

Approved: 2/3/94
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 2, 1994 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Salisbury, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Mikel Filter, Kansas Inc.
Michael Wojcicki, Kannsas Technology Enterprise Corporation
Bud Grant, Kansas Chamber of Commerce and Industry
Alan Cobb, Kansas Association for Small Business
Kathy Moellenberndt, Greater Topeka Chamber of Commerce
Patti Bossert, Key Temporary Personnel
Don Bruner, Director of Labor Management Relations and
Employment Standards Division, Department of Human
Resources

Others attending: See attached list

The Chairman announced Senator Petty replaces Senator Feleciano on the privatization subcommittee.

Hearing on HB 2576--Economic opportunity initiative fund

Lynne Holt, Legislative Research Department, briefed the Committee on HB 2576. She said the bill is very similar to 1993 HB 2507 which was enacted by the Legislature and vetoed by the Governor. The reason cited for the veto was the fiscal note.

Mikel Filter, Senior Research Analyst, Kansas Inc. testified HB 2576 would create a much needed economic development tool for the state of Kansas and would make the Kansas Economic Opportunity Initiatives Fund a permanent program, similar to the one-time special KEOIF appropriations bill passed in the 1993 session. The Kansas Economic Opportunity Initiatives Fund could be used in unique situations to fill the gap in a conservative and well constructed package of incentives, as well as funds that can be used to respond to an economic crisis. She stated \$1 of Economic Development Initiative Funds leveraged in response to Wichita layoffs equals \$6.96 federal and local, of which 38 cents is local, see attachment 1.

Michael Wojcicki, Kansas Technology Enterprise Corporation, testified in support of HB 2576. He stated the House amendments strengthen the bill. This bill gives Kansas the ability to retain and entice major employers in Kansas, see attachment 2.

Bud Grant, Vice President and General Manager, Kansas Chamber of Commerce and Industry, stated he understood the purpose of the bill is to create a fund to assist when it has been determined, "that an economic emergency or unique opportunity exists which warrant funding for a strategic economic intervention by such state agency or agencies to address expenses involved in securing economic benefits or avoiding or remedying economic losses"... The funding is allocated only after the majority vote of a distinguished five-person panel, application and certification by the Governor, and a vote by the Finance Council. He stated the two House amendments on page 2 do not strengthen the bill and KCCI opposes them. If the state has time to receive a request for funds, determine that an emergency exists, take the issue before the five-member panel,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 2, 1994.

await action by the Governor, conduct a cost/benefit analysis, and await a favorable vote from the Finance Council, the term "emergency" may be a misnomer, see attachment 3.

Alan Cobb, Kansas Association for Small Business, appeared in support of HB 2576. He stated he is also representing the Wichita/Sedgwick County Partnership for Growth. The ability to assist local communities in the attraction of new business and the expansion of existing business is invaluable and will assist in the development of new jobs in the state of Kansas, see attachment 4. Mr. Cobb indicated his support for the House amendments.

Kathy Moellenberndt, Vice President, Director, Economic Development, Greater Topeka Chamber of Commerce, spoke in support of HB 2576. She explained a California company estimates it would cost from \$700,000 to \$900,000 to relocate to Topeka. If they had access to a low interest loan to cover these expenses, they would be in a better position to relocate their operations. The low interest loan would give them access to funds without having to take cash away from their working capital. She asked the Committee to consider these concerns, see attachment 5. The conferee indicated support for the House amendments.

The hearing on HB 2576 was closed.

Continuation of hearing on SB 524--Registration fee increase for private employment agencies

Patti Bossert, Key Temporary, stated she represents Kansas Association of Personnel Services. The KAPS membership strongly opposes SB 524 concerning private employment agency registration fees. Employment agencies in Kansas, such firms registering Kansas citizens, or employer companies should not be allowed to charge fees to applicants. Such fees lead to many questionable, if not unethical and immoral business practices. She cited two agencies currently operating in Kansas City to illustrate this point, see attachment 6.

Ms. Bossert was requested by a Committee member to contact the Attorney General in regard to possible state statute violations on the part of the Kansas companies cited in her written testimony.

Don Bruner, Director of Labor Management Relations and Employment Standards Division, Department of Human Resources, informed the Committee the public policy of Kansas for the last 83 years has been to prevent job applicants seeking employment through private employment agencies from being charged fees for placement, and limited application fees to \$2.00. Currently there are no licensed employment agencies in Kansas. For the last 12 years and currently, none of the estimated 250 employment agencies operating in Kansas require licenses as they are not known to charge any fees to an applicant. SB 524, allowing an application fee, would require the Department of Human Resources to enforce the licensing requirement. The Department estimates the cost of enforcement to be \$112,407. Revenue from 250 licenses at \$25 is estimated at \$6,250. He submitted a proposed amendment to SB 524, see attachment 7.

