

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on February 12, 2003, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: David Patton, Kansas Board of Tax Appeals
Joan Wagon, Acting Secretary, Department of Revenue
Richard Greene, Attorney at Law
Linda Terrill, Attorney at Law

Others attending: See attached list.

SB 115—Reducing membership of board of tax appeals to three members

David Patton, Chairman of the Board of Tax Appeals (BOTA), testified on his own behalf, not on behalf of BOTA. He expressed his support of the reduction in membership, observing that Board will hear the same number of cases whether there are five or three members. He noted that currently 90 percent of the cases filed are either settled or stipulated to and are not tried, therefore, the number of trial cases have dramatically diminished. However, the cases which BOTA does try are much larger and more serious than they were in the past. For this reason, Mr. Patton opposes the reduction in the qualifications for board members. In his opinion, the qualifications should be increased rather than reduced. In support of his recommendation, he noted that the number of complaints and the controversy which surrounded BOTA in the past have been dramatically reduced during the past four years when the Chairman of BOTA has been a lawyer rather than a lay person. He also believes that it is important that attorneys serve on the Board because attorneys must adhere to the rules of judicial ethics. He noted that most cases the Board hears involve complex legal questions, and the members must act as both the judge and the jury. He pointed out, if there are no attorneys on the Board to consider legal documents, the Board will send the case to a staff attorney for a decision.

Mr. Patton also suggested that the time has come for a filing fee system to be instituted for BOTA, especially for the larger cases filed which involve millions of dollars and take a great deal of the Board's time. He requested that legislation be introduced to allow the Board to develop regulations allowing the imposition of filing fees. He believes that the filing fees would generate approximately \$300,000 in revenue for BOTA.

Senator Goodwin expressed the concerns of citizens in rural areas who fear that it is possible that all three

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members could be from urban areas, and the rural community will not be represented. In response, Mr. Patton noted that he is from Dodge City, but two current non-attorney Board members are from urban areas. He reiterated that three members will be just as effective as five.

Senator Allen asked who requested the introduction of **SB 115**. Senator Corbin explained that, although Senator Lee requested the introduction of the bill, the concept was recommended by the Governor's task force. Joan Wagon, Acting Secretary, Department of Revenue, spoke on behalf of the Governor's legislative staff. She reported that she visited with the Governor and members of her staff on February 10. The Governor supports the bill because of the fiscal savings involved and also because it would make BOTA more efficient as discussed by Mr. Patton. Ms. Wagon emphasized that it is very important that BOTA functions well because it is a court of record. She noted that the Governor is willing to give up the opportunity to appoint two BOTA members and to retain three Graves appointees and in order to accomplish a budget saving.

Richard Greene, an attorney from Wichita, testified in opposition to the portion of **SB 115** which removes the membership qualifications for BOTA. He maintained that deletion of the requirements will result in an inferior tribunal, salaries that are excessive for the remaining positions, and an erosion in public confidence in the system of tax appeals in Kansas. He argued that BOTA membership should consist of highly qualified and experienced lawyers because the Board is required to conduct hearings involving complex issues of law and must at all times observe applicable rules of procedure, rules of evidence, and applicable statutes founded on principles of law. He also pointed out that the salaries of BOTA members parallel the salary structure for district judges. He could find no reason to pay in excess of \$90,000 per year to a person who is required to have no more than minimal appraisal training as specified in the bill. He urged the Committee to amend the bill by restoring lines 19 through 24 to the extent that at least two of the three members must be practicing attorneys. (Attachment 1)

Linda Terrill, an attorney from Overland Park whose practice is exclusively in the field of state and local taxation, testified in support of reducing the number of BOTA members but in opposition to the removal of the requirement that BOTA members be attorneys. She suggested that, if the language requiring BOTA members to be attorneys is removed, the salary of members should be lowered to the level of an entry level civil servant for a state job which has no job qualifications. She pointed out that the Legislature originally tied BOTA salaries to that of a district court judge because that is the function BOTA members perform. She commented that, if the bill becomes law, this will be the only area of the law where records prepared for appeal will be done by a non-lawyer. She suggested that, if the lawyer requirement is removed, taxpayers should be permitted to bypass BOTA and appeal directly from the local level or from the Department of Revenue to district court. In conclusion, she reasoned, if the state cannot afford the luxury of a state agency to handle tax litigation, it would be preferable to sunset it and move the cases to district court rather than try to run it under circumstances where competency would likely suffer. (Attachment 2)

Senator Corbin asked Mr. Patton what the professions of the current five BOTA members are. Mr. Patton said three are attorneys, one is former mortgage broker, and one is a former government worker. Senator Corbin also confirmed that Mr. Patton recommends that two of the three members be attorneys.

Jack Graves, an attorney from Wichita, stood in support of the testimony offered by Mr. Greene and Ms.

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Terrill. He reiterated that BOTA occupies a very unique position as a tax court where the facts are determined and the law is applied. He observed that it makes no more sense to not have lawyers presiding over BOTA than to not have lawyers as district and appellate judges. He cited a case in which the Kansas Supreme Court determined that BOTA is a paramount, pre-eminent authority in the area of taxation.

There being no others wishing to testify, the hearing on **SB 115** was closed.

Due to the lack of sufficient time, Senator Corbin announced that the report by Acting Secretary Wagon on the post audit reviewing factors affecting the recent steep drop in corporation income tax receipts would be re-scheduled for a future meeting.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for February 13, 2003.