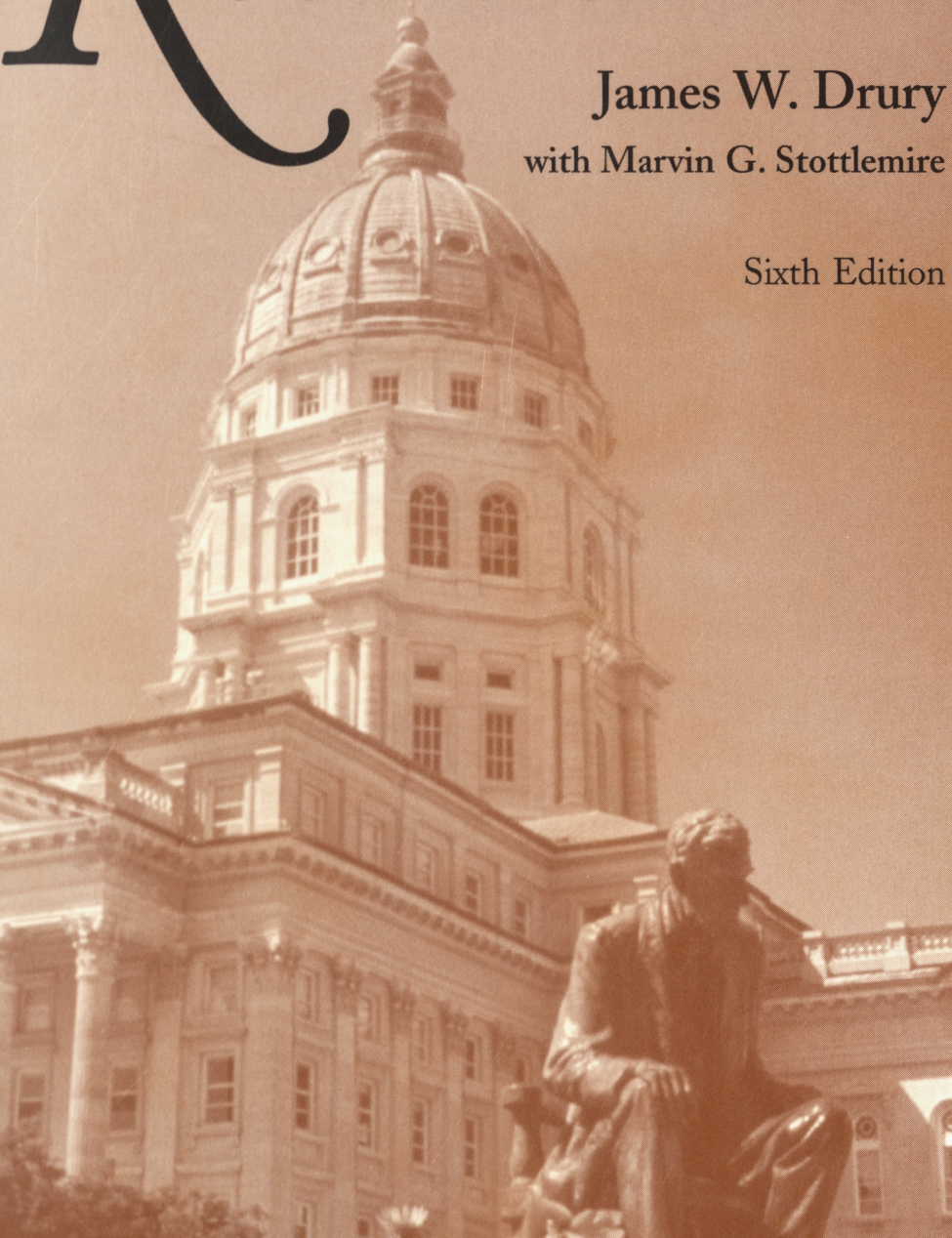


*The Government of*  
**Kansas**

James W. Drury  
with Marvin G. Stottlemire

Sixth Edition



# **The Government of Kansas**

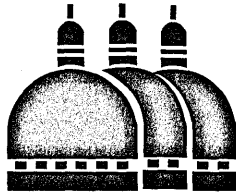




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**James W. Drury  
with  
Marvin Stottlemire**

Sixth Edition



Public Management Center  
The University of Kansas  
2001





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# Preface

A number of changes and developments have occurred in Kansas government in the four years since the fifth edition of *The Government of Kansas* was published. Some of these are:

- National attention to State Board of Education efforts to require different high school science standards on teaching evolution.
- Reorganization of the Board of Regents and a revised structure for community junior colleges.
- Continued mixed reviews of the privatization of child adoptions.
- A new highway program.
- Renewal of the lottery program.
- A new U.S. census, showing an increase in the state's population.
- An effort to look seriously at the depletion of the water table in western Kansas.
- An increase in both state expenditures and state revenues.
- The re-election of a governor, with a high percentage of voter support.
- Increased use of the Internet in personnel transactions.
- Continued uncertainty about welfare-to-work programs.
- Removal of the property tax lid on local governments.



All of these and many other changes are reflected in this volume.

As always, in an endeavor of this size, many people other than the author were involved. I am appreciative of their time and effort. Special mention should be made of the contribution of Marvin Stottlemire, assistant director of the KU Public Management Center. He has contributed greatly to this new edition. Numerous state officials gave generously of their time and expertise to describe the intricacies of the programs they administered. Representative Tom Sloan read a number of chapters and helped in their revision.

As was true in earlier editions, I continue to be indebted to Lynn Anderson and Malcolm Neelley of KU Continuing Education for their assistance in publishing this volume. Thelma Helyar, librarian at the KU Policy Research Institute, gave generously of her time in helping me access materials. Laura Stull, of the same institute, prepared some of the maps for the book.

All these people helped in their own special areas of competence to make this a better book, but this does not absolve me from responsibility for what appears. I continue to welcome responses from readers and others, so that future editions may be even better.

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## Chapter 1

# The State and Its People

**K**ansas is a giant section of the Great Plains, which extend through the Midwest from Texas to Saskatchewan. The very names of the states and provinces of the area—Oklahoma, Kansas, Nebraska, the Dakotas, Manitoba, and Saskatchewan—give a flavor of its history, its problems, and its future. In the music of these names is to be heard the thunder of vast herds of buffalo, the quiet beauty of the western sunset, the noise of battle, and the ceaseless rustle of wind on streams and in the open spaces.

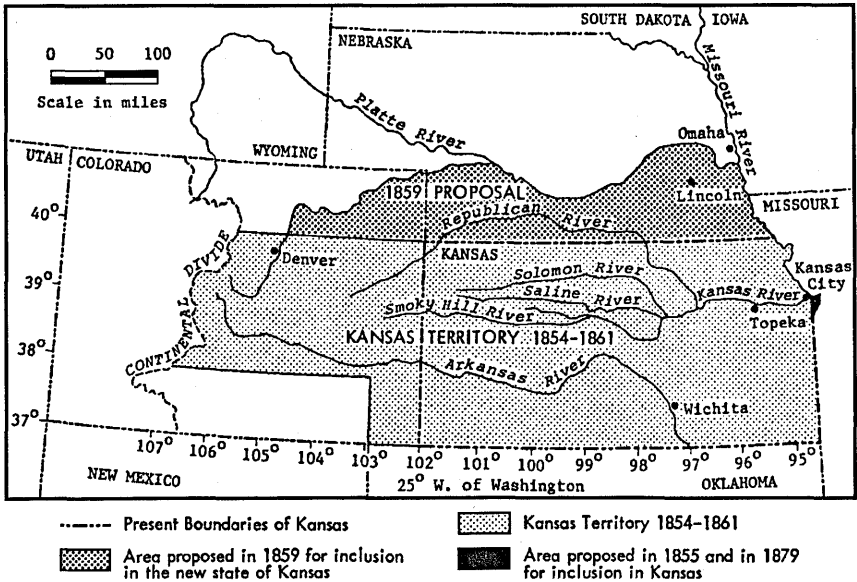
Kansas has its share of distinctive Great Plains attributes. But situated as it is, the state also possesses the characteristics of the vast intermountain empire of the Ohio, Mississippi, and Missouri rivers. Located in the exact center of the continental United States, Kansas is a parallelogram of 411 by 208 miles, minus a small irregularity nibbled out of the northeast corner by the Missouri River. The eastern fourth of the state, with its gentle hills and valleys, is more similar to western Missouri in its topographical features than to western Kansas, with its flat, wind-swept vistas. There frequently are substantial temperature and climatic differences between western and eastern Kansas.

Kansas was named for the Kansas River, a tributary of the Missouri River and therefore part of the greater Mississippi River Basin. A common but not unanimous view is that the name "Kansas" derived from the name of the river in the language of the Native Americans occupying the area.<sup>1</sup> Apparently the word was spelled in as many as 125 ways, so there are differences of opinion as to what the Native American word actually was.

The Kansas River is a substantial asset, making its water available to much of the state and infrequently, as in the floods of 1951 and 1993, bringing injury to those living close by. Kansas is also served by the Arkansas, Verdigris, Neosho, Marais des Cygnes, and Cimarron rivers. In the western and northern halves of the state, the drainage is mostly from west to east, while the pattern of flow is mostly from north to south in the southeast quarter.

The territorial act under which Kansas was organized set boundaries quite different from those in place today. As shown on the map below, much of Colorado was then included in Kansas. The western boundary of the state was settled by the Wyandotte Convention at the 25th meridian west of Washington. Since the Washington meridian is on 77° 03' 02.3" west of Greenwich, the western Kansas boundary is between regular Greenwich meridians. It seems quite likely that a different boundary would have been established had the Greenwich meridian been used.<sup>2</sup>

**Figure 1**  
**Map of the Kansas Territory**



Source: Map by Walter H. Schoewe, *Territorial Kansas* (Social Science Studies, 1954).



Delegates from the area north of the 40th parallel who attended the Wyandotte Constitutional Convention pleaded that the boundaries be drawn to include the Platte River. Delegates from Lawrence and Topeka opposed this plan, fearing it might jeopardize the likelihood of their home town becoming the capital of the state.

Had the 1879 efforts to annex the Kansas City, Missouri, area been successful, Kansas would have been larger by approximately 60 square miles and had a substantially greater population. At that time both the Kansas and Missouri legislatures approved of this change, which had been proposed as early as 1855.

## **History**

Early Spanish explorers are thought to have come as far north as Kansas in 1541 in their quest for gold. Aside from a brief time almost two centuries later when French explorers occupied parts of Kansas (1719–25), the area now known as Kansas was occupied exclusively by Native Americans. After the United States made the Louisiana Purchase in 1803, there were increasing numbers of explorations and movements across Kansas.

Congress attached the northern portion of the purchase, of which most of Kansas was part, to the Territory of Indiana. Later in 1812 it was made a part of the Missouri Territory. No special arrangements were made for administration in the area of Kansas after Missouri was admitted to the Union in 1821, and it was treated merely as part of the Native American lands.<sup>3</sup>

In 1830 parts of Kansas were allotted to certain Native American tribes, and at about that time several federal forts were built to protect settlers in the area. Fort Leavenworth was established in 1827, Fort Scott in 1842, and Fort Riley in 1853.

Congress passed in 1854 the famous Kansas-Nebraska Act. This created the Territory of Kansas and, by its adoption of the principle of squatter sovereignty, upset the Missouri Compromise of 1820. Under the Missouri Compromise, adopted when Missouri was admitted to the Union as a slave state, it was understood that slavery was to be forbidden in all the territory west of the Mississippi River and north of 36° 30' latitude. However, according to the Kansas-Nebraska Act, the local residents of the territories were to decide whether slavery was to be allowed. Since the future of slavery in the area was to be determined by the territorial government, this led to a conflict between the pro-slavery and anti-slavery forces in the Kansas Territory.

Thus, Kansas became the meeting ground—and in some cases the battle ground—for settlers from Missouri and other southern states and those from the northern states. After four unsuccessful efforts at drafting a state constitution (see Chapter 2), local leaders adopted the Wyandotte Constitution in 1859; Kansas was admitted as the 34th state on January 29, 1861. Born

amid the slavery controversy, Kansas contributed a proportionately greater number of soldiers to the Civil War than any other state in the nation. And although the main battles of the war were fought elsewhere, several skirmishes occurred in Kansas.

In addition to fighting among the whites, troubles between whites and Native Americans persisted until at least 1868, when the Native American tribes moved to Indian Territory, primarily in present-day Oklahoma.

Table 1 shows that substantial numbers of Kansas settlers came from Ohio, Missouri, and Indiana. This is important because the people who came to Kansas brought the experiences and ideas they had acquired elsewhere. For example, it is not surprising, in view of the number of settlers who came from Ohio, that some features of the Ohio Constitution were replicated in the Kansas Constitution.

Table 1

**Population of Kansas by Place of Birth (in percentages): 1860–1910**

Decade	1860	1870	1880	1890	1900	1910
<b>Total Population</b>	<b>107,204</b>	<b>364,399</b>	<b>996,096</b>	<b>1,427,096</b>	<b>1,470,495</b>	<b>1,690,949</b>
<b>Place of Birth</b>						
<i>U.S. Native</i>						
Kansas	10.3	17.4	23.4	34.1	44.2	48.7
Illinois	8.7	9.2	10.7	9.8	7.9	6.9
Indiana	9.3	8.5	7.7	6.2	5.3	4.1
Kentucky	6.1	4.4	3.3	2.8	2.2	1.8
Missouri	10.6	8.2	6.1	5.9	7.1	8.3
New York	5.9	5.1	4.4	2.8	2.0	1.4
Ohio	10.8	10.5	9.4	8.2	6.2	4.4
Pennsylvania	6.0	5.6	5.9	4.3	3.3	2.4
<i>All Other States</i>	20.7	17.8	17.9	15.5	13.0	14.0
<i>Total Native</i>	88.4	86.7	88.8	89.6	91.2	92.0
<i>Total Foreign</i>	11.8	13.3	11.1	10.4	8.6	8.0

Source: *Census of the United States*, 1910, Vol. II; 1900, Vol. I; 1890, Vol. I; 1880, Vol. I; 1870, Vol. I; 1860, Vol. I.

Many Kansas communities are proud of the influence of various parts of the United States on their heritage. Lawrence, for example, boasts of its ties with New England emigrants. This holds true for foreign-born Kansans, as well. The 1860 census showed that one-third had come from the German states and another third from Ireland. In some communities, groups of foreign emigrants concentrated in what amounted to small foreign enclaves.<sup>4</sup>

An illustration is the southeast corner of Kansas, often referred to as the "Balkans."

Because of its relatively small population, Kansas has never been regarded as a key state for winning a presidential nomination or election. However, three Kansans have received their party's nomination for president. Governor St. John was the Prohibitionist party nominee in 1884, and both Governor Alf Landon (1936) and Senator Bob Dole (1996) received the Republican Party nomination.

In national affairs Kansas has been famous for its contribution to two political currents: the Populist movement and prohibition. Because of the despair of farmers over abundant crops but low prices, a group of Kansas Farmers Alliance members met in Topeka in 1890 to form a new political party. The Populist Party was more successful in Kansas than nationally, but it did focus major party attention on rising agrarian discontent.

Carry A. Nation attracted national fanfare in her efforts to demonstrate how poorly the liquor laws were being enforced in Kansas (the state had in 1880 amended its constitution to outlaw saloons). With stricter enforcement of those laws, occasioned by the efforts of Nation and others, the prohibitionists could call attention in their national campaign to the success of prohibition in Kansas—a state that continued prohibition long after it was negated on the national level in 1933. Not until 1948 was prohibition repealed in Kansas, and then only with the stipulation that the "open saloon" should forever be forbidden.

Kansas has a strong tradition of political experimentation.<sup>6</sup> The state led in developing the legislative council as a device for improving lawmaking, and in the use of cash-basis budgeting as a requirement for local government units. The Supreme Court of the United States outlawed Kansas' efforts to find, through its Industrial Court, a mechanism for settling labor/management controversies. Kansas has attracted nationwide attention for its programs in mental health and rural health care, and somewhat earlier, through the campaigns of Dr. S.J. Crumrine, for its program of public health. The Topeka Board of Education has become associated with the famous school desegregation case, *Brown vs. Topeka Board of Education*.

## The Economy

One overriding impression of Kansas is that it basically is an agricultural state. (Not long ago, Kansas advertised itself on automobile license tags as the "Wheat State.") Indeed, Kansas may rightly be proud of its share of the world's agricultural produce. Wheat is the influential crop in the western part of the state, where open spaces make possible a mechanized farming operation very different from the agriculture of a generation ago. Wheat may be planted on large acreages in the early fall; with adequate rain and snow, it yields a productive crop with a minimum of further care until the

**Table 2**  
**Estimated Kansas Average Monthly Employment**  
**1985, 1995, 2000**

<b>Category</b>	<b>1985</b>	<b>1995</b>	<b>2000</b>
Civilian labor force	1,244,000	1,329,645	1,411,000
Employment	1,182,000	1,270,480	1,359,000
Unemployment	62,000	59,164	52,000
Unemployment rate	5.0	4.4	3.7
All industries	975,100	1,200,700	1,345,700
Manufacturing	174,200	191,900	210,100
Durable goods	102,500	108,800	(124,900)
Nondurable goods	71,700	83,100	(85,300)
Mining (and oil and gas extraction)	16,700	8,100	7,000
Construction	43,900	51,600	65,200
Transportation and public utilities	64,800	68,000	85,600
Wholesale and retail trade	245,300	296,000	320,300
Wholesale	67,200	73,400	(77,500)
Retail	178,100	222,500	(242,900)
Finance, insurance, and real estate	52,800	57,500	63,700
Services	186,900	290,200	348,400
Government	190,500	237,500	245,300
Federal	27,400	29,000	(26,800)
State and local	163,100	208,500	(218,500)
Labor-management disputes	100	0	0
Farm	64,400	59,900	53,200

Source: Kansas Department of Human Resources.

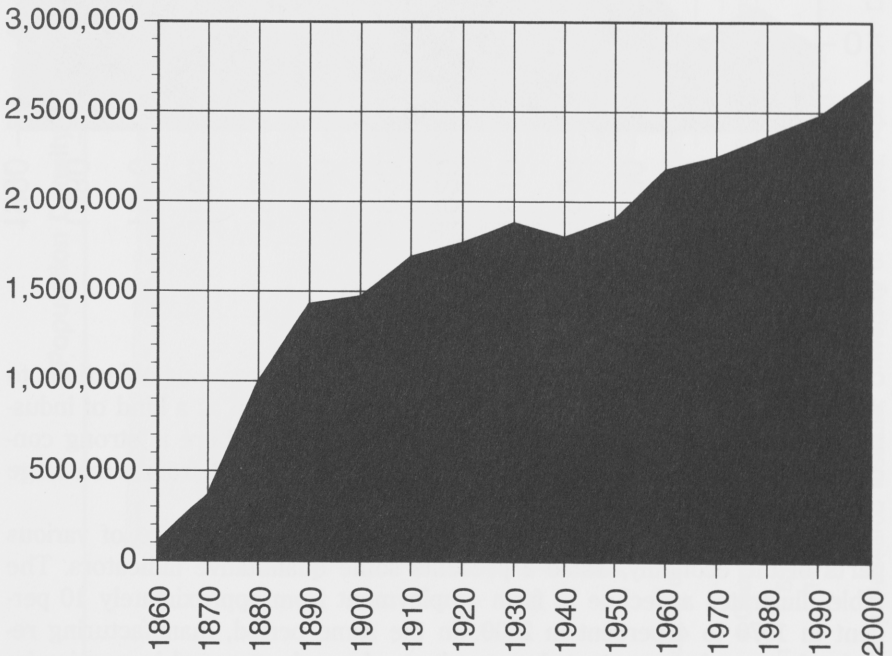
harvest. These practices have created “suitcase farmers” who do not live on the farm—and increasingly large-scale, sometimes corporate, farming.

In eastern Kansas, corn frequently is more consequential than wheat. In much of the central part of the state, livestock is the central focus. Dodge City, in southwest Kansas, prides itself on being the “Cowboy Capital of the Nation.”

Kansas’ agricultural component makes precipitation crucially important. Counties in the eastern parts of the state receive roughly 40 inches of rainfall a year—twice as much rain as the drier northwestern section. There is likely to be one more inch of rainfall for every 15-mile increment east from the Colorado/Kansas border. Of course there are substantial variations from year to year, with resulting differences in the bounty of crops.