Senator Kerr moved and Senator Steffes seconded to adopt the minutes of February 1, 1994. The motion carried on a voice vote.

The Chairman adjourned the meeting at 9:00 a.m.

The next meeting is scheduled for February 3, 1994.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/2/94

[illegible]

**The Senate
Committee on Commerce**

THE KANSAS LEGISLATURE

H.B. 2576

**An Act Creating
The Kansas Economic Opportunity
Initiatives Fund**

TESTIMONY OF:

Mikel Filter
Senior Research Analyst
Kansas Inc.

February 2, 1994

*2/2/94
Commerce
Attachment 1-1*

INTRODUCTION

Thank you for this opportunity to speak to you in behalf of H.B. 2576, an Act that would create a much needed economic development tool for the state of Kansas. H.B. 2576 would make the Kansas Economic Opportunity Initiatives Fund a permanent program, similar to the one-time special KEOIF appropriations bill passed in the 1993 Session. This special appropriations proviso granted authority for expenditures totaling \$1,485,000 as part of the Kansas Department of Commerce & Housing appropriations bill. That fund has already demonstrated its value.

States compete for companies with nearly unbelievable incentive packages. We have all read or heard about Alabama winning a \$30 million Mercedes deal with a \$253.3 million incentives packet, or their spending \$140 million on a steel mill employing 400. Kansas Inc. does not recommend the same strategy for Kansas, but we do see the absolute necessity to be able to put together a **conservative and well constructed package of incentives** when opportunities come our way.

By well constructed we mean, a package that accentuates our state's competitive advantages. Location consultants agree that state and local incentives only come into play after companies have narrowed their screening process down to two or three finalists. The factors that determine which states make the cut are: education/workforce quality; access to transportation, telecommunications, technology base, sound infrastructure, and a stable tax environment. These same experts say that once the cut is made, help to fill a financial gap, particularly in covering start-up costs, such as the one-time cost of relocation, can serve as the "tie-breaker."

The same holds true in our efforts to retain companies. Most retention challenges come on the wake of a firm deciding to expand. With large capital investments ahead, most firms check out the possibilities of relocating and other state incentives that go along. More and more, **these retention emergencies require us to put together that same conservative and well constructed package of incentives** in order to convince the company to remain and expand in Kansas.

But the state of Kansas is limited in its capacity to respond to many major opportunities or economic emergencies. Although we are fortunate to have many of the qualities employers look for, and can put together a package of attractive incentives, **we do not have a flexible source of funds that can be immediately accessed and used as the "tie breaker."** We lack the funds that can be used in unique situations to fill the gap in that conservative and well constructed package of incentives. Nor do we have a pool of emergency funds that can be used to respond to an economic crisis, such as occurred in Wichita with the loss of 5,000 jobs. The Kansas Economic Opportunity Initiatives Fund would fill both those needs.

Another important use of the fund would be to access federal programs requiring state matching funds. In response to the recent Wichita layoffs, the Governor established a task force of state, local and private agencies to develop responses to that major employment loss. Three proposals were developed. The first would develop a micro-loan program for

entrepreneurs wishing to start their own businesses, the second proposal involves funds from the National Institute of Standards and Technology to a manufacturers consortium there. The third proposal would establish a task force on employment and training to coordinate training resources in Wichita and develop strategies to train and retrain unemployed workers.

These three proposals involve a total of \$2.45 million in grants from the federal government. But, in order to access those funds, \$512,000 must be contributed as a match. Wichita has contributed \$140,000, and is requesting \$372,000 in state funds. A request for those funds is in S.B. 456, an appropriations bill. The attached chart illustrates the degree to which these funds will be leveraged in Wichita if appropriations are approved.

The Kansas Economic Opportunity Initiatives Fund is badly needed and has been endorsed by the Kansas Inc. Board of Directors as part of the legislative package to implement "A Kansas Vision".

Kansas Inc. urges your support of H.B. 2576. Thank you for your attention, and I will now stand for questions.

