

Approved: 3/23/93
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Keith Roe at 9:00 a.m. on March 19, 1993 in Room 519-S of the Capitol.

All members were present except:

Representative Allen, excused
Representative Pottorff, excused
Representative Wagle, excused

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Bill Edds, Revisor of Statutes
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Senator Robert Vancrum
Representative Kenneth King
Leon White, Butler County Board of Commissioners
Mark Burghart, General Counsel, Department of Revenue
Sister Elizabeth Ney, Carondelet Health Corporation and
Carondelet Long Term Care Facilities, Inc.
John Grace, Kansas Association of Homes for the Aging

Others attending: See attached list

A motion was made by Representative Grotewiel, seconded by Representative Empson, to introduce a bill relating to school district finance; affecting the definition of base state aid per pupil. The motion carried.

Chairperson Roe opened the hearing on SB 194.

SB 194 Countywide sales taxes to finance facilities in certain counties.

Representative Kenneth King testified in support of SB 194 and said that Butler County would like to be added to the list of counties authorized to impose a countywide sales tax dedicated to financing the construction of remodeling of certain county facilities.

Leon White, Butler County Board of Commissioners, testified in support of SB 194, stating that Butler County's needs for improvements to its buildings and facilities are great and their abilities to respond to these needs should include the availability of all possible funding alternatives (Attachment 1).

Mark Burghart, General Counsel, Department of Revenue, commented on SB 194 and said that the Department has had problems with these types of measures with other counties; that its the question of when is the tax cut off. He suggested amending in lines 20 through 22 to read: The tax imposed pursuant to this paragraph shall expire when sales tax sufficient to pay all of the costs incurred in the financing of such facility has been collected by retailers as determined by the Secretary of Revenue.

Chairperson Roe closed the hearing on SB 194.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 19, 1993.

The Chair opened the hearing on SB 253.

SB 253 Adult care home property tax exemption considerations.

Senator Robert Vancrum testified in support of SB 253. He said that the problem is that existing law adopts a very rigid standard known as "lowest feasible cost" which the board of tax appeals has interpreted in an even more rigid way to deny the exemption because of the payments made between two Catholic entities. The Senator also said that his county doesn't need further factors to discourage operators from building or expanding nursing homes or to punish a charity simply because it obtained start up funds from another charity to reduce operating costs (Attachment 2).

Sister Elizabeth Ney, Carondelet Health Corporation and Carondelet Long Term Care Facilities, testified in support of SB 253. She said that she believes it is a common financial practice in health care systems that one not for profit would lend to another not for profit corporation at the market rate or lower interest rates as in the case of her organizations. Sister Ney also said that they support the changes in this bill that allows note, rental, or mortgage payments, including interest computed at a rate not in excess of what a prudent borrower would have paid under market conditions existing at the time a loan is secured for another not for profit corporation to be included as operating expenses of the adult care facility (Attachment 3).

John Grace, Kansas Association of Homes for the Aging, testified in support of SB 253. He said that this loan arrangement is used by some of their larger not-for-profit organizations to ensure the financial health of their member organizations and to allow organizations to meet the needs of the growing elderly population (Attachment 4).

Chairperson Roe closed the hearing on SB 253.

The minutes of March 17, 1993, were approved as printed.

The meeting adjourned at 9:35 a.m.

The next meeting is scheduled for March 22, 1993.

Date:

GUEST REGISTER

HOUSE COMMITTEE ON
ASSESSMENT AND TAXATION

[illegible]

TESTIMONY OF LEON WHITE, CHAIRMAN
BUTLER COUNTY BOARD OF COMMISSIONERS

Regarding Senate Bill 194

March 19, 1993

Thank you for the opportunity to appear before you today regarding Senate Bill 194. My name is Leon White. I am Chairman of the Butler County Board of Commissioners. With me today is Neal Parrish, County Commissioner from Augusta, and David Yearout, the Butler County Planner.

Senate Bill 194 proposes to amend K.S.A. 1992 Supplement 12-187 to provide Butler County the option of seeking a countywide retailers' sales taxes. This would be used to finance certain county building improvements. The proposed amendment simply adds Butler County to the list of six existing counties with this special funding option. It also clarifies that the monies raised would be available for those improvements to county buildings and facilities that are determined to be needed. This is the only change we ask to the existing law. To this end, the Butler County Board of Commissioners asks that you approve Senate Bill 194 and submit it to the full House with a strong recommendation for passage.