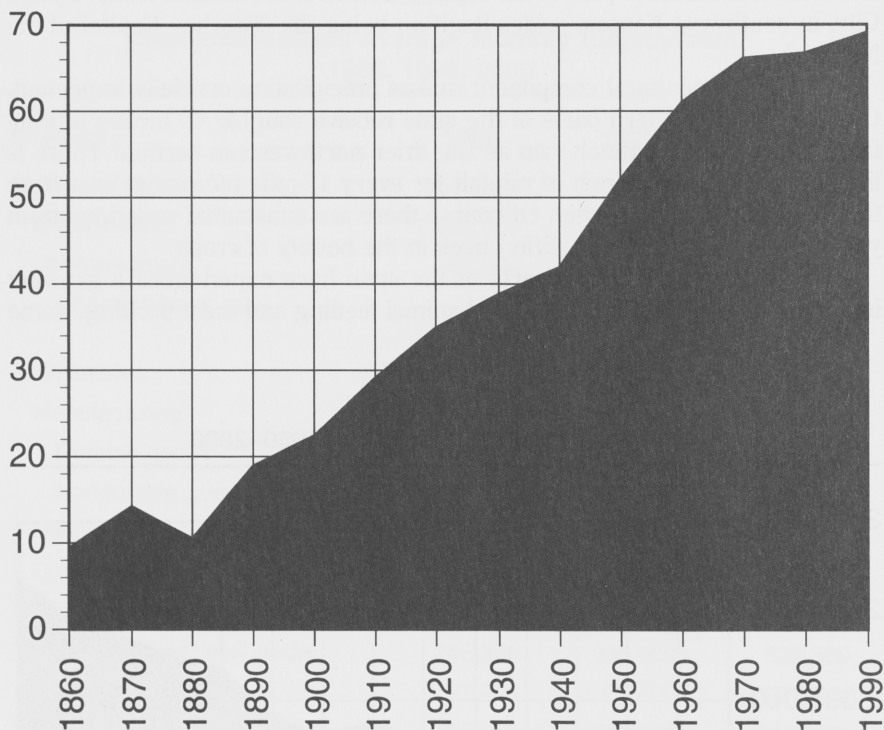
In recent years, several parts of the state have experienced a growing interest in large, corporate, confined-animal feeding and meat packing. Some

**Figure 2**  
**Kansas’ Resident Population, 1860–2000**



Source: U.S. Bureau of Census.

**Figure 3**  
**Urban Population (Percent) of Kansas, 1860–1990**



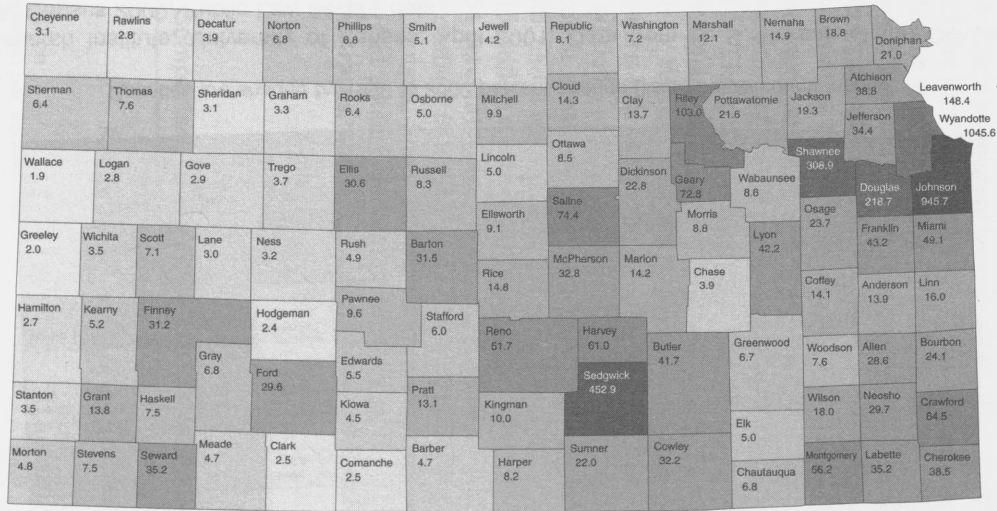
Source: *Kansas Statistical Abstract*, 1991–92, p. 41.

communities and small-farm operators have voiced strenuous objections to this development. Other small towns see corporatization as a kind of industrial development that brings jobs to the community. There is strong concern over the health problems of animal waste disposal from such large operations.

Although it is difficult to measure the relative importance of various parts of the economy, Table 2 presents some quantitative indicators. The table illustrates a decline in farm employment from approximately 10 percent in 1970 to 4 percent in 2000. In the same period, manufacturing remained somewhat constant, but numbers of people engaged in service industries increased substantially. The growth of cities, discussed in the next section, reflects the changes taking place in the overall economy of the state.

# Figure 4

## Population Density of Kansas Counties: 2000



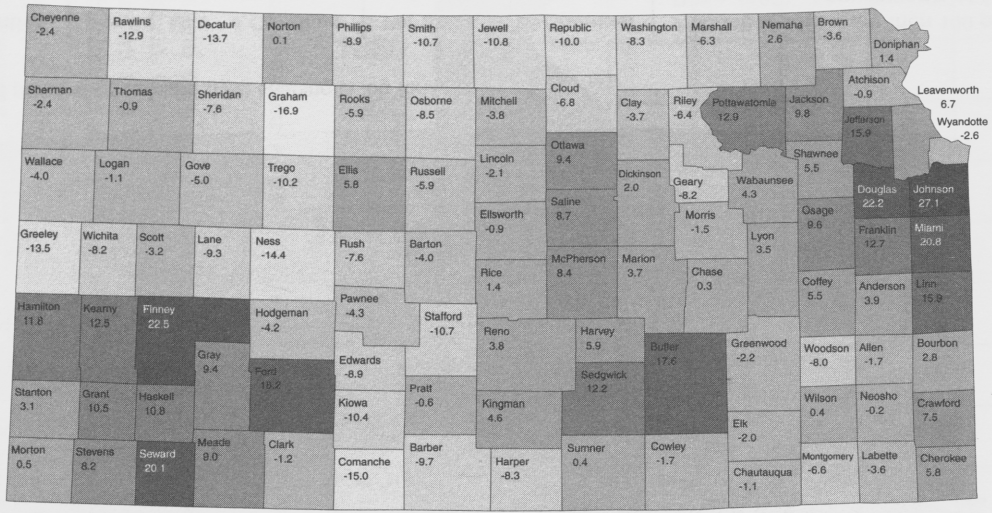
Figures are number of persons per square mile; shading is log (density).

Per Sq. Mile	# Counties	Per Sq. Mile	# Counties	Per Sq. Mile	# Counties	7 counties with more than 100 persons per sq. mile: Riley (103), Leavenworth (148), Douglas (219), Shawnee (309), Sedgwick (453), Johnson (946), Wyandotte (1,046)
Fewer than 11	55	21-30	9	41-60	6	
11-20	14	31-40	11	61-80	3	

Source: Policy Research Institute, University of Kansas, April 2001. Data from U. S. Bureau of the Census: *1990 Census of Population and Housing, Summary Population and Housing Characteristics*; Web site: [www.census.gov](http://www.census.gov), March 2001.



**Figure 5**  
**Population of Kansas Counties, Percent Change, 1990–2000**



Counties are shaded by 1990 to 2000 percent change (listed below county name).

Source: Policy Research Institute, University of Kansas, April 2001. Data from U. S. Bureau of the Census, 1990 Census of Population, STF1-A; Census 2000, Public Law 94-171 data.

## The People

Except for the 1940 census, each federal census has reported an increase in Kansas' population.<sup>7</sup> In percentages, the most rapid growth took place from 1860 to 1870, while quantitatively, the greatest increase was in the following decade. The percentage of the population classified by the U.S. Bureau of the Census as "urban" has increased steadily, until by 1980 two-thirds of the state's population lived in cities. The proliferation of machinery on farms and the increased productivity of farm labor, as well as the growth of manufacturing in urban centers, have augmented the change.

With several notable exceptions, most of the population growth has been in the eastern part of the state, as shown in Figure 2. In the 1980s, 80 of 105 Kansas counties lost population, with significant ramifications for governmental services and their influence on local communities.

The population of Kansas is quite unevenly distributed, as shown in Figures 4 and 5. The population density per county in 1990 varied from two persons per square mile in several western counties to 1,087 persons per square mile in Wyandotte County. The dense population areas are almost all in the eastern half of the state; more than 86 percent of Kansas residents live in this section.

The growth areas have been in the Kansas River corridor to Kansas City, Wichita, and a few selected areas of western Kansas. Four locales currently are identified as "metropolitan," and in 1990 for the first time more than half (54 percent) of the Kansas population lived in a metropolis.

The percentage of foreign-born Kansas residents has continued to drop: In the 1970 census, fewer than 2 percent of the population were foreign-born whites and about 6 percent were foreign-born blacks. About 4 percent were of other races, and almost 4 percent were identified as of Hispanic origin.

Table 3

### A Comparison of Selected Kansas and U.S. Statistics

Year	Subject	Kansas	United States
2000	Area	82,282 sq. mi.	3,787,425 sq. mi.
2000	Population	2,688,418	284,056,722
2000	Population per square mile	32.6	13.3
1999	Median Age	35.4	35.5
2000	Percent Black Population	6.3	12.3
1998	Percent Urban Population	69.1	75.2
1998	Per-Capita Income	\$25,537	\$27,203
2000	Number of Metropolitan Statistical Areas	4	331
2000	Population in Metropolitan Statistical Areas	1,521,063	218,606,870 (est.)

An interesting aspect of the Kansas population, having possible political implications, is its age. The percentage of residents above 65 years of age has been increasing somewhat more rapidly in Kansas than in the nation as a whole. In fact, in 1990 only five states had a higher percentage than Kansas of population above 65. This characteristic is significant in relation to welfare needs, employment opportunities, and possible voting trends.

It is worth noting that Kansas' population is close to being 1 percent of the total U.S. population. Therefore, it is possible to take various statistics for the total country, move the decimal two places to the left, and obtain a rough measure of what to expect in Kansas. For example, one might expect Kansas to have 1 percent of 535 (or 5.35) legislators elected to go to Washington. That's very close to the reality of four members of the House of Representatives and two members of the Senate.

This evaluation tool is obviously more useful for statistics related to population than to area. (Using the 1 percent measure, Kansas would be expected to contain 37,874 square miles, but it has more than twice this amount—confirming that Kansas is much less densely populated than most of the United States.)

## Chapter 1 Notes

1. Walter H. Schoewe, "Political Geographical Aspect of Territorial Kansas," *Territorial Kansas* (Lawrence, Kansas: Social Science Studies, University of Kansas, 1954), p. 14.
2. *Ibid.*, p. 10.
3. T.M. Lillard, "Beginning of the Kansas Judiciary," *Kansas Judicial Council Bulletin*, XXVIII (1954), Parts 1 and 2, p. 3.
4. J. Neale Carman, "Babel in Kansas," *Your Government* (Lawrence, Kansas: Governmental Research Center, University of Kansas), Vol. 6 (1950), No. 7, pp. 1-4.
5. Dwight D. Eisenhower spent most of his boyhood in Abilene, Kansas. But because he lived most of his adult life elsewhere, he is not included in this count.
6. For a short summary of the way some people view Kansans, see Marvin A. Harder, "Kansas," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 1-4.
7. For more information about the work force in Kansas and other demographic information, see Charles E. Krider's chapter, "Demography and the Workforce," pp. 26-47 in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University Press of Kansas, 1994.



## PART I

# KANSAS STATE GOVERNMENT

Chapter I has set in broad outlines the geographic, historic, and demographic context in which the government of Kansas operates. With this as a stage, it is possible to turn more specifically to the subject of this book: the government of Kansas.

It is useful to provide two different meanings for the term "government of Kansas." Some readers will immediately identify the government of Kansas with Kansas *state* government. They will think of the capitol building in Topeka, and of the governor, legislature, Kansas Supreme Court, and approximately 40,000 employees who receive their paychecks from this government. The U.S. Bureau of the Census has established definitions of government units; their definitions describe Kansas as having one state government within its geographic area. Revenues and expenditures are reported and classified on this basis.

It is also proper to drop the "state" and use the term "Kansas government" to include Kansas state government *and* the almost four thousand units of *local* government. In their dealings with Kansas state government, many local officials see their operations as distinct and different from those of the state. For them it is a question of "we" and "they" (although in many instances "we" and "they" come together to side against the "feds"). Yet the home rule claimed by some units of local government comes from the state constitution. The home rule of counties, for example, arises from actions by the state legislature, which establishes the ways in which such units may be created and provides many of their powers. It sets the pattern in which they operate. Thus, "government of Kansas" may appropriately be used to include the operations and functions of these local units.

In Part I of this book, the focus is on Kansas *state* government. In Part II, attention is turned to Kansas state government in its operation within the federal system, and the structure and operations of local units of government and their interrelations. Part III describes the services provided by Kansas governments, both state and local, with emphasis on delivery. In many cases, the federal government has affected substantially how Kansas government provides these services and makes policy decisions surrounding their operation.

## Chapter 2

# The State Constitution

**K**ansas today is governed under the constitution drafted two years before its admission into the Union in 1861. The State of Kansas Constitution has been amended 89 times; every one of the 15 articles and the Bill of Rights have been amended at least once. Fewer than half the articles date from the constitutional convention that met at Wyandotte (now a part of Kansas City, Kansas). However, since no new document has been approved by the voters, the 1859 Wyandotte Constitution<sup>1</sup> remains in effect today and provides the general framework for the operation of Kansas state government.

### Constitution Making

The politics of the Kansas Territory had been boisterous and bloody. The open prairies west of the Missouri had lured not only the settler in search of land but also slaveholders and abolitionists who sought to extend or contain the institution and practice of slavery. Railroad interests and land speculators eyed the lands between the Platte and the Arkansas rivers as potentially profitable links for the east-west railroads yet to come. Personal ambitions and political strife did not stop short of open violence.

Kansas had been organized in 1854 as a territory under the terms of the Kansas-Nebraska Act. The first territorial government was controlled by pro-slavery elements.<sup>2</sup> Their opponents, the Free-State party, refused to recognize this government on the grounds that its election had been effected only through the illegal votes of Missourians not enfranchised in the territory. The Free-Staters assembled in convention at Topeka in October 1855



and drew up a constitution that prohibited slavery.<sup>3</sup> But this document, usually referred to as the Topeka Constitution, had been drafted without authority from Congress—so the territorial governor threatened to use military force to prevent its implementation.

The next attempt at constitution writing was under more official, though still inadequate, auspices when the territorial legislature, controlled by pro-slavery men, called a convention that met at Lecompton, the territorial capital, in September 1857. The result, the so-called Lecompton Constitution, was designed to give full protection to slaveholders. Its seventh article spelled out the inviolable “right of the owner of a slave to such slave and its increase.” The Free-State party boycotted the December 1857 election in which this constitution was considered. About 6,000 pro-slavery votes were cast for its adoption.

Meanwhile, in October, the Free-Staters, who had won a majority in the territorial legislature, called for a second vote on the Lecompton document. This time the friends of slavery stayed home and the constitution was voted down, 10,264 to 164. A third balloting on the Lecompton Constitution was ordered by Congress and held in October 1858. It resulted in the overwhelming rejection of the pro-slavery constitution.

A third constitution had meanwhile been drafted at Leavenworth under the auspices of one faction of the Free-State party. The pro-slavery proponents did not participate in the referendum on this constitution. The vote was favorable but small, and the movement for statehood under this constitution was abandoned. The Leavenworth Constitution created little interest, probably because the controversy surrounding it had by that time reached Congress, and the action of that body had paved the way for a constitutional convention that would enjoy proper standing. The act of Congress providing for the third vote on the Lecompton Constitution also contained specific authorization for the Territory of Kansas to form a state government under an appropriate constitution whenever the territorial population reached 93,000.

Accordingly the Territorial Legislature, controlled by the Free-State party, called for a popular referendum on March 4, 1859, to determine whether a convention should be held. By a vote of nearly four-to-one, the people voted for another try at constitution making.

The election of delegates to the convention took place on June 7, 1859. For the first time in Kansas history, the Republican party appeared on the ballot, replacing the Free-State party. The Democratic party had for some time been active in the territory. Fifty-two delegates were elected: 35 Republicans and 17 Democrats. The apportionment of delegates had been the subject of a number of political deals in the legislature, and the proportion of popular votes cast for each party was much closer than the number of delegates elected would seem to indicate.

The convention assembled at Wyandotte on July 5, 1859. Most of the older factional leaders were absent; most of the delegates were young and relatively inexperienced. They had, however, the benefit of the three previous efforts at drafting a constitution, and they borrowed freely from the work done at Topeka and Lecompton.

The boundaries of the state became an issue at this convention. The Democrats favored pushing the northern boundary of Kansas to the banks of the Platte River. While this area contained some of the richest agricultural land available, it was a Democratic stronghold. Some Republicans favored including it because of its wealth and because the added population would make it possible to meet sooner the congressional statehood requirement of 93,000 inhabitants. The Republican majority, however, feared the accumulation of Democratic sentiment in the region, and the annexation was voted down.

The location of the state capital was also much-debated. Lecompton, the territorial seat of government, had never met with strong approval. It had become almost customary for the lawmakers of the territory to meet at Lecompton only long enough to adopt a resolution, then adjourn to less frugal facilities at Lawrence. Topeka and numerous other communities vied with Lawrence for the honor of becoming the new state's capital. On the first ballot, no one site commended itself to a majority; the vote was scattered among 22 contenders. On the second ballot, after cities garnering only one or two votes were eliminated, Topeka was selected over Lawrence and Atchison as the temporary capital. The selection of a permanent seat of government was left to the first state legislature. There seems to be little doubt that the Topeka victory was the result of some extremely skillful political horse trading.

Another issue sharply dividing the convention was the basis of representation in the legislature. According to historian G. Raymond Gaeddert, the Democrats held majorities in the older counties, while Republicans were more densely settled in the newer counties. The Democrats favored a House of Representatives limited to 50 members. But the original draft of the constitution, produced by a Republican-dominated committee, assigned no limit to House membership and would have allowed the legislature to fix the exact number. The Democrats argued for the economy of their plan, while the Republicans proclaimed their high interest in equity.

Finally the convention compromised on a limit of 100 House members. A committee of 13—10 Republicans and three Democrats—labored over a formula for the apportionment of legislative seats. The result was a gerrymandering scheme of representation that favored the dominant group.

A noteworthy interlude in the work of the convention was the appearance of a woman to plead for female suffrage. The gentlemen of the convention showed considerable hesitation, and finally found properly courteous language with which to reject her appeal.

The position of Negroes in the new state also was argued extensively and with vehemence. While a section of the constitution prohibiting slavery found easy acceptance, efforts to keep blacks segregated in the schools and to prevent further black immigration had considerable support—although not enough to prevail. Significantly, however, blacks were barred from full citizenship by the limitation of suffrage to “white” males.

The final product of the delegates’ labors has been described as being “in keeping with the trends of the time.”<sup>4</sup> Kansas, like other states of the Union, began its constitution formation with general acceptance of the propositions and basic precepts embodied in the Declaration of Independence and the Constitution of the United States. The separation of powers among three branches of government, the principle of an independent judiciary, and the bicameral legislature (except for Nebraska’s ongoing experiment) have been accepted by all, usually without any critical examination of the need for them.

In addition, the constitutions of certain states have commended themselves to their sister states. When Kansas was involved in constitution making, the constitutions of Ohio and Indiana in particular were regarded as models (14 of the 52 Kansas convention delegates had been born in Ohio).

When the new constitution was placed before the voters of Kansas, it bore the signatures of only the Republican members of the convention. The Democrats, citing numerous instances in which their position had been disregarded, refused to sign the document. Ratification by voters then became a party issue. Pro-slavery and free-state arguments were heard once again, each side charging the other with subservience to outside interests. But even among Democrats, the urge for statehood—which to many meant stability—was strong. On October 4, 1859, nearly 16,000 Kansans went to the polls. By a margin of almost two-to-one, they registered their approval of the Wyandotte Constitution.

The organization of state government under the new constitution could not, however, be undertaken until Congress had acted on the question of admitting Kansas to statehood. Here again, party divisions prevailed. Nationally, Democrats were unwilling to add another Republican state to the roster just before a presidential election, and they controlled enough votes in the U.S. Senate to prevent action. It was not until January 21, 1861, when the senators from Mississippi, Florida, and Alabama withdrew as a prelude to the secession of their states (the South Carolinians had departed two months earlier), that enough votes could be mustered in the Senate to admit Kansas. President Buchanan signed the statehood bill on January 29, 1861, and on February 9, 1861, Charles Robinson—who had been elected the first governor under the state constitution—proclaimed Kansas a state.

## **The Wyandotte Constitution**

There is much argument as to what should be included in a constitution. There is, indeed, a degree of discord on the basic question of what a constitution *is*. Constitution making is a political process, and what eventually becomes part of a constitutional document will inevitably and primarily be determined by consideration of politics. The setting of American politics provides the framework for all 50 state constitutions. The separation of powers and the principle of limited rather than omnipotent government furnish points of departure. Beyond that, there has been an increasing tendency to place in constitutions provisions (or prohibitions) concerning economic and social matters, largely in order to assure for such measures a degree of immunity from change or repeal.

The Kansas Constitution did not deviate from this trend. It embodies articles on taxation, corporations, education, and many other subjects, some sections considerably detailed. In this, Kansas conformed to the popular trends and fashions in constitution making. But even as amended, the Kansas Constitution is comparatively brief. About 12,000 words long, it compares favorably with the national average of about 37,000 words. Its organization is sometimes weak, with a notably extensive "catch-all" article at the end.

The Kansas Constitution consists of a Bill of Rights<sup>5</sup> and 15 articles. The Bill of Rights, organized in 20 sections, opens with an assertion of the "equal and inalienable natural rights" of mankind, echoing here the words of the Declaration of Independence. In equally traditional terms, the second section proclaims that all political power rests in the people. The remaining sections list prohibitions against government action that might impinge on the several rights traditionally safeguarded under the American system of government. The rights protected against federal action by the First Amendment to the U.S. Constitution are, in the fashion of the times, broken down into several sections and given more detailed enumeration.