5 - leveraged to \$6.96

EDIF Funds Leveraged in Response to Wichita Layoffs

\$2,590,000

\$1 EDIF = \$6.96 Federal & Local

.37 local - rest federal

\$372,000

EDIF

Federal & Local



KANSAS
TECHNOLOGY
ENTERPRISE
CORPORATION

*KTEC's mission is to create and maintain
employment by fostering innovation, stimulating
commercialization, and promoting the
growth and expansion of Kansas businesses.*

**Testimony to the Senate Committee on Commerce
on HB 2576
February 2, 1994**

* Support passage of HB 2576 which codifies the Kansas Economic Opportunity Initiatives Fund.

* Inability to predict economic development opportunities which may arise.

Example: Seal-Rite Corporation -- Ability to respond to retain major employer in Kansas.
Without current fund, could not have responded until next budget cycle.

Example: Major high technology firm had narrowed relocation search to Kansas and a few
other locations. Significant package needed in a short period of time.

* Mechanism would be in place for making awards from the fund, with appropriate checks and
balances.

Recommendation

KTEC President and Chair
Kansas, Inc. President and Chair
KDOCH Secretary

Authority

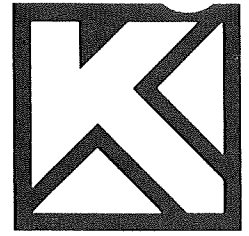
State Finance Council

* Transfer flow from EDIF monitored by Directors of Division of Budget and Legislative
Research to protect operations funding to other agencies.

*2/2/94
Commerce*

Attachment 2

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2576

February 2, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Commerce Committee

by

Bud Grant

Vice President and General Manager

Madam Chair and members of the Committee:

My name is Bud Grant and I appear today on behalf of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to make a very brief comment about HB 2576, as amended by the House.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

As I understand the purpose of the bill, it is to create a fund to assist when it has been determined, **"that an economic emergency or unique opportunity exists which warrant funding for a strategic economic intervention by such state agency or agencies to address expenses involved in securing economic benefits or avoiding or remedying economic losses,"**.....This

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Attachment 3-1

funding is allocated only after the majority vote of a distinguished five-person panel, application, and certification by the Governor, and a vote by the Finance Council.

My comments are directed to the two House amendments on page 2, lines 6 through 15. Lines 6 through 9 restrict the use of the fund without unanimous vote of the Finance Council if the economic development project involves an existing Kansas firm, or portion of a firm, moving to another location within the state. As just noted, this would follow only with a vote of the five-member panel and application and certification by the Governor. Yet, one person on the Finance Council could, for whatever reason, veto the efforts of the panel, the Governor, and obviously the affected community. The result could be that the economic opportunity ends up, not in another Kansas community, but in another state.

Lines 10 through 15 on page 2 would require a cost/benefit analysis to be completed by the Kansas Department of Commerce & Housing and a review of that analysis by the Finance Council prior to allocating funds. What happened to the "**economic emergency or unique opportunity**" this fund was created to address? If the state has time to receive a request for funds, determine that an emergency exists, take the issue before the five-member panel, await action by the Governor, conduct a cost/benefit analysis, and await a favorable vote from the Finance Council, the term "emergency" may be a misnomer. This fund should be free of red tape Madam Chair, not wrapped in it.

Thank you for the opportunity to make these observations. I would be pleased to attempt to answer any questions.

KANSAS ASSOCIATION FOR SMALL BUSINESS

151 N. Main • Suite 910 • Wichita, Kansas 67202 • (316) 263-0070

February 2, 1994

Madam Chair, members of the committee, I am Alan Cobb appearing not only on behalf of the over 100 small manufacturing companies that comprise KASB but also on behalf of the Wichita/Sedgwick County Partnership for Growth. (WI/SE) in full support of House bill 2576.

The availability of a state fund to assist local communities in the attraction of new business and the expansion of existing business is invaluable and will assist in the development of new jobs in the State of Kansas.

As you know, Sedgwick County experienced a mixed economic development picture in 1993. While a number of major Wichita employers experienced layoffs, and some closed operations, 13 companies announced new expansions which will eventually result in over 3000 new jobs. Nevertheless, the Wichita area faces continued challenges to develop new jobs for the community and for Kansas.

Communities do not know when economic development opportunities will arise. It is difficult or impossible to budget for them. A growing number of states are providing funding sources at the state level to work in concert with local governments to be able to take advantage of situations that will benefit the State as well as local jurisdictions and give economic developers another tool to develop a competitive package which can be committed quickly while the opportunity is "hot".

