COMMISSION MODEL now in place with the proposed COUNCIL MODEL.

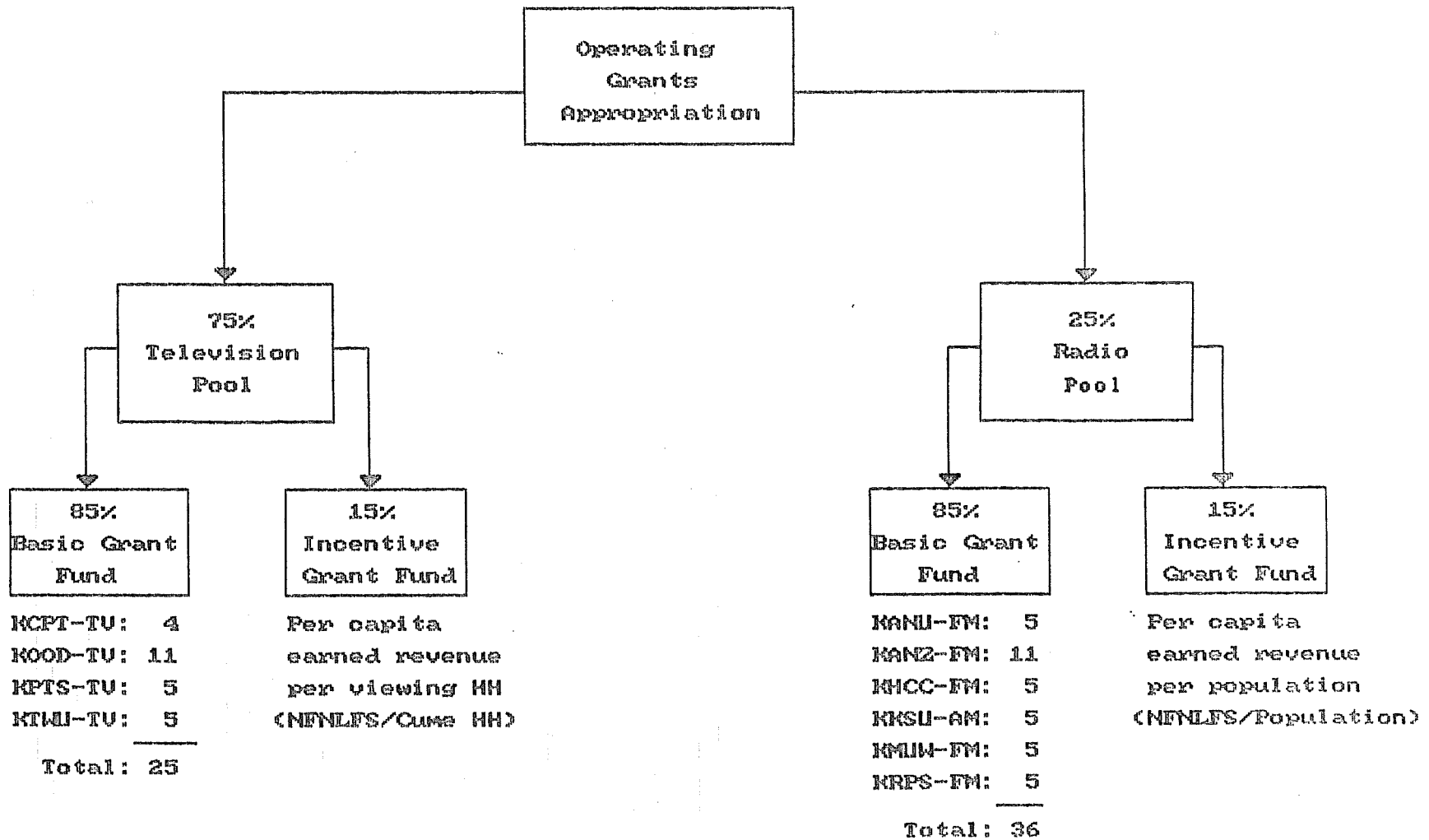
5. Repealing current statutes pertaining to public broadcasting in Section 16 (page 9).

