

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidricksen at 9:00 a.m. on March, 7 1994, 1994 in Room 254-E of the Capitol.

All members were present except:
Senator Brady - Excused

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:
Representative Blaise R. Plummer - 20th District
Senator Lana Oleen - 22nd District

Others attending: See attached list
Alice Blecha - Stagg Hill Neighborhood Association, Manhattan
Kathy Johnston - Manhattan
Don Molar - General Counsel, League of Kansas Municipalities
James Tobaben - KDOT
Berlin Richardson - Berlin Richardson, Overland Park
Tim Rogers - Aviation Advisory Committee

HB 2647 - Relating to speed limits

Representative Plummer addressed the Committee to explain the purpose and intent of this bill which would provide exception to uniform speed limits in residential areas and enable cities to have the flexibility to set speed limits in these areas. He explained that this bill will solve several problems including those of legality and fines.

Senator Oleen introduced some people from her district who have helped to bring this bill forward due to the loss of life of a couple of children who were injured in their residential areas.

Alice Blecha spoke of the need to pass ordinances to lower speed limits under the home rule option. She urged the Committee to pass this bill to clarify the statute and give Manhattan City Commission this tool to make their streets safer. (Attachment 1)

Kathy Johnston addressed the Committee in support of the bill stating that Manhattan's Officials and the Attorney General came to the conclusion that local authorities do not have the authority to lower the speed limit in residential areas. She stated that there are a lot of cities in Kansas that have 20 miles per hour posted in residential neighborhoods and she feels it is necessary to lower the speed limit in their neighborhood also. (Attachment 2)

Testimony was also distributed but not read from:
Linda Glasgow - Neighborhood Watch Coordinator, Manhattan (Attachment C)
Steve Hall - City Commissioner, Manhattan (Attachment 4)
Marie Henn - Stagg Hill Neighborhood Association (Attachment 5)
Stephen K. Pfister - Northview Neighborhood Association, Manhattan (Attachment 4)

Don Molar appeared for The League of Kansas Municipalities to comment on **HB 2647**. He stated that they do not believe the conclusion regarding the 30 mph speed limit requirement is correct give the existence of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254E-Statehouse, at 9:00 a.m. on March 8, 1994.

constitutional home rule for cities in Kansas. The League believes that cities may prescribe more restrictive traffic speeds in residential areas by using their constitutional home rule authority and these more restrictive speed limits do not conflict with existing state statutes. He asked that if the Committee decided to report this bill favorably that they consider two amendments. One would be to amend a grandfather clause in all existing 20 or 25 mph speed limits in residential areas. The other would be to assure that the legislation could not be used against cities to further undermine constitutional home rule authority. (Attachment 7)

James Tobaben stated that KDOT recommends passage of this bill to give local authorities the power in establishing speed limits to decrease the limit within any residential district, but not to less than 20 miles per hour, based upon an engineering and traffic investigation. (Attachment 8)

Berlin Richardson appeared in opposition of the bill giving a list of reasons for not lowering the speed limit laws. He felt that there were too many different speed limits on city streets and too many officers writing traffic tickets. (Attachment 9)

HB 2614 - Relating to the development of general aviation airports

Tim Rogers addressed the amendments to this bill explaining that the changes clarify it and aid the planning function for KDOT. He stated that this bill was a must to continue improvements and assistance.

The Chairman called for discussion.

Senator Jones made a motion to recommend **HB 2614** favorable for passage. This was seconded by Senator Tiahrt. Motion carried.

A motion was made by Senator Rock to pass **HB 2647**. A second was made by Senator Emert.

A substitute motion was made by Senator Burke to amend the bill to grandfather in all existing 20 to 25 mph speed limits in residential areas and assure that the legislation could not be used against cities to further undermine constitutional home rule authority. This was seconded by Senator Rock. Motion carried with Senator Tiahrt voting "No".

Attention then returned to the primary motion and **HB 2647** was passed with amendments.

A motion was made by Senator Burke and seconded by Senator Tiahrt to approve the minutes of the February 22, February 23, February 28 and March 1 meetings. Motion carried.

The meeting was then adjourned by the Chairman.

The next meeting is scheduled for March 9, 1994.

GUEST LIST

SENATE TRANSPORTATION COMMITTEE

DATE: MARCH 7, 1994

[illegible]

Testimony to the Senate Transportation Committee

on House Bill No. 2647

March 7, 1994

Mr. Chairman and Committee Members:

Thank you for giving me the opportunity to speak before you regarding House Bill 2647. My name is Alice Blecha, and I am a board member of the Stagg Hill Neighborhood Association. Our Association formed about a year ago in response to the very problem that the bill before you addresses. In fact, it might be said that our neighborhood opened the Pandora's Box that gave rise to this bill.

Our neighborhood lies in the southwest section of the City of Manhattan, and we are a mixed neighborhood of single family homes, duplexes, and multi-apartment buildings. Because of our proximity to a major highway west, many of our residents work at Fort Riley. Others work in Manhattan, at K-State or in other community businesses. Our neighborhood consists entirely of residential streets, many with curves on the hill that gives us our name -- Stagg Hill. In the Stagg Hill neighborhood, there are no through streets to other areas of the community.

We are a young neighborhood, and on nice days you can see many of our children playing in our front and back yards, or riding their bicycles and skateboards on our streets. You see, we have no sidewalks, and we have no neighborhood park as yet. Our whole neighborhood is our children's playground.

Our tragedy is that we have had two traffic fatalities of

ATTACHMENT A

SEN. TRAN. 3/8/94

A-1

neighborhood children in the past two years. After the second death, we approached our city commission to request that speed limits be lowered and stop signs be installed at critical intersections in the neighborhood. Many members of our neighborhood attended a meeting with city staff to present our request, and the outcome of that meeting was only a partial solution. City staff agreed to install four-way stop signs at two of three critical intersections, but that was as far as they could go, they said, because of state statute. Our city staff said that state statute prohibited them from lowering speed limits in residential areas.