The Kansas Economic Opportunity Initiatives Fund will provide to Kansas communities a source from which to seek state funding to match local resources and compete when the opportunities exist. This bill provides a safe-guarded yet accessible source of funding that can be used for unique or individual situations that can fill critical gaps when developing a package of incentives and assistance to businesses and employers.

While strategies are developed to implement these programs, it is important not to limit the view of an economic development project to the primary and most direct beneficiary. Second and third-tier contractors benefit anytime a major manufacturer is assisted. Clearly the community and state benefit from secondary job expansion.

Additionally, this bill provides a quicker, smoother mechanism to react to private or federal grant opportunities such as the funds provided to the Kansas Manufacturers Association that you heard on the Senate floor yesterday when Senate bill 456 was discussed. *2/2/94 Commerce*

Attachment 4

Greater Topeka
Chamber of Commerce
120 SE 6th Avenue, Suite 110
Topeka, Kansas 66603-3515
913/234-2644
Fax: 913/234-8656



Senate Commerce Committee
February 2, 1994
Testimony Concerning HB 2576
Presented by: Kathy Moellenberndt
Vice President - Director
Economic Development
Greater Topeka Chamber of Commerce

On behalf of the Greater Topeka Chamber of Commerce we would like to support House Bill 2576, the Kansas Economic Opportunity Initiatives Fund.

This particular program could be a tremendous asset to the economic development professionals throughout the State in the attraction of businesses to this area.

In Topeka, for example, we have been working with a manufacturing firm looking to relocate its business from the California area in order to get closer to their market. Their sales range from \$16 million to \$20 million and they currently employ 110 individuals.

The company is very aware and appreciative of the various incentive programs such as training programs, property tax exemption, enterprise zone tax credits, and so forth. There is no question that each of these programs directly impact their bottom line. However, the upfront cost to relocate their business is an area of great concern to them. Their estimates to relocate range from \$700,000 to \$900,000. If they had access to a low interest loan to cover these expenses, they would be in a better position to relocate their operations. The low interest loan would give them access to funds without having to take cash away from their working capital.

I use this as one example, but I'm certain there are other similar type situations that have arisen throughout the state.

On behalf of the Greater Topeka Chamber of Commerce, I appreciate this opportunity to express our views and ask for your consideration of our concerns as you proceed.

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Commerce

Attachment 5

SENATE COMMERCE COMMITTEE HEARING
SENATE BILL No. 524
FEBRUARY 1, 1994

I represent KAPS, Kansas Association of Personnel Services, which is an association of approximately 35 permanent and temporary placement services across Kansas. The KAPS membership strongly opposes SB 524 concerning private employment agency registration fees. It is our firm belief that employment agencies in Kansas, or any such firms registering Kansas citizens or employer companies, not be allowed to charge fees to applicants. We believe that such fees lead to many questionable, if not unethical and immoral business practices.

The unemployed person is typically depressed and desperate, making him an easy target for agencies promising him a job for a small fee. When in truth, the agency does not have to work to find its registrants obtain a job, because they have earned their fee by simply allowing the applicant to register with them. They will receive additional fees if the applicant remains unemployed. The agency has no obligation to ensure that the applicant finds employment.

There are two such agencies currently operating in Kansas City:

1) ^{*Line*} ~~Jobs Club~~ - 1-800-JOB-6692 is a phone bank with operators who read a script and cannot give potential applicants any information about the jobs or employers. They are only trained to get the callers \$15.00 by VISA or MasterCard.

Below is information I found out by calling the 800 number last night:

- Although the ad on the radio says \$7.95/month fee, the actual cost is \$15.00 for 30 days. However, this does include a BONUS Weekly Job Journal which lists all jobs, pay "range", and contact names for jobs "In your category."
- You can register immediately by giving your VISA or MasterCard information and you will be sent a "registration form with a couple of questions" to determine if you qualify for any jobs and/or what category of jobs. They do not want you to send a resume.
- The operator said she had no idea how often these job lists were updated.
- Your name, address, and phone number is then given to any potential employers "In Your Job Category" and these employers will contact you directly if they are interested in you.

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Attachment 6-1

-You may continue enrollment in the club for a \$2.00 per week fee that simply covers shipping and handling charges of the list. (I understand that these "lists" normally contain 10 jobs on 1 page.)

-There is no guarantee and no refund of the fee if you are dissatisfied or do not obtain employment.

-The employers also pay a fee to get the list of potential applicants. Current clients are in the Greater Kansas City area, including many in Overland Park and Lenexa.

I learned from other contacts (private employment agencies) who have paid to participate as employers, that they provide a list of jobs, many of which are either fictitious or temporary. They then receive a list of potential applicants looking for work and their main job interest area.