THE RECOMMENDATION

The public radio and television stations serving Kansas endorse enthusiastically SB 350, concur with the deletion of former Section 11 (c) on page 5, request clarification of Section 10 as amended by the Senate, and request that the operating appropriations as set forth in HB 2064 for the Kansas public broadcasting commission be replaced with a single appropriation of \$850,000 in order that all 10 stations may pursue the goals of the state and the responsibilities of the council as set forth in SB 350, with said funds being allocated by the formulas contained therein.

For FY 1993 supplementals and FY1994 only, we would recommend that the EDIF appropriations for equipment replacement be left as appropriated in HB 2064.

OPERATING GRANTS FORMULA



Station	Original Agency Req. FY 1994	Gov. Rec. FY 1994	Revised Station Req. FY 1994	Difference from Orig. Req.	Difference from Gov. Rec.
KCPT-TV (Kansas City)	\$ 115,375	\$ 104,886	\$ 112,211	\$ (3,164)	\$ 7,325
KOOD/KSWK-TV (Bunker Hill)	270,072	245,520	269,069	(1,003)	23,549
KPTS-TV (Wichita)	134,721	122,474	128,109	(6,612)	5,635
KTWU-TV (Topeka/Washburn)	134,721	122,474	128,111	(6,610)	5,637
Total Operating Grants	<u>\$ 654,889</u>	<u>\$ 595,354</u>	<u>\$ 637,500</u>	<u>\$ (17,389)</u>	<u>\$ 42,146</u>

The remainder of the money -- \$212,500, would be divided among public radio station, as shown in the following table.

Station	Aid From Regents' Institutions	Gov. Rec. through PBC FY 1994	Revised Station Req. FY 1994	Difference from Gov. Rec.	Total Requested State Aid
KANZ/KZNA-FM (Garden City/Hill City)	\$ -	\$ 34,944	\$ 64,777	\$ 29,833	\$ 64,777
KHCC-FM (Hutchinson Juco)	-	-	32,133	32,133	32,133
KANU-FM (Lawrence/KU)	455,033	-	31,056	31,056	486,089
KKSU-FM (Manhattan-KSU)	395,278	-	25,240	25,240	420,518
KMUW-FM (Wichita-WSU)	165,449	-	29,716	29,716	195,165
KRPS-FM (Pittsburg-PSU)	-	-	29,547 *	29,547 *	29,547 *
Total Operating Grants	<u>\$ 1,015,760</u>	<u>\$ 34,944</u>	<u>\$ ** 212,469</u>	<u>\$ 177,525</u>	<u>\$ 1,228,229</u>

* 29,577

** 212,499

House Subcommittee Recommendations

A. FY 1993. The Subcommittee concurs with the Governor's recommendations.

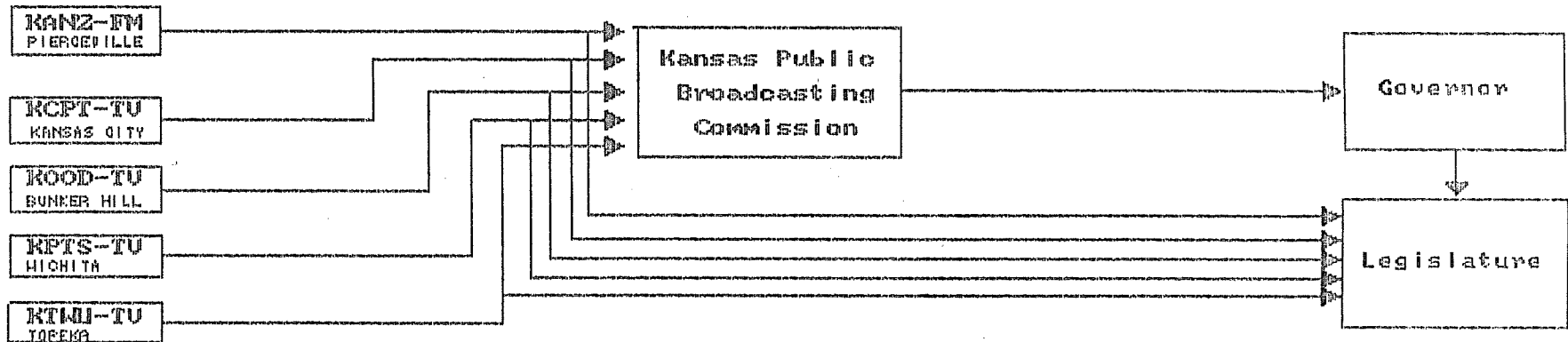
B. FY 1994. The Subcommittee concurs with the Governor's recommendations, with the following exceptions:

1. The Subcommittee recommends the introduction of a bill to implement the recommendations of the Public Broadcasting Commission. Should further funding be required in order to implement the funding formula called for in the Commission's recommendations, the Subcommittee recommends that the matter be reconsidered during the Omnibus Session.
2. The Subcommittee recommends that money from the Economic Development Initiatives Fund be used in order to match federal capital equipment grants received by Kansas public broadcasting stations. The following table shows the amount of money required in order to match grants already in hand.

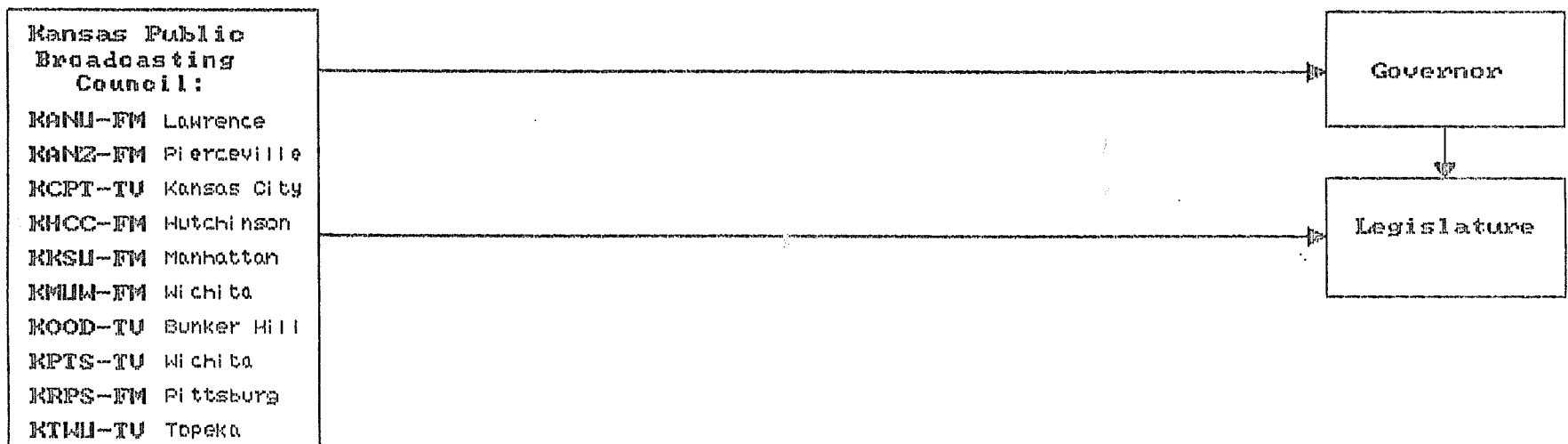
Station	Amount
KANZ/KZNA-FM (Garden City/Hill City)	\$ 2,500
KOOD/KSWK-TV (Bunker Hill/Lakin)	100,000
TOTAL	<u>\$ 102,500</u>

3. The Subcommittee recommends, furthermore, that EDIF money be set aside in order to match federal capital equipment grants that public TV and radio stations serving Kansas have applied for

COMMISSION MODEL



COUNCIL MODEL



TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE

SB 386

ROBERT S. WUNSCH

March 31, 1993

Thank you, Madame Chair. My name is Bob Wunsch and I am here today representing the University of Kansas Medical Center to testify in support of Senate Bill 386.