Our requests continued to the City Commission itself, and the city attorney wrote an opinion that the staff interpretation of the state statute was correct: no lowered speed limit and no four-way stop signs at the third intersection where one of the children had died.

You can imagine how frustrated we were to see two protected intersections, and a third one, which was essentially identical, unprotected. You can imagine how frustrated we were to find out that cities throughout Kansas annually pass ordinances lowering speed limits in residential areas. Our speed limits are still 30 mph, even though our Manhattan city engineer wrote in a memo on August 17, 1993, that the 30 mph speed limit signs should be removed in order to "eliminate the possible impression given to motorists that it is appropriate to drive that fast."

After months of neighborhood meetings, doing research, and talking with City Commissioners and staff, the city attorney

asked the Attorney General for an opinion. As you know, the Attorney General agreed with the Manhattan city attorney and city staff: state statutes are inflexible regarding residential speed limits.

It was out of our frustration that we held up our own stop signs on Friday evenings, and nearly all drivers courteously complied with our homemade signs for the weeks we protected our own intersection. The media discovered us, and we had TV coverage from other cities.

But we do not want media coverage. We just want safe neighborhoods for our children. We know that many other communities pass ordinances to lower speed limits under the home rule option. We in the Stagg Hill neighborhood want to have the tools other ciities already assume they have to make our neighborhood safe for our children.

Our City Commission needs this clarification of state statute to do what other communities throughout Kansas have already done. We urge this Committee to pass this bill, to clarify state statute, and to give the Manhattan City Commission this tool to make our streets safer for our children and ourselves.

Thank you very much.

My name is Kathy Johnston and I live in Manhattan. Our neighborhood association started our fight for 20 miles an hour in residential neighborhood almost a year ago. Unfortunately our fight started to late for Raymond Patterson and Holt Rogers. Raymond died in October 1992 of injuries he recieved from a skateboard /car accident. Holt died April 23, 1993 from injuries he recieved from a bicycle car accident.

In Manhattan our school zones are 20 miles per hour when school is in session. Why is this, because young children are near. Our parks have 20 miles per hour. Why? Because children are playing. Kansas State University has 20 miles per hour. Why? School Zone maybe or maybe college students might accidentally walk or ride in front of a car. Business districts have 20 miles per hour for shoppers and business people. But our children are living and playing in neighborhoods with 30 miles per hour. When the speed limits were lowered on the interstates, it was done to save lives. The motto was "Drive 55 To Stay Alive". Now 65 has still made a big difference. I know in my neighborhood we need "20 To Stay Alive". There are a lot of neighborhoods that need lowered speed limits.

Manhattan's Officials and Attorney General Robert Stephan came to the conclusion that local authorities do not have the authority to lower the speed limit in residential areas. Therefore Ladies and Gentlemen we are running out of hoops to jump through. Please pass this bill so they do have the authority to do so.

There are a lot of cities in the State of Kansas that already have 20 miles per hour posted in residential neighborhoods. Why? They know they need "20 To Stay Alive."

The Parents of the two little boys didn't allow there children to play in the streets. They were riding a skateboard and bicycle. Yes they were in the street, you see we don't have sidewalks. When children get off at the bus stops they walk in the streets. Our neighborhood also is very hilly with limited sight distances at both intersections in which the accidents occurred, and we have more just like them. Our city staff removed the 30 miles per hour signs, but anyone who takes the Kansas drivers license examination knows that your handbook states "MAXIMUM SPEED LIMITS IN A RESIDENTIAL DISTRICT ARE 30 MILES PER HOUR UNLESS OTHERWISE POSTED".

Thank You.

March 7, 1994

Senator Ben Vidricksen, Chairman, and Members
Senate Transportation and Utilities Committee
State Capitol
Topeka, KS 66612

Dear Senator Vidricksen and Members of the Committee:

I am writing in support of HB 2647 which would allow cities to lower speed limits, when appropriate, in selected neighborhoods.

I have been the Neighborhood Watch Coordinator for Manhattan's Snowbird Addition for over five years. We have just under 100 residences in our neighborhood, and 15-20% of the residences are represented at our annual educational meetings with Riley County Police Department representatives. A recurring theme at our annual meetings is the perception by residents that cars travel too fast on our streets to insure the safety of our children. As drivers ourselves, we know that reaction time can only be as fast as a driver's attention, and that higher speeds result in longer travelling distance for even the quickest reacting driver. Many of our streets in the Snowbird Addition have curves, and our neighborhood feels that thirty miles per hour is a speed which endangers our children's lives.

Another factor which concerns us at this time is that a new middle school will be built in the next year just across a collector street from our neighborhood. We know that the increased traffic to accommodate school arrivals and departures will lead motorists to seek alternative routes to the school, and our neighborhood is a natural path for drivers coming from the east. If traffic speeds remain at 30 mph in our neighborhood, our streets (which were designed only to be residential streets) will become "de facto" collector streets, and our children who will be walking to the school without sidewalks will be endangered even more.

We urge you to approve HB 2647 and allow neighborhoods such as ours to work with our municipal governments to determine the proper balance between motorist efficiency and pedestrian safety.

Sincerely yours,

Linda Glasgow

Linda Glasgow
2236 Snowbird Drive
Manhattan, KS 66502
913-776-9617

TESTIMONY BEFORE
SENATE TRANSPORTATION COMMITTEE

REGARDING
HOUSE BILL No. 2647

March 7, 1994

Mr. Chairman and Committee Members:

As a City Commissioner of Manhattan, Kansas, I have witnessed the grief caused by two children being killed in one of our neighborhoods in less than a 12 month period. There is no doubt in my mind that reduced speed limits and proper signage in this neighborhood might have prevented these tragedies. The residents of this neighborhood have struggled against all odds to bring House Bill 2647 to your attention.

