

Approved: March 24, 1993  
Date

## MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson August Bogina at 11:00 a.m. on March 19, 1993 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Leah Robinson, Legislative Research Department  
Scott Rothe, Legislative Research Department  
Norm Furse, Revisor of Statutes  
Judy Bromich, Administrative Assistant  
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Dr. Bill Wolff, Principal Analyst, Kansas Legislative Research Department  
Senator Hardenburger  
Ron Hein  
Senator Frahm  
Representative McKechnie  
Zoel Parenteau, KPTS Wichita  
Howard Hill, KANU Lawrence

Others attending: See attached list

### HB 2062 -- APPROPRIATIONS, CLAIMS AGAINST THE STATE

Dr. Wolff appeared before the Committee to review claims that had been reviewed and recommended by the Joint Committee on Special Claims Against the State. The following sections were discussed:

Sec. 3. (a) -- Dr. Wolff told members that the Joint Committee adopted a new rule to charge 10% of the amount that is approved for return to these entities in order to provide an incentive for obtaining the exemption certificate before the projects are started.

Sec. 3. (b) -- Concern was expressed about using state monies to provide a refund for taxes paid to the county. It was moved by Senator Kerr and seconded by Senator Salisbury that this item be deleted from the bill. The motion carried on a show of hands.

Sec. 5. (c) -- A letter from the Department of Wildlife and Parks (Attachment 1) was distributed. It explained the agency's objection to payment of this claim from the Wildlife and Parks Fee Fund.

Sec. 5. (d) -- Attachment 1 also addressed the opposition of the Department of Wildlife and Parks to payment of this claim from the agency's fee fund. Dr. Wolff noted that the House Committee amended the claim to state that if Mr. Shepard accepts the \$38,000, he relieves the state from any existing liability of future liability for any loss. He stated that the \$38,000 does not include calculation of future losses.

Sec. 7. (b) -- In answer to Senator Kerr, Dr. Wolff stated that the state pays only on the basis of permanent disability and then on the state's average weekly wage as defined by workers' compensation statute.

Sec. 10. -- Dr. Wolff stated that the award herein was not paid because the Secretary of Corrections believes that the employee's suggestion was developed within the course of his job description. The Employee Awards Committee believes the employee should be compensated and used \$1,000 from their budget to motivate the Secretary to agree to pay the balance of the \$5,000 limit on awards.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 19, 1993.

Sec. 17. -- In answer to a question, it was stated that \$350,000 was the amount requested by Mr. Jones. It was moved by Senator Petty and seconded by Senator Morris that Sec. 17 be amended by including a proviso that directs the Department of Human Resources to assess the claimant's potential for future employment, to make job training available to him, and, upon successful completion of that training, directs that the Division of Personnel assist the claimant in job placement within 2 years of the completion of training at no cost to the claimant. There was general agreement with the principle of the amendment, but concern was expressed about putting the amendment in statute. Senator Salisbury expressed concern that the proviso might limit the opportunities of the claimant. The motion carried on a show of hands. There was discussion regarding the claim paid to Mr. Jones and a 1990 claim paid to a claimant who had been wrongfully incarcerated due to a prosecutorial error. Senator Kerr expressed his opinion that a policy addressing equitable payment for this type of claim should be developed.

Sec. 23 as deleted by the House Committee -- Senator Lawrence moved, Senator Moran seconded, that Sec. 23 as deleted by the House Committee be reinserted in HB 2062. Dr. Wolff told members that autopsies were performed to determine a cause for Sudden Infant Death Syndrome and that counties are to submit claims for the autopsies to the Department of Health and Environment. Senator Lawrence noted that Sedgwick county was unaware that the claims had not been submitted by the county coroner since the implementation of the statute. The Chairman requested that staff determine if the autopsy reports were submitted and if they were of value. The motion carried on a voice vote.

Senator Hardenburger appeared before the Committee on behalf of Orrin J. Fowles and reviewed Attachment 2 in support of including the claim of Mr. Fowles in the amount of \$117,037 for a lost lottery ticket.

Ron Hein, legislative counsel for Mr. Fowles, appeared before the Committee and distributed copies of Attachment 3. Mr. Hein told members that if Mr. Fowles is successful in an appeal to the Supreme Court, the state will pay approximately \$190,000 because of accumulated interest or the Court may rule that retailers, as agents of the lottery, will be liable for claims filed by winning ticket holders in the event that tickets are lost by the retailer. Senator Brady expressed his opinion that retailers do not have the responsibility of holding tickets for customers and should not be held accountable. In answer to Senator Salisbury, Mr. Hein acknowledged that he was testifying in an effort to have the claim reinstated in the bill, and was not asking the Committee to address the issue of whether the retailer is an agent of the Lottery. It was moved by Senator Moran and seconded by Senator Rock that the claim for Mr. Fowles' lost lottery ticket be reinserted in HB 2062 and that language be included that releases the state from any interest charges. The motion failed on a show of hands.

Dr. Wolff presented a memorandum from James Cobler, Director, Division of Accounts and Reports, regarding costs of a contested election in Cloud County (Attachment 4). It was moved by Senator Kerr and seconded by Senator Lawrence that HB 2062 be amended to include an appropriation of \$698.32 to the Clerk of the District Court of Cloud County to pay the claim submitted by Jerilynn D. Palmer. The motion carried on a voice vote.

Dr. Wolff reviewed the case of an inmate at the Lansing Correctional Facility who was injured on the job and whose claim was no longer in dispute (Attachment 5). It was moved by Senator Brady and seconded by Senator Petty that HB 2062 be amended by including \$11,197.25 from the existing budget of the Lansing Correctional Facility to pay the claim of Mr. Archie Simons. The motion carried on a voice vote.

Senator Brady moved, Senator Rock seconded, that HB 2062 as amended be recommended favorable for passage. The motion carried on a roll call vote.

### **SB 350 -- KANSAS PUBLIC BROADCASTING COUNCIL CREATED, GRANTS TO PUBLIC TELEVISION AND RADIO STATIONS**

Senator Frahm appeared before the Committee in support of SB 350 and told members that the Public Broadcasting Commission had been charged with bringing a recommendation before the Legislature that would update and revise the procedure for funding public broadcasting in Kansas. She stated that SB 350 had unanimous support of all station managers in the state.

Representative McKechnie also testified in support of SB 350, noting that the greatest concern has been that the recommended council has no public members. In answer to this concern, he stated that the managers answer to their own public board and, as a group, set long range vision for public broadcasting and make budgetary recommendations. He submitted Attachment 6 which contained a balloon of technical amendments intended by the Committee but neglected in the rewrite of the bill.

Mr. Howard Hill appeared before the Committee and reviewed the report of the Commission contained in

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 19, 1993.

Attachment 7. Mr. Zoel Parenteau then illustrated how **SB 350** relates to the charges of the Commission as illustrated on pages 8 through 14 of Attachment 7. Mr. Parenteau reiterated that the Council has no discretion in the distribution of funds and asked that Sec. 12. (c) regarding the election of the chairperson be deleted from the bill.

The Chairman announced that because of time constraints action on **SB 350** would have to postponed until a later date.

It was moved by Senator Kerr and seconded by Senator Lawrence that the minutes of March 15 and 16, 1993 be approved. The motion carried on a voice vote.

The meeting was adjourned at 1:10 P.M.

The next meeting is scheduled for March 22, 1993.



## GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: March 19, 1993

[illegible]



STATE OF KANSAS



Joan Finney  
Governor

DEPARTMENT OF WILDLIFE & PARKS  
OFFICE OF THE SECRETARY  
900 SW Jackson St., Suite 502 / Topeka, Kansas 66612 - 1233  
(913) 296-2281 / FAX (913) 296-6953

Theodore D. Ensley  
Secretary

March 19, 1993

The Honorable Gus Bogina  
Chairperson, Committee on Ways and Means  
Senate  
State Capitol Building  
Topeka, Kansas 66612

Dear Senator Bogina:

I appreciate the opportunity to discuss claims against the Department of Wildlife and Parks as included in House Bill No. 2062. This bill includes the recommendations of the Joint Committee on Special Claims Against the State and provides authority for the settlement of four claims which have been made against the Department of Wildlife and Parks.

The four claims are authorized in Section 5 of House Bill No. 2062. I support the claims recommended by the Joint Committee on Special Claims as included in subsections (a) and (b) of the bill. The item in subsection (a) pertains to the moving costs of agency personnel who were relocated in order to perform their assigned duties for the agency. The Division of Accounts and Reports, Department of Administration, will not authorize payment for moves of employees if the move does not exceed 25 miles. Subsection (b) provides for the settlement of a personal injury claim to Mr. Bernard Pfeifer resulting from an attempt to trap a fox on his property during which the Department provided assistance.

The Department of Wildlife and Parks is opposed to the recommendations of the Joint Committee as included in subsections (c) and (d). The settlement proposed in subsection (c) pertains to fire damage that occurred in 1989 to private property adjacent to Elk City State Park. The damage resulted from an arson fire that began on Elk City State Park grounds. The local fire unit, the Elk City Rural Fire Unit, responded to the fire twice and both times left because the fire was considered to be extinguished. Unfortunately, the fire rekindled a third time and by the time the fire was extinguished again, the property owned by the claimants had been damaged. I am of the opinion that the Department of Wildlife and Parks should not be held liable for an act of arson that was not of the Department's making and for the

SWAM  
march 19, 1993  
Attachment 1

failure of local fire authorities to properly control the fire after they had responded to the situation.

The claim included in subsection (d) is also opposed by the Department of Wildlife and Parks. This claim was presented to the Legislature during the 1992 Session and was included in the 1992 Claims Bill, as introduced, (HB no. 2791). The amount recommended by the Joint Committee on Special Claims against the State was \$2,500. The item was deleted by the House Committee on Appropriations. The amount of claim included in 1993 HB no. 2062, as approved by the Joint Committee on Special Claims against the State, is \$38,000.

I am opposed to this claim because I do not believe the Department of Wildlife and Parks should be held liable for upholding State and Federal laws. State law requires that the Department protect and conserve the natural resources of the State. Included in those duties is the protection of threatened and endangered species such as the Neosho Mactom. This species is on both the State and Federal threatened species list.

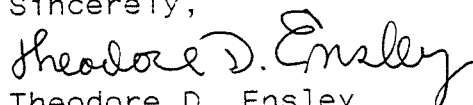
Due to the Neosho Mactom being on both the State and Federal threatened species list, a moratorium on gravel dredging in the Neosho, Cottonwood, and Spring Rivers was jointly decided upon and issued on May 31, 1991. The moratorium would remain in existence until mitigation for dredging could be determined.

The intentional taking of a state threatened species is illegal pursuant to KSA 1992 Supp. 32-1010 and is a C misdemeanor. Any taking of a nationally threatened species can subject an individual to a fine of up to \$50,000 per occurrence or per day and up to a year's imprisonment for each occurrence or day. If the Department of Wildlife and Parks were to issue a permit to an individual allowing them to take gravel and that dredging causes a taking of the species, the US Fish and Wildlife Service could proceed against the individual and against the agency itself.

The Department of Wildlife and Parks has no choice but to prohibit the issuance of a permit to take gravel from the Neosho River. I further suggest that to allow this claim would establish a precedent which would expose this agency and other State agencies to potential liability whenever individuals claim they were harmed by the lawful enforcement of any statutes or rules and regulations.

If you or any members of the Committee have any questions, please feel free to ask them at this time. Thank you.

Sincerely,



Theodore D. Ensley  
Secretary of Wildlife and Parks

STATE OF KANSAS

JANICE L. HARDENBURGER

SENATOR, 21ST DISTRICT  
CLAY, CLOUD, MARSHALL  
NEMAHA, WASHINGTON AND  
PARTS OF POTTAWATOMIE  
AND RILEY COUNTIES

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TOPEKA, KS 66612-1504  
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: ELECTIONS  
MEMBER: ENERGY AND NATURAL RESOURCES  
PUBLIC HEALTH AND WELFARE  
ASSESSMENT AND TAXATION  
JOINT COMMITTEE ON ADMINISTRATIVE  
RULES & REGULATIONS

In 1988, one of my constituents, Orrin J. Fowles, purchased a winning lottery ticket which was subsequently lost by the retailer from whom he purchased the ticket.

The Lottery refused to pay the ticket because it was not delivered from the retailer to the Lottery.

The Director of Security for the Lottery, Mr. Jim Huff, has been quoted in the paper as saying, "There is no question he [Orrin Fowles] bought the ticket."

Apparently the Lottery had paid numerous awards for lost tickets previously, and even paid one from the same convenience store a year after Mr. Fowles' ticket.

In 1989, Mr. Fowles filed a claim with the Joint Committee on Special Claims Against the State. The Joint Committee agreed with Mr. Fowles, and SB 653 was introduced in the 1990 Session by the Joint Committee on Special Claims Against the State, including the Fowles claim. The claim was intact when the claims bill left the Senate, and when it left the House Appropriations Committee, but was taken out on the House floor. Ultimately, there were several efforts to get the conference committee report approved, but the House would not relent, and the Senate ultimately concurred in the House amendments, and the Fowles claim was lost.

In 1991, the Fowles claim was once again approved by the Senate, and also approved by the House, and was submitted to the Governor, and the Governor line item vetoed it. There was no attempt to override the Governor's veto.

In 1992, there was an effort to put the Orrin Fowles claim on the Lottery sunset bill, which was successful. However, the Lottery sunset bill did not pass on final action, and there was a motion to reconsider, the Fowles claim was removed, and the Lottery sunset bill was eventually passed without the amendment on it.

My predecessor, Sen. Ross Doyen, worked for three years to get this claim approved for our constituent.

This is a matter of equity and fairness, and there is significant legal justification for the action being done, as will be explained to you by another conferee. I would request that the Committee approve an action which has been previously approved by this Committee, and amend HB 2062 to include the claim of Orrin J. Fowles in the amount of \$117,037.

Thank you, Mr. Chairman, for your time.

*JWAM*  
*March 19, 1993*  
*Attachment 2*



**HEIN, EBERT AND ROSEN, CHTD.**

*ATTORNEYS AT LAW*

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telefax: (913) 273-9243

(913) 273-1441

*Ronald R. Hein  
William F. Ebert  
Eric S. Rosen  
Stephen P. Weir*

**SENATE WAYS AND MEANS COMMITTEE  
Re: HB 2062 Special Claims Against the State  
Presented by Ronald R. Hein  
on behalf of  
Orrin J. Fowles  
March 19, 1993**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Orrin J. Fowles.

Orrin Fowles bought a Lottery ticket on July 17, 1988. Since he was leaving town, he handed the ticket to his daughter, who was also the clerk at the convenience store where he purchased the ticket, and she placed the ticket under the counter.

The ticket got lost.

No one disputes that Orrin Fowles purchased the ticket. There were no other Lottery tickets purchased at that store in a 3-4 hour period. No one else has come forward to claim the prize. The Director of Security of the Lottery has been quoted in the newspaper that there is no question that Mr. Fowles bought the ticket.

The Lottery argues that their rules and regulations provide that in order for a ticket to be validated, it must meet several criteria, including that the ticket be intact, be present in its entirety, not be mutilated, altered or tampered with in any manner, etc. That is the Lottery's defense to Mr. Fowles' claim that he should be paid for his winning ticket.

However, between May, 1988, and March, 1990, the Lottery had a policy that it would pay claims even though tickets were lost, not intact, or mutilated.

