

Approved: February 25, 1993  
Date

## MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Vice-Chairperson Todd Tiahrt at 11:12 a.m. on February 18, 1993 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Martin, Senator Bond, Senator Corbin, Senator Feleciano Jr., Senator Hardenburger, Senator Lee, Senator Reynolds, Senator Sallee, Senator Wisdom

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

Conferees appearing before the committee: Senator Robert Vancrum  
Sister Elizabeth Ney, St. Joseph's Health Center, KC  
John Grace, Kansas Homes for the Aging  
Larry Clark, Kansas County Appraisers Association

Others attending: See attached list

Senator Tiahrt, in the absence of Senator Langworthy, called the meeting to order by calling the attention of the committee to the fiscal notes and minutes which were before the members.

### **SB 253--Adult care home property tax exemption considerations**

Senator Robert Vancrum appeared in support of **SB 253**. He said this bill is to clarify the original intent of the law 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 is exempt from property tax. (Attachment 1)

Sister Elizabeth Ney, St. Joseph's Health Center, Kansas City, read from a prepared statement. (Attachment 2) She said the Sisters of St. Joseph have sponsored health care institutions in the Kansas City area since 1877. In 1988, they sponsored the building of a skilled nursing facility in Overland Park, Kansas. She explained conventional borrowing was not possible and 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. In 1992 the Board of Tax Appeals denied their application for ad valorem tax exemption. She said it is their belief that Villa Saint Joseph is being used exclusively as an adult care home and is operating at the lowest feasible cost. She said she did not believe it was the intent of the legislature to deny Villa Saint Joseph property tax exemption because of this type of a loan.

John Grace, President Kansas Association of Homes for the Aging, appeared in support of **SB 253**. He said this bill would clarify that this type of loan should not be taxed. (Attachment 3) He was asked by the committee if he saw any other homes that maybe involved under this law and he said no, the bill is very narrow. There was also a question if there was a legal opinion on this and he said there was.

This closed the hearing on **SB 253**.

### **SB 193--Property tax procedure; hearings with county appraiser**

Larry Clark, Kansas County Appraiser Association, appeared in support of this bill. He said this bill would make the procedure more efficient and less costly. He explained the reason for the bill by saying **SB 193** would limit the conduct of a formal hearing by a county appraiser to those protests which state that the

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S  
Statehouse, at 11:12 a.m. on February 18, 1993.

valuation or assessment of the property upon which the taxes are levied is illegal or void. Current law requires a county appraiser to hold a formal hearing for each protest of a taxpayer's taxes. (Attachment 4)

The hearing was closed on **SB 193**.

Senator Langworthy opened discussion on **SB 253**.

Senator Bond moved to pass **SB 253** favorably. The motion was seconded by Senator Martin. Motion carried.

Discussion was opened on **SB 182** and staff was asked to report on research done on this bill. Staff said they thought this bill applied to only Johnson County but there may be some affect on 2nd and 3rd class cities. Senator Langworthy said this concept has been worked on for several years in Johnson county and it has taken some time to get it worked out.

Senator Martin moved to pass **SB 182** favorably. Senator Bond seconded the motion. Motion carried.

Discussion was opened on **SB 191**. Staff reported they had not found out how many benefit fire districts there are in Kansas that this would affect.

Senator Wisdom moved to pass **SB 191** favorably. Senator Lee seconded the motion. Motion carried with Senators Corbin and Sallee voting no.

Senator Tiaht moved to approve the minutes of January 21, February 4 and 5. Motion was seconded by Senator Hardenburger. Motion carried.

The meeting adjourned at 11:55 a.m.

The next meeting is scheduled for February 19, 1993.

DATE: February 18, 1993

[illegible]

STATE OF KANSAS

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 ASSESSMENT AND 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 or 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 it 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 expending nursing home facilities in my county and particularly do not need to punish any well meaning or publicly spirited-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.