The substance and style of the entire Bill of Rights follows closely that found in the Ohio Constitution of 1851. There is only one notable deviation, in the omission of a constitutional requirement of a grand jury presentment in criminal proceedings. The records of the Wyandotte Convention shed no light on the reasons for this departure from the prototype.

The first three articles of the constitution remained in effect for more than 100 years; then, in a span of four years, they were superseded. A new executive article was approved by the voters in 1970, but a year later was declared unconstitutional as having been improperly submitted to the electorate under the existing amendment procedure. The article was resubmitted in 1972 and again was approved by the voters, but this time it was submitted under the new amendment article and held to be constitutional. In 1972, a new judicial article was approved by the voters. Two years later, a

new legislative article was adopted, although several important changes had previously been made in the original wording of these articles.

Article 4 of the original Wyandotte Constitution, pertaining to elections, has been substantially changed. In 1914, three sections were added on the recall of public officers, and in 1968, two sentences were dropped. In 1974, the voters approved three new sections to take the place of the existing five sections. Somewhat similarly, a new Article 5 on suffrage was approved by the voters in 1974. Several of the original provisions were not incorporated into the new article, with the result that the new article is shorter. Probably the most fundamental change made in this article occurred in 1971, when the voting age in Kansas was lowered from 21 to 18.

Article 6 of the Wyandotte Constitution was substantially revised in 1966, when voters approved a new article restructuring the state's education activities and providing for a Board of Regents, an elective state Board of Education, and an appointive commissioner of education.

Article 7 on public institutions and welfare was revised in 1972. Sections pertaining to the state's participation in welfare programs and unemployment compensation had been added by earlier amendments to the constitution. These were included in the new article.

The original section on legislative apportionment was repealed in 1972, and two years later a new Article 10 on legislative apportionment was approved. In 1988, an amendment was adopted calling for the use of the U.S. Census in determining apportionment.

Article 14 on changing the constitution remained in effect from 1859 until 1970, when both sections were amended. The significance of the revised amendment procedure is indicated by the fact that under the new procedures, 18 proposals to amend the constitution were submitted within a period of 27 months—and all but one were approved.

With respect to the other six articles of the constitution, changes have been made in sections and individual parts, and other types of changes have been considered. Article 8 on the state militia continues in effect. An effort was made to change it in 1970, when it was proposed that a new executive article be added to the constitution; but the Kansas Supreme Court ruled that this proposal had been submitted to the voters improperly.

Parts of Article 9, concerning county and township government, remain unchanged from the original wording, but several sections were dropped in 1902. Some sections of Article 11 regarding finances and taxation have been altered, and a new section was added in 1932 to allow for the taxation of income. The section on the uniform and equal rate of property assessment has been changed from its original wording, and further changes were approved in 1976 and 1986. The sections on the state debt have been renumbered but otherwise remain intact from the original Wyandotte Constitution. The section restricting the state from entering into internal

improvements has been changed to allow the state to be a party to flood-control works.

Article 12 concerning corporations continues in effect in substantial measure, but an extensive section on municipal home rule was added in 1960. Article 13 on banks and currency is still in the form approved by the Wyandotte Convention. Article 15, the "miscellaneous article," has undergone much change, although some of its original sections remain. A section on the tenure of officers was added to allow the establishment of a civil service system, as was a section to allow certain types of organizations to conduct bingo games. In 1974, the oath section, which previously had been in the legislative article, was moved to the miscellaneous article to make it clear that the oath applied not only to legislators.

Thus, a close look at the present Kansas Constitution reveals that little of the original Wyandotte Constitution remains in effect. Some of its concepts have been carried over into the new sections and articles, but today the state operates under a substantially modified version of the original. Nevertheless, the Wyandotte Constitution provided the framework for making these piecemeal changes, article by article and section by section.

## Amending the Constitution

In 1970, the original procedures for amending the constitution were modified. The traditional procedure was continued: proposal of amendments by two-thirds of each house of the legislature and ratification by a simple majority of those voting. But the new wording makes it clear that one whole article of the constitution may be presented to the voters as a single subject.

In the important case of *Moore v. Shanahan*,<sup>6</sup> the Kansas Supreme Court was called upon to consider whether a new executive article and two new sections on amending and revising the constitution could be submitted to the voters as two proposals under the pre-1970 amendment procedures. In its decision, the court held that the two sections dealt with *one* subject, and thus had been properly submitted and properly approved by the voters. The court ruled, however, that the proposal to amend the executive article contained *more* than one subject and thus violated the pre-1970 amendment requirement.

Two years later, when much the same executive article was again submitted to and approved by the voters, the question of the number of subjects in the proposal was not crucial; the article had been submitted under the new amendment procedure, which provided that one proposal could include any *entire* article of the constitution (except the articles on general provisions). Under the new procedure, an article may be renumbered, and all or parts of other articles may be amended, or amended and transferred to the article being revised, as parts of a single proposal.

**Table 4**  
**Amendments to the Kansas Constitution by Decade**

Decade	Number of Amendments Proposed	Number Ratified
1861-1870	7	5
1871-1880	8	7
1881-1890	5	2
1891-1900	2	1
1901-1910	10	6
1911-1920	8	6
1921-1930	6	3
1931-1940	7	4
1941-1950	5	5
1951-1960	11	8
1961-1970	11	9
1971-1980	23	22
1981-1990	9	7
1991-2000	6	4
<i>Total</i>	118	89

\*The proposal regarding county sheriffs and county treasurers serving more than two consecutive terms counted as one proposal.

The 1970 shift in amendment procedures increased from three to five the number of proposals that can be presented to voters at one time. It also permitted proposals to be submitted at either general or special elections. The legislature has used this authority to call special elections on constitutional proposals. For example, in 1971 the legislature submitted to voters the question of changing the constitutionally established minimum age for voting. In many parts of the state, the vote on the constitutional question coincided with city elections. But in areas in which city elections were not being held, special elections were called, and citizens voted only on the constitutional amendment.

Similarly, the legislature authorized the submission of five proposals at the time of the primary election in 1972 and again in 1974. In the general election in 1972, three proposals were submitted to the voters, but in the 1974 general election, five proposals were on the ballot. As a result of this arrangement, 18 proposals were submitted to the voters in a 28-month period. Under the previous arrangement of allowing only three proposals to be submitted at each general election, this would have taken at least 10

years. It could have taken even longer under the old procedures, in which only one subject, not a full article, could be presented as one proposal.

A further change was made, in that proposals may now be submitted to the voters by title only; that is, the full text of the change need not appear on the ballot. The legislature determines the wording of the title when proposals are submitted in this fashion.

## **Constitutional Revision**

Amending the constitution is but one way of changing its formal content. The legislature may, by a two-thirds vote of the elected members, submit to voters the question of whether a constitutional convention should be convened to revise, amend, or replace the constitution. It was long assumed that making individual or small changes could best be accomplished through single amendments, while broad changes, revisions, or proposing a new constitution could most effectively be achieved through a convention. Sentiment for calling a constitutional convention has manifested itself on numerous occasions in Kansas.

Only twice (in 1879 and 1891) were sufficient legislative majorities mustered to bring the question before the people. On the first occasion, only 22,870 voted for the proposed constitutional convention, with 146,279 voting against it. The second vote was close, with 118,491 favoring a convention and 118,957 voting against. Since 1909, at least 25 resolutions calling for a constitutional convention have been introduced in the legislature.

The subject of a constitutional convention periodically reasserts itself. In December 1957, Governor George Docking appointed a Commission on Constitutional Revision. This group was charged with studying the Kansas Constitution, promoting whatever changes it saw fit, and reporting the results of its study. The 22 appointees included three former governors, two former justices of the Kansas Supreme Court, many people experienced in the legislature, three journalists, a homemaker, and several educators. Although appointed by a Democratic governor, the commission had more Republican members.

The commission issued a progress report in January 1959 and a final report in 1961.<sup>7</sup> Upon legal advice the commission indicated that it interpreted the existing amending procedures as allowing submission to the electorate of an entire article of the constitution as a single amendment. While refraining from recommending the calling of a constitutional convention, the commission reported agreement in four areas which, under the interpretation suggested above, would require only four amendments—even though they would alter numerous sections of the constitution. Many of these recommendations later were adopted as amendments.

The Second Commission on Revision of the Kansas Constitution was appointed in 1961 and submitted a report two years later. In a sense this



was an extension of the earlier group. It had the same chairperson, and its report included many recommendations of the earlier commission. But it laid the groundwork for some recommendations of the next commission on constitutional revision, established by the legislature in March 1968.

This was the Citizen's Committee on Constitutional Revision, charged with examining and evaluating the Kansas Constitution and determining which provisions needed transformation. Three members were appointed by the governor, three by the president of the Senate, three by the speaker of the House, and three by the chief justice of the Supreme Court; some members had served on the earlier commissions. Its report<sup>8</sup> in 1969 was precise and detailed. It examined each of the 15 articles of the constitution; identified the significant recommended changes; supplied the text of the concurrent resolutions needed to implement the recommendations; and presented commentary on each proposed article.

In this format, the legislature had recommendations in the form it was accustomed to acting upon. While some changes were made in the draft resolutions, these recommendations became the basis for a number of the amendments proposed by the legislature (discussed above).

This whole procedure was discussed in the *dissenting* opinion in *Moore v. Shanahan*. The chief justice described this as a *novel* approach to constitutional revision. Indeed, he clearly stated that he believed the legislature had, through the artifice of the citizens' committee, projected itself and the commission into a role that might make constitutional revision by a constitutional convention unnecessary. In his judgment, the Wyandotte Constitution's provisions for revising the constitution were being circumvented. He considered that the 1970 proposal to change the amendment and revision procedure had been submitted unconstitutionally to the voters, and was thus void.

When the new amendment procedure was approved in 1970, a new section on constitutional *revision* (as distinguished from constitutional *amendment*) was also adopted. This section clarifies the procedures for calling constitutional conventions and answers a number of questions that might have arisen had a constitutional convention been called under the provisions of the original Wyandotte Constitution.

By a two-thirds vote in each chamber, the legislature may submit to the voters the question of calling a convention. The question may be submitted at either a general or a special election, and the question may be for the calling of a limited or a "wide-open" convention. If the voters approve the calling of a constitutional convention, the delegates to the convention must be selected at the next general election or special election. One delegate is to be elected from each representative district. The work of the convention is to be submitted to the voters at a general or special election, as determined by the legislature. The constitution itself spells out some details of

the convention and its operation, with others to be filled in by the legislature or convention.

The time required for this process could be considerable, depending upon whether special or general elections were held and how quickly the legislature acted to arrange for a convention. If two-thirds of the legislators thought a new constitution or a major revision was needed, they might be tempted—particularly in view of the early 1970s success of the commission approach—to try this method again. The cost and time involved probably would be less with this procedure, and the legislature and its leaders would have greater control over the revision process.

Twenty-three of the 33 states in the Union at the time Kansas was admitted have seen fit to adopt new constitutions. Some of these states have revised their constitutions more than once, and other states that subsequently joined the Union have changed their constitutions. Today 11 states have constitutions older than that of Kansas.

Only nine states today have shorter constitutions. While the Kansas Constitution contains many items that need not have been included, its moderate length has undoubtedly contributed to its ability to endure.

The test of a democratic constitution is how well it responds to the needs and wishes of the people. Kansas' record on that score, if not superior, has certainly not been deficient. While choosing to continue using the Wyandotte Constitution as the framework, Kansas' leaders have made broad changes over the years. The innovation of considering one whole article as one subject, coupled with use of a commission jointly sponsored by the governor and the legislature, has changed the nature of and possibilities for constitutional revision in Kansas. No longer does substantial revision await the long and involved process of convening a convention and approving its work.

## Chapter 2 Notes

1. For years the secretary of state has published and distributed up-to-date copies of the Kansas Constitution in pamphlet form at no cost.
2. *The Birth of Kansas* by G. Raymond Gaeddert (Lawrence, Kansas: Social Science Studies, University of Kansas, 1940) was of substantial value in writing this portion of the chapter.
3. James C. Malin, "The Topeka Statehood Movement Reconsidered: Origins," *Territorial Kansas* (Lawrence, Kansas: Social Science Studies, University of Kansas, 1954).
4. Gaeddert, *Birth*, p. 70.
5. Brian Moline, "The Kansas Bill of Rights," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 269–277.
6. *207 Kan.*, p. 645 et seq. (The official rules of the Kansas Supreme Court state that *Kansas Reports* shall be cited as *Kan.*)
7. *Report of the Kansas Joint Commission on Constitutional Revision* (Topeka, Kansas, 1969), pp. 1–32.
8. *Report of the Citizen's Committee on Constitutional Revision* (Topeka, Kansas, 1969), pp. 1–124.

## Chapter 3

# The Legislature: Its Members and Its Organization

In many ways the legislature is the most important institution through which the people seek to control their government. There are other elected officials in Kansas, but the legislature comes closer to representing all the people than does any other part of the government. Its larger size makes it possible for many and varying shades of public opinion and interests to be expressed. The legislature has special powers and relationships with the other branches of government.

The Kansas Constitution follows the typical pattern of other constitutions in the United States, providing for the creation of three grand divisions of government: the legislative, the executive, and the judicial. In this separation of powers, it is presumed that the legislature will act first, passing laws that the executive will carry into effect and that, should the need arise, the courts will adjudicate. The Kansas governmental emphasis on written laws makes it appropriate to consider the legislature first.

### Qualifications

The question of who may be a member of the Kansas Legislature is answered in the state's constitution, which requires that members be qualified voters and residents of the district from which they are elected.<sup>1</sup> Further, the constitution prescribes that every citizen of the United States who has attained the age of 18 and resides in the voting area in which he or she seeks to vote is a "qualified elector."<sup>2</sup>

On the other hand, the constitution disqualifies some people from voting and thus from serving in the legislature.<sup>3</sup> Members of Congress and

officers of the United States are specifically prohibited from serving in the Kansas Legislature. In the event that a state legislator is subsequently elected or appointed to any federal office, that legislator's seat is declared vacant.<sup>4</sup> Members must take an oath<sup>5</sup> or affirmation to support the Constitution of the United States and the Constitution of Kansas, and faithfully to discharge their official duties.

While the foregoing constitute the *legal* restrictions on membership in the state legislature, another type of restriction may be just as significant. From 1861 until 1949, legislators received the compensation of three dollars per day, as originally provided for in the constitution, and a travel allowance of 15 cents per mile for one round trip to their homes during each session. Further, there were limits on the compensation they could receive.

The legislators tried six times<sup>6</sup> between 1900 and 1947 to amend the constitution so as to increase their compensation. Five times these proposals were defeated by substantial majorities. Finally in 1948, a constitutional amendment to raise the salaries and expense allowances of legislators was approved by a majority of almost 100,000 votes. The amendment prescribed maximum amounts for salaries and limits for expenses. These continued in effect until 1962, when another amendment allowed legislators to set their own salaries.

As of 2001, members received \$76.44 per day for their services and an expense allowance of \$85 per day. They were entitled to expenses for travel between the legislator's home and the capitol with a limit of not more than one round trip per week while the legislature is in session at the mileage rate for all state employees as determined by the Secretary of Administration (in 2001, 32.5 cents per mile). They receive a monthly incidental expense allowance of \$270 for each biweekly pay period except January, February, and March. While some legislators have discovered they could not afford to serve and have not sought reelection because of the pay, the current salary and expense allowances better reflect the cost of living than did those of the relatively recent past. Hard evidence is not available to answer the question of how many otherwise qualified candidates are precluded from running because of the salary and allowances.

Legislators are understandably sensitive<sup>7</sup> on the subject of their pay. This sensitivity is related to how much service the public expects and demands from its legislators. Indeed, the allocated salary and allowances is one indicator as to whether citizens expect their legislators to serve full time. In Kansas, although salaries and allowances have been increased in the past several years, there still seems to be an underlying assumption that legislators are expected to be part-time "citizen" legislators, as distinguished from full-time or "professional" legislators. Limits on the length of the legislative session and an increase in interim activity suggest a move toward a full-time legislature—but this has not been achieved, and it is questionable whether it is wanted by most Kansas citizens. If these assumptions are cor-

rect, then only those whose regular employment or activities allow them to be absent from their homes for three months each year are able to run for election. Others are in effect not able to run for office.

## **Apportionment**

Representatives are elected for two-year terms and senators for four-year terms. There is no overlapping of terms in either legislative chamber. Some continuity is assured, however, by the reelection of members and by the fact that a new Senate is elected only half as often as a new House. Elections occur in November of even-numbered years, and the legislature convenes on the second Monday of January in each year. There is no constitutional limitation on the length of sessions in odd-numbered years, but the sessions in even-numbered years are restricted to 90 days unless extended by a two-thirds vote of the members.

In the event of the death or retirement of a member, the method of filling the seat is prescribed by law.<sup>8</sup> The procedure is for the county or district committee of the same political party as the former incumbent to hold a convention and name a successor. The governor then appoints that person to fill the unexpired term (serving only for the remainder of that term). Appointments to Senate vacancies occurring in the first half of a four-year term are effective only until the next general election, when a successor is elected. This system has replaced the expensive and troublesome procedure of holding special elections to fill legislative vacancies.

Representation in the legislature is based on a system of districts that largely follow county lines.<sup>9</sup> The historical development of this trend can be traced back to the Wyandotte Convention.<sup>10</sup> The state constitution originally limited the size of the legislature, declaring that there should be no more than 33 senators and 100 representatives.<sup>11</sup>

In the Wyandotte Convention, an apportionment was established for a House of 75 members and a Senate of 25. In the original apportionment, only 40 counties are mentioned. Twelve of the 14 original House districts contained two or more counties. The legislature was authorized to determine the size of each chamber within the constitutional maximum.

As people moved westward, new counties were established, and for years the constitution entitled each county to at least one representative. As long as the number of representatives was less than the constitutional maximum, it was relatively easy to make adjustments. New counties could be represented without affecting the representation of the older counties.<sup>12</sup>

Under an apportionment in 1871, the legislature created 90 House districts in 55 counties, but the legislature actually seated eight members from unnumbered districts and later granted seats to new counties. When the 1873 legislative session was confronted with problems of whom to seat, the members resolved their difficulty by seating 133. This action was contested,

and the Kansas Supreme Court held that each house had considerable discretion in seating its members.

Pressure for new seats for new counties, and an attorney general's ruling that each new county was *entitled* to a seat, led to a constitutional amendment in 1873 setting new maximum limits on both chambers; the limit for the House was raised to the current 125 and for the Senate to the current 40. The referendum on this amendment indicated substantial cleavages between several sections of the state.

Following this amendment, in 1876 an act was passed apportioning 123 seats; thus the legislature was forced into its previous practice of seating members in excess of the constitutional limit. In 1881, the House seated 137 members, but passed an apportionment bill giving an increased proportion of representatives to the western part of the state. The seriousness of the situation became so aggravated that in 1886 a special session was convened for reapportioning representation. The act that was passed recognized 88 counties.

Dissatisfaction over apportionment was one factor leading to a referendum for a constitutional convention—and to its defeat. After only minor readjustments, the House was reapportioned again in 1909. By this time all 105 counties had been established, and the 20 remaining seats available for the more populous counties were distributed.

As Kansas cities grew and the state became more urbanized, these 20 seats became inadequate for making the adjustments necessary if districts were to be approximately equal in representation. The result of all these constitutional provisions was for House representation to be determined predominantly on a geographic basis. As a result there were substantial population variations between districts. For example, according to the 1959 agricultural census Greeley County, with 2,061 people, had one representative, while Sedgwick County, with 321,503 residents, was allowed only five. If the people in Sedgwick County had been evenly divided into its five districts,<sup>13</sup> there would have been 64,301 people in each—31 times as many as in Greeley County.

This condition prevailed even after the legislature in 1959 reapportioned seven of the 20 seats available for reapportionment. This was the first major reapportionment in 50 years. The constitutional limitation on size, and the constitutional provision for each of the 105 counties to have at least one representative, combined to frustrate any effort to equalize apportionment in the House of Representatives.

Like the House, the Senate was and is constitutionally restricted in its number of members.<sup>14</sup> But there was no restriction on the number of counties that might be included in a single senatorial district. The means were thus more readily available to the legislature to equalize representation in the Senate. As with the House, however, there was a marked reluctance to reapportion, with reapportionments occurring only in 1933, 1947, and 1962—

despite a then-existing constitutional requirement to reapportion every five years.

The 1963 reapportionment of the Kansas Senate came about largely because of the U.S. Supreme Court decision in *Baker v. Carr* the previous year. The court had ruled that the "equal protection of the law" clause of the U.S. Constitution required state legislatures to be apportioned on a basis of "one man, one vote." The Senate had long been apportioned more on a basis of population than had the House. So attention in Kansas turned first to the Senate, because senatorial districts already were more equal, many districts already crossed county lines, and Senate apportionment was not restricted by the state constitutional mandate of at least one representative from every county.

Reapportionments were made in 1963 and 1964. Both apportionments resulted in more equally populated districts, but when the 1964 Senate reapportionment was challenged in the federal courts, it was found to violate the equal protection clause.<sup>15</sup> Injunctive relief was not allowed at the time, and the court ruled that the senators should be allowed to serve their terms. The court, however, retained jurisdiction and indicated that action would be taken if the legislature did not reapportion before new senators were elected in 1968.