In an internal Lottery memo obtained during litigation on this matter, the policy was set out that if the Lottery "could determine the status of the ticket (a winner or not) and if no other claim was made on the same ticket, and if no other information concerning the ticket was brought to the attention of the Lottery (i.e. stolen, etc.) that the claim could be paid after the official expiration of the game." That same internal memo listed 205 separate ticket claims that had been paid, for over \$15,337.00 in winnings.

*SWAM  
March 19, 1993  
Attachment 3*

the lawyer for the Lottery, Carl Anderson, in a memorandum dated June 20, 1990, stated "Although I wasn't aware that claims were being honored without actual tickets, your memo of February 20, 1990, indicated that this was a practice that had been in operation from the beginning."

Mr. Jim Huff, the former Director of Security of the Lottery, confirmed the informal policy when his deposition was taken. Mr. Huff went on to state that the Lottery's philosophy in paying such claims was that "the Lottery is a marketing and sales organization. In a marketing sales organization... you have to bend over backwards to please your customers. It goes back to the old saying that the customer is always right. And this was the philosophy that we used early on in the Lottery, is that the fact that the customer was always right."

The Lottery even established a computer program to "reconstruct" tickets that were lost, stolen, mutilated or otherwise questionable. If a ticket was reconstructed and found to be a winner, it was paid.

Mr. Huff further stated in his deposition that he had the authority, under the statutes and rules and regulations of the Lottery, to authorize payment of Lottery tickets that had been mutilated, torn, lost, stolen, etc. and it was his interpretation of the rules and regulations that what the Lottery was doing, in paying all such claims, was in accordance with those rules and regulations.

This policy and practice was in effect when Orrin Fowles purchased a Kansas Cash Lotto ticket with the winning combination numbers on July 17, 1988, with a drawing on July 20, 1988 for a jackpot prize of \$117,037. The retailer he purchased it from, the Short Stop convenience store at 6th and Grant in Clay Center, Kansas, was an authorized Lottery retailer. The back of Kansas Cash Lotto tickets state "To claim the prize: Present winning ticket to any Kansas on-line retailer for processing."

Mr. Fowles filed a claim with the Joint Committee on Special Claims, and his claim was approved by the committee, and ultimately passed by the Legislature, but was vetoed by the Governor.

Mr. Fowles also waited the allotted amount of time provided for by the informal policy of the Department, that being that the year period after the drawing date expire. The money that Mr. Fowles won and to which he is entitled was never paid out by the Lottery, and specifically was not paid out by the Lottery to the next Kansas Cash Lotto winner, as would have been the case had there been no winner on July 20, 1988. So far as can be ascertained, the Lottery has kept the money, and has never paid out to anyone the \$117,037 that was "won" that night.

In the response to the Joint Committee, the Lottery Commission sent a response indicating that "The Kansas Lottery Act and our administrative regulations do not permit payment of money from Lottery funds to individuals who do not present valid, winning tickets."

the best of our knowledge, this was the first time, ever, that the Lottery had used their regulations to deny such a claim, and the Lottery continued to approve all similar and identical claims through the Spring of 1990. The only distinction on the Orrin J. Fowles claim was the amount of money being sought.

According to a deposition of Mr. Huff, Mr. Huff attended a March 2, 1990, Lottery Commission meeting wherein it was determined that the policy should be changed from that date forward, but that the claims made before that decision should be paid under the old policy of the Lottery.

In fact, even after that meeting, on July 3, 1990, the Executive Director of the Lottery approved of a "lost ticket" claim by a Barbara Romman who purchased a Holiday Cash Ticket worth \$250 at the same Short Stop convenience store from which Mr. Fowles purchased his ticket. The Lottery ticket had been lost, but despite that, the State of Kansas paid the claim. In their letter to Ms. Romman, which included the check for payment of the claim, they stated "We were unable to pay your claim until after the expiration of the "Holiday Cash" game which occurred on June 11, 1990. Since we never received the original ticket and claim form at the Lottery. This delay was required because anyone presenting the winning ticket, which they had signed with an accompanying claim form would have been entitled to payment. No such claim was made, and in accordance with office policy in effect at that time, we are honoring your claim..... At a Lottery Commission meeting on March 2, 1990, it was determined that effective immediately it was the Lottery's policy to deny all future claims unless the Lottery receives the actual winning ticket accompanied by a claim form. Thus, pursuant to current policy, claims such as the one you presented will no longer be paid."

In 1991, Mr. Fowles filed a breach of contract suit against the Lottery, and the Lottery filed a third party petition against the retailer, which filed a third party petition against the sales clerk.

The District Court ruled that the Lottery could not be liable at all, and Mr. Fowles' sole claim was against the retailer. The Court, in its opinion, made no mention of the fact that Lottery had a "policy" of paying such claims, and simply cited the rules and regulations. The District Court opinion has been appealed by Mr. Fowles.

The Committee may be desirous of knowing why the Legislature should approve payment when this matter is still being litigated. There are several reasons.

First of all, if Mr. Fowles is successful on appeal, the State may have to pay out nearly \$190,000 if Mr. Fowles receives judgment for his claim plus all accumulated interest.

Secondly, if Mr. Fowles is not successful on appeal, the Court may be making a case law ruling that the retailers themselves are liable for claims filed by winning ticket holders in the event that tickets are lost by the retailer, even though the retailer is an agent of the Lottery, and has been held out as an agent by the Lottery, even on the lottery tickets themselves.



George Leiszler, the owner of Leiszler Oil Company which ran the store where Mr. Fowles purchased his ticket, has been supportive of Mr. Fowles efforts. He is the past president of the Kansas Oil Marketers Association and Convenience Store Association of Kansas, and he has indicated in the newspaper article attached that the 5 cents profit that a retailer makes on a dollar ticket sold does not warrant the potential liability for paying off claims worth thousands or millions of dollars, and that such liability could "make some stores think twice".

Lastly, the litigation itself is costly to the State of Kansas.

We believe that the Legislature and the Governor should put this issue to rest at this time. We respectfully request that the Legislature approve, once again, the claim of Mr. Fowles, and give Mr. Fowles one more opportunity to appeal to the Governor on this matter.

Mr. Fowles won, and the Lottery does not dispute that he has won. They have paid claims such as Mr. Fowles' before, and they do not dispute that they have paid those claims. The only difference here is the size of the claim, and that is a poor reason and an invalid legal reason to draw the distinction. We believe that, on appeal, the Court of Appeals will agree with Mr. Fowles that the Lottery has acted in an arbitrary way which is not supportable in law or in equity.

I would be happy to yield for any questions.

# One that got away

## Man's lost lottery ticket sets off spate of lawsuits

Associated Press

CLAY CENTER — For nearly four years, Orrin Fowles has been trying to collect \$117,037 in Kansas Cash Lotto winnings.

But he has a problem: he lost the winning ticket.

And despite his being declared the winner by the Legislature last year, the only cash winnings so far have gone to lawyers.

After Gov. Joan Finney blocked the Legislature-directed payment, Fowles sued the state and the Kansas Lottery.

Now the lottery is suing the corporation that owns the store where he bought the ticket.

In turn, the store owners are suing Pennie Cranmer, Fowles' daughter, who is a former employee of the store. She sold her father the ticket.

Depending on the outcome of the lawsuits, the eventual losers could be stores that sell lottery tickets, as well as Fowles' daughter.

"It's too much money to just walk away from," Fowles said last week from his daughter's home in Clay Center.

Store owners say the court battle could sour the relationship between the lottery and stores that sell tickets.

If Leiszler Oil Co., the company that owns the Short Stop, is held liable for the money, other stores might be reluctant to sell lottery tickets, store owners argue.