Unfortunately I was unable to appear before you in person this date, but I respectfully request that you forward this bill to the full Senate with your endorsement for its approval. Please don't hesitate to contact me should you require any additional information.

Sincerely,

Steve Hall

Work phone: 776-6864
Home phone: 537-8787

Steve Hall
3425 Treesmill
Manhattan, KS 66502

ATTACHMENT 4

SEN. TRANS. 3/8/94 4

March 4, 1994

Senator *Bill Brady*
State Capitol
Topeka, KS 66612

Dear Sen. *Brady*,

I am writing concerning HB 2647, which would allow cities the authority to lower residential speed limits from 30 mph. I support this bill and urge you to, as well.

Last summer our neighborhood association asked the Manhattan City Commission to reduce the speed limit in our neighborhood following the deaths of two boys, ages 6 and 8, that occurred in two separate traffic accidents in our neighborhood within 7 months of each other. The Manhattan city attorney, William Frost, told the City Commission that, in his opinion, cities in Kansas do not have the authority to reduce residential speed limits from 30 mph, because of the state statute. He then sent his opinion to the Kansas Attorney General for a review. The Attorney General's office issued their opinion in October, 1993, which agreed with Mr. Frost's interpretation.

As you know, many Kansas towns and cities have had residential speed limits lower than 30 mph for many years, and the October Attorney General's opinion raised the question of whether or not they were authorized to have done this. This bill simply clarifies the authority of individual cities and towns to decide what speed limit in residential areas is safest and reasonable.

For your information, copies of signed petitions from our neighborhood have been submitted to Senator Ben Vidricksen. Please help our neighborhood protect our children by allowing Manhattan and all communities in Kansas to lower residential speed limits by supporting HB 2647.

Sincerely,

Marie Henn

Marie Henn, Board Member
Stagg Hill Neighborhood Association
901 DeHoff Drive
Manhattan, Kansas 66502

March 4, 1994

Senator Ben Vidricksen, Chairman
Members of the Senate
Transportation and Utilities Committee
State Capitol
Topeka, KS 66612

Dear Senator Vidricksen and Members of the Committee:

The Northview Neighborhood Association supports HB 2647 and urges the Senate Transportation and Utilities Committee to pass it on to the full Senate.

The City of Manhattan is a young community because of Kansas State University and its proximity to Fort Riley. We have just passed a major school bond issue that will build two new middle schools and a new elementary school in the community over the next two years.

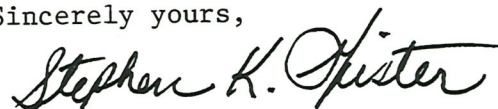
Because we are a young community, past residential development in Manhattan has sought cost-reductions such as not putting in sidewalks, in order for young families to afford to purchase homes. These decisions, however, have created a hazard to the children of these same families who must walk in the streets to school.

Fortunately, our city planners have also designed our streets with logical collectors and arterials that keep heavy traffic out of residential neighborhoods. When the speed limits of collectors and arterials are the same (30 mph) as residential streets, however, drivers often seek what they think will be faster routes through residential areas when traffic on the main roads is heavy.

The passage of HB 2647 will enable our city engineer and planners to work with neighborhoods such as ours to set speed limits that are appropriate for our residential area and pedestrian movement, and to keep through traffic on the streets designed for that use.

Thank you for your consideration.

Sincerely yours,



Stephen K. Pfister
1908 Tulip Terrace
Manhattan, KS 66502
913-537-4623

ATTACHMENT 6

SEN. TRANS. 3/8/94

6



**THE LEAGUE
OF KANSAS
MUNICIPALITIES**

**Municipal
Legislative
Testimony**

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Transportation and Utilities Committee

FROM: Don Moler, General Counsel

DATE: February 7, 1994

SUBJECT: HB 2647, Speed Limits in Residential Areas

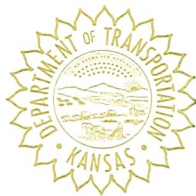
The League appears here today to comment on HB 2647, a bill which reduces by statute the minimum speed limits cities may enforce in residential areas. This has been an area in which much discussion has taken place with widely conflicting interpretations of the existing statutory law and the constitutional home rule powers of cities in Kansas. We appreciate the initiative of Representative Plumber.

Specifically, the League of Kansas Municipalities takes issue with the conclusions reached in Attorney General Opinion 93-131. We do not believe the conclusion regarding the 30 mph speed limit requirement is correct given the existence of constitutional home rule for cities in Kansas. Essentially the League believes that cities may prescribe more restrictive traffic speeds in residential areas by using their constitutional home rule authority and these more restrictive speed limits do not conflict with existing state statutes. Thus, the League's Governing Body has determined that the League should not seek "corrective" legislation in this case. For this reason we are not supporting or opposing HB 2647. It is the opinion of the League, as expressed by action of the League's governing body, that to support "corrective" legislation, as a result of a questionable Attorney General Opinion, simply serves to further undermine the constitutional home rule authority of Kansas cities. For this reason, the League has not sought legislative action in response to AGO 93-131.

Should the committee determine that HB 2647 be reported favorably, the League would like to suggest two amendments. First of all the bill should be amended to grandfather in all existing 20 or 25 mph speed limits in residential areas. Failure to include this amendment would create a mandate on cities across the state and be wildly expensive.

The second amendment would be to assure that the legislation could not be used against cities to further undermine constitutional home rule authority. Specifically we ask that the following language be inserted in the legislation as a new section: **"Nothing in this act or the Uniform Act Regulating Traffic shall be interpreted as preempting the ability of cities, in their respective jurisdictions, from adopting regulations, pursuant to Article 12, Section 5 of the Kansas Constitution, that are more restrictive than this Act or the Uniform Act Regulating Traffic."**

STATE OF KANSAS



Michael L. Johnston
Secretary of Transportation

KANSAS DEPARTMENT OF TRANSPORTATION

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
FAX - (913) 296-1095

Joan Finney
Governor of Kansas

**TESTIMONY BEFORE
SENATE TRANSPORTATION AND UTILITIES COMMITTEE**

**REGARDING
HOUSE BILL NO. 2647**

MARCH 7, 1994

Mr. Chairman and Committee Members:

Mr. Chairman and members of the committee, I am James Tobaben, State Traffic Engineer, with the Kansas Department of Transportation. I am here today on behalf of the Department to provide testimony regarding the proposed revision of K.S.A. 8-1338.