In 1968, the legislature passed two bills for reapportioning the Senate, but each measure was declared invalid by the federal district court for Kansas. The legislature took no further action on Senate apportionment until 1972, when it passed two different proposals. Both were vetoed by the governor and neither veto was overridden by the legislature. Both plans arranged for multi-member districts, a concept the court had included in its own plan. Finally, in March 1972 a panel of three federal district court judges ordered an apportionment. The population of the districts at that time ranged from 54,808 to 57,676. In 1972 and 1976, the Senate was elected on the basis of this court-ordered reapportionment.

Later U.S. Supreme Court decisions established that it was not enough for *one* body of the state legislature to be apportioned by population; *both* houses had to be so apportioned. In effect, this meant that the state constitution's provision for at least one representative from each county violated the U.S. Constitution. After a court case in Kansas and a limited delay, the legislature—in a special session in 1966—reapportioned the Kansas House of Representatives. While there were charges that district lines were drawn to bolster incumbents (particularly incumbents of the majority party), it is significant that the legislators were able to agree on a plan.

In August 1974, Kansas voters approved a new constitutional article on apportionment, calling for the legislature to reapportion every 10 years, beginning in 1979. The choice of year indicated the expectation that the state census would be used; by 1979, the 1970 federal census would be nine years old, but the 1980 decennial census would not yet be available. The new



apportionment procedures brought the Kansas Supreme Court automatically into the process; no case needed to be instigated. The attorney general is required by the constitution to bring action in the Kansas Supreme Court, which then determines the validity of an apportionment. If the court rules that the reapportionment plan is not valid, the legislature may draw up another one, which the court will then review. Even a third attempt is allowed, with the admonition that the judgment of the state Supreme Court shall be final.

This new apportionment provision reflected a desire to maintain apportionment as a legislative matter and to keep it in state rather than federal courts. While a determination by the legislature and by the state Supreme Court with regard to apportionment may be challenged in federal court, the constitution establishes a procedure that likely will result in the first judicial determination being made in a state court.

The legislature did reapportion both chambers on the basis of the 1979 census, and that action was upheld by the Kansas Supreme Court. It is expected that the Kansas legislature will reapportion the Kansas House and Senate on the basis of the 2000 census when it becomes available in 2002.<sup>16</sup>

## **Legislative Apportionment as of 1992**

Because of the constitutional mandate to reapportion every 10 years, it became manifest that the legislature needed a reapportionment census plan. It had discontinued the annual enumeration of Kansas residents, and no census would be available in 1989 to use as a basis for reapportionment. When queried, the attorney general indicated that he thought it unconstitutional to use the 1980 U.S. Census data in 1989.

A legislative compromise was presented to the voters in the form of a constitutional amendment. Kansas would postpone its next reapportionment until 1992 and reapportion every 10 years thereafter, using U.S. Census data. As a one-time arrangement to move into the new cycle, a special census would be taken by the secretary of state in 1989 and used to reapportion the House in 1990 for the November 1990 election. Since senators already had been elected for four-year terms, they were not affected by this proposal.

Given the fact that this matter affected primarily the House, representatives were asked to formulate a plan. While the House Apportionment Committee held hearings, leaders of both parties drafted a plan that was approved by the House, the Senate, the governor, and the Kansas Supreme Court. There was relatively little friction because districts were drawn so that only a few incumbents were forced to run against each other. Under the plan, Democratic incumbents would have run against each other in three districts; Republican incumbents were required to run against each other in two. In two other new districts, contests were to be expected between new-

comers. It is notable, however, that this new apportionment resulted in the Democrats gaining control of the House for only the third time in the 20th century.

Although the problem of reapportionment continues to recur, the gross inequalities of representation that existed for so many decades have been eliminated. The legislature acted on reapportionment under considerable pressure from the courts, but the fact that it *did* act is significant. The thorny problem of reapportionment was for a time considered to be one the legislature could not, or would not, tackle.

Changes in the population provoke problems in apportioning the legislature. The question inevitably arises as to how equal the districts are. Recent apportionments have showed population variances generally in the range of 3 to 5 percent over or under the representative quotient. The federal courts have been unwilling to express precisely how much deviation they will allow while still considering the representation to be equal for purposes of the "equal protection of the law" provision of the 14th Amendment to the U.S. Constitution.

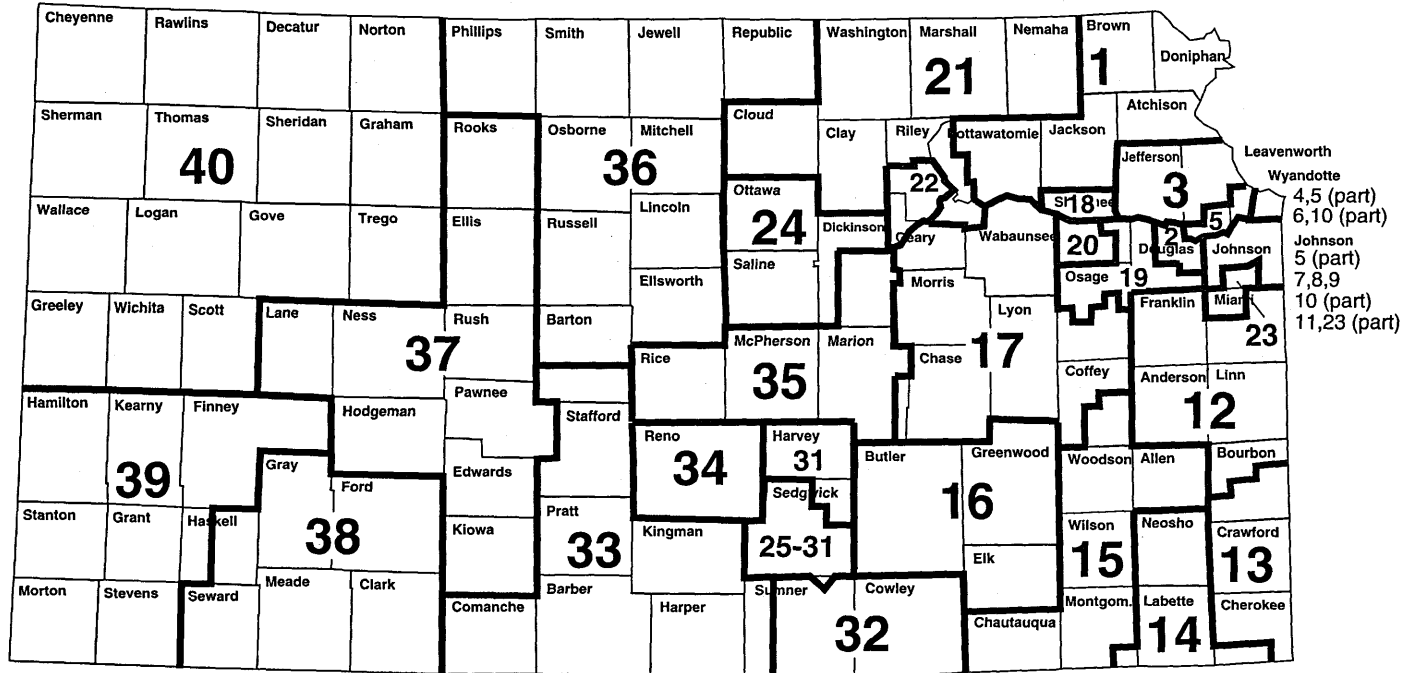
A case can be made that frequent reapportionment ensures equality of representation. But what is frequent? It must be realized that precise equality of population will never be maintained for any length of time because of births, deaths, and mobility. The desire for equality must also be balanced against the desirability of having constituents know their senator or representative and organize with others in their district to influence their legislator.

Apportionment of the legislature distributes political power; it is at the very heart of the political process. But it can be divisive, in that legislators may be required to run in areas that are new to them or less friendly than their old precincts. Incumbents may find themselves running against each other. And when incumbents are "thrown together" in newly created districts, the minority party usually will have more of its legislators competing against each other than will the majority party. Creation of a district that does not have an incumbent adds uncertainty for both parties.

What has been the effect of reapportionment on public policy? Previously, when urban areas were significantly underrepresented, there was concern—supported by some evidence—that distribution of the sales tax residue and liquor revenues, and financing of welfare and highway programs, were decided on the basis of the urban/rural split, with the result that urban areas were slighted. But one careful observer concluded, even before the major reapportionment, that his analysis did not support "a conclusion of sharp and irrepressible conflicts between rural residents and city dwellers as such."<sup>17</sup>



**Figure 7**  
**Kansas Senate Districts Created by 1992 Session**



The Legislature: Its Members and Its Organization 37

Source: Institute for Public Policy and Business Research, *Kansas Statistical Abstract, 1991-92*, p. 132; data from 1990 U.S. Census.

## Background of Members

Kansas legislators come from every walk of life; this is so much the case that it is difficult to classify their occupations meaningfully. In general, this book has incorporated the occupational group or groups the legislators themselves identified. Earlier editions classified legislators by broader occupational groupings.

For many years, lawyers and farmers have been the two largest occupational groups in the legislature. During some periods, these two groups made up three-fifths of the membership, but recently their numbers have been declining. In 2001, eight of the 40 state senators identified themselves with farming or ranching and six described themselves as lawyers. In the House in the same year, 11 identified themselves as lawyers and 16 reported themselves as farmers or engaged in closely related agricultural activities. With the increasing specialization of society, legislators have chosen different terms to describe their occupations. These titles include "community volunteer/legislator," "consultant," "self-employed," or "retired." Only infrequently do members classify themselves occupationally as "legislator."

While there are notable exceptions, legislators generally do not have long tenure; the median House member serves approximately three terms (six years), and the median senator serves eight years.

Many members of both houses therefore are "first termers." In 2001, 15 of the 40 senators were "new," but six of the new senators had served in the House. Twenty-three of the 125 House members were "new." House members find the four-year terms of the senators attractive and often run for the Senate after a stint in the House. Approximately one-third of the senators had experience in the House.

In 2000, four senators and 46 representatives ran for re-election without opposition in either the primary or general election. Most departures in both chambers are voluntary, in the sense that they are not occasioned by an election defeat. One study found that the legislators credited insufficient compensation, lack of appreciation, and lack of interest with being responsible for most voluntary departures.<sup>18</sup>

## Party Affiliation of Members

Because only three times since 1900 have the Republicans not held a majority in both houses, Kansas is generally viewed as being predominantly a one-party state. But Democrats seem to be eroding the Republican fortress, as was the case in 1990, when Democrats elected a majority of members of the House of Representatives. In years when there have been large majorities, factionalism and splits developed within the Republican party.

These splits become conspicuous in hard-fought, close elections for the speakership of the House and for the presidency of the Senate. 1995 was one such year in the House, when a moderate Republican was defeated in

**Table 5**  
**Political Affiliations of Kansas Legislators: 1901–2001**

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Year	House Republicans	Senate Republicans
1901	66%	83%
1911	56	88
1921	90	95
1931	60	93
1941	78	88
1951	84	85
1961	65	80
1971	67	80
1981	57	60
1991	49.6	55
1999	61.6	67.5
2001	63.2	75

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In 1901, 1903, and 1979 there were appreciable numbers of representatives from third parties. Since 1929 there have been no third-party members in the House or Senate.

Sources: Barnard (as cited in Note 17), p. 30; House and Senate journals.

the speakership race by a more conservative one. Some observers felt that the House sometimes functioned as though it contained three political parties—conservative Republicans, moderate Republicans, and Democrats. This split has continued in the House; some feel the split was extended to the Senate.

### **Regular and Special Sessions**

From 1861 until 1875, the legislature met annually as required by the Wyandotte Constitution. In 1875, a constitutional amendment was adopted, providing for sessions in alternate years beginning in 1877. In 1954, the voters approved an amendment for “budget sessions.”

From 1955 through 1966, budget sessions were held in even-numbered years, alternating with the regular sessions. In 1966, voters approved a change in the constitution to allow for “regular sessions” of the legislature each year; but in the “off years” (even-numbered calendar years) the session was to be limited to 60 days except that the legislature might, by a two-thirds vote, extend it. This was lengthened to 90 days by another change in 1974.

A special session of the legislature can be called at the discretion of the governor, and in such a case the governor's proclamation must outline the reasons for the special session. Normally the governor will recommend certain action, and reasons for calling special sessions usually have been urgent.<sup>19</sup> Since 1950, there have been only five special sessions of the legislature.<sup>20</sup> While the governor assigns the reasons for the call, the legislature is not limited to considering the subjects listed. Once convened, the legislature may take any matters under consideration, bounded only by the normal constitutional regulations governing legislative acts.

The executive article of the constitution adopted in 1972 requires the governor to call a special session of the legislature when petitioned to do so by two-thirds or more of the legislators. In 1974, the legislature spelled out the form of petition to be used, and sought to cover the contingency of a governor's being unwilling to call a special session even when constitutionally required to do so.

## **Organization**

Each chamber of the legislature must do some organizing before the session begins. In 1968, the legislature passed laws establishing preliminary or pre-organizational meetings for this purpose. On the first Monday in December following a general election in November, the House is called to order by the secretary of state or a deputy, and the roll of the members-elect is called. A temporary chairperson is appointed, and members of each party hold a caucus to elect their leaders. On the majority side, this means a speaker, a speaker pro tem, a majority leader, on occasion an assistant majority leader, and such other party officers as desired. Similar meetings are held by the senators. In some years, orientation meetings for new legislators have been authorized.

The formal organization of the legislature begins with its convening at the beginning of each session. The secretary of state or deputy presides over the House and the Senate until each is organized.

The first items on the agenda for both chambers are the receipt of the certificates of election of members and the administration of the oath of office. According to the constitution, each chamber is the judge of the elections, returns, and qualifications of its own membership.

After certification of members and administration of the oath, each chamber moves to elect its officers. Normally this can be quickly accomplished, for it involves merely the ratification of the decisions made at the preliminary organizational meetings. The speaker of the House and the president of the Senate officially appoint the chief administrative officers of their respective chamber. The director of Legislative Administrative Services is appointed by the Legislative Coordinating Council, and she/he will have worked

with the new leaders to provide clerical and administrative staff so the session can get off to an orderly and timely start.

During the interval between the preliminary organizational meeting (at which the legislative leaders have been selected) and the convening of the session, the leaders will have met with the legislators and made progress toward arriving at committee assignments. Certain basic considerations usually guide the naming of these committees. For instance, each of the state's congressional districts normally receives representation on each committee.<sup>21</sup> Members with previous experience customarily are selected as chairpersons. The majority party assumes control over the committees by having its members appointed as chairpersons and by seeing that the party has a "working" majority on all committees.

An analysis of sessions reveals that in both the House and the Senate, the committees generally have close to the same percentage of Republicans and Democrats as do the chambers themselves. The conspicuous exception is the Senate Committee on Organization, Calendar and Rules, which according to Senate rules consists only of members of the majority party. In 2001, the Republicans held 75 percent of the seats in the Senate and 75 percent of committee assignments. In the House, Republicans had 63.2 percent of the House membership and 69 percent of committee assignments.

The number of standing committees has varied considerably, as Table 6 shows. The table reports on committees authorized by the rules, but does not reflect subcommittees that from time to time have been formally autho-

**Table 6**  
**Number of Standing Committees in the Kansas Legislature:**  
**Selected Years**

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Year	Senate	House
1939	46	38
1949	29	43
1959	31	43
1969	18	24
1979	18	19
1989	19	22
1993	17	17
1995	17	17
1997	15	20
1999	16	31
2001	17	29

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Sources: 1939–1949, Barnard (as cited in Note 17); 1949–1979, Senate and House journals.



rized and on other occasions have been used without formal authorization. The table also does not include the Committee on Claims, which has for years functioned as a joint committee.

In the Senate in 2001, the number of persons assigned to each committee ranged from six to 11. There were 142 committee assignments, with the result that each senator sat on an average of three or four committees. However, "veteran" members frequently are assigned to several of the more prestigious committees and their work load becomes enormous.

The House committee system is less demanding, for there are more than three times as many representatives as senators. In 2001, there were 457 House committee assignments; the average member served on about three committees. The number of House and Senate committees was reduced in 1993. This resulted in members serving on fewer committees and work loads being more evenly distributed.

In practice, members apportion the time they spend in committee meetings, choosing on the basis of importance and expediency. Less important committees find it difficult to schedule meetings that a sufficient number of committee members can attend.

The work of individual standing committees assumes even more importance in the Kansas legislative process than in many other bicameral states. The committees considering appropriations<sup>22</sup> divide up the budgets of state agencies and decide which committee will give the first—and generally the most detailed—consideration to the budget review. The second committee to review the budget is likely to accept the recommendations of the first.

In addition to the standing committees, the legislature uses other devices to keep informed and to monitor Kansas state government. Between sessions, the Legislative Coordinating Council establishes a varying number of "special" joint committees and authorizes meetings to study a wide variety of topics. These committees frequently draft bills, which are referred to the appropriate standing committees when the legislature comes back in session. There also are statutory "committees." They use a variety of terms in their titles, such as joint committee, task force, commission, or council. The statutes often require that all members be legislators, but occasionally non-legislators are appointed (in 1996, six) and some state officials serve *ex officio*.

## Chapter 3 Notes

1. *Kansas Constitution*, Article 2, Section 4.
2. *Kansas Constitution*, Article 5, Section 1.
3. *Kansas Constitution*, Article 2, Section 5.
4. For a further discussion of those disqualified from voting, see p. 92.
5. From 1949 until 1967 a loyalty oath was required of all state and local officers, including members of the state legislature. They were required to affirm that they did not advocate, and were not members of a political party that advocated, the overthrow of the government by force. In 1967 the U.S. District Court in Kansas ruled that the Kansas statute requiring the oath violated the U.S. Constitution. (273 *F. Supp.* 178 (1967)).
6. In 1901, 1907, 1909, 1925, 1929, and 1947.
7. For a general discussion of the relations between legislators and the press see Mike Kautsch, "Kansas Legislators and the Kansas Press Corps: Good News and Bad," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 169–196.
8. *Kansas Statutes Annotated*, 25-321.
9. For a detailed study on this subject see Thomas Page, *Legislative Apportionment in Kansas* (Lawrence, Kansas: Bureau of Governmental Research, University of Kansas, 1952). This section draws heavily on the materials presented by Dr. Page.
10. *Kansas Constitutional Convention, Proceedings and Debates, Wyandotte July 1859* (Topeka, Kansas, 1920), p. 360.
11. *Kansas Constitution*, Article 2, Section 2 (prior to 1873 amendment).
12. Page, *Legislative Apportionment*, pp. 52–69.
13. Precise information on the number of people in each district was not available because neither the agricultural census nor the federal census at that time followed representative district lines.
14. *Kansas Constitution*, Article 2, Section 2.

15. *Long v. Avery*, 251 F. Supp. 541.
16. Requests can be made to the KU Public Management Center for assistance in getting a map of the 2002 legislative apportionment.
17. Page, *Legislative Apportionment*, p. 145.
18. Bernard L. Barnard, "The Legislature of Kansas: An Appraisal" (Washington, D.C.: Ph.D. Dissertation, American University, 1949).
19. For a sample proclamation calling the legislature into special session, see *Laws of Kansas*, 1966.
20. Special sessions occurred in 1958, 1964, 1966, 1987, and 1989.
21. Barnard, *Legislature of Kansas*, p. 55.
22. Differing from the terminology in the U.S. Congress, the Kansas Senate Ways and Means Committee considers appropriations. In the Kansas House, the corresponding committee is designated the Committee on Appropriations.

## Chapter 4

# The Legislature: Making Laws, Appropriating Dollars, Lobbying and Interest Groups

The Kansas Constitution vests the lawmaking power of the state in the legislature, and makes no distinction between the House of Representatives and the Senate with respect to the initiation or consideration of bills. Despite this general legal relationship, legislative sensitivities are such that each chamber controls its own rules—and legislative comity requires that each chamber dictate its own apportionment and control renovation of its own chambers and other matters regarded as part of its operations.<sup>1</sup>

Increasingly, citizens have augmented the representation that is based largely on geographic areas. With greater ease of travel and communication, citizens strive year-round to be vocal in presenting their views to their elected or appointed officials. By supporting or withholding support, such citizen interest groups become important factors in determining who is elected. This is the subject of the latter part of this chapter.

### Legislative Powers

Legislative powers may be considered from a strictly legalistic view within the context of the federal structure. This involves a review of the state constitution, its amendments, and how the courts have interpreted these provisions.

As the government of reserved powers under the federal system, the Kansas Legislature holds extensive authority. It has the powers enumerated in the Kansas Constitution as well as the powers reserved to the people. The courts have ruled that as the representative of the people, the legisla-

ture is the "people acting." In this context, the power of the legislature is broad and comprehensive. It is able to do anything not forbidden by the federal or state constitutions.

The legislature has a broad reservoir of powers included under the concept of police powers. This has been interpreted broadly to mean that the legislature may pass statutes it deems necessary to promote the health, general welfare, safety, and morals of the community.

Substantial legislative time and effort is devoted in each session to financing Kansas government at both the state and local levels. The process begins when the governor presents a proposed budget to the legislature for financing the activities of Kansas state government. The appropriations committees hold hearings, deliberate, and come forth to the full chambers with their recommendations.

It is in this process that precise numbers of dollars to be appropriated to the various state agencies are set. These allocations substantially determine what services will be provided, for whom, and at what level or quality. As resources have become more scarce and the demand for services has increased, competition for tax dollars has intensified. Because levels of state services are determined by this annual budget process, it is closely monitored by the people hoping and expecting to receive services.