3/19/93
House Taxation Cmte
Attachment 1

Leon White Testimony

We feel it is very important to stress a few relevant facts for use in your deliberations. First and foremost, the imposition of the retailers' sales tax cannot occur unless and until the voters of Butler County approve it. It is necessary that we define the scope and estimated costs of any proposed improvements before the question is placed on the ballot. Finally, and also extremely important, the sales tax would be in effect only for as long as it took to raise the necessary funds to pay for the improvements defined in the ballot question. All of these limitations are written into the existing law and are felt to be strong reasons for the successful use of this funding option.

Butler County's needs for improvements to its buildings and facilities are great. The existing Courthouse was built in 1908 and does not meet either current Americans with Disabilities Act standards or many of the current building and safety code standards. The Butler County Judicial Building, including the existing County Jail, was built in 1971, but it too fails to meet many of the current standards. Butler County has made certain modifications to these facilities through the years to minimize some of the deficiencies. It is evident that a more comprehensive and thorough renovation is necessary to resolve the problems and provide the needed office and facility space.

Leon White Testimony

In addition, Butler County will need to provide additional office and facility space for our growing County. This may include a new jail, judicial facilities, juvenile detention facilities, administrative offices, meeting and storage spaces. All these needs must be addressed by our County's citizens in the coming years. The requested amendment in Senate Bill 194 simply provides Butler County with another optional funding source to meet these needs based on the wishes of our citizens.

Butler County is one of only a few counties within the State of Kansas that is experiencing growth. Our rate of growth is one of the highest in the State, with a large percentage of the growth in the unincorporated part of the County. As a result, we continue to see a growing demand for services from this new population. Our abilities to respond to these demands should include the availability of all possible funding alternatives. As elected officials, we wish to present optional financing methods to the local electorate so as not to depend too heavily on the property tax. During public meetings on a proposed improvement project last year, the public continually expressed more support for use of a sales tax as a method to finance the project, as opposed to a property tax. Senate Bill 194 provides that additional flexibility to Butler County in addressing its building and office space needs.

Leon White Testimony

The Butler County Board of Commissioners unanimously supports the passage of Senate Bill 194 and requests this Committee favorably pass the bill in its present form and recommend its passage and approval to the House and Governor.

Thank you for the opportunity to testify before you today. I'll be happy to respond to any questions you may have.

BOB VANCURUM

SENATOR, ELEVENTH DISTRICT

OVERLAND PARK, LEAWOOD

STANLEY, STILWELL, IN

JOHNSON COUNTY

9004 W. 104TH STREET

OVERLAND PARK, KANSAS 66212

(913) 341-2609



TOPEKA

SENATE CHAMBER

STATE CAPITOL

TOPEKA, KANSAS 66612-1504

(913) 296-7361

COMMITTEE ASSIGNMENTS

VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES

MEMBER: WAYS AND MEANS

JUDICIARY

**TESTIMONY FOR HOUSE TAXATION COMMITTEE IN SUPPORT OF SENATE BILL 253
FROM SENATOR BOB VANCURUM**

This bill was requested as a result of Board of Tax Appeals case last year interpreting those sections of 79-2016 and related sections that denied a property tax exemption to the owner and operator of this facility, which is a federally tax exempt public charity to which donations are deductible under federal law, simply because it had help in financing the original construction--from another 501 (c) (3) Catholic charity which is also tax exempt and donations to which are deductible for federal tax purposes. Although either one of these entities would have been entitled to the exemption as a free standing owner there is a problem with what are otherwise arms' length payments.

The problem is that existing law adopts a very rigid standard known as "lowest feasible cost" which the board of tax appeals has interpreted in an even more rigid way to deny the exemption because of the payments made between two Catholic charities.

Although the original language was intended to make certain that people do not evade the law by leasing the facilities to a "for profit" entity, it appears that the legislature must clarify its original intent.

The amendment language is drawn very narrowly so that is unlikely that this language would exempt anyone other than the exact situation before us; that is, where one charity assists another one to start a not for profit nursing home that is otherwise operated so as to meet all the guidelines for full property tax exemption.

There is a continuing shortage of nursing home space in southern Johnson County and in fact I will be having a lot to say about the proposed moratorium on nursing home space as it impacts areas such as mine that still have a chronic shortage of nursing home space. We certainly don't need further factors to discourage operators from building or expanding nursing home facilities in my county and particularly do not need to punish any well meaning charity simply because it obtained start up funds from another charity to actually reduce operating costs.

I will be happy to answer any questions but we need action on this bill this session.