KDOT recommends passage of this bill, to give local authorities the power in establishing speed limits to "decrease the limit within any residence district, but not to less than 20 miles per hour" based upon an engineering and traffic investigation. I emphasize the need for a traffic engineering study in determining appropriate speed limits. Existing engineering guidelines, when followed, provide the safest operation along a given roadway as well as a limit that appears reasonable to the majority of drivers.

Thank you for this opportunity to provide testimony. I would be happy to answer any questions you may have regarding speed zoning.

Sincerely,

James E. Tobaben, P.E.
State Traffic Engineer

ATTACHMENT 8

SEN. TRAVS. 3/13/94

81

REASONS FOR NOT LOWERING KANSAS STATE 30 MPH SPEED LIMIT LAWS

1-The multitude of rules and regulations for motorists are confusing enough. Cities in Kansas need uniformity in speed limits etc.

2-Kansas uniform act regulating traffic, is a good law and should not be changed just because Overland Park has 25 mph signs all over.

3-The city of Overland Park has 3 different speed limits for neighborhoods 25, 30, and 35.

4-According to a U.S. dept. of transportation study dated July 1985--lowering the speed limit will not slow down traffic.

5-Kansas traffic act is similar to most states.

6-25 mph speed limits would make law breakers of almost everyone.

7-Speed trap abuse can occur.

8-Municipal police would be spending more time issueing speeding tickets, instead of preventing crime and protecting neighborhoods.

9-Kansas motorists would be getting even more speeding tickets.

10-With the exception of school and business zones, 20 and 25 mph speed limits are out of date. Streets are for expediting traffic.

11-Cars are better designed now and can be stopped more quickly.

Berlin M. Richardson

11925 Grandview

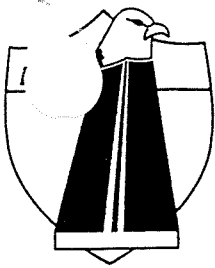
Overland Park, Kansas 66213

(913) 451-8911

ATTACHMENT 9

SEN. TRANS. 3/8/94

9-1



National Motorists Association

6678 Pertzborn Road, Dane, Wisconsin 53529

608/849-6000

November 5, 1993

Ann Spivak
Kansas City Star
1729 Grand Avenue
Kansas City MO 64108

Dear Ms. Spivak,

The enclosed summary of a federal study on speed limits may shed some light on your current controversy, concerning Kansas' "uniformity" law.

In a nutshell, urban posted speed limits have little to no influence over actual vehicle speeds. Changing the numbers will not change driver behavior.

I noted that the municipalities are concerned about costs they may incur in lost ticket revenue and sign replacement. I also noted that no one expressed any concern related to the capricious and arbitrary nature of existing speed limits.

The simplest and most cost effective solution is to remove the illegal signs and enforce the statutory limit of 30 mph. The signs do not have to be replaced (accept, perhaps at the entrance points to the municipality). There will be no change in average and 85th percentile speeds. I'm sure the preponderance of enforcement activity has been focussed on vehicles traveling in excess of 30 mph.

In other words, all that will be lost is several thousand eyesores.

Sincerely,

James J. Baxter
James J. Baxter
President

JJB/jrh
Enclosures



U.S. Department
of Transportation
Federal Highway
Administration

FHWA Contact:
Davey L. Warren, HSR-30
FTS 285-2426

Research, Development,
and Technology
Turner-Fairbank Highway
Research Center
6300 Georgetown Pike
McLean, Virginia 22101-2296

TECHNICAL SUMMARY

SYNTHESIS OF SPEED ZONING PRACTICE

Report No. FHWA/RD-85/096

July 1985

Limit Should Reflect Traffic Speed

Introduction

Speed zoning is the establishment of reasonable and safe speed limits based on an engineering study. Speed zoning incorrectly used on streets and highways can lead to driver non-compliance with speed limits.

This study reviewed the principles and practices used to set speed limits. It is based mainly on a survey of traffic officials conducted by the American Association of State Highway and Transportation Officials (AASHTO) Subcommittee on Traffic Engineering. All States and 44 city and county agencies responded to the survey.

Results

Some of the problems found with current speed zoning practices include:

- o Lack of understanding and support for current speed zoning criteria.
- o Difficulty of using other factors such as road characteristics and accident experience in conjunction with prevailing speed.
- o Public pressure based on concern about past accidents.
- o Concealing radar and obtaining speed samples on low volume roads.

Traffic officials generally agree speed limits should reflect the speed of most drivers. All States and most of the local agencies use the 85th percentile speed of free flowing traffic as the basic factor. However, it is fairly common to reduce the speed limit based on a subjective consideration of other factors.

The main factors used in setting speed limits are shown in Table 1. The most commonly reported lower level of the speed limit is 5 mph below the 85th percentile speed with 10 mph below being the extreme.