In simpler days of Kansas government, the legislature decided on what programs to operate and then had standing provisions to levy property taxes to fund them. Increasingly, however, Kansas budgets are "revenue driven," in that agencies are expected to propose budgets in line with anticipated revenues. Anyone proposing a new program is expected to demonstrate the availability of funding sources. Legislators also expect program supporters to endorse the necessary revenue increase measures.

The legislature is involved in financing local units of government because it shares state revenues with local governments, and because the local units depend upon the legislature for grants of authority to raise funds locally. This is especially true for school districts, which receive almost half of their operating funds from state aid. School districts typically do not make up their budgets for the next year until they know how much state aid will be available.

When the legislature appropriates dollars for the next fiscal year, it is authorizing *spending* of those dollars—most of which have yet to be collected. The number of dollars forthcoming will depend on the state's economy, state and federal regulations and laws, the weather, and many other considerations. Even when taxes and charges remain unchanged, and even when there is a record of collections upon which to base estimates, there may be variations in how much is actually available. While the state draws on experts who make their best estimates, it is the legislators who must decide which estimates to accept.

The legislature decides the exact revenue mix the state will use to finance its operations and, in substantial measure, those of local governments. Fairness, equity, and public interest are resolved here. The precise wording to describe the coverage and rate of taxes or charges is determined by the legislature, or by rules and regulations made under the authority of the legislature. Individuals and interest groups profess their willingness to pay their fair share, but the legislature is responsible for precisely defining what "fair shares" are.

Another significant power of the legislature is its authority to oversee administration. The word "oversight" suggests not a detailed supervision of the actions of state administrators, but a broad mandate to hold the administrators responsible for their actions. The legislature does this through the laws it passes and through the annual appropriation of funds to agencies. By setting the rules for purchasing, employing of personnel, and disbursement of dollars, the legislature exercises a level of control over administration. Some administrators develop the confidence and trust of legislators, and subsequently receive more discretion in their operations.

Another form of legislative oversight is the review of administrative rules and regulations. The legislature finds it difficult to enact laws governing many specific, technical matters, and increasingly has turned to the device of passing laws setting *general* standards, then allowing administrative agencies to promulgate rules and regulations under the authority of the legislature. As this practice has expanded, the legislature has looked for ways to review these voluminous rules and regulations.

In 1977, the legislature established a procedure through which—by concurrent resolution—it could amend or revoke rules and regulations adopted by administrative agencies. In 1984, the Kansas Supreme Court decided that this amounted to usurpation of executive authority, particularly because the governor does not have the authority to veto concurrent resolutions.<sup>2</sup>

Subsequently, the legislature provided for a new five-member State Rules and Regulations Board with two legislative representatives. The board presumably channels information to the legislature, which continues to have interest in seeing that legislative intent is followed.

In 1978, the Kansas Legislature joined many other states in adopting "sunset legislation." A regular schedule to review the work of individual agencies was adopted. An agency was to "disappear into the sunset" if, after an administrative review of its work, the legislature did not enact a bill allowing the agency to continue. Proponents felt that in this way ineffective and unneeded agencies would be reviewed and ultimately terminated. The Legislative Division of Post Audit was assigned responsibility for conducting the audits, under the supervision of the Legislative Post Audit Committee.

In 1992, the legislature repealed the sunset legislation, which was scheduled to expire July 1, 1992. It was replaced with the Kansas Governmental Operations Accountability Law (K-GOAL), which established a schedule for

the audit, review, and evaluation of 17 state agencies between the years 1993 and 2000. The new legislation did not include a threat of abolition of state agencies.

## **Enacting a Bill**

Every session of the legislature considers hundreds of bills. It is in the form of bills that the legislature makes most of its policy decisions. Any of the 165 legislators may introduce a bill, but only about a quarter or a third of the bills that are introduced are passed. Bills introduced by legislative leaders or committees, and bills growing out of interim study committees, are the most likely to be enacted. Many proposals for bills come from the governor or from administrators who have discovered a need for change.

The Kansas Constitution and legislative rules have sought to establish an orderly process for making and changing laws. The desire for continuity and stability is such that the goal is to strike a balance between making it too easy or too difficult to effect change.

With 40 persons in the Senate and 125 in the House, and both chambers required to approve precisely the same wording about highly technical matters as well as issues embodying important philosophical principles of public policy, it is remarkable that as many measures pass as do.

Figure 8 outlines the procedures that must be followed.<sup>3</sup> Broadly, these procedures have been established to allow full participation of the legislators and the public. Each step typically is followed, but some clearly are more important than others.

### *Introducing a Bill*

The issue of who introduces a bill is important. Bills introduced after interim studies, bills proposed by the leaders of the chamber, committee bills, and bills sponsored by trusted and experienced legislators are much more likely to be passed than those introduced by a "freshman" legislator or by a legislator who has introduced the bill at the request of a constituent.

Typically in the House about 600 bills are introduced, with roughly one in every three or four being passed. Though there were fewer members in the Senate in 1997, 387 bills were introduced; 96 became law.

### *Action by Committee*

The legislature is most likely to give close attention to a bill while it is in committee. Theoretically, each committee is representative of the chamber, so committee action should be similar to that of the full chamber. The legislator introducing a bill may try to see that the presiding officer of the chamber refers the bill to a committee likely to view it favorably; but most

often the subject matter determines the reference. On occasion, chamber leaders may refer a bill to more than one committee.

To give the appearance of wide support, an astute legislator may try to persuade other legislators to join in introducing a bill. Occasionally a matter is of such vast interest that a legislator compiles a large number of sponsors. If the legislator can win the support of the chairman of the appropriate committee, the likelihood of favorable committee action is of course increased.

The goal of the sponsor is to get the bill passed, and many stratagems are available. Often the sponsor asks for a good deal more than is realistic, in order to have bargaining chips. The sponsor must know how far to push the committee chairman and other members to act favorably on the bill. The sponsor often is torn between waiting for an invitation to testify, going assertively to the chairman to request a hearing, and lobbying constituents of the chairman to show interest in the bill.

There is no single best tactic. But if a measure is to pass, it must be referred back to the chamber with a favorable recommendation. Few bills leave committee in precisely the form in which they were introduced. The sponsor usually accepts the changes made by the committee, but occasionally a bill is so altered from the sponsor's original idea that he or she can no longer support it.

In Kansas, the leaders of each chamber determine its calendar, which identifies the bills and the order in which they will be considered. Kansas does not follow the procedure, used in a few states, by which bills automatically appear on the calendar in the order in which they are reported to the chamber.

### *Action by the Full Chamber*

Assuming that the committee reports the bill favorably, the next critical factor is where it is placed on the calendar. In the last hectic days of the session, even bills reported favorably by committee may not come up for discussion in the Committee of the Whole; at this stage, the full chamber merely dissolves itself into a less formal group to decide what action to take on the bills under the calendar heading of "General Orders." At this time, each member has a chance to hear the bill discussed and to move any changes he or she thinks appropriate. These proposed amendments may be minor or major, that is, friendly or unfriendly in the view of the sponsor (or sponsors).

Most commonly, the committee chairperson or designee will "carry the bill": move the adoption of the bill, explain it, and lead discussion on the floor. The legislator who proposed the bill may or may not be the one who carries it, for after a bill has been adopted by a committee, it is considered the committee's bill. After "working" the bill, the Committee of the Whole takes action on the motion of the legislator carrying the bill to recommend



## **Reflections on Being a Kansas Legislator**

### **Senator Michael L. Johnston**

"If there is any one bit of advice for new members . . . it is to spend time at the outset becoming familiar with the rules of procedure that govern each respective chamber and each activity that takes place.

"The legislature is a body not unlike a huge committee; it is often slow to act or respond . . . Consensus is often difficult to achieve.

"Unlike the federal system, there is no formal seniority system that governs the organization and conduct of the Kansas Legislature.

"Lobby groups . . . are not the ugly dragons, as they are often portrayed.

"If you have given your word and want for some important reason to change it, go to the person on the other end of the bargain and explain your situation.

"The influence of legislative leaders on the legislative process cannot be overemphasized.

"In our form of democracy, I believe most would agree that elected officials should endeavor, by some measure, to express the views of a majority of those they represent.

"One of the more obvious roles of a member of any policy-making body is that of a policy advocate.

"Compromise is a necessary ingredient in the decision-making process.

"One of the most important yet least understood legislative roles is that of executive oversight.

"The legislature is an exciting institution. It is the focal point where ideas come together, where change takes place."

### **Representative and Speaker Pro Tem Ben Foster**

"After having served four years in the House, it became apparent (to me) that my law practice was suffering considerably.

"The phrase 'carrying a bill' is used by legislators to indicate the individual who is responsible for explaining the bill during floor debate.

"Since I wasn't quite finished with the legislative process in Topeka, I decided to attempt to find a job as a lobbyist.

"Service on the Ways and Means Committee is an experience that every member of the legislature should enjoy.

"Being a minority of a minority leaves something to be desired."

## Senator John Chandler

“One’s perception of the Senate is shaped by the particular vantage point from which he approaches it.

“The political graveyards grow green over former legislators whose statesmanlike devotion to matters of statewide import kept them at the seat of government when they should have been mingling with the electorate at home.

“Constituents will not be content to regard his job as doing a workmanlike stint of lawmaking . . . (they) expect him to be their personal ombudsman in any difficulty they may encounter with representatives of the bureaucracy at the local, state, or federal levels.

“The senator should keep as close as possible to these people to whom he owes so much.

“A senator’s effectiveness is determined more by his committee assignments and the manner in which he handles them than by his performance on the Senate floor.”

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Source: *Reflections on Being a Kansas Legislator—1* (Topeka, Kansas: KU Capitol Center, 1982).

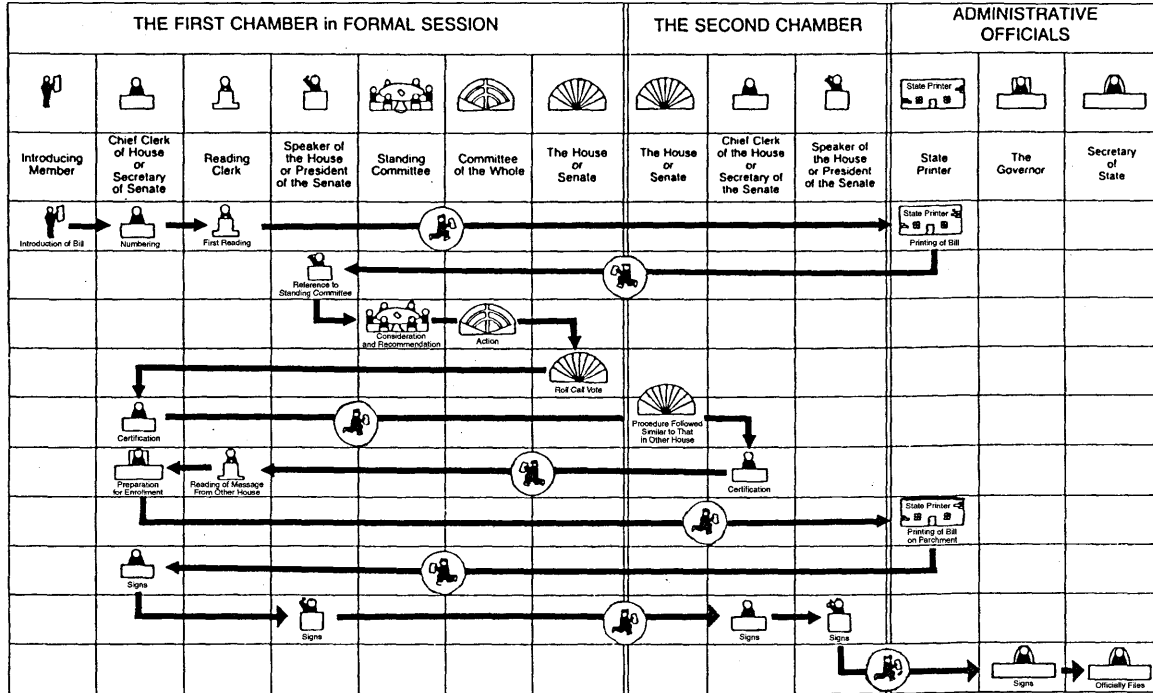
passage to the full chamber. If the bill survives this test, it is corrected or “engrossed” under the supervision of the chief clerk of the House or the secretary of the Senate. It then is put on the next day’s calendar for final action by the chamber. On the following day, most members vote as they did the previous day, but some change their mind. This procedure in effect allows legislators a second chance to consider each bill.

### *Action by the Second Chamber*

The bill then goes to the second chamber, where much the same procedure is repeated. The committee to which the bill is referred in the second chamber may accept the bill exactly as it passed the first chamber, but usually some changes are made by the committee or by the full chamber when it considers the bill.

Here again, the sponsor must consider strategies. Too much effort to get action by the second chamber may cause the committee chairperson to be less sympathetic to the bill. Many legislators believe the best strategy for success is to let the bill stand on its own rather than push for action. To pass the legislature, the measure must pass both chambers in *precisely* the

**Figure 8**  
**Abbreviated Flow Chart of Legislative Procedure in Kansas**



Source: The Kansas Legislature, *Introducing the Kansas Legislature*, pp. 14-15.

same form. This requirement gives rise to another critical stage in the life of a bill: the conference committee.

### Conference Committees

When the chambers pass different versions of the same bill, and the first chamber refuses to agree to the changes made by the second chamber, the leaders of each chamber assign three members to work out their differences. Each conference committee then reports to its chamber. The reports must be voted "up or down"; that is, they cannot be amended. During the last days of the session, there may be more than 100 conference committees meeting to prepare reports that must be accepted by both chambers if the bills are to be passed and sent to the governor.

Theoretically, each bill will stand on its own. But normally at the end of the session it becomes clear that there are differences between the House and the Senate. Various leaders will have their own "pet" bills and ideas. A package of conference committee reports, while officially handled separately, may become part of a package or compromise that will be worked out among the leaders of the two chambers—giving each *some* of what they want.

### Action by the Governor

Sponsors of a successful bill usually do not wait until the bill is passed to discuss it with the governor or the governor's assistants. In the committee stages, information may be offered as to whether the bill possesses or lacks the approval of "the second floor"—an indirect reference to the governor. Since the governor's approval is needed for the measure to become law, the threat of veto may prompt changes.

When it has the agreement of both houses, the bill is reengrossed (printed in its final, revised form) if it has been amended. Then it is "enrolled," or printed on parchment by the state printer and signed by the officers of both chambers. The bill is then transmitted to the governor, who may sign it and make it a law. The governor also has the options of holding the bill for 10 legislative days without action and letting it become law without a signature, or vetoing it.

To veto a bill, the governor writes a formal veto message that is sent to the "house of origin" (the chamber in which it originated). In an appropriation bill, the governor may veto individual items. Should the governor veto an entire bill, two-thirds of the members of each chamber must vote to override the governor's objections. This seldom happens, as it is difficult to marshal sufficient votes for an override.

Before the adoption of the new legislative article to the constitution in 1974, the governor of Kansas had a "pocket veto." That is, by withholding his or her signature, the governor could prevent a bill from becoming law if the legislature had already adjourned and could not consider a veto mes-

sage. This gubernatorial power had long been restricted by the legislature, which usually recessed after completing the bulk of its work and later returned to consider any measures the governor had vetoed.

The new legislative article makes no reference to the pocket veto. Furthermore, the legislature has enacted a law requiring the governor to return to the legislature any bills she or he disapproves. The legislative resolution setting the time for adjournment also normally sets an appropriate time for reconvening to consider the governor's veto messages. The statute categorically states that "no bill shall ever be deemed to have received a pocket veto."<sup>4</sup>

### *The Calendar*

Each chamber publishes a daily calendar showing the status of proposed bills and setting forth the order of business for the day. Each chamber has a standing Calendar Committee that revises the calendar and designates the time for consideration of particular bills. These committees become even more important toward the end of the session, when they may change the order of consideration of bills and thus determine which bills will get to the floor and which will "die" on the calendar. Since a two-thirds vote of the chamber is necessary to change the calendar, the Calendar Committee is quite influential in the legislative process.

### *The Journal*

The secretary of the Senate and the chief clerk in the House maintain the official journal of the meetings of the chamber. Each chamber publishes daily a copy of its journal, which for most public purposes becomes the official record of chamber business. The daily journals are consolidated at the end of the session and jointly published in a single volume. Each journal records only the official action taken; no effort is made to record debate or explain the actions. One must be in attendance, peruse the newspapers, or interview legislators to discover the sometimes rich and colorful circumstances surrounding the passage or defeat of individual measures.

### *Publishing the Law*

According to the constitution, the legislature may determine the date on which a law goes into effect. The legislature may direct that a law be effective from the date of publication in the official state paper, but most laws are effective upon their appearance in the *Session Laws*, a bound volume prepared by the secretary of state containing indexed copies of all laws passed during the session.

The *Session Laws* are compiled in the *General Statutes*, which contains a systematized collection of all laws of a general nature in force at the time of printing. The first collection of laws of the Territory of Kansas was com-

posed of those adopted by the first legislative assembly at the Shawnee Manual Labor School in 1855. These are commonly known as the Bogus Statutes, because at the time of their adoption the pro-slavery forces controlled the legislature. The Free-State party questioned the legitimacy of a large number of the legislators on the ground that they had been elected by nonresidents who had come into the territory merely for the purpose of voting. The Free-State party also denied the validity of laws passed at this and other meetings of the territorial legislature, which was dominated by the pro-slavery elements.

When in 1859 the Free-State party had a majority in the territorial legislature, a board of commissioners was selected to prepare an entire code of laws upon all subjects of general legislation pertaining to the interests of the territory. The board reported a code of laws to this same session of the legislature, which adopted the code and repealed the *Laws of 1855*.

After the close of the regular session in 1862, the general laws then in force were compiled by a joint committee of the two chambers and published in a volume known as the *Compiled Laws of 1862*.

In 1867, the legislature authorized the governor to appoint three commissioners to revise and codify the civil and criminal codes of procedure and all state laws of a general nature. The commissioners reported to the next session of the legislature, which adopted their recommendations. This compilation was titled the *General Statutes of 1868*. Subsequently the statutes were revised and compiled in 1876, 1889, 1897, 1899, 1901, 1905, 1909, 1915, 1923, 1935, 1949, and 1963. In that year, the title of the compilation was changed to *Kansas Statutes Annotated*.

To provide for the continuous revision of the statutes, the legislature in 1929 created the Office of Revisor of Statutes. Immediately after the close of each session, the revisor is required by law to compile, edit, annotate, and index the laws of a permanent nature passed by the legislature, and to add them to the general statutes of the state by means of supplements printed each year.

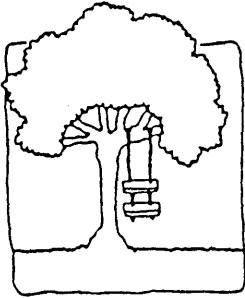
### *Another Way of Viewing the Legislative Process*

In the preceding paragraphs, we have reviewed the especially critical steps in enacting a law. Figure 9 portrays the legislative process in a more humorous way. But it is also realistic, in that various legislators, agencies, and the public may have quite divergent views of the same bill.

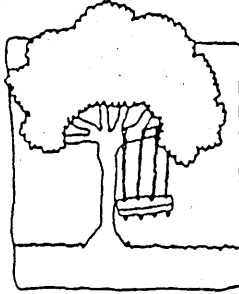
## **Legislative Coordinating Council**

In 1933, Kansas became one of the first states to establish a Legislative Council. The council was "to prepare a legislative program in the form of bills or otherwise, as in its opinion the welfare of the state may require, to be presented at the next session of the legislature." The council was a de-

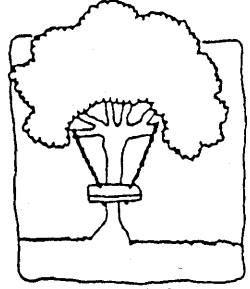
**Figure 9**  
**How a Bill Becomes a Law**



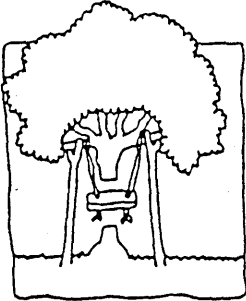
**As Introduced**



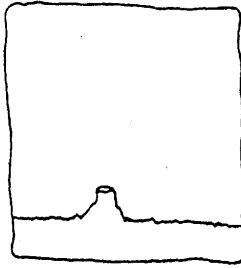
**As Amended in  
Committee**



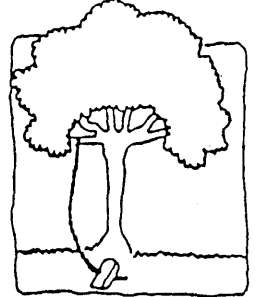
**As Amended on  
Second Reading**



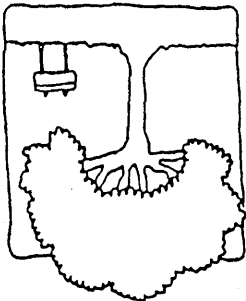
**As Enacted**



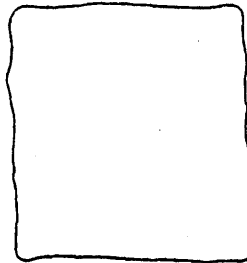
**As Funded by Joint  
Budget Committee**



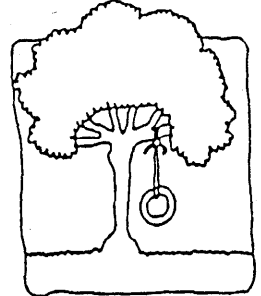
**As Implemented by  
the State Agency**



**As Reported by the  
Media**



**As Understood by  
the Public**



**What was Actually  
Needed**

Source: The cover of *The ATLA Docket* (4th quarter 1984), a publication of the Arkansas Trial Lawyers Association. Reprinted with permission.

liberative, investigative body composed of 10 senators appointed by the lieutenant governor and 15 representatives appointed by the speaker of the House. The appointees were subject to approval by a majority of the respective chambers. This bipartisan council organized itself into 10 substantive committees, which met between the council's regular quarterly gatherings.