2) ACCESS is a company which has also been operating in Kansas for over a year. They charge a nonrefundable \$50.00 fee for a six month registration. Members of KAPS and concerned citizens in Johnson County have been trying to prohibit this agency's operation in Kansas because it is in violation of the current state statute, but have been unsuccessful because this agency apparently has political contacts "higher up" who have been blocking these attempts.

In closing, I would like to share that I personally own and operate a Temporary Service in Topeka with an annual payroll of over \$3 million. My company employed 2356 Kansans in 1993, NONE of whom paid a fee to work. Approximately 350 of these employees obtained permanent employment through their temporary assignment, again at NO FEE.

A onetime \$15.00 fee charged to each of these employees would generate \$35,340. in additional revenue for my company.

A monthly fee of \$15.00 would result in an estimated \$76,000. revenue.

If I were to charge every applicant a onetime fee, I would receive \$70,230.

A monthly applicant fee of \$15.00 would have produced an income of \$252,000. in 1993.

****This is income on which I do not have any liability for Workman's Compensation, Unemployment, FICA, or Sales tax.****

Respectfully submitted,
Patti Bossert
Owner, Key Temporary Personnel
Board Member, KAPS

Testimony before the Senate Commerce Committee
Senate Bill 524
Registration Fee for Private Employment Agencies
February 1, 1994

My name is Don Bruner, Director of Labor Management Relations and Employment Standards Division, Department of Human Resources.

The public policy of Kansas for the last 83 years has been to prevent job applicants seeking employment through private employment agencies [defined in K.S.A. 44-401(e)(1) and 44-401(e)(B)] from being charged fees for placement and limited application fees not to exceed two dollars (\$2).

The act was last amended (at 44-405) in 1989 to bring required hearing under the Kansas Administrative Procedures Act. Further, the Act has been interpreted by four (4) Attorney General Opinions. The latter - Stephen 82-272 - is applicable to the current Act and Senate Bill 524 as it exempts licensing requirements where employment agencies are solely paid by the employer.

The industry in Kansas then abandoned the charging of applicant fees including the two dollar (\$2) application fee. This removed the necessity to protect the general public from the fraudulent or incompetent practices set out in Stephen 82-272.

For the last 12 years and currently none of the estimated 250 employment agencies operating in Kansas require licenses as they are not known to charge any fees to an applicant. Such is accepted as we receive no complaints alleging anything different.

Passage of Senate Bill 524 allowing the application fee as proposed would change this Agency's enforcement responsibility if applicants are charged fees. The licensing requirement would again be required carrying with it the full duty of the Department of Human Resources to enforce the Act. Those duties would consist of:

1. Establishment of licensing procedures,
2. Collection, accounting and deposit of licensing fees,
3. Requirement for bonding in the amount of \$500.
4. Refer actions on bonds to the Attorney General or other prosecutor,
5. Revocation of license under the Administrative Procedures Act,
6. Examination of private employment agencies records for violations of the Act,
7. Investigate complaints of alleged violations, and
8. Institute criminal proceedings for enforcement of penalties.

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Commerce

Attachment 7-1

Senate Commerce Committee
SB 524-Registration Fee
for Private Employment Agencies
February 1, 1994
Page 2

Estimated cost of enforcement of mandated duties of the Secretary of Human Resources is set at \$112,407. Revenue from 250 licenses at \$25 is estimated at \$6,250.

Further, if Senate Bill 524 is to become law an additional amendment is necessary requiring notice to the applicant on their copy of the signed receipt of refund conditions and identifying the Department of Human Resources as the enforcement agency. (see attached)

ESTIMATED FISCAL IMPACT

Revenue \$25 X 250 Licensed Agencies		\$ 6,250
Expenditures for Enforcement		
Staffing	(1) Office Assistant III	18,792
	(2) Labor Conciliator I	55,640
Travel	200 Inspections @ 300 miles, 60,000 miles	11,400
Lodging	75 Nights @ \$40.00	3,000
Per Diem	450 Quarters @ \$5.50	2,475
Office Space	360 Square Feet @ \$10.00	3,600
Office	Miscellaneous	<u>2,500</u>
		\$ 97,407
Administrative Hearings 10 @ \$1,500		<u>15,000</u>
		\$112,407

I thank the committee for allowing my appearance and will stand for questions.