Vice Chancellor Roger Lambson is here to illustrate the need for this requested new law as it concerns the Medical Center, but before he testifies I would like to inform the Committee as to the genesis of the provisions of this bill.

Last fall the Medical Center requested authority from the board of regents to seek introduction of a bill of this nature during the 1993 Legislative Session. The board of regents approved our request but provided that the bill should cover all regents institutions. Thus, Senate Bill 386 became a regent-wide measure. At the time of the Senate Committee hearing the prevailing mood of the regents was that the bill should return to a Medical Center bill. Thus, the deletions of lines 16-21, page 1, of the bill.

Madame Chair, I would like to remind the Committee that there is a law, K.S.A. 76-757, which allows the endowment association of each regent institution to construct buildings, do repair and remodeling, etc. free of all of the various purchasing and contracting requirements such as are set forth in K.S.A. 75-3739 et seq. Senate Bill 386 is intended to provide the Medical Center with such freedom for projects emanating totally from private monies which are not managed by the KU endowment association. Senate Bill 386 does retain the same executive and legislative control and oversight as found in K.S.A. 76-757. These projects would have to have the same prior approval of the board of regents and the secretary of administration as is required in projects managed by an endowment association. Additionally, the board of regents is required to consult with the joint committee on state building construction before approving any such project.

In view of K.S.A. 76-757, one might well ask "why" then Senate Bill 386 which is intended to parallel, not replace, the provisions of K.S.A. 76-757. The "why" is because at the Medical Center there have been privately funded projects with which the KU endowment association under K.S.A. 76-757 has not wanted to become involved. Traditionally, the endowment association's reluctance to become involved has been in projects which are funded by "agency" funds which are on deposit with the association but under dispersing authority of the University staff or projects which amount to refurbishment, redecoration, internal rearrangement and mechanical systems installation modifications.

ATTACHMENT 4

The amendment reflected on lines 36-38, page 1, were made at our suggestion as there is one statute namely K.S.A. 75-3741c from which we should not be exempted.

The amendment on lines 22-23, page 1, which establishes a cap of \$500,000 per project was at the joint request of the regents and the Medical Center.

The amendment on lines 38-42, page 1, and lines 16-19, page 2, was suggested in part by the Medical Center and in whole by the regents. We both felt it important to require the secretary of administration's acceptance of a completed project. I am of the opinion, however, that the language on lines 40-41, page 1, and lines 16-17, page 2, where it is stated: "the improvements shall become the property of the state of Kansas" is unnecessary and even inappropriate as a project constructed under the provision of Senate Bill 386 is a project of the University and not its endowment association. There is no need to transfer title.

I am of the opinion that "acceptance by the secretary of administration" in part consists of an inspection by the division of architectural services. If this is correct, then there is no need for the amendment on lines 33-34, page 1, and lines 10-11, page 2. Perhaps the staff can shed light on what constitutes "acceptance by the secretary of administration".

I would be pleased to answer any questions and then yield to Dr. Lambson for his testimony.

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SENATE BILL 386
HOUSE APPROPRIATIONS COMMITTEE
MARCH 31, 1993

Madam Chairperson and Members of the House Appropriations Committee.

I thank you for the opportunity to speak today in regard to Senate Bill 386. My name is Jack Shipman. I am the Director of the Division of Purchases, Department of Administration.