*Senate Assessment and Taxation*

*February 18, 1993*

*Attachment 1-1*

TESTIMONY  
February 18, 1993  
TAXATION AND ASSESSMENT COMMITTEE

My name is Sister Elizabeth Ney, Vice President of Carondelet Health Corporation and Carondelet Long Term Care Facilities, Inc., both sponsored institutions of the Sisters of St. Joseph of Carondelet. The Sisters of St. Joseph have sponsored health care institutions in the Kansas City area since 1877. As we saw the older population in need of alternatives to hospitalization, we started a home health agency in 1985. In 1988, we sponsored the building of a skilled nursing facility in Overland Park, Kansas. This facility was designed to meet the needs of the families who resided in Kansas since our ministry of health care is beyond state lines. The mission of the Sisters of St. Joseph is that we provide high quality care as we continue to heal the resident, the patient, the family, and the community we serve.

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 an IRS 501, C-3 designate corporation, 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 8.3% for 25 years. In 1988, Villa Saint Joseph was the first effort of Carondelet Long Term Care Facilities, Inc. to operate a nursing home.

Conventional borrowing was not possible since Carondelet Long Term Care Facilities, Inc. was a new corporation and would have had to be guaranteed by Saint Joseph Health Center or a five year letter of credit would be issued by a foreign bank. In addition to exploring conventional financing, two bond companies were not interested in underwriting the sale of securities 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 interest obtained in 1988 by Saint Joseph Health Center. We felt that a prudent means would be to borrow money from Carondelet Health Corporation and to have the same rate of interest as our sister corporation of 8.3%, a rate lower than most nursing home facilities in 1988.

In 1992 the Board of Tax Appeals denied our application for ad valorem tax exemption. In the Board's decision, the interest costs associated with the loan of \$5,100,00.00, which amounts to \$300,000 in expenses annually, were not allowed as a normal operating expense.

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*Attachment 2-1*

TESTIMONY  
TAXATION AND ASSESSMENT COMMITTEE  
February 18, 1993

Therefore, by BOTA not allowing this interest cost, our financial statements would have shown a net gain rather than a net loss for our initial years. These interest costs of the loan are actually less than if we would have been able to issue bonds or borrow money from the bank.

At the end of fiscal year 1993, according to our certified public accounting firm's audit, we showed a negative net worth of \$1.7 million.

It is our opinion that it is a common financial practice in religiously sponsored 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 realize that we could have appealed the findings of the Board of Tax Appeal to the District Court but, as I stated before, we chose the common practice in religiously sponsored health care systems to lend money. We did not want to jeopardize this practice nor did we feel this was the intent of KSA 70-201b.

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.

In conclusion, it is our belief that the nursing home, Villa Saint Joseph, is being used exclusively as an adult care home and is operating at the lowest feasible cost. We believe that it was not the intent of the legislature to deny Villa Saint Joseph property tax exemption because of this type of loan expense.

I thank you for this opportunity to give you my reasons for support of amending KSA 70-201b.

With me today are three people who are closely associated with Villa Saint Joseph. They will assist me in answering any questions you may have. They are: Thomas M. Johnston, former Board member of Carondelet Long Term Facilities, Inc., and Chairperson of Saint Joseph Health Center, who resides at 6425 Willow Lane, Shawnee Mission Kansas; Mr. Louis Rasmussen, former Chairperson of Carondelet Health Corporation, who resides at 10111 Howe Drive, Leawood, Kansas; and Ms. Katharine Ensign, present Administrator of Villa Saint Joseph, 11901 Rosewood, Overland Park, Kansas.



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

Testimony provided to: Senate Taxation and Assessment  
Committee,  
The Honorable Audrey Langworthy, Chair

From: John R. Grace, President  
Date: February 17, 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 greater Kansas City community.

Senate Bill 253 would clarify that a loan between two not-for-profit corporations that is in place of a traditional mortgage or conventional bond issue would not jeopardize their tax exempt status. This type of financing is important to a not-for-profit facility to construct or remodel its existing nursing facility to meet the needs of a growing elderly population.

The capital financing markets 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 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.

*Senate Assessment + Taxation  
February 18, 1993  
Attachment 3-1*

KANSAS COUNTY APPRAISERS ASSOCIATION  
P.O. BOX 1714  
TOPEKA, KANSAS 66601

To: Senate Assessment and Taxation Committee  
From: Larry Clark, Past President KCAA  
Date: February 18, 1993

Madame Chairman and members of the committee thank you for the opportunity to testify in support of Senate Bill 193. My name is Larry Clark and I represent the Kansas County Appraisers Association.