SENATE BILL No. 524

By Senator Vancrum

1-19

8 AN ACT concerning private employment agencies; regarding reg-
9 istration fees; amending K.S.A. 44-407 and repealing the existing
10 section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

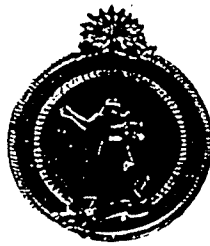
13 Section 1. K.S.A. 44-407 is hereby amended to read as follows:
14 44-407. Where a registration fee is charged for receiving or filing
15 applications for employment, said fee shall in no case exceed the
16 sum of ~~one dollar (\$1)~~ \$1, unless the salary or wages shall be more
17 than ~~three dollars (\$3)~~ \$3 per day, in which case a fee of not more
18 than ~~two dollars (\$2)~~ \$15 may be charged, for which a duplicate
19 receipt shall be given (one copy to be kept by the employee and
20 the other for the employer), in which shall be stated the name and
21 address of the applicant, the date of such application, the amount
22 of the fee, and the nature of the work to be done or the situation
23 to be procured. ^

24 In case the ~~said~~ applicant shall not obtain a situation or employ-
25 ment through such licensed agency within three days after registra-
26 tion as aforesaid, then ~~said the~~ licensed agency shall forthwith repay
27 and return to such applicant, upon demand being made therefor,
28 the full amount of the fee paid or delivered by ~~said the~~ applicant
29 to such licensed agency. ~~Provided, That said.~~ However, an em-
30 ployment agency shall make no additional charge for their service
31 rendered other than the fees set out above.

32 Sec. 2. K.S.A. 44-407 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after
34 its publication in the statute book.

Notice of repayment requirement
if applicant does not obtain a
situation or employment through
the licensed agency within three
days. And notice that the Kansas
Department of Human Resources shall
enforce the law governing this act.



JAN 03

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 30, 1982

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 272

Harvey L. Ludwick, Ed.D.
Secretary of Human Resources
612 West Sixth
Topeka, Kansas 66603-3178

Re: Labor and Industries -- Employment Officer, Agencies
and Committees -- Employer-Fee-Paid Employment
Agencies Exempt

Synopsis: K.S.A. 44-401 et seq. do not require licensing
of employment agencies which are paid for these
services solely by prospective employers. Cited
herein: K.S.A. 44-401, 44-412.

*

*

*

Dear Secretary Ludwick:

You inquire on behalf of the Department of Human Resources regarding the scope of K.S.A. 44-401 et seq., an Act relating to private employment agencies. Specifically, you desire an opinion on the effect of the licensure provisions on a private employment agency which derives its fee exclusively from an employer who hires an agency applicant. The particular statute in question, K.S.A. 44-401, was originally promulgated to regulate private employment agencies doing business in the state of Kansas. In its original form the statute provided:

"No person, firm or corporation of this state shall open, operate and maintain an employment agency or office to furnish persons seeking to be engaged in manual labor, clerical, industrial, commercial or business pursuits and to secure employment for such described persons or where a fee, commission or other consideration is charged to or exacted from either applicants for employment or for help without first

14

obtaining a license for the same from the
state labor commissioner" L. 1911,
ch. 187, §1.

The underscored language was deleted from the statute by the
Kansas Legislature in 1971 (L. 1971, ch. 178, §1).

We note in passing that the state may exercise its police
power to license and regulate certain activities commonly de-
signated as business occupations, vocations and trades.
Williams v. Fears, 179 U.S. 270, 45 L.Ed. 186, 21 S.Ct. 128
(1900); Brazee v. Michigan, 241 U.S. 340, 60 L.Ed. 1034, 36
S.Ct. 56 (1916); Adams v. Tanner, 244 U.S. 590, 61 L.Ed.
1336, 37 S.Ct. 662 (1917); Ribnick v. McBride, 277 U.S. 350,
72 L.Ed. 913, 48 S.Ct. 545 (1928), Olsen v. Nebraska, 313
U.S. 236, 85 L.Ed. 1305, 61 S.Ct. 862 (1941). Although a
licensing statute usually includes a tax or fee, regulation
and not revenue is its primary function.

While it is generally recognized that the business of an em-
ployment agency is a legitimate one, Adams v. Tanner, 244
U.S. at 597, the general nature of the business dictates that
the underlying policy of the regulation is to protect the
state's citizenry from moral and financial exploitation.
Justice Brandeis, in his dissenting opinion in Adams v.
Tanner, supra at 601, noted several potential areas of abuse
if the employment agency is not regulated. He specified as
potential abuses the following:

"(1) Charging a fee and failing to make any
effort to find work for the applicant.