State officials say that if payment is made

See **LOTTERY**, Page 3C

## LOTTERY

From Page 1C

without presentation of the winning ticket, similar claims might be filed by other lottery players.

According to Fowles' lawsuit:

He bought a "quick pick" Kansas Cash Lotto ticket at the Short Stop convenience store in Clay Center on July 17, 1988. He gave the ticket to his daughter, the store clerk, to hold.

On July 21, 1988, a Kansas Lottery official notified the store that a ticket with the winning numbers had been sold there, at the time Fowles bought his ticket. But Cranmer and other store employees could not find the ticket.

Fowles says the lottery has no reason to dispute that he bought the ticket, because no one else bought a ticket at the store within a three-hour period.

Lottery officials say a clause in the contract with retailers protects it from liability associated with the acts of a store or its employees.

The store says it's not their duty to pay the ticket because Cranmer was acting on behalf of her father, not as a store employee, when she

agreed to hold the ticket for him.

Lottery officials say they never pay on lost tickets, but evidence shows the state has, under certain circumstances, done just that.

In some cases, information was verified from photocopies of the ticket, or a carbon copy of the winner's claim form filled out at the store where the ticket was purchased.

"Are you asking if he bought the winning ticket? There's no question he bought the ticket," said former lottery security director Jim Huff, now the police chief in Ellsworth.

"But in every other case I worked, we had a piece of a ticket. This guy had no ticket, and it's unfortunate because he's a hell of a nice guy. But the question is, should the lottery pay off without a ticket?"

For Fowles' daughter, the fight for the winnings has been an emotional swirl.

"That was one of the hardest things to do, to tell him I had lost"

the ticket, she said.

"I was crazy, I used to come home at night after work and I'd think of somewhere else I hadn't looked and I'd call down to the store and have the night clerk look for the ticket," she said.

Her former boss, George Leiszler of Leiszler Oil Co., has been supportive of her family's efforts and even helped her dad search for the ticket at the landfill, she said.

Leiszler, who is also the president of the Kansas Oil Marketers Association and Convenience Store Association of Kansas, doesn't think his store or Cranmer will be liable once the court makes its decision.

But at five cents' profit for every \$1 ticket sold, the potential liability for paying off claims worth thousands or millions of dollars could make some stores think twice, Leiszler said.

"I can't feature too many stores being on the line for \$117,000 for a nickel," he said.

Monday, April 13, 1992 THE WICHITA EAGLE 3C



**DEPARTMENT OF ADMINISTRATION**  
DIVISION OF ACCOUNTS AND REPORTS

JOAN FINNEY  
Governor

JAMES R. COBLER  
Director of Accounts and Reports

March 11, 1993

900 Jackson, Room 251  
Landon State Office Building  
Topeka, KS 66612-1220  
(913) 296-2311  
FAX (913) 296-6841

Mr. William G. Wolff  
Legislative Research Department  
Room 545-N, State Capitol  
Topeka, Kansas 66612

Dear Mr. Wolff:

RE: Claims Bill Request for Cost of Election Contest in  
Cloud County

Attached are copies of claims involving costs of the contested Cloud County Sheriffs election submitted by Jerilynn D. Palmer, Clerk of the District court of Cloud County under authority of K.S.A. 25-1452. K.S.A. 25-1452 provides that the court may waive costs assessed the contestee under certain circumstances in which case the costs shall be paid by the state from appropriations therefor. Also attached is a copy of the Journal Entry entered by Cloud County District Court Judge Merlin G. Wheeler in Case No. 92-CV-37 ordering the state and the Director of Accounts and Reports to pay costs in this case to the Clerk of the District Court.

The claims submitted are based on the following charges:

Concordia Office Supply, Inc. - Transparencies	\$ 80.68
Inspector Marvin Stortz - 45 hrs @ \$4.25 per hr	191.25
Inspector Darice Cairns - 45 hrs @ \$4.25 per hr	191.25
Inspector Pat Murk - 45 hrs @ \$4.25 per hr	191.25
Employers Social Security & Medicare Tax @ 7.65%	<u>43.89</u>
 Total	 <u>\$698.32</u>

Although contested elections have occurred in past years, the cost is generally recovered from the contestee. These costs are only paid by the state subject to a Judicial ruling that the contestee is found to be the winner of the election. In such cases, costs are waived and the Director of Accounts and Reports is ordered to pay such costs. In those cases where the state has been required to pay such costs to the Clerk of the District Court to reimburse the county involved, the amount has been added to the Joint Committee on Special Claims Against the State Bill, i.e. H.B. 2062.

*SWAm*  
*March 19, 1993*  
*Attachment 4*

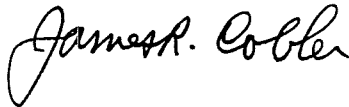


Mr. William G. Wolff  
Legislative Research Department  
March 11, 1993  
Page 2

We understand a hearing has been scheduled for March 19, 1993 in the Senate Ways and Means Committee on HB 2062, Joint Committee on Special Claims Against the State Bill.

We request your advice and assistance in securing an appropriation from the FY 1993 Session to resolve this issue.

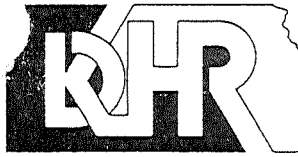
Very truly yours,

A handwritten signature in cursive script that reads "James R. Cobler".

James R. Cobler, Director  
Division of Accounts & Reports

JRC:MEE:cv

Enclosures



# Kansas Department of Human Resources

Joan Finney, Governor  
Joe Dick, Secretary

Information  
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Director's Office  
913-296-4000  
Topeka Law Judges  
913-296-7012

DIVISION OF WORKERS COMPENSATION  
800 SW JACKSON ST STE 600  
TOPEKA KS 66612-1227

Rehabilitation  
913-296-2050  
Claims Advisory  
913-296-2996  
Self Insurance  
913-296-3606  
Medical Utilization Review  
913-296-0846

March 2, 1993

William G. Wolff  
Principal Analyst  
Legislative Research Department  
State Capitol, Room 545-N  
Topeka, Kansas 66612-1284

Re: Claim # 3876  
Archie Simmons

Dear Mr. Wolff:

In November, 1992 I wrote to Ms. Lou Allen of the Department of Corrections setting out the calculation for injuries in the above claim. On January 13, 1993, I wrote to Ms. Allen confirming my calculations. All of my calculations were based on the wrong information taken from the medical reports of a Dr. Mani.

The following is a corrected computation of benefits that would be payable if the above claim were paid under the Kansas Workers Compensation Act.

I am making the assumption that the claimant was earning the state's average weekly wage of \$370.75 as computed by K.S.A. 44-704 for the date of accident, March 5, 1991, and the assumption that there was no loss of time and therefore, no temporary total disability compensation or healing period.

Dr. Mani's letter report of March 11, 1992, addressed to Gay L. Savino rates Mr. Simmons as having a 30% loss of use of the left hand, which the doctor converts into 27% of the upper extremity. Neither rating is useable in computing the compensation since neither the hand nor the upper extremity was injured. Mr. Simmons' injuries were limited to the fingers of the left hand, and the computation of compensation would be on the basis of finger injuries.

Dr. Mani's records include a "History, Physical Examination and Progress Notes" of 3/11/92. In those notes Dr. Mani rated the specific injuries that Mr. Simmons suffered as: thumb 18%, index finger 12%, middle finger 12%, ring finger 80% and little finger 70%.

I erroneously picked up the figures from the column headed "hand" instead of the column headed "fingers".

An injury to the thumb is based on a schedule of 60 weeks. The number of weeks of compensation payable for the injury would be 10.8 weeks for 18% loss of use.

SWAM  
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Attachment 5

William G. Wolff  
March 2, 1993  
Page 2

An injury to the index finger is based on a schedule of 37 weeks. The number of weeks of compensation payable for the injury would be 4.4 weeks for 12% loss of use.