During the early life of the council, the legislature met only once every two years, and for a restricted number of days—conditions making it even more urgent that some work be done between sessions. The council committees made recommendations to the council, which debated them and forwarded to the legislature the ones that were approved. While it was sometimes referred to as the "little legislature," it never had authority to enact laws.

In 1971, after review and recommendations by the council, the system providing for interim legislative activities and for the supervising of legislative staff services was revised. The Legislative Coordinating Council was established as the central management group for the legislature.

This new council consists of most of the legislative leaders, *ex officio*. These are the officials who have been selected by their party caucuses and officially elected by their chambers. They are the speaker of the House, the president of the Senate, the majority leaders from both chambers, the minority leaders from both chambers, and the speaker pro tem.

The previous balance between the House and Senate had recognized the larger membership of the House by allowing 15 representatives but only 10 senators. In the new council, one more position was given to the House than to the Senate; but as a part of the legislative compromise accompanying passage of the legislation, provision was made that the members of the council from each chamber would control decisions made on matters pertaining to their chamber. The speaker of the House and the president of the Senate rotate on a yearly basis as chairperson and vice-chairperson of the council.

The Legislative Coordinating Council appoints the revisor of statutes, the director of the Legislative Research Department, the director of Legislative Administrative Services, and the legislative counsel. The council also approves the budgets for and gives general administrative direction to these legislative staff offices. The council is authorized to speak for the legislature in certain matters between sessions. It approves the budget estimates for the legislature in advance of the session, but the appropriations for the legislature are handled by the appropriating committees, much as other budgets are.

At the end of the legislative session, the council receives suggestions from members, committees, and lobby groups, and official requests from the legislature itself in the form of resolutions requesting studies. The new council has continued the practice of using the word "proposal" to describe the charges given to committees to study. The council is free to set up as



many study proposals and committees as it wishes, and it appoints legislators to the committees. Most committees hold one- or two-day meetings each month from May through early November. Reports are made by the special committees to the legislature. While the reports are filed with the Legislative Coordinating Council, they are not reviewed by the council. The bills authorized for prefilng by the committees are assigned by the council to either the Senate or the House for introduction. An effort is made to divide the work between the two chambers and to recognize where the bills will receive the most thorough attention.

The use of special committees has substantially increased the number of legislators able to be active between sessions. During the interim, matters requiring longer and more careful study may be considered; most legislators have welcomed the opportunity to take part in interim activities. One major problem, however, is that the special committees are composed of legislators who are *not* on standing committees. Therefore the standing committees must review the materials again and hold additional hearings. The chamber leaders have sought to prevent this type of duplication, but there is no easy resolution.

The Legislative Coordinating Council has assumed a leadership role in stimulating and encouraging many legislative changes. For instance, the council helped expand legislative staff services, obtained more statehouse space for legislative use, and planned and directed the renovation of House and Senate chambers. The council has been an important device for bringing top legislative leaders together, and has furthered many of the legislative reforms that resulted in the Kansas Legislature's being recognized with the Legislative Improvement Award in 1976. This was presented by Legis 50, a national organization aimed at improving legislative effectiveness in all 50 states.

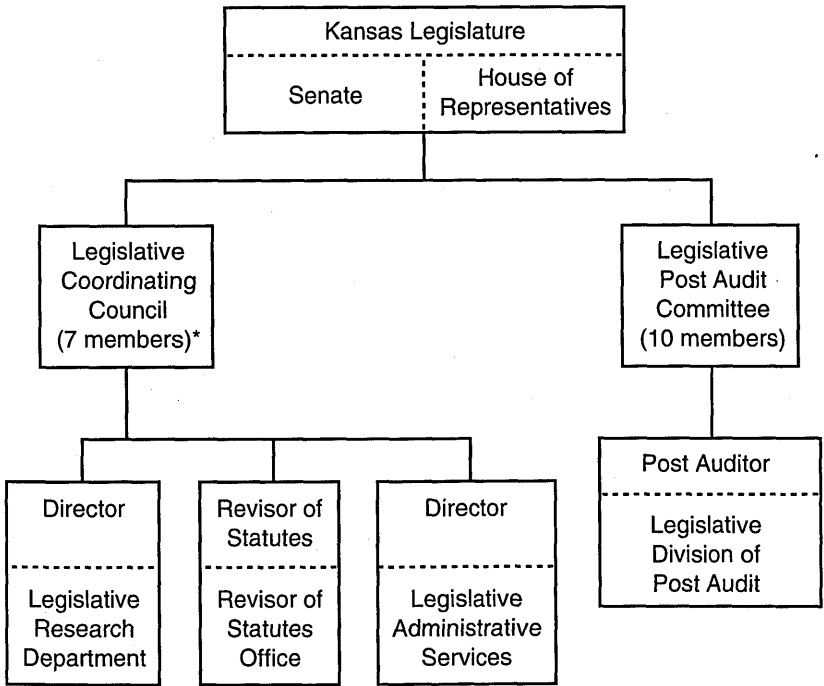
## **Legislative Staff Services**

### *Legislative Research Department*

The Legislative Research Department, created in 1934, has long provided staff services for individual legislators and for committees of the legislature and of the Legislative Coordinating Council. It operates as a nonpartisan fact-finding agency to help legislators learn what other states are doing and explore policy alternatives that arise during the enactment process. The department prepares many extensive reports during each session of the legislature. Drafts of prefiled bills accompany the reports, which normally give a detailed rationale for special committee recommendations.

During sessions, the department provides professional staff service for standing committees. Department staff members draft summaries of all legislative bills that clear the first committee. These summaries are approved by committee chairpersons and sometimes are used in explaining bills on

**Figure 10**  
**Organization of Legislative Staff Agencies in Kansas**



\* Includes president of the Senate, speaker of the House, speaker pro tem, and majority and minority leaders of the Senate and House.

Source: Adapted from Marvin A. Harder and Raymond G. Davis, *The Legislature as an Organization: A Study of the Kansas Legislature* (Lawrence, Kansas: The Regents Press of Kansas, 1979), p. 22.

the floor. At the end of the session, the department summarizes all bills in nontechnical language. In recent years, the department has added a fiscal staff particularly to assist the House and Senate Ways and Means committees.

### *Office of the Revisor of Statutes*

The Office of the Revisor of Statutes, created in 1929, performs the important tasks of drafting bills and most amendments to bills, and of revising the statutes. Any member of the legislature may introduce any bill on any subject within the time frame established by the statutes and the rules of the chambers. Legislators may draft their own bills or introduce mea-

tures that have been prepared by someone else. But in recent years an increasing number of bills have been drafted, at the request of legislators, by attorneys in the revisor's office. The legislative leadership of both parties has encouraged the use of this nonpartisan service, because it ensures that the Kansas statutes are more consistent.

In the revisor's office, previously enacted laws are identified, changed, and made compatible with new laws. Acting individually, legislators have found that it can be difficult to identify all the existing laws that need to be changed to obtain the desired result.

Attorneys from the revisor's office attend meetings of special and standing committees, and draft bills and amendments for committees as well as individual legislators. The bills prepared by the interim (special) committees normally are drafted in the revisor's office and prefiled; thus they are ready for official referral by the chambers to the standing committees when the legislature convenes in January.

Bills are printed in various type styles or fonts to discriminate between material that is new, is being changed, and is being stricken. This same format is used in publishing the *Session Laws*. The revisor's office also determines where in *Kansas Statutes Annotated* the new laws will be placed, by assigning KSA numbers. The staff prepares the index to the statutes and notations, both of which are helpful to users.

The revisor's office increasingly has been involved with the administrative rules and regulations that are authorized by numerous laws and serve to implement them. Legislators have become concerned that the administrative rules and regulations have not always expressed the intent of the legislature. Indeed, it has been alleged that rules and regulations have incorporated policies and procedures the legislature rejected or was unwilling to approve. The revisor was for a time a member of the State Rules and Regulations Board, along with the attorney general and the secretary of state; but in 1977 the board was reconstituted, and a legislator was appointed in place of the revisor.

### *Legislative Administrative Services*

In 1975, after several years of operating with a Joint Committee on Legislative Services and Facilities, the legislature created Legislative Administrative Services. This unit provides administrative support for the House, Senate, and leadership offices, and handles a myriad of services for individual lawmakers. As the legislature has authorized the holding of more hearings and the renovation of committee rooms and offices, the activities of this unit have grown.

### *Legislative Division of Post Audit*

Even before the constitutional office of auditor was abolished, the legislature created the Legislative Division of Post Audit and transferred to that division the function of auditing the accounts of state agencies. It is generally recognized that the legislature needs some machinery for seeing that the moneys it appropriates are spent for the purposes described in the appropriations. Kansas moved from having an independent elected state auditor perform this function, to having it done by a legislative staff officer. A 10-member bipartisan committee was established to provide general legislative direction to the post audit operations and to appoint the division director.

Each state agency is audited at least every two years. This audit of financial transactions is conducted according to standard audit procedures. All apparent violations of state statutes are reported to the Legislative Post Audit Committee, the governor, and the attorney general. This type of audit is particularly aimed at seeing that the moneys of the state are handled properly and safely, and that they are being spent for authorized purposes.

More recently the committee has encouraged and directed the division to perform a different type of audit of selected state agencies. These "performance audits," which are less focused on finances, raise substantial policy questions as to whether the agencies have been effective in using state appropriations.

### *Other Aids*

The State Library provides both a general and a specialized reference service for legislators. In addition to the standard legal and statutory references, the library maintains an index of all bills submitted to the legislature since 1909. During the session, it cooperates with the revisor's office in publishing an index of bills—the *Kansas Bill Locator*—which shows the actions taken on each bill. These publications are made possible by the use of a computerized legislative information system.

Either chamber (or both chambers acting together) may ask the attorney general to submit a legal opinion with regard to legislation under consideration. Individual members may also informally request and receive legal advice from the attorney general.

## **The Governor in the Lawmaking Process**

In addition to having veto powers, the governor plays an important role in the lawmaking process. Before the opening of each session of the legislature, every Kansas administrative agency is requested to submit to the governor a report, accompanied by an enumeration of proposed statutory changes and recommended legislation. These proposals are reviewed, screened, and sometimes refined before making their way into the governor's

“state of the state” message or being submitted as separate proposals to the legislature. Moreover, the governor submits to the legislature a budget that has been prepared and analyzed by the Department of Administration.

In practice, the governor plays a substantial role in presenting suggested legislation and actually passing bills. Over the years, the existence of one-party domination has meant that the Kansas governor, as titular party head, can exert great influence on legislative proposals. While the veto is used sparingly, it usually is sustained. By means of her or his position within the party, the governor wields considerable authority in the legislature. Members frequently come to be considered as “administration people” or “anti-administration people.”

During most of the state’s history, the governor has been a member of the political party that controlled the House and the Senate, and the party has been a coordinating device. In these periods, the personal relationships between the governor and the legislative leaders are extremely important in creating harmony. When the governor and the legislative leaders spring from different parties, however, tempers tend to be shorter and scrimmages more exaggerated—although the appearance of cordiality has been maintained and extended confrontations have been few.

Probably the threat of the veto is as important as the veto itself. Legislators can report that a bill, if passed in its present form, will be vetoed—or they can say that their bill or amendment has been “cleared with the second floor,” referring to the location of the governor’s office.

## **Other Sources of Legislation**

Another source of legislative proposals is the State Commission on Interstate Cooperation, which concerns itself with proposals on uniform laws or reciprocal agreements designed to facilitate relations between the state and the federal government. As a member of the Council of State Governments and of the Commission on Uniform State Laws, the Kansas Legislature considers proposed model uniform acts. As of 1989, Kansas had enacted 45 such laws, either exactly as proposed by the National Conference of Commissioners on Uniform State Laws or in an amended form.<sup>5</sup>

While these are the formally constituted channels for receiving legislative proposals, many enactments stem from suggestions made by nongovernmental lobby groups and local officials. Although no accurate figures are available, one observer has estimated that about one-third of all legislation comes from lobbyists and local administrators, another third from state administrative agencies, and the final third from the legislators themselves.<sup>6</sup>

## Lobbying

No discussion of modern legislative practices would be complete without mention of lobbies and lobbying. All three branches of government respond to interest groups, but the legislature and the governor are particularly expected to interact with them. It is to the legislature and administrative agencies that interest groups try most vigorously to make their views known. On occasion, interest groups may bring court action, or join others in court actions to further their position.

Interest groups organize around every conceivable viewpoint and cause. Some are single-issue groups, such as "pro-lifers" who are opposed by those supporting the "pro-choice" position on abortion. Labor unions press their perspectives, as do business groups. Veterans, taxpayers, professionals, students, and many others band together to influence government action. Most of the time, each group is so busy pursuing its agenda that it deals solely with its own members and the appropriate legislative committees or the governor. On occasion, however, an issue becomes so overriding that coalitions of interest groups develop. Other groups, such as Common Cause Kansas, consider themselves to be broad-based by their very nature.

As members of a pluralistic society, most people ally themselves with others holding similar views. While a few interest organizations have rigid criteria for membership, most want to expand their influence, so they appeal to all to join their cause. Some of these organizations, such as the Kansas Farm Bureau, have substantial business components. Many, like the League of Women Voters, are affiliated with national organizations.

There are elaborate and formal ways for an organization to poll its members before it takes a position on a public policy question. Large organizations hold annual conventions to adopt policy stands. In some instances a board of directors or a legislative committee works with a lobbyist to present the organization's views to the legislature or to others it seeks to influence.

It is the job of a lobbyist to appear before the legislative committees considering matters of interest to the organization. This may involve seeking changes in the laws as well as opposing proposed changes. The lobbyist must know what is transpiring in the appropriate committees, and alert the membership of his or her organization to the grist in the legislative mill at a given time. Lobbying strategies differ according to the subject, its importance, and the personalities of the legislators and the lobbyist. On occasion, the lobbyist may ask key members of the organization to contact crucial legislators who are about to vote on an issue. The lobbyist may mount a campaign with radio and newspaper ads to engender support for the group's point of view.

On a few occasions in the last decade, allegations have surfaced about certain Kansas legislators receiving favors from lobbyists in exchange for votes. But in general there has been increasing recognition of the necessity

## What lobbying approach do you like the best? The least?

"What I like the best is when a constituent back home writes me or calls me on the phone and wants me to support an issue. The rest of the lobbying done here is for informational purposes only. They don't have an influence on the legislator's thinking, not nearly as much as local constituents or a citizen of our state."—*Sen. Ben Vidricksen, R-Salina*

"The one that I like the best is when a lobbyist would bring me accurate information, and that the lobbyist has information on both sides of an issue and has a reputation for being truthful. What I like the least is when they do not have time even to discuss the issue."—*Sen. Marge Petty, D-Topeka*

"When they come to me, when they are presenting the issue and views, if I ask a question, they would tell me both sides of the issue. As a general rule, most lobbyists have been very good to do that. What I don't like—the high pressure tactics."—*Sen. Steve Morris, R-Hugoton*

"I was a lobbyist for 14 years before I ran for the legislature. I like just studying the information: what's the positive of the position that's being lobbied and what is the downside of it. I don't want to just hear their supporting part of it. I want to hear the other side. I don't like someone being pushy and nagging us when I say I like to look it over and come up with my own conclusion."—*Rep. Gerry Ray, R-Overland Park*

"I am a new legislator and I like for lobbyists to be right upfront with me and give me their concerns about the legislation. I would not like them to try and force their concerns and beliefs on me."—*Rep. Bill McCreary, R-Wellington*

"Probably no lobbying approach is what I like the best, but the least-liked approach is when they try to sit on us to do something. I think they have a purpose, but a lot of time that purpose is better served outside my office."—*Rep. Cindy Empson, R-Independence*

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Source: *Topeka Capital-Journal*, Sunday, February 9, 1997. Reprinted with permission.

and value of lobbyists within the total governmental framework. They no longer are viewed as primarily a sinister force. In return, they are required to register and to file reports of money spent to influence legislation, as well as to wear identification badges when they are in the capitol.

Table 7 shows the diversity of interests that were represented in the 2001 Kansas legislative session. Note that there were more than four times as many lobbyists as legislators.

The influence of these interest groups is difficult to measure, but it is helpful to examine how they are viewed by those closest to the legislative process: the legislators and the lobbyists themselves. Table 8 records the results of a survey by two scholars. It is significant that both legislators and lobbyists saw education, agriculture, banking, and business as the forces most consistently influential.

The typical Kansas lobbyist is male (76.9 percent), has had some post-graduate education, and does *not* consider lobbying as his primary occupation. More than half the lobbyists about whom information is available have been lobbying for five or fewer years. Some legislators who retire or are defeated return to Topeka as lobbyists. Most lobbyists in Kansas represent only one interest and confine their activities to this state.

Legislators reported that the most important service of lobbyists is to supply information about clients, organizations, and policy goals. Lobbyists agreed, but they also highlighted the role of providing in-depth information to legislators about the areas of their interest.

Controlling lobbying is a difficult task because, in light of the high turnover among legislators, the lobbyists often have more experience with the legislative process than does the average senator or representative.

Increasing attention has been given to the operation of political action committees, and to the support and assistance these PACs provide to legislators—including financial contributions to election campaigns. While there are exceptions, incumbents tend to be favored over challengers in campaigns and to receive more support from PACs. Thus, it is charged that elections frequently are waged on an “uneven playing field” because the incumbent is a known quantity who frequently qualifies for the support of interest groups.

Since 1909, Kansas has had a law requiring the registration of legislative “agents and counsels,” as they were at first defined. In 1974, as the result of a bipartisan effort, a government ethics law was enacted. The act clearly was directed toward establishing a state agency responsible for enforcing the new law. Legislators (and candidates for nomination), elected executive officials (and candidates for nomination), state officers and non-teaching employees who receive more than \$15,000 per year, and individuals confirmed by the state, are required to file statements of substantial interest. Lobbyists register with the secretary of state and are required to file periodic financial reports listing expenditures, including gifts and honoraria. In a given calendar year, a lobbyist may not offer or pay “any economic



Table 7

## Special Interest Representation in Kansas: January 2001

Special Interest Categories	Number of Registered Interests	Number of Lobbyists Registered
Aged . . . . .	4	8
Agricultural . . . . .	44	63
Banks/savings & loans/finan. inst. . . . .	25	80
Business/industrial . . . . .	98	183
Chambers of commerce/commerce . . . . .	18	26
Cities/counties . . . . .	28	146
Construction/development . . . . .	21	29
Education . . . . .	30	60
Energy/gas & oil . . . . .	26	52
Environment . . . . .	9	12
Gambling, racing, lottery . . . . .	8	13
Health care improvement . . . . .	16	24
Insurance . . . . .	48	83
Intergovernmental relations . . . . .	13	27
Labor/unions . . . . .	9	19
Legal profession . . . . .	8	19
Liquor industry . . . . .	9	11
Lobbyist/professional . . . . .	22	53
Medical/health/hospitals—provider . . . . .	65	151
Pharmaceutical industry . . . . .	15	21
Professional . . . . .	18	40
Railroads . . . . .	4	5
Real estate . . . . .	7	11
Registered individuals . . . . .	0	0
Religious . . . . .	4	5
Sin/morality groups . . . . .	4	4
Social problems . . . . .	48	75
Telephone/communications . . . . .	26	77
Utilities . . . . .	16	31
Women's groups/issues . . . . .	3	3
Unclassified/unknown . . . . .	4	4
Total . . . . .	650	1,355

Source: Data from the Office of the Secretary of State.

**Table 8**  
**Most "Consistently Influential" Interests in Kansas Politics**  
**(Legislator and Lobbyist Nominations)**

Policy Sector	# of Times Mentioned	
	By Legislators	By Lobbyists
Education		
(KNEA, Kansas Assoc. of School Boards) . . . . .	48	53
Agriculture/rural		
(Farm Bureau, Kansas Livestock Association) . . . . .	45	66
Banks		
(Kansas Bankers Assoc., Indep. Bankers Assoc.) . . . . .	40	74
Business		
(KCCI, Boeing) . . . . .	23	43
Utilities		
(Kansas Power and Light, Rural Electric Co-ops) . . . . .	21	33
Lawyers		
(Kans. Bar Assoc., Kansas Trial Lawyers Assoc.) . . . . .	20	34
Medical and health		
(Kansas Medical Society) . . . . .	18	36
Insurance . . . . .	13	15
Cities . . . . .	12	13
Local chambers of commerce . . . . .	11	8
Labor		
(AFL-CIO) . . . . .	11	11
Oil and gas . . . . .	11	28
Telephone and communications		
(Southwestern Bell) . . . . .	9	15
"Sin" and morality groups		
(Kansans for Life at Its Best) . . . . .	9	8
State agencies		
(Dept. of Social Welfare, Board of Regents) . . . . .	9	18
Real estate . . . . .	7	0
Motor carriers		
(Kansas Motor Carriers Assoc.) . . . . .	5	16
Railroads . . . . .	5	14

All interests noted by a minimum of 5 respondents on either survey are listed in the table.