Table 1. Main Factors Used to Set Speed Limits

Factor	Percent of	
	States	Locals
85th percentile speed	100	86
Roadside development	85	77
Accident experience	79	81
Adjacent limits	71	45
10 mph pace	67	34
Roadway geometrics	67	57
Average test run speed	52	34
Pedestrian volumes	40	50

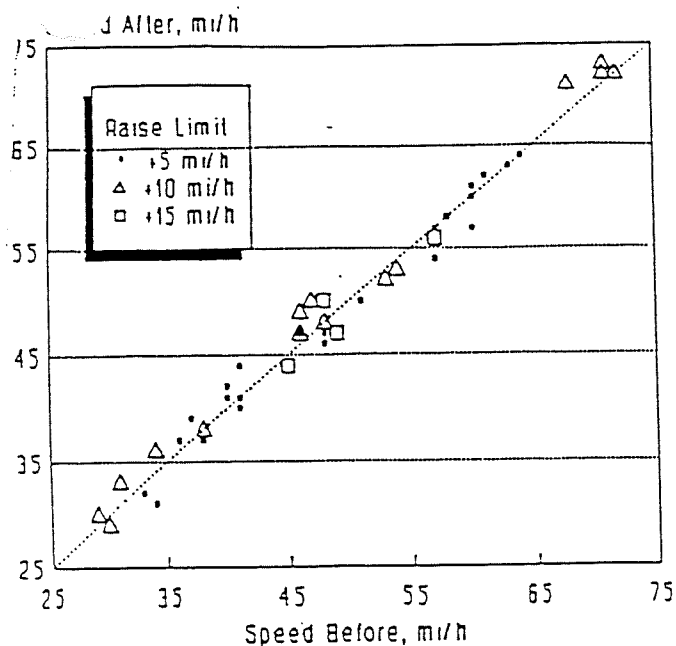


Figure 5. Prevailing speeds before and after raising speed limits (N=45)

If speed limits were raised to more realistic levels, would drivers automatically drive 5 to 10 mi/h over the new speed limit as is commonly believed? The answer is no. Raising the speed limit by various amounts up to 15 mi/h has little or no effect on speeds over a broad range of road types and speed levels (Figure 5).

Conversely, lowering the speed limit will not slow down

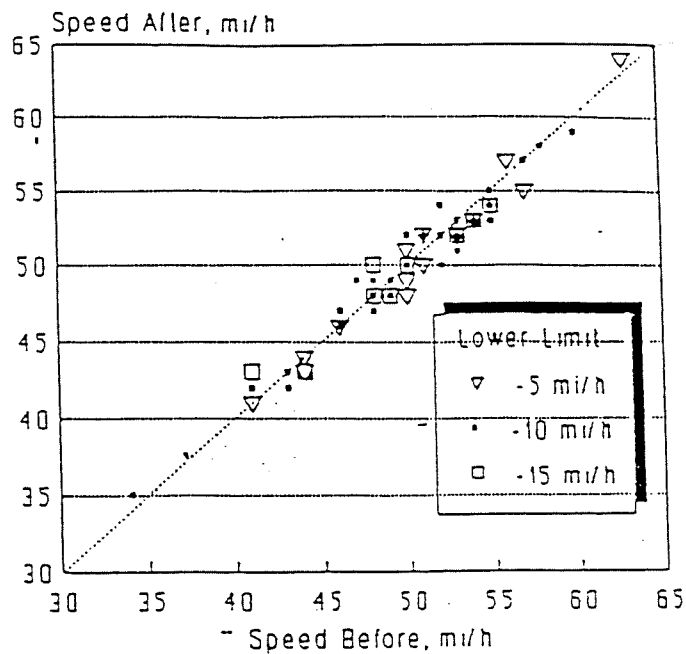


Figure 6. Prevailing speeds before and after lowering speed limits (N=57)

traffic (Figure 6). Although speed increases of 3 mi/h and decreases of 3 mi/h were observed at individual sites, the expected change in speed is less than 1 mi/h which is normal variation (Figure 7). In addition there is no evidence in our studies that raising the speed limit to 65 on rural interstate highways led to an increase in speeds off the freeway (Figure 8).

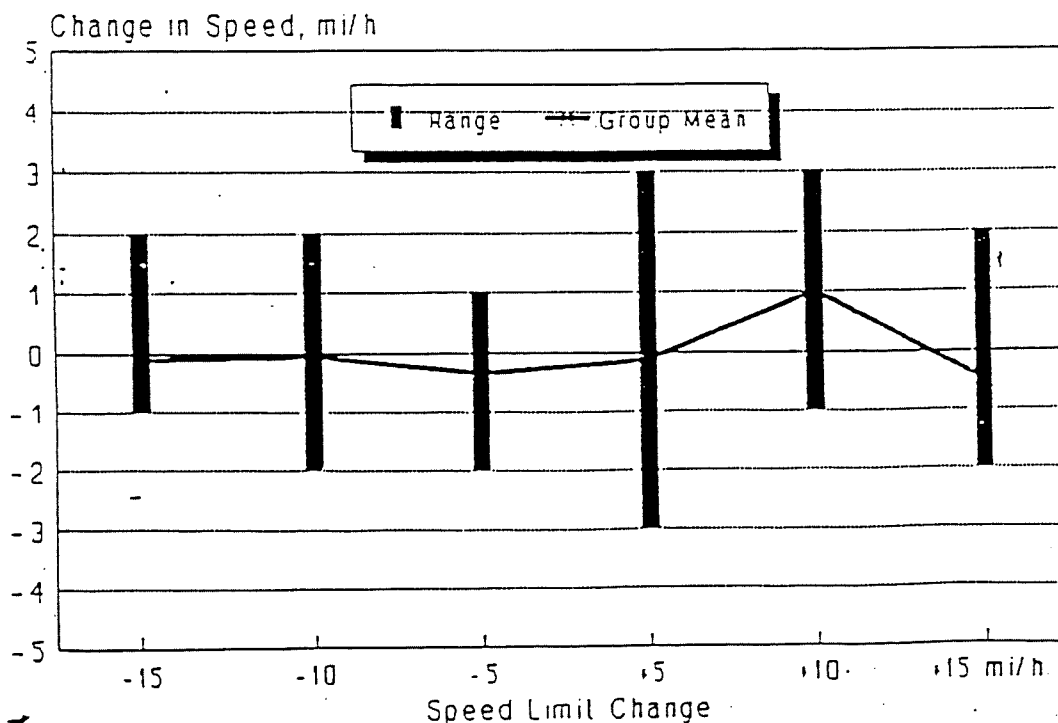


Figure 7. Effects of altering speed limits by various amounts (N=102)

COURT CASES

OVERLAND PARK KANSAS

	<u>Total</u>	<u>Traffic approx</u>	<u>Traffic %</u>
1993	53,112	47,000	88.5
1992	42,472	36,000	84.8
1991	45,458	39,000	85.8

Public information from Overland Park
Municipal court records

by Tom Leathers



A New Symbol for Overland Park?