"(2) Sending an applicant where no work exists.

"(3) Sending applicants to distant points
where no work or where unsatisfactory work
exists, but whence the applicant will not re-
turn on account of the expense involved.

"(4) Collusion between the agent and employer,
whereby the applicant is given a few day's work
and then discharged to make way for new work-
men, the agent and employer dividing the fee.

"(5) Charging exorbitant fees, or giving jobs
to such applicants as contribute extra fees,
presents, etc.

"(6) Inducing workers, particularly girls, who
have been placed, to leave, pay another fee,
and get a 'better job.'"

See, e.g., Florida Industrial Commission v. Manpower, Inc. of Miami, 91 So.2d 197 (Fla. 1956); People ex rel., Armstrong v. Warden of City Prison of New York, 183 N.Y. 223, 76 N.E. 11 (1905); Telex Corp. v. Balch, 382 F.2d 211, 219 (8th Cir. 1967).

Whether the evils of fraud and oppression are present in employer-fee-paid contractual arrangements is questionable. Many of the factors noted by Justice Brandies in his dissenting opinion no longer exist in this situation. Consequently, the threat of exorbitant charges, dismissal of employees after a few days on the job, collusion and kickbacks no longer appear to be problems. Perhaps this is the reason some states exclude employer-fee-paid business from their definition of an employment agency. Courts, in construing statutes in those jurisdictions, have repeatedly concluded that licensure provisions are promulgated to protect the individual applicant. See Florida Industrial Commission v. Manpower, Inc. of Miami, 91 So.2d 197 (Fla. 1956); National Staffing Consultants v. District of Columbia, 211 A.2d 762 (Dist. of Col. 1965); Positions, Inc. v. Steel Deck Siding Co., 225 S.E.2d 769 (Ga. 1976); Camilla Cotton Oil Co. v. Mills Management, 264 S.E.2d 294 (Ga. App. 1979); Dunhill of Fargo, Inc. v. Lahman Manufacturing Co., Inc., 317 N.W.2d 824 (S.D. 1982).

Other states have included employer-fee-paid agencies within their respective definitions of an employment agency. The underlying policy promoting regulation of the employer-fee-paid agency has traditionally been based on the need to protect the public from fraudulent or incompetent practices. State ex rel., Weasmer v. Manpower of Omaha, 73 N.W.2d 692 (Neb. 1955); Schroeder v. Ajax Corp., 239 N.W.2d 342, 71 Wisc.2d 828 (1976).

A search of Kansas authorities reveals only one district court case in which the court had occasion to interpret the licensure provision. In Dunhill v. Prosoco, No. 61, 862 B (Wyandotte County, 1976), Judge Claflin, in response to a motion for summary judgment, stated that the licensure provision, K.S.A. 44-401, did not require private employer-fee-paid employment agencies to register and obtain a license prior to operating. In so holding, it appears that Judge Claflin determined that the Act was not intended to protect the agencies. Judge Claflin bolsters his conclusion by noting that the word "or" (preceding the words "where a fee") has been interpreted by the Attorney General as making the "fee charging" disjunctive. Judge Claflin then states that, if viewed as disjunctive, the licensure provisions would also apply to agencies which render services free of charge. He concludes that regulating employment agencies which render services

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free of charge is clearly contrary to the purpose of the Act and consequently he notes that in order to carry out the legislative mandate the word "or" must be construed as being superfluous.

To date, there have been three Attorney General opinions construing the effect of K.S.A. 44-401 on employment agencies. The first and second opinions, issued in 1969 and 1975, respectively, are clearly relevant to the issues addressed herein. The third opinion, also issued in 1975, sought to define the term "doing business" as it appears in the statute. Additionally, the third opinion denotes the applicability of K.S.A. 44-406 (a provision requiring the agency to maintain certain records) on agencies governed by the Act.

In the initial opinion on the effect of K.S.A. 44-401, the Attorney General noted that private employment agencies which received a fee from the employer rather than the applicant must comply with the Act. VI Kan. Att'y Gen. Op. 438 (1969). The Attorney General based his opinion on the 1969 version of the statute, which, as previously noted, included the words "or for help." The Attorney General concluded that an applicant "for help" was an employer. Subsequent to that opinion, however, the Kansas legislature modified K.S.A. 44-401, deleting the underscored language noted above. The "or for help" language was stricken also from each statute codified in that act.