An injury to the middle finger is based on a schedule of 30 weeks. The number of weeks of compensation payable for the injury would be 3.6 weeks for 12% loss of use.

An injury to the ring finger is based on a schedule of 20 weeks. The number of weeks of compensation payable for the injury would be 16 weeks for 80% loss of use.

An injury to the little finger is based on a schedule of 15 weeks. The number of weeks of compensation payable for the injury would be 10.5 weeks for 70% loss of use.

The weekly compensation rate is determined by multiplying the average weekly wage, \$370.75, by 66 2/3 percent (.6667), which yields a weekly rate of \$247.18.

The number of weeks of compensation is then multiplied by the weekly rate to determine the total compensation. In this claim the total number of weeks of permanent partial loss of use is 45.3. Forty-Five point three (45.3) weeks multiplied by \$247.18 equals \$11,197.25.

I apologize to all involved that my error has caused such confusion. If you have any questions, please let me know.

Very truly yours,



William F. Morrissey  
Assistant Director

WFM:lre

Copies to:

Lou Allen, Legal Counsel, Kansas Department of Corrections  
Donald T. Taylor, Attorney at Law, 827 Armstrong, Kansas City, Kansas 66101



PERSONAL INJURY OR PROPERTY DAMAGE CLAIM FORM  
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

Claim No. 3876  
Filed October 15, 1992  
(For Committee Staff Use)

In the Matter of the Claim of:

Claimant's Name Archie C. Simons #7235

Address Lansing Correctional Facility, PO Box 2, Lansing, KS 66043

Telephone (Home) N/A (Work)

Claimant's Attorney (if any) Donald T. Taylor & Angela Johnson

Address 827 Armstrong, Kansas City, KS 66101

Telephone 321-9600

Now on this 22nd day of September, 1992, comes the undersigned and makes a claim against Lansing Correctional Facility, Kansas Department of Corrections and the State of Kansas.

in the amount of \$ 15,120.76, for personal injuries and property damages or both sustained on the 5th day of March, 1991, at Lansing Correctional Facility.

1. Describe accident or occurrence in detail. Submit any accident or incident reports prepared at the time of the accident or occurrence (for example: Motor vehicle accident reports, other law enforcement reports, report to employer, etc.) and any witness statements.

Claimant submits that the claimant's hand was caught in the sander of the Lansing Correctional Facility causing severe laceration and bone exposure to the left hand. Any accident reports would be in the care, custody and control of the Kansas Department of Corrections and/or the Lansing Correctional Facility.

2. Describe the personal injuries or property damage or loss sustained by claimant in detail. Attach any reports prepared by third parties concerning the personal injuries or property damage or loss (for example: Attending physician's assessment, other medical records, estimates of property damage made by adjuster, etc.)

Severely lacerated left hand with medical hardware required to repair the damage resulting in permanent restriction and permanent partial impairment of 27% to the upper extremity. (See enclosed medical records and reports.

3. List in detail the monetary losses sustained or expenses incurred by claimant as a result of the accident or occurrence. Attach any property valuation statements or repair estimates.

Medical expenses paid by the State of Kansas. Loss of earnings and earning capacity. Total amount of damages estimated: 40 hours a week times \$10.00 per hour times .6667 times 210 weeks times 27% PPD equals \$15,120.76.

4. Did the claimant or any other party have insurance which covered or might have covered the accident or occurrence or the personal injuries or property damage or loss? List all such insurance policies by owner of the policy (name, address, telephone), insurance company, policy number and insurance agent (name, address, telephone).

No

5. Has any claim been made or lawsuit filed by the claimant or any other party against any insurance company or party based on the accident or occurrence? Describe in detail each such claim or lawsuit including when it was made or filed, for what amount, who was it claimed or filed against (name, address and telephone), is it still pending, what amount was recovered, if any, and if denied, what was the reason for denial. Attach a copy of each such claim form or legal petition.

No

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6. Claimant (does not) desire to appear in person or by authorized agent or attorney before the committee for a hearing when this claim is considered by the committee. (Strike out one). By making this request for a hearing, claimant agrees to appear in person or by authorized agent or attorney at the time and place of the meeting designated in the notice to the claimant. Claimant is advised that a hearing in person may be requested by the committee and the claimant or the claimant's attorney will be required to be present at such hearing upon notification thereof.

*Archie C. Simons*

ARCHIE C. SIMONS

CLAIM VERIFICATION

STATE OF KANSAS, )  
 )  
COUNTY OF LEAVENWORTH ) SS:

ARCHIE C. SIMONS, being first duly sworn,  
states that he or she has read the above and foregoing claim, including attachments,  
and knows the contents thereof and that the same are true and correct.

Archie C. Simons

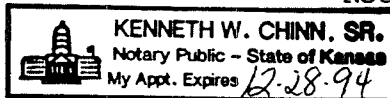
(Signature)

Subscribed and sworn to before me, a Notary Public, this 1 day of

OCT, 1992.

Kenneth W. Chinn Sr.

Notary Public



My Commission expires \_\_\_\_\_.

Mail completed forms to:

Joint Committee on Special Claims Against the State  
c/o Legislative Research Department  
Room 545-N  
Statehouse  
Topeka, Kansas 66612



## SENATE BILL No. 350

By Committee on Ways and Means

2-17

8 AN ACT creating the Kansas public broadcasting council; prescribing  
9 powers, duties and functions therefor; providing for state grants  
10 to certain public radio and television stations serving Kansas and  
11 for related purposes; abolishing the Kansas public broadcasting  
12 commission; amending K.S.A. 1992 Supp. 75-4912 and repealing  
13 the existing section; also repealing K.S.A. 75-4901, 75-4905, 75-  
14 4906, 75-4909, 75-4910 and 75-4911 and K.S.A. 1992 Supp. 75-  
15 4907.

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

18 New Section 1. Sections 1 through 16 and amendments thereto  
19 shall be known and be cited as the Kansas public broadcasting council  
20 act.

21 New Sec. 2. (a) The legislature of Kansas hereby finds and de-  
22 clares that:

23 (1) Public radio and television stations provide a valuable edu-  
24 cational, cultural and informational service to the people of Kansas;

25 (2) such stations offer an essential forum for public discourse on  
26 important issues of public policy and the conduct of government;

27 (3) the presence of a sound public broadcasting system enhances  
28 the quality of life for Kansas citizens;

29 (4) the provision of a public broadcasting service at a level of  
30 quality comparable to that available in other states is important for  
31 economic development and stability of the tax base of Kansas;

32 (5) public broadcasting can be a cohesive force as it explores and  
33 celebrates the diversity of cultures, lifestyles and traditions of the  
34 people of Kansas;

35 (6) high quality public broadcasting service should be provided  
36 to every part of Kansas; and

37 (7) encouragement of public broadcasting furthers the general  
38 welfare of the people and the state of Kansas.

39 (b) The legislature hereby declares that the full accomplishment  
40 of the matters specified in subsection (a) is an objective of public  
41 broadcasting stations and wishes to establish a system for encouraging  
42 the accomplishment of that objective.

43 New Sec. 3. As used in this act:

PROPOSED AMENDMENTS FOR CONSIDERATION  
BY SENATE WAYS AND MEANS  
MARCH 19, 1993

SWAM  
March 19, 1993  
Attachment 6

1 (a) "Kansas public television station" or "television station" means  
2 a noncommercial public television broadcasting station licensed as  
3 such by the federal communications commission which operates from  
4 a community located in Kansas and meets the minimum criteria for  
5 receipt of a community service grant set by the corporation for public  
6 broadcasting. These terms also include public television station  
7 KCPT, which provides primary service to five Kansas counties.