FOUR OR FIVE YEARS AGO, *The Squire* dubbed Overland Park the "Orange Barrel capital of the world" — and said the Orange Barrel should be its official symbol. It cited the fact that there seemed to be more orange barrels than people in the city.

Then later, we called Overland Park the "Red Light capital" — and suggested the red light as the symbol. No, not because of any proliferation of places you usually associate with red lights — like a red light district. The reason was that with all that traffic, you could hardly drive anywhere in the city without encountering a red traffic light. In fact, on one stretch of Metcalf (from 95th Street going south), you can stop at six or seven in a row.

But now we suggest a new title, one that seems richly deserved: ***Ticket Master***. Thanks to an eager band of ticket writers, the Overland Park Police Department increased its number of traffic tickets by 30 percent last year. That's one ticket for every two residents — a new record for the town. And the way they're going, the Overland Park police look like sure bets to go 1-for-1 in '94 — the equivalent of one ticket for every one of the residents. When that happens, who can say it doesn't deserve to have the traffic ticket as its symbol?

IN THE MUNICIPAL COURT OF OVERLAND PARK, KANSAS

CITY OF OVERLAND PARK, KANSAS,
Plaintiff,

vs.

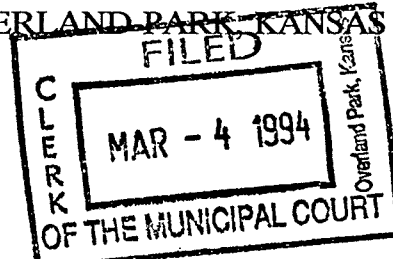
JULIUS JOSEPH CENTYE,
Defendant,

and
THOMAS M. GAUME,
Defendant,

and
CAROL L. MELLOTT,
Defendant,

and
BERLIN RICHARDSON
Defendant,

and
ROGER A. WORDEN
Defendant.



CASE NO. 94-1-72133

CASE NO. 93-1-56166

CASE NO. 93-1-59144

CASE NO. 93-1-64017

CASE NO. 93-1-58813

MEMORANDUM DECISION

At various times over the last two months the above listed defendants have filed, pro se, either orally or in writing, Motions to Dismiss their speeding tickets on the basis of the validity of O.P.M.C. §12.04.033, which sets residential speed limits in Overland Park at 25 miles per hour. The City appears, for purposes of arguing this issue, by Robert Watson, City Attorney and John S. Anderson, Senior Assistant City Attorney. Written arguments and authorities were last filed on March 2, 1994. After fully reviewing all authorities presented, the Court is now prepared to rule.

CONCLUSIONS OF LAW

In reviewing this matter, the Court is bound by the long-standing rule of law that a city ordinance is entitled to a presumption of validity and should not be stricken unless its

infringement upon a statute is clear beyond a substantial doubt.¹ The ordinance challenged by the defendants in this case is O.P.M.C. §12.04.033 which states, in part:

"Except when a special hazard exists that requires lower speed . . . the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway² at a speed in excess of such maximum limits. . .

(2) All vehicles 25 miles per hour in any residence district except where posted otherwise.

The defendants argue that the city ordinance is contrary to K.S.A. § 8-1336, which states:

(a) Except when a special hazard exists that requires lower speed . . . the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds and no person shall drive a vehicle at a speed in excess of such maximum limits:

(2) in any residence district, 30 miles per hour;

and is therefore invalid. K.S.A. §8-1336 is part of a broader statutory scheme entitled "the uniform act regulating traffic on highways" (hereinafter referred to as "the Act").³ In another section, the Act goes on to state:

"The provisions of this act shall be applicable and uniform throughout this state and in all cities and other political subdivisions therein, and no local authorities shall enact or enforce any ordinance in conflict with the provisions of this act unless expressly authorized; however, local authorities may adopt additional traffic regulations which are not in conflict with the provisions of this act."⁴

The Attorney General of the State of Kansas issued a written opinion on October 6, 1993 stating that, based on the above cited state statutes, cities do not have the authority to promulgate ordinances which alter the state prescribed speed limit of 30 miles per hour in

¹*Executive Aircraft Consulting, Inc. v. City of Newton*, 252 Kan. 421, 424 (1992).

²"Highway" is defined in the ordinance as:

"The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this ordinance, it shall mean street, avenue, boulevard, thoroughfare, trafficway, alley and other public way for vehicular travel by whatever name unless the context clearly indicates otherwise."

³K.S.A. §8-2204 (1993 Supplement).

⁴K.S.A. §8-2001 (1991).

a residential district. The defendants rely on this opinion in challenging their speeding tickets.⁵

Upon an initial reading of these two statutes it would appear that the City does not have the authority to adopt 25 mile per hour limits in residential areas. However, the issue is not as simple as that. The Court finds, for the reasons that follow, that cities in Kansas do have the authority to adopt speed limits as they deem are reasonably necessary to control traffic in their respective cities.