Source: Allan J. Cigler and Dwight Kiel, *The Changing Nature of Interest Group Politics in Kansas* (Topeka, Kansas: KU Capitol Center, 1988), p. 12.

opportunity" (gifts, loans, special discounts, or favors) with an aggregate value of more than \$40. Hospitality in the form of food or beverages is generally excluded.

In 2000, the bill was amended to require any lobbyist spending more than \$100 per year on lobbying to report each individual gift, including the name of the recipient and the value of the gift. The legislation was unpopular, and in 2001 the House passed amendments watering down its provisions—but the proposed amendments did not pass the Senate.

The 1974 ethics legislation created the Governmental Ethics Commission, with limited powers to investigate the conduct of public officials. In 1981, its powers and composition were changed, as was its name. It became the Kansas Public Disclosure Commission, a title that more accurately described its functions. Legislative interest in the subject was revived in 1991, resulting in a broad revision of these statutes and another change of name to the Commission on Governmental Standards and Conduct. The commission is now able to initiate investigations as well as follow up on the basis of complaints. It is expected that with this increase in authority it will be more able to accomplish the objectives of its early sponsors.

The new commission consists of nine persons. The governor appoints two persons, designating one as chairperson; the speaker of the House and the president of the Senate each appoint one commission member, as do the minority leaders of the House and Senate, the chief justice of the Supreme Court, the attorney general, and the secretary of state. The commission is authorized to hear and investigate complaints under the act. If the commission determines that it is suitable to censure, reports are made to the appropriate legislative chamber for action against legislators; to the Legislative Coordinating Council for legislative employees; to the Supreme Court for court officers and employees; and to the governor for other state officers and employees. The commission also enforces the Campaign Finance Law.

## **Improvements in Legislative Procedure**

A national study in the early 1970s rated the overall performance of the Kansas Legislature 23rd in the nation; yet in 1976 it received a national award for being the country's most-improved legislature. Many changes obviously happened in the intervening period, only a few of which are described in detail in this chapter. Some of the events leading to this national recognition were listed in the award citation. These included:

- abandonment by the speaker of the House of the seniority rule in the selection of committee chairpersons and committee members;
- granting the minority the right to name minority members to the standing House committees;
- adoption of joint House and Senate rules;

- enhancement of the legislature's ability to oversee the executive branch;
- a reduction in the number of standing committees;
- the institution of legislative orientation sessions and in-service training programs;
- publication of a manual for legislators;
- enactment of laws with regard to campaign finance, conflict of interest, open meetings, and regulation of lobbyists.

Many other developments also precipitated change. A major decision was made to improve the physical working conditions of the legislature. State agencies and offices were moved out of the statehouse to make more room for the legislature and its staff. For the first time, legislators were assigned office space in addition to their desks on the floor of the House or Senate. (Committee chairpersons were the first to receive the semi-private offices.) The staffs of the Legislative Research Department, the Office of the Revisor of Statutes, Legislative Administrative Services, and the Legislative Division of Post Audit were expanded. The Office of Legislative Counsel was established.

A new legislative article in the constitution was approved by the voters, incorporating some small but important changes:

- The requirement for readings of bills was omitted from the new article;
- Single-member districts became mandatory and legislators were required to reside in their districts;
- More flexibility was given to the length of the session, and the governor was obligated to call a special session when petitioned to do so by two-thirds or more of the legislators;
- There was an effort to make less restrictive the constitutional provision that a legislative bill may be devoted to only one subject;
- The previous two-year limitation on appropriations was deleted;
- A two-thirds majority is now required in each chamber for ratification of an amendment to the U.S. Constitution or for petitioning Congress to call a constitutional convention.

Of major significance in this period was the establishment under legislative auspices of the Legislative Division of Post Audit. Now, because of the ten-member bipartisan Legislative Post Audit Committee, clear channels and procedures have been established so the legislature can attend to the reports of audits, both financial and performance. The establishment within the Legislative Research Department of a fiscal staff for appropriating committees, coupled with the greater interest in and ability to review administrative rules and regulations, has enabled the legislature to increase dramatically its competence in overseeing the administration of government.

The change from the Legislative Council to the Legislative Coordinating Council reflects much about the legislature. Probably the most important aspect is the legislators' desire to be more involved during the interim. Previously, only the 26 legislators who were appointed to the council generally attended interim meetings. Now, through the device of special committees, almost any legislator may be active during the interim. The creation of the Legislative Coordinating Council as a management group for legislative services showed that the leadership had assigned new importance to these services and paved the way for their expansion. Creation of the Legislative Coordinating Council also evidences an awareness that the legislative branch needed a clearly identified spokesperson so it could be recognized as an equal branch of government. The council speaks, to the extent that any group can, for the legislature when it is not in session.

Despite all these improvements, it is clear that further change and action will be necessary. There is concern as to whether the work of the interim special committees is being used effectively by the legislature and its standing committees. The Legislative Coordinating Council has become so involved with management that review of the substance of interim committee recommendations has fallen by the wayside. How Kansas legislators and voters will respond to the current nationwide interest in term limitations for legislators is unknown, but the imposition of limits likely would change the legislative process again, and perhaps even alter power relationships.

## Chapter 4 Notes

1. For a different view of the Kansas legislature and its process, see Marvin A. Harder, "Introducing the Kansas Legislature," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 115–131.
2. *State ex rel. Stephans v. Kansas House et al.*, 236 Kan. 45.
3. See the third edition of this book for a more detailed discussion of the steps involved.
4. K.S.A., 45-305.
5. The Council of State Government, *The Book of the States*, 1990–1992 edition, pp. 409–415.
6. Barnard, *Legislature of Kansas*, p. 131.



## Chapter 5

# Political Parties and Popular Control

**P**olitical parties are integral to the American system of government. They are so important that their organization and functions have been provided for in state law, and some of their activities, such as selection of party nominees, are paid for by the government.

Parties become avenues and often facilitators of coordination between branches and units of government, especially between the legislature and the governor. The move toward nonpartisan selection of judges has somewhat modified this aspect of the role of political parties. In a similar way but for different reasons, the move for nonpartisan city government has diminished the party role of liaison between the state and cities. Political parties continue to be active at the county and district levels in the election of state and local executives, state and national legislators, the governor, and the president.

### **Political Parties: Their Organization and Operations**

Since the admission of Kansas to statehood, the Republican party has dominated most elections, although for brief periods other parties have challenged its supremacy. Over the years, a multitude of third parties have appeared on the political scene, including the American Alliance, Anti-Mason, Anti-Nebraska, Workingman's Labor, Farmer-Labor, Free-Soil, Liberty, Anti-monopoly, Prohibition, Greenback, Silver, Reform, Union, Non-partisan, Independent, Constitutional Union, Socialist, Socialist Labor, Communist, Union Labor, Liberal Republican, Nation, Gold Standard, and Progressive parties.<sup>1</sup>



Most of these were based on particular issues, disappearing when the issue faded away. Many were formed as protests against the major parties.<sup>2</sup>

There actually have been only three parties in Kansas that could be termed "major." The Republican and Democratic parties once had a strong competitor in the People's (or Populist) party. When Kansas was admitted to statehood, the two "accepted" parties—Democrat and Republican—differed in their stands on slavery as well as on other political issues. The status of Kansas as a free state gave the Republican party, as the abolitionist group, an ascendancy it has never relinquished. The distrust engendered by the slavery question resulted in the Wyandotte Convention's restricting the boundaries of the state, and in the Democratic delegates' refusing to sign the constitution adopted by the convention.

The Republican party held complete control of state politics for more than a quarter-century after the Civil War. During those years, campaign issues usually managed to bring in the "old soldier" theme and to cast aspersions on the Democrats as the party of slavery and sedition. But in 1890, a new force, the Populist party, appeared. It was composed of members from the Farmers' Alliance and third-party groups such as the Greenbacks and Union Labor. In the election of 1890, the Populists, aided somewhat by the Democrats, elected five of the seven congress members, won a majority in the lower chamber of the state legislature, and elected one state official, the attorney general. Aside from the 1882 election, in which the Democrats had elected a governor, this was the first time the Republicans had lost a state office in Kansas.

In the election of 1892, the Democrats generally supported Populist candidates, and the combined parties won the presidential electors, the majority of the state Senate, and a little less than half of the state House of Representatives. It was almost a complete sweep, but without control of both chambers, the party could not enact the legislation it desired.

In 1894, an insurgent Republican party regained control of the state offices. Then in 1896, the national conventions of both the Populists and the Democrats nominated William Jennings Bryan, and in Kansas the two parties fused and were largely successful in the election. In 1898 and 1900, the cohesion of the two parties became tenuous, the Populists losing strength. In both elections, the Republicans made substantial headway and reasserted their supremacy. The Populists soon either joined the Democratic party or drifted into the Republican party; they never again were a factor in state or national elections.

Since the time of the Populists, more Republicans than Democrats have been elected to state office in Kansas. On occasion, the Democrats have elected a governor, owing in some instances to factionalism within the Republican party. In 1956 George Docking, a Democrat, was elected governor after a bitter fight in the Republican primary. Two years later, Docking broke precedent by becoming the first Democrat to be elected to the Kansas gov-

ernorship for a second term. In this election, the Democrats won three of the six Kansas seats in the U.S. House of Representatives; the offices of state printer, treasurer, and lieutenant governor; and increased representation in the Kansas House of Representatives. Democratic leaders were quite hopeful about the future of their party.

But in 1960 and in the next two gubernatorial elections, the Republicans captured the governorship and all state administrative offices. Despite the fact that Kansas cast its electoral presidential votes for Democrat Lyndon B. Johnson in 1964, Republicans kept control of state offices. (Overall, however, Kansans have been more Republican in their voting for president than in their voting for governor.)

Robert Docking, a Democrat and the son of Governor George Docking, was elected governor in 1966, 1968, 1970, and 1972, becoming the first Kansan to be elected to four two-year terms. In 1974, Robert F. Bennett, a Republican, won a close election over Vern Miller, the former attorney general, who ran for governor after Docking announced he would not seek a fifth term. Bennett won with slightly less than a majority of the popular vote; he had about 4,000 votes more than Miller, but almost 12,000 votes were cast for the candidates of a third party. For the Democrats, Curt Schneider won the office of attorney general and Joan Finney the office of state treasurer.

Two years later, in 1976, the Democrats captured control of the House of Representatives for the first time in 64 years, and won 19 of the 40 seats in the Senate.

Kansans have consistently shown a preference for the Republican party, as shown in Figures 11 and 12, with Republican registration ranging from 32 to 45 percent. Democrats have varied from 21 to 31 percent. Thus, the independent vote is important for success at the polls.

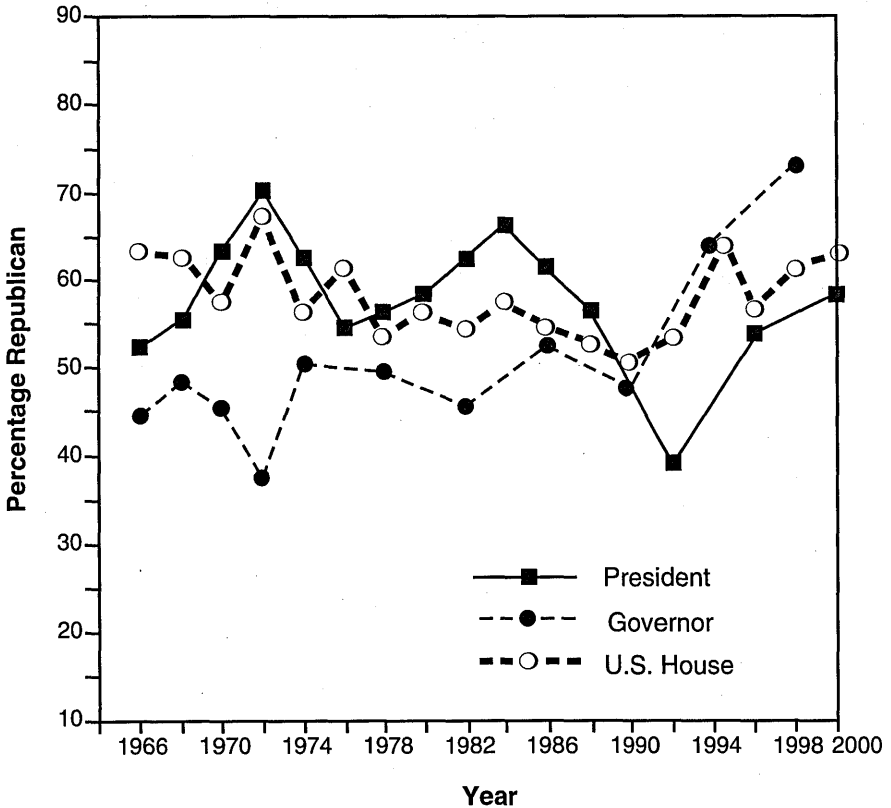
2000 voter registration information is contained in Figure 13. Wyandotte County, with Kansas City, Kansas, is a Democratic stronghold; adjacent Johnson County, with its affluent suburbs, votes strongly Republican. Pockets of Democrats are located around some cities in western Kansas.

One study of the characteristics of party identification (Table 9) points to certain generalizations about Kansas political party membership: almost two-thirds of high-income residents were Republican; more than two-thirds of blacks surveyed were Democrat; and rural residents were more likely than their urban counterparts to be Republican. It must be noted, however, that the survey included a comparatively small sample.

To analyze election results accurately, party strength must be related to density of population and centers of population. The shifting urban-rural balance, the growth of metropolitan areas, and the evolving bases of the state's economy add uncertainty and an element of challenge to both major political parties.<sup>3</sup> Fewer voters both nationally and in Kansas are identifying with

Figure 11

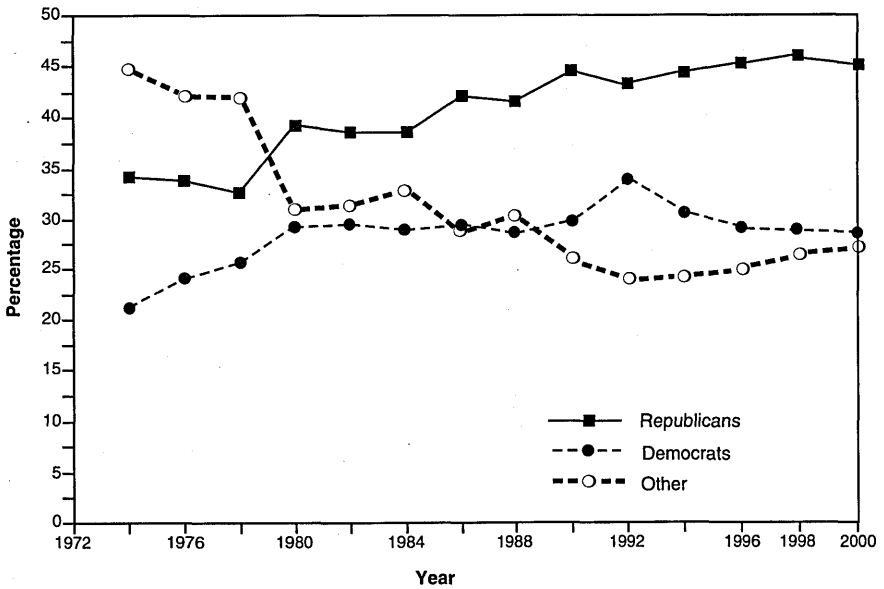
Republican Percentage of Vote for President, Governor, and  
U.S. House in Kansas: 1966–2000



Source: Allan Cigler and Burdett Loomis, "Kansas: Two-Party Competition in a One-Party State," in Maureen Moakley, ed., *Party Realignment in the American State* (Columbus, Ohio: Ohio State University Press, 1992), pp. 163–178. Reprinted with permission. For 1992–2000 elections, Election Statistics, Secretary of State.

Note: The total vote for the U.S. House of Representatives gives some indication of the political complexion of the state. More important is the number of congressional districts electing Republicans. Since 1992, when Kansas was apportioned for four seats, only Kansas' Third District has elected a Democrat, and then for only two of the five terms.

Figure 12  
Voter Registration in Kansas: 1974–2000



Source: Allan Cigler and Burdett Loomis, "Kansas: Two-Party Competition in a One-Party State," in Maureen Moakley, ed., *Party Realignment in the American State* (Columbus, Ohio: Ohio State University Press, 1992), pp. 163–178. Reprinted with permission. For 1992–96 elections, Election Statistics, Secretary of State.

either the Republican or Democratic parties, further complicating predictions for the future success of these parties at the polls.

In recent years, there have been sharp divisions within the Republican Party, some of the sharpest conflicts occurring between the left and moderate wings of that party. One that occasioned Kansas to capture national attention was the adoption in 1999 by the State Board of Education of changes to the science standard for high school instruction (shown in the accompanying excerpted reprint). Two members of the board who had voted for the new standard, which gave diminished attention to the teaching of evolution, faced challenges in the Republican primary in August 2000 and were defeated by Republicans who voted to reverse the standard. More attention was then given to evolution and the "big bang" theory of the creation of the universe. The governor made clear his preference for the original standards.

In the 2001 legislative session, Governor Bill Graves, a Republican, was publicly at odds with some of the legislative leaders on raising taxes to in-

## **Board for Kansas Deletes Evolution from Curriculum (excerpted)**

**by Pam Belluck**

**Dateline: Chicago, Aug. 11, 1999**

The Kansas Board of Education voted yesterday to delete virtually any mention of evolution from the state's science curriculum, in one of the most far-reaching efforts by creationists in recent years to challenge the teaching of evolution in schools.

While the move does not prevent the teaching of evolution, it will not be included in the state assessment tests that evaluate students' performance in various grades, which may discourage school districts from spending time on the subject.

And the decision is likely to embolden local school boards seeking either to remove evolution from their curriculums, to force teachers to raise questions about its validity or to introduce creationist ideas. Some local boards have already said they will consider adopting creationist textbooks, while others have said they will continue teaching evolution.

Creationists say a divine being created humans and other species. They say that since evolution cannot be observed or replicated in a laboratory, there is no evidence that it actually occurred.

Kansas is the latest state to face a battle over evolution and creationism in recent years. Alabama, New Mexico and Nebraska have made changes that to varying degrees challenge the preeminence of evolution in the scientific curriculum, generally labeling it as a theory that is merely one possible explanation. Others, like Texas, Ohio, Washington, New Hampshire and Tennessee, have considered, but ultimately defeated, similar bills, including some that would have required those who teach evolution also to present evidence contradicting it. At the local level, dozens of school boards are trying to make similar changes.

More than a decade after the Supreme Court said states could not compel the teaching of creationism, creationists appear to be increasingly active, adopting a new strategy to get around the constitutional issues. Instead of trying to push creationism onto the curriculum, many creationists are trying to keep Darwin out of the classroom or insure that if evolution is taught, it is presented as merely one unproved theory.

**Figure 13**  
**Registered Voters: Percent of Republicans: 2000**



Percent	# of Counties	Percent	# of Counties	Percent	# of Counties
18%	1	46-55%	29	66-75%	11
33-35%	4	56-65%	39	82%-	1
36-45%	20				

Source: Data from Office of Kansas Secretary of State, as of October 23, 2000.

**Table 9**  
**Characteristics of Party Identifiers in Kansas: 1988**

	Republicans (%)	Democrats (%)	Independents (%)	Other (%)
<b>Family income</b>				
Under \$15,000 . . . . .	30.1	25.2	39.8	3.6
\$15,000–40,000 . . . . .	40.1	28.8	28.2	2.8
\$40,001–70,000 . . . . .	29.9	22.1	46.8	1.3
\$70,000+ . . . . .	63.2	0.0	31.6	5.3
<b>Religion</b>				
Protestant . . . . .	44.1	23.8	29.5	2.6
Catholic . . . . .	27.8	30.6	38.9	2.8
Jewish . . . . .	0.0	50.0	50.0	0.0
Agnostic . . . . .	23.4	29.8	42.6	0.0
Other/not classified . . .	23.4	29.8	46.2	4.3
<b>Gender</b>				
Female . . . . .	31.7	27.4	38.0	1.9
Male . . . . .	42.5	22.9	32.0	2.6
<b>Race</b>				
White . . . . .	38.6	22.5	35.9	3.0
Black . . . . .	7.1	71.4	21.4	0.0
Other . . . . .	17.6	41.2	23.5	0.0
<b>Residence</b>				
Rural . . . . .	40.3	24.4	32.6	2.7
Urban . . . . .	30.0	27.1	40.0	2.9
<b>Education</b>				
Less than high school .	25.6	33.3	38.5	2.6
High school . . . . .	36.2	38.8	23.3	1.6
Some college . . . . .	36.8	21.1	40.0	2.1
B.A./B.S. . . . .	41.2	27.9	27.9	2.9
Graduate degree . . . . .	32.0	12.1	56.0	0.0
<b>Age</b>				
Under 30 . . . . .	37.2	19.2	42.3	1.3
30–40 . . . . .	31.7	23.2	42.7	2.4
41–50 . . . . .	44.9	22.5	30.6	2.0
51–65 . . . . .	41.1	28.8	26.0	4.1
65+ . . . . .	41.1	31.6	23.3	4.1

Source: Allan Cigler and Burdett Loomis, "Kansas: Two-Party Competition in a One-Party State," in Maureen Moakley, ed., *Party Realignment in the American State* (Columbus, Ohio: Ohio State University Press, 1992), pp. 163–178. Reprinted with permission.

crease state support of education. He expressed his disappointment when the legislature refused to follow his lead to some modest measures to increase taxes.