8 (b) "Kansas public radio station" or "radio station" means a non-  
9 commercial public radio broadcasting station which is licensed as  
10 such by the federal communications commission and which operates  
11 from a community located in Kansas and meets the minimum criteria  
12 for receipt of community service grants as set by the corporation for  
13 public broadcasting.

14 (c) "Eligible station" means a radio station or television station  
15 which has been fully qualified under the grant criteria of the cor-  
16 poration for public broadcasting for a period of four years prior to  
17 applying for a grant under this act. Any station seeking to become  
18 eligible after the effective date of this act must comply with the  
19 requirements of section 10 and amendments thereto as a condition  
20 of eligibility. In the event that the corporation for public broadcasting  
21 ceases to exist, or its community service grant program should ter-  
22minate, or the eligibility criteria for community service grants should  
23be lowered, then the criteria for eligibility for such grants which  
24were extant on July 1, 1992, shall be applicable for purposes of this  
25act and the methods of calculating and reporting financial information  
26for all purposes shall be those extant on that date.

27 (d) "Station" means any eligible radio station or television station.

28 (e) "Nonfederal, nonlicensee financial support" means the total  
29 sum of nonfederal financial support reported to the corporation for  
30 public broadcasting under its community service grant program, mi-  
31nus any amount of noncash or in-kind funds included, and minus  
32any cash support provided by the licensee of the station, and minus  
33any grants received from state sources.

34 (f) "Population covered" means the total population in the coun-  
35ties covered by each eligible station and its associated transmitters  
36or translators as reported in the most recent United States decennial  
37census. The counties covered by each station are to be determined  
38as set forth in section 13 and amendments thereto.

39 (g) (1) "Per capita earned revenue" for each radio station is the  
40 radio station's nonfederal, nonlicensee financial support divided by  
41 the population covered, yielding the revenue that radio station has  
42 generated per capita.

43 (2) "Per capita earned revenue" for each television station is the

1 television station's total nonfederal, nonlicensee financial support di-  
 2 vided by the number of weekly come households as reported in the  
 3 most recent "PBS All-Station Come Report," yielding the revenue  
 4 that television station has generated per viewing household.

5 New Sec. 4. (a) Each eligible station shall certify to the secretary  
 6 of administration, in such form and at such time as the secretary  
 7 shall require, its nonfederal, nonlicensee financial support for the second  
 8 prior fiscal year. Upon acceptance by the secretary of administration,  
 9 such certification shall constitute the basis for grants provided under  
 10 this act. The secretary of administration shall have the authority to  
 11 ascertain that the amounts certified as nonfederal, nonlicensee fi-  
 12 nancial support are accurate, audited and comparable in method of  
 13 calculation.

14 (b) Funds appropriated for the purposes of this act shall be ap-  
 15 propriated to the department of administration for distribution in  
 16 accordance with this act.

17 New Sec. 5. Funds appropriated for the purpose of making  
 18 grants under this act shall be divided into two grant pools, with 75%  
 19 of such appropriated funds constituting a grant pool for public tel-  
 20 evision stations and 25% of such appropriated funds constituting a  
 21 grant pool for public radio stations.

22 New Sec. 6. (a) Two basic service grant pools shall be established fund amounts  
 23 for basic service grants as follows: A television basic service grant  
 24 pool consisting of 85% of the grant pool for television, and a radio from the grant pools under section 5 and amendments thereto  
 25 basic service grant fund consisting of 85% of the grant pool for radio.  
 26 Each such basic service grant pool shall be divided into as many fund amount  
 27 units as necessary to provide basic service grants to each eligible  
 28 station as follows: amount

29 (1) If the population density within an eligible station's service  
 30 area, as determined by the average population density of all counties  
 31 within that area, is 50% or more of the mean population density of  
 32 the state, that station shall receive a basic service grant of five units;

33 (2) if the average population density within an eligible station's  
 34 service area, as determined by the mean population density of all  
 35 counties within that service area, is less than 50% of the mean  
 36 population density of the state, that station shall receive a basic  
 37 service grant of 10 units; and 11

38 (3) KCPT-TV shall receive a basic service grant of four units.

39 (b) The service areas of each station and the counties to be fund amounts  
 40 included in each service area shall be certified to the secretary of  
 41 administration in the manner set forth in subsection (e) of section from the grant pools under section 5 and amendments thereto  
 42 13 and amendments thereto.

43 New Sec. 7. Two incentive grant pools shall be established as

6-4

1 follows: A television incentive grant [pool] consisting of 15% of the  
2 grant pool for television, and a radio incentive grant [pool] consisting  
3 of 15% of the grant pool for radio. Each eligible station shall receive  
4 an annual incentive grant amounting to a pro rata share of the  
5 incentive grant [pool] for which the station is eligible. This share shall  
6 bear the same proportion to the incentive grant [pool] from which  
7 the share is allocated as the station's per capita earned revenue bore  
8 in the second prior fiscal year to the aggregate per capita earned  
9 revenue of all eligible stations in such incentive grant [pool].

fund amount
fund amount
fund amount

10 New Sec. 8. Appropriations may be made in any year for specific  
11 projects by more than one eligible station. Such cooperative project  
12 grants shall be distributed by the secretary of administration to the  
13 Kansas public broadcasting council under the terms of section 13  
14 and amendments thereto.

15 New Sec. 9. Appropriations may be made in any year for the  
16 purchase of equipment to be used by an eligible station, or by several  
17 such stations, or by the Kansas public broadcasting council except  
18 that any grant made to an individual station must be in compliance  
19 with section 13 and amendments thereto.

20 New Sec. 10. (a) Notwithstanding any other provision of this act,  
21 no station shall be allocated more than 45% of the total funds in  
22 the grant pool applicable to the station. Those funds not obligated  
23 by virtue of this limitation shall be returned to the incentive grant  
24 pool applicable to the station for distribution to the remaining stations  
25 in accordance with the provisions of section 7 and amendments  
26 thereto.

27 (b) Institutional licensees eligible to receive grants under this act  
28 shall not use funds provided under this act to supplant funds cur-  
29 rently provided from other sources.

30 New Sec. 11. Each eligible station and its station licensee shall  
31 certify to the secretary of administration when applying for a grant  
32 under this act that any funds received pursuant to this act shall not  
33 supplant or cause to be reduced any other sources of funding for  
34 the station and that the licensee is in compliance with the provisions  
35 of section 10 and amendments thereto regarding reduction of funding  
36 from institutional sources. Applicants shall also certify that funds  
37 received pursuant to this act will be used solely for the operation  
38 of a public broadcasting station and not for general institutional  
39 overhead, parent organization expenses or for any other purpose not  
40 directly related to the operation of a public broadcasting station.

41 New Sec. 12. (a) There is hereby created a body politic and  
42 corporate to be known as the Kansas public broadcasting council.  
43 The Kansas public broadcasting council is hereby constituted a public

1 instrumentality and the exercise of the authority and powers conferred by this act shall be deemed and held to be the performance  
2 of an essential governmental function.

3 (b) The Kansas public broadcasting council shall be governed by  
4 a council of directors. The council of directors shall consist of one  
5 representative of each station eligible to receive grants under this  
6 act.

7 (c) The council of directors shall organize by electing a chair-  
8 person and a vice-chairperson at the first meeting after the effective  
9 date of this act and shall organize biennially thereafter in accordance  
10 with this subsection. The first-elected chairperson shall be a director  
11 representing a television station and the first-elected vice-chairperson  
12 shall be a director representing a radio station. The chairperson and  
13 vice-chairperson shall each have a term of two years and one of such  
14 officers shall be a director representing a television station and the  
15 other such officer shall be a director representing a radio station, in  
16 accordance with this subsection. At each succeeding organization  
17 election, (1) if the outgoing chairperson is a director representing a  
18 television station, then the director elected as chairperson shall represent a radio station, or, if the outgoing chairperson is a director  
19 representing a radio station, then the director elected as chairperson  
20 shall represent a television station, and (2) if the outgoing vice-  
21 chairperson is a director representing a radio station, then the director elected as vice-chairperson shall represent a television station,  
22 or, if the outgoing vice-chairperson is a director representing a television station, then the director elected as vice-chairperson shall  
23 represent a radio station.