Clearly, as stated in the statute itself, the Act is uniformly applicable to all cities. However, recently the Kansas Supreme Court, in Blevins v. Hiebert, 247 Kan. 1, 8 (1990),⁶ held that "a municipality has the right to legislate by ordinary ordinance or resolution non-conflicting local police power⁷ laws even though there are state laws on the subject uniformly applicable to all cities. This is a court-imposed exception to constitutional and statutory home rule."⁸ The Court went on to state that the legislature may prohibit such

⁵*It should be noted that all defendants are alleged to have been traveling well in excess of the speed limit even if it were 30 miles.*

⁶*It should be noted that the Attorney General does not mention this case anywhere in his opinion.*

⁷*Courts have long recognized a city's authority to enact ordinances which regulate and restrict activities in the interest of the "health, safety, and welfare" of their citizens. This is generally referred to as the city's "police power."*

⁸*"Home rule" power, as opposed to "police power" is that authority granted by Article 12, Section 5 of the Kansas Constitution, which in pertinent part states:*

"Cities are hereby empowered to determine their local affairs and government . . ."

The Kansas Constitution then goes on to set out a procedure known as "statutory home rule" power or "charter ordinance" authority allowing cities to adopt "charter" ordinances that exempt them from statutory provisions that are: 1) not areas of statewide concern; and 2) are not uniformly applicable to all cities. Finally, the constitutional provisions concludes with the following section:

"Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government."

local authority only by "expressly preempting the field."⁹ Therefore, the first issue in this case is whether or not the legislature has expressly preempted the field of speed limits.

The defendants first argue, by way of the Attorney General opinion, that the "plain meaning of K.S.A. §8-2001" sets forth an intent by the legislature to preempt the field of speed limits. The Court disagrees. The last clause of K.S.A. §8-2001 states, "*However, local authorities may adopt additional traffic regulations which are not in conflict with the provisions of this act.*" Said language, appears to be a clear expression that the legislature does **not** intend to preempt the field. The legislature is clearly aware of its power in adopting statutory provisions that apply to cities. It "knows" how to preempt city authority, because it has done so in the past. In Blue Star Supper Club v. City of Wichita, 208 Kan. 731 (1972), the Kansas Supreme Court found that the following language constituted a "preemptive" provision:

*"The power to regulate all phases of control of the manufacture, distribution, sale, possession, transportation, and traffic in alcoholic liquor and the manufacture of beer . . ., except as specifically delegated in this act, is hereby vested exclusively in the state and shall be exercised as provided in this act."*¹⁰

The mere fact that the legislature has enacted legislation on a subject does not necessarily preempt the cities' power to legislate on the same subject.¹¹ Likewise, simply because a statute may contain a clause that prohibits a city from adopting any ordinance that conflicts with the state law, does not mean that the state has preempted the cities' power to legislate

⁹Id.

¹⁰Id. at 733, *emphasis added.*

¹¹City of Garden City v. Miller, 181 Kan. 360, 366 (1957).

on the same subject.¹² Finally, as outlined in detail in the City's brief, the Kansas Supreme Court has considered K.S.A. §8-2001, or its statutory predecessors, on at least three separate occasions and on each occasion has found that it does **not** manifest a clear legislative intent to preempt the field of traffic regulation.¹³

Second, the defendants argue, through the Attorney General's opinion, that since, in 1974, the legislature repealed a specific grant of authority to cities to alter speed limits, it can be presumed that the legislature intended to preempt the field of speed regulation. However, the Kansas Supreme Court has specifically rejected this doctrine of "implied preemption."¹⁴

Once having determined that the City may adopt its own speed regulations, pursuant to its police power, the next issue to consider is whether or not a city speed limit of 25 mph "conflicts" with a state speed limit of 30 mph. Again, analysis is not as simple as it might seem.

According to the Kansas Supreme Court, the "test" to use in deciding whether or not an ordinance impermissably conflicts with a state statute is:

"... whether the ordinance forbids or prohibits that which the statute authorizes; if so, there is a conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict."¹⁵

¹²*Id.* at 735. Also, see Garten Enterprises, Inc. v. City of Kansas City 219 Kan. 620, 623 (1976).

¹³See, Harshaw v. City of Kansas City, 154 Kan. 481 (1941); City of Garden City v. Miller, 181 Kan. 360 (1957); and Missouri Pacific Railroad v. Board of Greeley County Comm'rs, 231 Kan. 225 (1982).

¹⁴City of Junction City v. Griffin, 227 Kan. 332, 336 (1980).

¹⁵City of Junction City v. Lee, 216 Kan. 495, 501 (1975).

Clearly, both the state speed limit and the city speed limit are prohibitory. The only difference is that the city ordinance is more stringent than the state law, it "goes further in its prohibition." The defendants argue, however, that by reducing the speed limit to 25 m.p.h. the City is "forbidding that which the legislature expressly allows."

For support, they refer to the state "Driver's License Renewal Examination" handbook which states:

"Speed limits: Where no special hazard exists, the traffic laws set up speed limits for normal driving conditions. Unless otherwise posted maximum limits are:

In Towns or Cities:

20 m.p.h. in any business district; 30 m.p.h. in any residential district

Again, based on a review of the case law in Kansas, the Court disagrees. There are many circumstances in which a City adopts an ordinance, pursuant to its police power, that prohibits activity that the State does not prohibit. For example, a city ordinance that prevented a private club from staying open after 1:30 a.m. was found not to conflict with state law, even though state law allowed such clubs to remain open until 3:00 a.m.¹⁶ In the landmark case of Kansas City v. Henre, 96 Kan. 795 (1915), a city ordinance setting stringent standards in the quality of milk sold was held not to "conflict" with a state law that set lesser standards. The Court in the Henre case went on to state, "It may be necessary in a congested district such as a city to make stricter regulations than are made and enforced by statute for the state at large."¹⁷ The Court could cite numerous similar examples. "Conflict"

¹⁶Leavenworth Club Owners Ass'n v. Atchison, 208 Kan. 318 (1971).

¹⁷Id. at 797.

is a term of art in legal writing and is not always equivalent to "different". To be in "conflict" with state law the City would have to adopt an ordinance preventing activity that was **expressly** allowed by the state or allowing activity that was **expressly** prohibited by the state.