In 1975, a second Attorney General opinion (Attorney General Opinion No. 75-238) was issued which again construed the effect of K.S.A. 44-401 on employment agencies. In this opinion the Attorney General determined the phrase "where a fee, commission or other consideration is charged . . . or received from the applicant for employment" as contained in K.S.A. 44-401, was disjunctive and an alternative supplemental condition upon which licensing is required. The Attorney General concluded that the corporation was subject to the licensure provisions despite the fact that the agency would derive its fees from its affiliated subsidiaries and not from the applicants. Ignoring the change in the statutory language, Attorney General Schneider noted: "The fact that no fees are proposed to be paid by applicants is not legally determinative." Id. at 2.

In light of the conflicting interpretations of the district court and previous Attorneys General, we consider the statutory language as ambiguous and examine the issue anew. The most fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. That intent is to be determined by a general

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consideration of the whole act [State v. Dumler, 221 Kan. 386, 389 (1977); State v. Luginbill, 223 Kan. 15, 19 (1977)], "even though words, phrases or clauses at some place in the statute must be omitted or inserted." Farm and City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325 (1976).

Additionally, it has been held that:

"In interpreting a statutory provision which is susceptible of more than one construction, it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose." United Parcel Service, Inc. v. Arnold, 218 Kan. 102, 542 P.2d 694 (1975).

We also note that "if a statute specifies one exception to the general application the other exceptions are excluded: expressio unius est exclusio alterius." U.S. v. Jones, 567 F.2d 965 (C.A. Kan. 1975). The employment agency regulatory act contains a specific statutory exception to the filing requirements. That statute, K.S.A. 44-412, states:

"Any officers or agencies now organized or established, or which may be organized or established in this state by the secretary of human resources or by charitable organizations for the purpose of assisting persons to become employed shall not be subject to the provision of this act."

Arguably, if the legislature had intended employer-fee-paid agencies to be exempt from the regulatory requirements of the act, it would have explicitly excluded them in this provision.

We are, however, not persuaded that the legislature desires to regulate employer-paid employment agencies. First, the Kansas legislature amended the Act in 1971 to delete those phrases from the relevant statutes upon which the Attorney General had relied in 1969 in his opinion including employer-paid agencies within the regulatory Act. It is a commonly accepted rule of statutory construction that a change in phraseology or the deletion of a phrase in amending a statute raises a presumption that change of meaning was also intended. See State ex rel. v. Richardson, 174 Kan. 382 (1953); Consumers Cooperative Ass'n. v. State Comm. of Rev. and Taxation, 174 Kan. 461 (1953); State v. Beard, 197 Kan. 275 (1966); Hessell v. Lateral Sewer District, 202 Kan. 499 (1969); Shawnee Township Fire District v. Morgan, 221 Kan. 271 (1977). Note, especially, State v. Beard, supra, where the legislature

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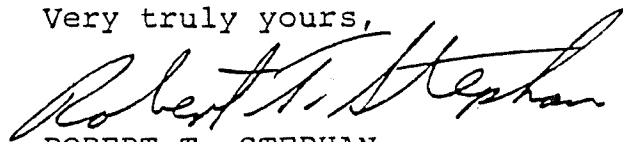
adopted statutory changes following recommendations of the Kansas Legislative Council; and Morgan, supra, where the statute was amended after series of Supreme Court decisions interpreting previous law. Note, also, that the presumption is stronger where change is specific and isolated rather than general revision or codifications. Hauserman v. Clay County, 89 Kan. 555 (1913) and Confinement Specialists, Inc., v. Schlatter, 6 Kan.App.2d 1 (1981).

With these principles in mind, we have considered the amendment of K.S.A. 44-401 in 1971 (L. 1971, ch. 178, §1) specifically deleting the language relied upon two years previously by the Attorney General. We believe the presumption is strong that the legislature intended a change in the law, and we can ascertain no rationale for this change other than to reverse the effect of the 1969 Attorney General's opinion.

Secondly, the state Department of Human Resources has not been enforcing the licensing requirements of K.S.A. 44-401 et seq., against employer-paid agencies for a number of years. Such administrative interpretations are entitled to great weight where a statute is ambiguous or subject to more than one interpretation, unless the administrative interpretation is clearly erroneous. See State v. Helgerson, 212 Kan. 412 (1973) and cases cited therein at 413 (interpreting a licensing statute).

Therefore, it is our opinion that K.S.A. 44-401 et seq. do not require licensing of employment agencies which are paid for their services solely by prospective employers.

Very truly yours,



ROBERT T. STEPHAN
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Deputy Attorney General

RTS:BJS:hle