24 (d) The Kansas public broadcasting council shall function under  
25 such bylaws as shall be written by its initial council of directors and  
26 amended from time to time, except that such bylaws shall be in  
27 conformity with the applicable laws of the state of Kansas and this  
28 act.

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

32 New Sec. 13. (a) The Kansas public broadcasting council shall  
33 report annually to the appropriate committees of the legislature on  
34 the following matters:

35 (1) The services provided to the people of Kansas with funds  
36 appropriated pursuant to this act in the prior fiscal year, particularly  
37 with respect to the goals of public broadcasting as set forth in section  
38 2 and amendments thereto;

39 (2) the need and justification for appropriations in the current

in the second , or the law in effect prior to the effective date of this act,



1 and future years;

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

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

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

10 (b) The Kansas public broadcasting council shall present, as a  
11 part of its annual report to the legislature, a comprehensive plan  
12 setting forth the service goals and operational plans for public broad-  
13 casting in Kansas during the ensuing three years, such plans having  
14 been developed by and voted upon by the directors of the Kansas  
15 public broadcasting council. This plan shall be updated each year to  
16 take into account changing needs, technologies and operational  
17 circumstances.

18 (c) The Kansas public broadcasting council shall certify to the  
19 secretary of administration, following a vote of the council's directors  
20 thereon, that any station seeking eligibility for a grant under this  
21 act and which was not in operation prior to the effective date of this  
22 act, is essential and necessary for the provision of service to the  
23 people of Kansas. This requirement for certification shall also apply  
24 to any station eligible for a grant on the effective date of this act,  
25 if such station subsequently becomes ineligible and later seeks to  
26 again become eligible for a grant. No station for which such certi-  
27 fication is required shall be eligible to receive a grant under the  
28 terms of this act unless such certification has been provided.

29 (d) In the event of any conflict between stations with respect to  
30 eligibility for grants or the amount of such grants, the issue shall  
31 be studied and resolved by the directors of the Kansas public broad-  
32 casting council. The decision of that body shall be binding on the  
33 secretary of administration with respect to distribution of grants.

34 (e) The Kansas public broadcasting council shall provide to the  
35 secretary of administration a list of the counties covered by each  
36 station eligible to receive a grant under this act, together with the  
37 population in that county as reported in the most recent United  
38 States decennial census. This report shall be the basis for calculation  
39 of each station's basic service grant and incentive grant.

each

and the population density of each county

40 (f) The Kansas public broadcasting council shall review the pro-  
41 posal of any station or group of stations seeking an equipment grant  
42 under the terms of section 9 and amendments thereto and shall  
43 prioritize all requests for equipment grants, taking into account the

1 costs of such equipment, the benefits such equipment would supply  
2 to the people of Kansas, the urgency of the request with respect to  
3 maintenance of existing services, the relevance of the equipment  
4 grant request to the provisions of the long-range plan submitted by  
5 the council and such other factors as may be relevant. The Kansas  
6 public broadcasting council shall present the council's prioritized list  
7 of equipment grant requests to the legislature as a part of the annual  
8 budget process and shall support those grant requests in the council's  
9 annual report to the legislature.

10 (g) The Kansas public broadcasting council shall have the power  
11 to accept grants or appropriations from the federal government or  
12 the state of Kansas, or any agency or instrumentality thereof, to be  
13 used for the purchase of equipment for use by the members of the  
14 Kansas public broadcasting council as the directors shall determine.  
15 Nothing in this act shall preclude the Kansas public broadcasting  
16 council from utilizing such equipment for the generation of revenue  
17 for the support of Kansas public broadcasting activities, nor shall the  
18 Kansas public broadcasting council be precluded from raising funds  
19 from other sources for the support of the council's activities.

20 (h) The Kansas public broadcasting council shall have the financial  
21 operations of the council audited annually by a certified public ac-  
22 countant and shall make its audited financial statement available to  
23 the legislature upon request.

24 (i) The Kansas public broadcasting council shall have no power  
25 or authority to compel any Kansas public television station or Kansas  
26 public radio station to broadcast any program or programs, whether  
27 or not funded in whole or in part by the council, nor shall the  
28 council have any power to forbid any station to broadcast any program  
29 acquired from any other source. The Kansas public broadcasting  
30 council shall have no regulatory authority over any individual station,  
31 the programming of any station or program scheduling for any station.

32 New Sec. 14. (a) Funds appropriated to the department of ad-  
33 ministration pursuant to this act are provided on a ministerial basis  
34 only and are to be distributed under the formulae set forth in this  
35 act upon compliance with the eligibility criteria set forth in this act.

36 (b) Nothing in this act shall give any officer, employee, agent or  
37 elected official of the state of Kansas any authority to influence or  
38 attempt to influence or to attempt to influence the content or sched-  
39 uling of any program produced or broadcast by any eligible station,  
40 whether or not such influence is intended to be related in any way  
41 to receipt of a grant under this act.

42 Sec. 15. K.S.A. 1992 Supp. 75-4912 is hereby amended to read  
43 as follows: 75-4912. (a) The activities of the Kansas public broad-

secretary of administration

1 casting ~~commission~~ *council* in making grants to noncommercial pub-  
2 lic television stations and public radio stations serving Kansas for  
3 the purpose of providing money for the public television station or  
4 public radio station to match federal funds for capital equipment  
5 purchases with the proceeds of revenue bonds issued for such pur-  
6 pose by the Kansas development finance authority are hereby ap-  
7 proved for the purposes of subsection (b) of K.S.A. 74-8905 and  
8 amendments thereto and the authorization of the issuance of such  
9 bonds by the Kansas development finance authority in accordance  
10 with that statute except that no such bonds shall be issued unless  
11 the issuance of such bonds is specifically approved by an appropri-  
12 ation or other act of the legislature, other than this act. The pro-  
13 visions of subsection (a) of K.S.A. 74-8905 and amendments thereto  
14 shall not prohibit the issuance of bonds for such purposes and any  
15 such issuance of bonds is exempt from the provisions of subsection  
16 (a) of K.S.A. 74-8905 and amendments thereto. Bonds issued under  
17 this section shall be financed from moneys appropriated for the public  
18 television stations and public radio stations.

19 New Sec. 16. (a) On the effective date of this act, the Kansas  
20 public broadcasting commission is hereby abolished.

21 (b) On the effective date of this act, all of the records, memo-  
22 randa, writings and property of the Kansas public broadcasting com-  
23 mission are hereby transferred to the Kansas public broadcasting  
24 council established by this act and the council shall have legal custody  
25 of the same.

26 Sec. 17. K.S.A. 75-4901, 75-4905, 75-4906, 75-4909, 75-4910 and  
27 75-4911 and K.S.A. 1992 Supp. 75-4907 and 75-4912 are hereby  
28 repealed.

29 Sec. 18. This act shall take effect and be in force from and after  
30 its publication in the statute book.

Testimony of  
The Public Broadcasting Stations serving Kansas  
on Senate Bill 350  
before the Senate Committee on Ways and Means  
March 19, 1993

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."

SWAM  
March 19, 1993  
Attachment 7

## 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 1, New Section 2 (a) of SB 350, the state's involvement in public broadcasting is delineated. The rationale for inclusion of this section was presented by the consultant in the following manner:

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

The remaining sections of 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 3 through 11 (pages 1 through 4).

- Section 3 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 soundness and comparable quality as expressed in subsections (3) and (4) of Section 2. (a) on page 1, the five institutional public radio stations are included as eligible grantees.