For the past six to eight months, Dr. Kay Clawson, Executive Vice-Chancellor of the University of Kansas Medical Center, Representative Phil Kline, myself and members of my staff have met with members of the administration at the KU Medical Center. The emphasis of the discussions held centered upon the ability or inability of the Medical Center to proceed with smaller construction projects at the Medical Center in order to facilitate the arrival of new researchers or the development of new technologies. To this end, the Division of Purchases, at the request of Dr. Clawson, and the input of Representative Kline, formulated, bid and set in place a Labor Services contract for the Medical Center. The purpose of this contract is to facilitate remodeling projects or smaller construction projects at the Medical Center so as to assist the operation of the Hospital and to ensure research dollars and research overhead dollars may be maintained and well spent at that facility.

Senate Bill 386 serves to assist the Medical Center in the expenditure of private monies defined as endowment funds, granted research monies and gifts from the public. Of importance to the facility is an enhancement or speeding up of the time taken to formulate a project and have it completed and ready for occupancy. The Division of Purchases is sympathetic to the needs of the Hospital and would support Senate Bill 386 but would like to suggest a couple of amendments.

The Legislature has traditionally supported, as does the Division of Purchases, the wholesomeness of competition in the seeking and awarding of contracts. Construction projects seem to be particularly sensitive to litigation due to the highly competitive nature of construction. Therefore, I would like to amend this Bill at line 38, on page one, by adding this amendment, "In seeking construction contracts pursuant to this section, the University of Kansas Medical Center shall solicit competitive bids for such contracts."

In supporting this, I would further seek to amend this Bill by recommending that it be examined two years hence. In order to facilitate this examination, I would like to offer the amendment on page two, at line 23, after the word construction, to add section (d) to state, "The provisions of this section shall expire on June 30, 1995."

By adding these amendments we are endorsing fair practices and also recommending that in two years time that we revisit the situation to see how well it is operating. If these amendments could be accepted, I would be happy to support Senate Bill 386. I would be glad to try and answer questions at this time.

SENATE BILL No. 386

By Committee on Ways and Means

2-23

AN ACT concerning state educational institutions the university of Kansas medical center; construction, repair, remodeling and renovating buildings from private moneys; exemptions from certain statutory requirements.

It enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this act:

(1) "State educational institution" means the Fort Hays state university, Kansas state university of agriculture and applied science, Kansas state veterinary medical center, Emporia state university, Pittsburg state university, university of Kansas, university of Kansas medical center, Wichita state university and Kansas state university, college of technology at Salina.

(1) "Capital improvement project" means a project which has a total cost of \$500,000 or less.

(2) "Private moneys" means moneys from nongovernmental sources.

(b) A state educational institution The university of Kansas medical center is authorized to construct buildings and facilities on state-owned property of the university of Kansas medical center from private moneys granted or given to such institution if the capital improvement projects for such buildings and facilities have received prior approval by the state board of regents and the plans and specifications for such projects have received prior approval by the secretary of administration. Such capital improvement projects shall be inspected by the division of architectural services. Such capital improvement projects financed totally from private moneys shall be exempt from the provisions of K.S.A. 75-3739 through 75-3744, 75-3740, 75-3740a, 75-3741, 75-3741a, 75-3741b, 75-3742, 75-3743 and 75-3744, and amendments thereto. Such capital improvement projects shall be totally financed from private moneys and the buildings and facilities constructed shall become the property of the state of Kansas upon completion and acceptance by the secretary of administration. No such capital improvement project for a building or facility shall be approved by the state board of regents without having

In seeking construction contracts pursuant to this section, the university of Kansas medical center shall solicit competitive bids for such contracts.

ATTACHMENT 5a

5a-2

1 first advised and consulted with the joint committee on state building
2 construction.