3/19/93

House Taxation Committee
Attachment 2

TESTIMONY
March 19, 1993
HOUSE OF REPRESENTATIVES TAXATION AND ASSESSMENT COMMITTEE

My name is Sister Elizabeth Ney, Vice President of Carondelet Health Corporation and Carondelet Long Term Care Facilities, Inc. I reside at 5406 West 103rd Terrace, Overland Park, Kansas. With me today is Mr. Louis C. Rasmussen, former Chairperson of Carondelet Long Term Care Facilities, Inc. and Carondelet Health Corporation, who resides at 10111 Howe Drive, Leawood, Kansas.

Today I would like to speak in behalf of the recommended changes that are proposed in Senate Bill 253. In 1988, Carondelet Long Term Care Facilities, Inc., a not for profit corporation and a 501, C-3 designate corporation from the IRS, began the operation of Villa Saint Joseph, a 120-bed skilled nursing facility. In order to purchase the facility, Carondelet Health Corporation, a 501, C-3, not for profit corporation paid for the facility/land and contents, and in turn leased the facility and contents to the operator, Carondelet Long Term Care Facilities, Inc. at a lease payment of 8.375% for 25 years. In 1988, Villa Saint Joseph was the first venture of Carondelet Long Term Care Facilities, Inc. to operate a nursing home. Conventional borrowing and two bond companies were not interested in a new corporation and if moneys were to be obtained, the interest rate would have been 11 - 13%. The rate of interest of 8.3% was the same as the bond rate of interests obtained by Saint Joseph Health Center in 1988.

In our application for property tax exemption, we included in our financials the interest cost of the money that was used to finance this intra-company loan. In the including of this payment, Villa Saint Joseph is at the lowest possible cost as it repays the parent corporation, Carondelet Health Corporation, for the interest moneys loaned for the only purpose of operating an adult care home. In the opinion of the Kansas Board of Tax Appeal, Carondelet Health Corporation, through the intra-company loan was not using Villa Saint Joseph exclusively for adult care, but rather investment, and therefore the interest payment made would not be allowed in determining lowest feasible cost. In addition to the exclusion of interest payment, tax payments were not included. At the end of fiscal year 1993, Villa Saint Joseph had a negative net worth of \$1.7 million.

3/19/93

House Taxation Cmte

Attachment 3

TESTIMONY

March 19, 1993

HOUSE OF REPRESENTATIVES TAXATION AND ASSESSMENT COMMITTEE

It is our opinion that it is a common financial practice in health care systems, that one not for profit would lend to another not for profit corporation at the market rate or (lower interest rates as in the case of Carondelet Health Corporation and Carondelet Long Term Care Facilities, Inc.). We support the changes in Senate Bill 253 that allows note, rental, or mortgage payments including interest computed at a rate not in excess of what a prudent borrower would have paid under market conditions existing at the time a loan is secured for another not for profit corporation to be included as operating expenses of the adult care facility.

I thank you for this opportunity to give you my reasons for support of this amending of KSA 79-201b. In conclusion, it is my belief that the property at 11901 Rosewood is being used exclusively as an adult care home, the parent corporation, Carondelet Health Corporation, borrowed the money through Saint Joseph Health Center to purchase Villa Saint Joseph, and that being prudent borrowers, have asked that repayment be made at a lower than market rate of 11%. We are sure that it was not the intent of the legislature to exclude not for profit corporations to lend money between not for profit corporations so that services to the residents of our State could continue and rather than paying higher interest rates, money could be devoted to providing quality care for residents of such facilities.



*Enhancing the
quality of life
of those we serve
since 1953.*

March 19, 1993

Testimony provided to: House Taxation Committee
The Honorable Keith Roe, Chair

From: John R. Grace, President

Date: March 19, 1993

We support Senate Bill No. 253.

Our association represents over 140 not-for-profit long term care facilities and retirement communities in Kansas. The Villa St. Joseph facility is a member of our group and has an excellent reputation for providing very high quality of care and services for the older persons and their families in the Overland Park community.

As the Senate Bill 253 would clarify, the issue of a loan between two not-for-profit corporations that is in place of a traditional mortgage or conventional bond issue and assures that a not-for-profit facility could utilize this type of financing from its parent organization to construct or remodel or add to its existing nursing facility.

This loan arrangement is used by some of our larger not-for-profit organizations to ensure the financial health of their member organizations and to allow organizations to meet the needs of the growing elderly population. The capitol financing market are extremely difficult for not-for-profit organizations to access and this type of loan arrangement is one very viable way that ensures that they can meet the social service needs of their community.

We would ask the committees favorable endorsement of this bill and I would be glad to answer any questions. Thank you very much.

*3/19/93
House Taxation Cmte
Attachment 4*