- Section 4 sets forth certifications required by each station to provide the basis for grants under the act.

- Section 5 establishes the 75%-25% television-radio split of the single operating appropriation for the 10 stations.

- Section 6 establishes the basic grant ~~pools~~<sup>funds</sup> 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 7 establishes the incentive grant funds 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 8 provides for state grants for special cooperative projects by more than one station, which would be appropriated to the new council of stations.

- Section 9 provides for state grants for capital equipment.

- Section 10 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 11 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.

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 12 and 13 (pages 5 through 7).

- Section 12 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 subsection (c) it prescribes 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 subsection (c) is inconsistent with subsection (d) and was amended into the proposed legislation by the Kansas public broadcasting commission at its most recent meeting. This is the only

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

- Section 13 (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 13 (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 13 (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 13 (d) requires the council to settle any disputes between or among stations.

- Section 13 (e) requires the council to provide population figures for counties served by the stations needed for grant calculations.

- Section 13 (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 13 (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 13 (h) requires an annual independent audit of the council's financial operations.

- Section 13 (i) prohibits the council from interfering with programming or scheduling decisions of its member stations.

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 14 (page 7).

4. Abolishing the Kansas Public Broadcasting Commission and carrying forward the pertinent powers and administrative records to the new station mechanism in Sections 15 and 16 (pages 7 and 8).

- Section 15 transfers authority to utilize KDFA funding from the Kansas public broadcasting commission to the council.

- Section 16 abolishes the commission. The attached chart compares the COMMISSION MODEL now in place with the proposed COUNCIL MODEL.

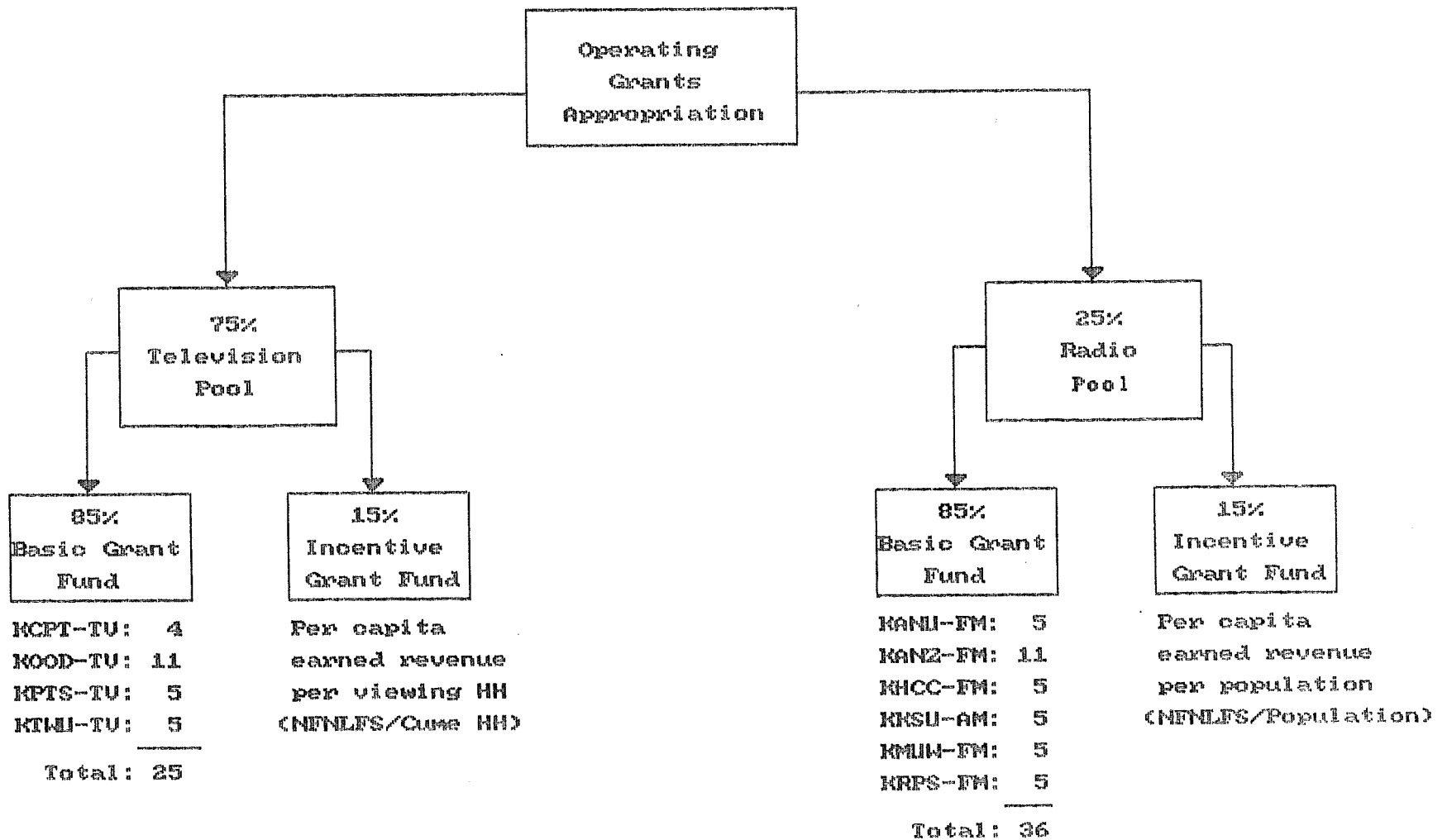
5. Repealing current statutes pertaining to public broadcasting in Section 17 (page 8).

#### THE RECOMMENDATION

The public radio and television stations serving Kansas endorse enthusiastically SB 350, with the suggested deletion of Section 12, subsection (c), 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

### 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:

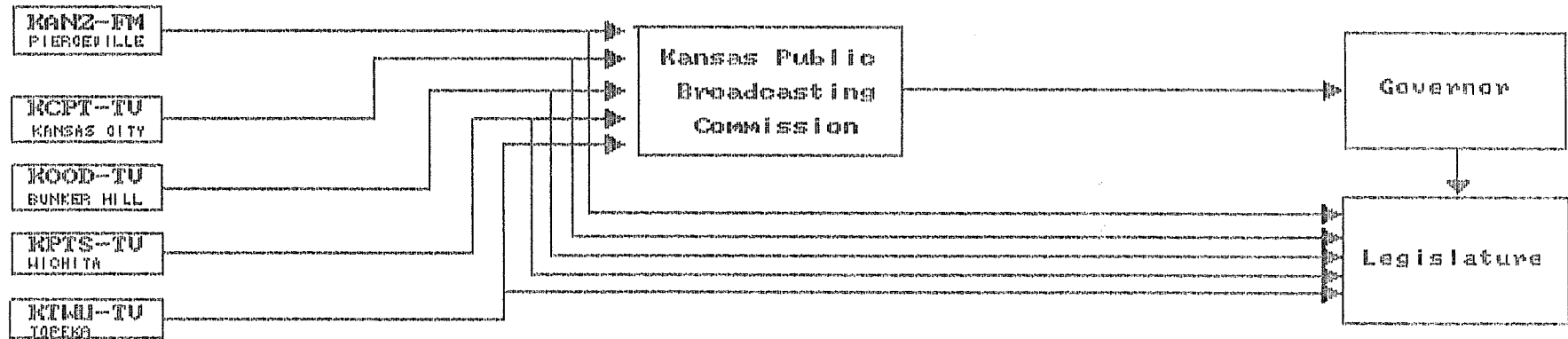
1. The Subcommittee recommends the introduction of a bill to implement the recommendations of the Public Broadcasting Commission. Should further funding be required in order to implement the funding formula called for in the Commission's recommendations, the Subcommittee recommends that the matter be 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