3 (c) ~~A state educational institution~~ *The university of Kansas*
4 *medical center* is authorized to repair, remodel or renovate state
5 buildings and facilities of the state educational institution univer-
6 *ity of Kansas medical center* from private moneys granted or given
7 to such institution if the capital improvement projects for such re-
8 pairs, remodeling or renovations have received prior approval by the
9 state board of regents and the plans and specifications of such projects
10 have received prior approval by the secretary of administration. *Such*
11 *capital improvement projects shall be inspected by the division of*
12 *architectural services.* Such capital improvement projects financed
13 totally from private moneys shall be exempt from the provisions of
14 K.S.A. 75-3739 through ~~75-3744~~, 75-3740, 75-3740a, 75-3741, 75-
15 ~~3741a~~, 75-3741b, 75-3742, 75-3743 and 75-3744, and amendments
16 thereto. *Such capital improvement projects shall be totally financed*
17 *from private moneys and the improvements shall become the property*
18 *of the state of Kansas upon completion and acceptance by the sec-*
19 *retary of administration.* No such capital improvement project to
20 repair, remodel or renovate any *such* state building or facility shall
21 be approved by the state board of regents without having first advised
22 and consulted with the joint committee on state building
23 construction. *

24 Sec. 2. This act shall take effect and be in force from and after
25 its publication in the statute book.

(d) The provisions of this section shall
expire on June 30, 1995.

March 31, 1993

Testimony Before the House Appropriations Committee
SB 386

My name is Roger O. Lambson and I am the Vice Chancellor for Administration at the University of Kansas Medical Center. I am here today to speak in support of Senate Bill 386.

As Mr. Wunsch has explained, the Kansas University Endowment Association is reluctant to be involved with refurbishment, redecoration, internal rearrangement, or mechanical systems modifications. Sometimes they prefer not to be involved with larger projects. Their help, however, on many occasions has been most important.

I understand the Endowment Association not wanting to manage all of the small privately funded capitol projects at the Medical Center. Soliciting money for the institution, investing, and otherwise managing those funds is their primary business; managing myriad renovation projects for the institution is not. Nonetheless, the institution does need to have a mechanism to utilize private funds where necessary to expedite completion of a project or to address a special requirement.

As an example, about two years ago, the Medical Center was approached by Children's Oncology Services of Mid-America, Inc. about establishing a Ronald McDonald Family Room in our hospital. This proposal from the community was made in response to the often expressed need for a facility within the hospital where the families of patients could escape the pressures of caring for a sick child, to relax, or to conduct family business away from the patient and hospital staff. The idea quickly germinated and grew. Considerable community support for the project was generated and a very short time frame to complete the project was established. Needless to say, the Medical Center was very interested in having the proposed facility and our Anesthesiology Foundation agreed to vacate their space on the fifth floor of the Delp Pavilion, immediately adjacent to the Children's Center, for the proposed Family Room project. Because we had no good mechanism to quickly renovate other space for the unit being displaced, Anesthesiology ended up in temporary quarters for over a year and one half and had to move twice. Had the provisions of Senate Bill 386 been in place, private funds could have been used to quickly ready the space for Anesthesiology and still meet the schedule for the Ronald McDonald Family Room project. In spite of these problems, the new Family Room was ultimately opened, the first of its kind in the nation.

ATTACHMENT 6

The second example relates to our outpatient clinic operations. As many of you know, the Medical Center provides space through contractual agreements to each of our clinical foundations. As part of these agreements, the institution provides basic space and support services and each foundation provides staffing and furnishings for their outpatient operations. As Medical Center facilities age and competition increases, there is increasing need to refurbish, redecorate, rearrange, and otherwise upgrade these clinical facilities. We have been unable to meet these growing demands in a timely manner with our own construction staff. This lack of responsiveness has resulted in frustration and delays in improving several critical clinical facilities including pediatrics and radiology in Kansas City and the outpatient clinics in Wichita.

I fully support the amendments of the Committee on Ways and Means including the limit of \$500,000 on privately funded projects which would be managed by the institution and to require approval by the secretary of administration of any project before it is accepted by the state. Such oversight is appropriate and is certainly consistent with similar requirements for all other capitol projects, regardless of their funding or method of construction.

We believe that Senate Bill 386 will help us make small but important improvements in a more timely manner when private funds are available to do so.

I would be pleased to attempt to answer any questions.