A good example of the latter is the DUI statute in Kansas. Although the law specifically allows cities to adopt their own DUI laws, it states that if such a law is adopted the punishment for said offense shall not be less than nor more than that provided under state law. Therefore, if a city adopted an ordinance that provided that a second time DUI offender would only be subject to a fine, it would be in direct conflict with the mandatory jail time under state law. Since the legislature has **expressly** prohibited such action, the laws would be in conflict. As stated earlier, when the legislature wants to prohibit cities from making changes to state law, it knows how to accomplish such a mandate. No such mandate appears with regards to speed limits. Therefore, the Court finds that the city's ordinance is not in "conflict" with state law, as that term has come to be defined by the Kansas Supreme Court.

In addition, the statement pointed to by the defendants in the driver's license handbook contains the qualifiers, "unless otherwise posted." Since the speed zones in question in the present cases were presumably "otherwise posted," the defendants cannot claim any detrimental reliance on the handbook or mistake of law, even if such an argument were a valid legal defense in this case.¹⁸

The final issue raised by the defendants in this case, although not specifically addressed by the Attorney General, is the issue of whether or not a traffic study is required to be

¹⁸The Court finds that mistake of law is not a valid defense in the case at bar for the reasons set forth in the City's brief.

conducted before a speed limit may be established that varies from the state law. Defendants argue that K.S.A. §8-1338 requires a traffic and engineering study. Said statute states:

" (a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that any maximum speed permitted under this act is greater . . . that is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

- . . .
- (1) Decreases the limit at intersections; or
 - (2) Increases the limit within an urban district¹⁹ . . .
 - (3) Decreases the limit outside an urban district . . .
 - (4) Decreases the limit within an urban district in a school zone. . .

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets²⁰ . . .

The City does not argue that this statute is not applicable to the City.²¹ Instead, it argues that the statute should be interpreted to mean that traffic and engineering studies are **only** required in the listed circumstances. Since residential speed limits are not listed, the City argues that said omission only means that no traffic or engineering studies are necessary to adopt speed limits in residential areas. In other words, this is an area entirely within local control. In fact, if HB 2647 (as attached to the City's brief) is adopted, under the City's argument, it will continue to allow cities to decrease speed limits in residential areas, however will add the additional requirement that said decrease will have to be based on

¹⁹K.S.A. 8-1484 (1991) defines "urban district" as follows:

"...the territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses, situated at intervals of less than one hundred (100) feet for a distance of a quarter of a mile or more."

²⁰K.S.A. §8-1403 (1991) defines "arterial street" as:

"...any U.S. or state numbered route, controlled access highway or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways."

²¹In fact, in its own speed limit ordinance the City requires that variances from the City's statutory speed limits also be supported by engineering and traffic studies. O.P.M.C. §12.04.033(e).

engineering and traffic studies that determine 30 m.p.h. is greater than is reasonable and safe under the conditions found to exist upon said highway. The City goes on to argue that since all of the cases currently before the Court occurred on non-arterial streets in residential areas and not in school zones, the Court need not address the issue of the requirement of a traffic study. However, the Court has no evidence before it as to whether the locations of the alleged violations are in urban districts or on arterial streets. Admittedly, none of them occurred in school zones, since the appropriate box on the ticket does not so indicate. From the face of the tickets, it is not possible to determine the type of district or street involved without the Court making certain assumptions, which it does not believe would be proper. Only the Richardson case has already proceeded to trial and there was no testimony as to whether or not Lamar is designated as an "arterial" street, thus requiring a traffic study and whether or not, if required, such a traffic study existed. Both K.S.A. §8-1507 (1991) and O.P.M.C. §12.04. 012 set forth a statutory presumption that traffic control devices are assumed to be properly placed, by lawful authority, "unless the contrary shall be established by competent evidence." Therefore, the Court finds that insufficient evidence has been presented on this issue, and therefore it is not properly before the Court at this time.

Based on the above and foregoing, the Defendants' Motions to Dismiss are hereby denied and the Court enters the following orders with respect to each Defendant:

Julius Joseph Centye, Case No. 94-1-72133, is set for trial on April 19, 1994 at 1:00 p.m. in Courtroom A.

Thomas M. Gaume, Case No. 93-1-56166 is set for trial on April 13, 1994 at 10:00 a.m. in Courtroom A.

Carol L. Mellott, Case No. 93-1-59144 is set for trial on April 28, 1994 at 8:00 a.m. in Courtroom A.

Roger A. Worden, Case No. 93-1-58813 is set for trial on April 19, 1994 at 1:00 p.m. in Courtroom B.

Berlin Richardson, Case No. 93-1-64017, having already presented his case for trial, is found not guilty based solely upon the facts as presented at trial.

IT IS SO ORDERED.

DATED THIS 4TH DAY OF MARCH, 1994.


KAREN ARNOLD-BURGER
MUNICIPAL JUDGE

CERTIFICATE OF MAILING

I, Janet Mitchell, Clerk of the Overland Park Municipal Court, do hereby certify that a copy of the above Memorandum Decision was mailed on March 4, 1994, postage prepaid, as follows:

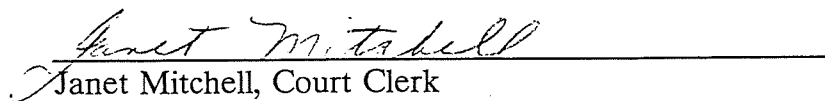
Julius J. Centye, 8580 Farley, Apt. #508, Overland Park, KS 66212

Thomas M. Gaume, 10821 W. 100th, Overland Park, KS 66214

Roger A. Worden, 12020 W. 99th Terr., Lenexa, KS 66215

Berlin Richardson, 11925 Grandview, Overland Park, KS 66213

Carol Mellott, 5929 Fontana, Fairway, KS 66205


Janet Mitchell, Court Clerk
O v e r l a n d P a r k M u n i c i p a l C o u r t