Background:

Prior to 1989 the payment under protest process was very simple, a protesting taxpayer was given a hearing by the Board of Tax Appeals and the issue was resolved. In 1989 counties began a process which calls for the appraiser to conduct an informal hearing with the property owner who pays under protest. A decision is mailed to the taxpayer who then has the option of appealing an unfavorable decision to another county hearing, this time with the county commission or their representatives. Ultimately, however, the decision to change the value of the property which is the subject of the protest remains with the State Board of Tax Appeals.

Problem

In 1991 the International Association of Assessing Officers reviewed the appraisal of Wyandotte County specifically and the state of Kansas generally and had this to say about the payment under protest process.

The second-chance protest appeal provisions apparently were enacted in anticipation of the 1989 reappraisal. Whatever their merits then, the process delays finality in the property tax system, increases public confusion about how the system works, falsely raises expectations of relief when none is warranted, and diverts appraiser's office resources from more important tasks. "Payment under protest" provisions in other states usually pertain to appeal systems in which tax bills are issued before valuation appeals are heard or to procedures for protesting allegedly illegal property tax levies. The Kansas "payment under protest" appeals confuse the question of assessment uniformity (tax equity) with the size of tax bill, which is influenced more by the size of tax levies.

Under the current system county resources are diverted to a process which is both inefficient and expensive. Local tax jurisdictions faced with the prospect of losing a portion of their revenue to this process have little choice but to "pad" budgets at the expense of all taxpayers. To do otherwise would amount to gambling with their ability to pay all their bills and maintain a sound credit rating. There are many examples across this state where one taxpayer is responsible for the bulk of the

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*attachment 4-1*



tax base for a given taxing jurisdiction. A successful protest could bankrupt that jurisdiction.

This needs to be weighed against the need for a second annual review of values and the possibility of a satisfactory valuation decision. With the implementation of annual notification of values there is little excuse for property owners failing to challenge unfair values prior to budgets being set. The legislature has taken commendable strides to insure that equalization hearings are conducted by persons trained in appraisal procedures. The county appraiser is required to follow uniform standards of professional appraisal practice and hearing officers in 1993 will be required to be trained in appraisal. However, those requirements do not exist for the State Board of Tax Appeals; and no matter how well meaning or sincere their efforts, they may fall short of rendering decisions grounded in sound appraisal principles. After the county invests time and property tax revenue in developing a recommendation ostensibly based on the appraisal training and experience of its staff, there is nothing in the law to require that decision to be followed or given any consideration whatsoever.

For all of these reasons the Appraisers Association has consistently supported elimination of the payment under protest process. Because of the previous resistance in the legislature to that idea, two alternatives have been introduced during the current session.

#### Senate Bill 193

The State Board of Tax Appeals has interpreted K.S.A. 79-2005 to require that protests based solely upon the mill levy must still be heard at the county level before they will be considered by that board. Due to dramatic shifts in mill levies resulting from changes in school finance there were a significant number of protests filed in some counties. One county in southwest Kansas experienced 5,000 such appeals.

The county appraiser is never given the authority to alter or change the mill levy in any way. To require the taxpayer to meet with the appraiser when the dispute arises solely from the mill levy is a waste of both the taxpayer's and the county's time and resources. A simple change in this statute limiting protest hearings with the county appraiser to appraisal and/or assessment issues will eliminate this problem.

#### Senate Bill 261

If the legislature retains the payment under protest process it can be made much more efficient by eliminating the county hearings. The best result of such hearings allowed under current law is a stipulation, wherein the county and property owner agree on a value. The State Board of Tax Appeals is not bound by this stipulation, however, and is more likely to require an additional hearing as the amount of the value change increases. In this case and especially where there is no stipulation, the county hearing is relegated to an exercise in administrative excess which the taxpaying public cannot afford.

I would respectfully suggest that it would be much more efficient and cost effective to eliminate the county hearing requirement. The issue of a stipulation then becomes one of

timing, where it is warranted at all. Such a stipulation can occur with the concurrence of the Board at or in conjunction with the state board of tax appeals hearing. Where there is no chance for a stipulation, property taxpayers are saved the cost of an additional hearing.