## **Political Party Organization**

In the primary elections conducted under state auspices in even-numbered years, party members elect in each precinct a party precinct committeeman and precinct committeewoman. These precinct committee leaders form the nucleus of local party organization. The precinct is the logical unit for the election of local party leaders because it is the place where the ballots are cast and counted. There is at least one precinct in each township and third-class city, and in each ward of first- and second-class cities. Any of these units may be divided into two or more precincts when necessary to accommodate the voters.

Selected by party members, the precinct committeemen and committeewomen form party committees within their city, county, congressional district, and state. Election (or appointment) as precinct committeeman or committeewoman is a necessary prerequisite to membership on county committees, which do most of the party work. While they are primarily active at particular times in the election cycle, the committees formally serve two-year terms, as do the precinct committeemen and committeewomen.

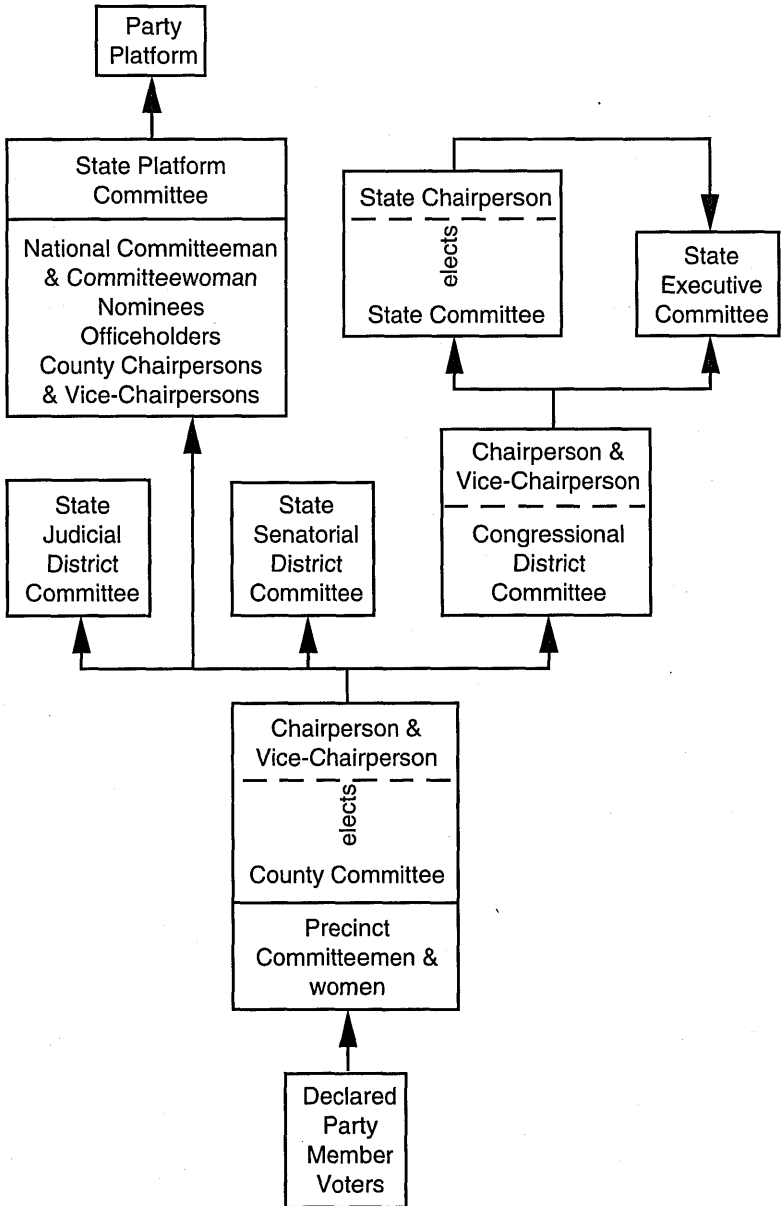
All precinct committeemen and committeewomen elected in a county comprise the county committee. For this reason, the precinct committeemen and committeewomen are sometimes referred to in Kansas as *county* committeemen or committeewomen. The county committee normally elects one of its number to be county chairperson and one to be vice-chairperson. One must be male and one female. The county committee is a key element in political party organization. The vigor and enthusiasm with which a county committee operates depends on its precinct committeemen and committeeewomen. In some sections of the state there are so few members of a party, and party candidates stand so little chance of election, that the county committee is inactive.

Candidates for public office may visit with the precinct committeemen and committeewomen, and make appropriate efforts to further their campaigns. For many years, whenever public officers were elected from districts larger than a county, separate party committees were authorized, but in most cases these committees were not active. The individual candidate essentially runs his or her own campaign, involving the active party workers to the extent that the candidate desires and the workers are willing.

In 1972, changes were made in some aspects of the political party organization. County committees now are to be organized within two weeks after the primary, but congressional district committees are not to be organized until after the general election.



**Figure 14**  
**Kansas Political Party Organization**



Source: Adapted from *Kansas Voter's Guide, 1984 General Election Edition* (Lawrence, Kansas: Center for Public Affairs, University of Kansas), p. 17.

The provision for other multi-county political committees has been dropped, but this does not prevent candidates from working informally with party officials. The effect of organizing district committees after the general election is to orient the committees to the long-term concerns of the party, such as party selection of delegates to the national conventions, rather than to winning congressional seats for particular individuals. The change is expected to make Kansas party organizations more stable.

On occasion the county committee may have the important job of filling vacancies that occur in public office, or selecting a party nominee in case of death or resignation.

Congressional district committees are organized in each of the state's five congressional districts; these districts contain from four to 65 counties. In addition to the county chairperson and vice-chairperson, each county is entitled to representation on the congressional committee by one additional man and woman for each 1,000 party votes, or major fraction thereof in excess of 1,500 party votes, cast in the primary at which the county committee was elected. The additional members are chosen by the respective county committees.

For years the state committee was composed of the chairperson and vice-chairperson of each of the 105 county committees. But in 1972, as part of the "one person, one vote" philosophy, the legislature provided that the state committee should consist of 22 members elected by each congressional district committee, plus a limited number of persons serving *ex officio* or being represented by their designees. The state committee has as many as 125 members and is too large to act as an operating or administrative group. Consequently, this committee meets infrequently and operates principally through its officers and the State Executive Committee.

The State Executive Committee is made up of the officers of the state committee, the chairperson and vice-chairperson of each congressional district committee, certain state legislative leaders, and a designee of each U.S. senator. The chairperson of the state committee is *ex officio* chairperson of the State Executive Committee. In practice, the state chairperson usually is someone who has been suggested by, or is satisfactory to, the party's candidate for governor.

Provision is made by law to allow for city party committees consisting of the precinct committeemen and committeewomen elected within the city. Where such city committees exist, they assist in general elections, but most city elections in Kansas are nonpartisan.

After the August primary, the county committees meet, organize, and elect their officers. Vacancies in the position of precinct committeeman or committeewoman are filled by the county chairperson; if no one is elected to the office from the precinct, the office cannot be filled until the committee has organized after the primary and a new chairperson is elected (or the incumbent chairperson reelected).

## Activities of the Party

### *Spring to August of Even-Numbered Years*

During the spring months through August of even-numbered years, preparations are made for the next general election. Party leaders, who frequently are potential candidates, talk informally with other party leaders and members to sound out the depth of support for particular candidates. In some cases, the formal and informal party leaders encourage possible candidates or "maneuver them into position" for running. Other possible candidates are discouraged from running. The county committee and its chairperson may likewise build up the party organization by encouraging certain candidates for precinct committeeman and committeewoman slots. The committee also may attempt to ensure a full and balanced slate for state and local offices. The party encourages voters to register or change party affiliation to become eligible to vote in the party primary.

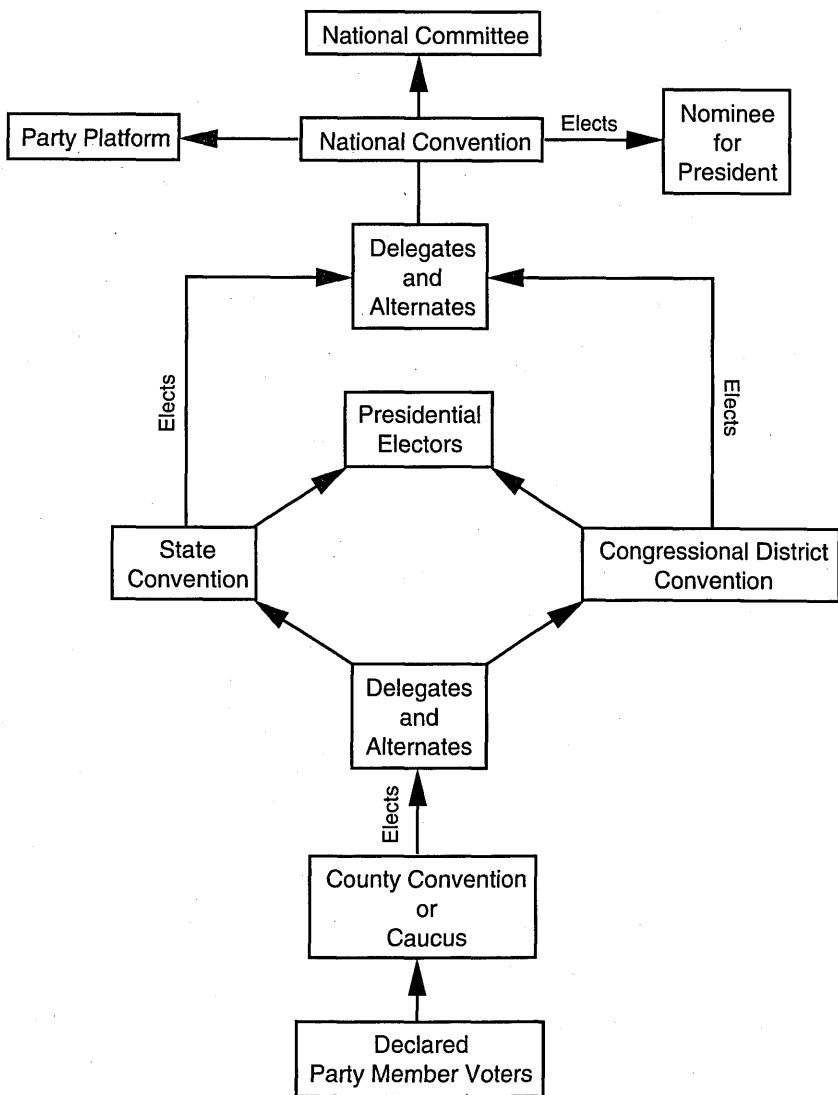
At this stage in the party process, it often is difficult to discern whether party officials are acting on their own or in an official capacity. This surge of activity culminates in the primary election, during which party members select the party's candidates for various offices and elect their precinct committeemen and committeewomen.

In the spring of presidential election years, the county party committees are directly concerned with national politics. The procedure for selecting delegates to the national conventions is substantially the same for both major parties. The county committees (elected 20 months earlier) and the district committees (organized after the general election 17 months earlier) play an important role.

In the Republican party, the county chairperson decides whether delegates and alternates to the congressional district convention will be chosen by a countywide meeting of qualified Republican voters or by conventions of delegates in precinct, ward, or county commissioner district caucuses. Whatever the method, one delegate and one alternate to the district convention are selected for each 400 votes cast in that district for the Republican candidate for governor in the last election. The national party organization has rules designed to encourage wide participation in the process and to keep the selections open to all qualified Republican voters. The national Republican organization determines the number of delegates and alternates each state may send to the national convention. Each district convention is allotted a given number of delegates and alternates, and is allowed to recommend to the state convention additional delegates and alternates. At the state convention, at-large delegates are elected. Each district convention elects one presidential elector, while the state convention elects two to fill out the slate of six.

In the Democratic party, the type of local convention is determined by the population of the county. In small counties (fewer than 30,000 people),

**Figure 15**  
**Party Conventions and Delegate Selection Process**



Source: *Kansas Voter's Guide, 1984 General Election Edition* (Lawrence, Kansas: Center for Public Affairs, University of Kansas), p. 23.

countywide conventions are held; in medium-size counties (between 30,000 and 75,000), conventions are held in county commission districts; and in larger counties (more than 75,000), conventions are held in each House of Representatives district.

Two members—one male and one female—are elected for each 1,000 votes cast in each local unit for the Democratic candidate for governor at the most recent election. These local meetings are held the second Saturday in April and are followed by district conventions held the second Saturday in May. In 1992, the national party allowed Kansas 42 delegates and six alternates, 75 percent to be elected by district. The remainder were elected at the state convention in June.

The national party has rules the state party must follow in selecting delegates and alternates at the district and state conventions. Failure to follow the rules may lead to challenges and contests before the Credentials Committee. The Democrats follow a procedure similar to that of the Republicans for choosing presidential electors.

Kansas has experimented with a presidential primary. In 1980 and 1992, the state held presidential preferential primaries on the first Tuesday in April. Candidates put their names on the ballot by signing a declaration of intent and paying a fee, or by filing a nominating petition. In these primaries, voters express their support for a candidate or vote for "none of the names shown." Delegates to the national convention are expected on the first ballot to vote proportionately for the candidates as "instructed" by the party members in the primary.

Kansas is a comparatively small state, and it is difficult to see the impact of a Kansas primary in the national confusion of the presidential primaries. In 1990, the legislature authorized such primaries on a continuing basis, but the next year withheld county funding for the elections. After the 1992 primary, the legislature voted again to fund the elections. The Kansas presidential primary in 1992, however, was overshadowed by elections held the same day in more populous states, and the turnout was light.

In 1996, because of the timing of the presidential primaries in other states, it was felt that a presidential preferential primary was unnecessary and would add nothing to the selection process. Senator Dole, a native son, had already established himself as the Republican candidate for president in the Democratic Party. President Clinton was unchallenged for his party's nomination. The future of such primaries in Kansas seems uncertain.

The process of selecting delegates to the national party conventions is distinct from that of selecting presidential electors. The presidential electors are nominated by conventions or by caucuses, depending on the political party.

### *August to November of Even-Numbered Years*

During the period from August to November in even-numbered years, the committees and their members are most active, working intensively for the success of the party's candidates in the November election. This is the time for appealing to voters through meetings, formal and informal discussions, newspaper and radio publicity, the distribution of party literature, and television appearances. While attention is centered on the major offices, voters are urged to support all party candidates. Informal committees may be organized to work for particular candidates and to help finance their campaigns, or to work among specific groups of voters. At the same time, campaign contributions are solicited from candidates, officeholders, and interested citizens. Occasionally the party committee nominates a candidate to fill a ticket vacancy that has occurred since the primary.

In addition to these activities, the precinct committeemen, committee-women, and party workers encourage prospective voters to register and vote for their candidates. The county chairpersons and committees help select the election boards and arrange for "poll watchers," who observe the balloting and counting, challenge voters who are not properly qualified, and make reports to party leaders.

### *November of One Even-Numbered Year to Spring of the Next Even-Numbered Year*

The political parties and their committees are largely inactive during the period from November of one even-numbered year until spring of the next even-numbered year. The party in control of state government advises public officers and suggests appointments to public office. The elected officials maintain close contact with the party members, particularly party leaders. The party out of power watches for opportunities to criticize.

In presidential election years, the presidential electors for the candidates who received the most votes in the state are certified. They convene in Topeka to cast their ballots officially on the first Monday after the second Wednesday in December. The ballots are sent to Washington to be tallied.

## **The Party Platform**

When candidates were selected by party caucuses and conventions, the party platform was drawn up and adopted at such meetings. When the direct primary became the method of selecting candidates, it was necessary to establish a group within the party so that the candidates elected in the primary would have a voice in framing their party platform.

For years this group was called the "Party Council," but since 1972, legislation has required each party to have a "Platform Committee." The committee consists of the party candidates for state office, the U.S. Senate, the U.S. House of Representatives, the state Senate, and the state House of

Representatives who were nominated at the preceding election. The national committeeman and committeewoman, the U.S. and state senators of the party whose terms extend beyond the following January, and the chairperson and vice-chairperson of each county committee also are members of the Platform Committee.

The Platform Committee is intended to be the general policy-making agency of each party. Although the platform is the principal (and often the only) matter brought before the committee, it cannot be formulated by several hundred people in a short time. Well before the last Tuesday in August, when the Platform Committee meets in Topeka, party leaders—especially the candidate for governor—are likely to appoint subcommittees who tour the state, soliciting platform proposals from interest groups. Long before the committee session, the subjects to be included in the platform, as well as appropriate phrasing and language, are considered by party leaders, the gubernatorial candidate, and other interested groups. The work of the Platform Committee often consists principally of the formal adoption of a draft that has been prepared well in advance. The statute calls for the approved platform to be made public by not later than 6:00 p.m. on the day following adjournment of the Platform Committee, and for a copy to be filed with the secretary of state.

## Methods of Nomination in Kansas

There are several ways in which persons may place their names on the ballot at the general election. The most common is the direct primary, which is required for all national, state, district, county, and township offices. Primaries are not held for city elections in cities of fewer than 5,000 people, and are held in some cities with larger populations only if there are more than two candidates for each vacancy.

While primaries frequently are thought of as elections *within* a political party, they are not limited to partisan elections. In nonpartisan elections, primaries are used to reduce the field of candidates so the winner will truly represent a majority of voters.

To become a candidate in a primary, one must either file nomination papers, accompanied by a petition signed by a requisite number of voters, or file a declaration of intent and pay a filing fee that varies with the office sought. In a partisan primary, the candidate receiving the highest number of votes becomes the party nominee for the office in question; in a nonpartisan primary, the two candidates with the largest number of votes are nominated for each vacancy.

In a partisan election, a candidate may run as an independent if she or he files *before* the primary. This automatically prohibits any candidate defeated in the primary from having a second chance by filing as an independent for the regular election.

In the event that a party candidate, nominated in the primary, should be unable to run in the general election because of death, disqualification, or retirement, the party may name a candidate by means of a convention of the party committee for the jurisdiction concerned. For offices or elections for which primaries are not held, nominations are made in a manner similar to the procedures by which candidates get their name on the ballot for a primary election. In cities that have partisan elections but do not have primaries, nominations may be made by caucus or convention of party members.

## **Election Administration**

The close election and recounting of votes in the 2000 presidential election in Florida has sparked an almost nation-wide review of election procedures and mechanics. The 2001 Kansas Legislature has been asked to review procedures in the state. From the perspective of the federal government, elections—even those for federal office—have been viewed as “state” matters. But from the state perspective, elections have been viewed for many purposes as “county matters.” One report notes that in Kansas, 81 counties use optical scanners, 21 use paper ballots, and three use voting machines. In general, the goal is to determine the “intent of the voter.” In considering the Florida election recount, the U.S. Supreme Court noted the absence of uniform rules between counties to determine the intent of the voter, and directed that uniform rules were required under the “equal protection of the law” clause of the 14th Amendment to the U.S. Constitution. It is uncertain at this writing how this ruling will affect Kansas and other states.

Registration is a means of identifying voters and ascertaining that they possess the qualifications prescribed by the state constitution. The Kansas Legislature has the power to require voters to establish their eligibility to vote prior to an election. As early as 1869, the legislature passed a registration law for persons living in cities of the first class. The law was expanded 10 years later to include persons in cities of the second class, and in 1971 was extended to all areas of the state.

The county election officer (the county clerk in all but the four most populous counties) may appoint city clerks in first- and second-class cities to act as deputy county election officers for the purpose of registering voters. Voters may register at any time during the usual office hours of the registration officer until 20 days before the election, at which time the registration books are closed and the final voter lists prepared for use at the polls. Some counties make it easier for people to register by stationing deputies at supermarkets, shopping centers, and other crowded locations. In 1976, the legislature began to allow registration by mail. Proposed national legislation would permit voters to register at the time and place of the election.



**Figure 16**  
**Citizen's Election Calendar**

	Aug. 06*	Nov. 05	Feb. 25*	Apr. 01	Aug. 03*	Nov. 02	Mar. 01*	Apr. 05	Aug. 01*	Nov. 07	Feb. 27*	Apr. 03	Aug. 05*	Nov. 04
	2002	2002	2003	2003	2004	2004	2005	2005	2006	2006	2007	2007	2008	2008
<b>National Offices</b>														
Pres. & V. Pres.					X	X							X	X
U.S. Senator (1)	X	X											X	X
U.S. Senator (2)					X	X								
U.S. Representatives	X	X			X	X			X	X			X	X
<b>State Offices—Const.</b>														
Gov. & Lt. Gov.	X	X							X	X				
Att'y. General	X	X							X	X				
Sec'y. of State	X	X							X	X				
State Senators					X	X			X	X			X	X
State Representatives	X	X			X	X			X	X			X	X
Members State Bd. of Educ.	4-yr. Staggered Terms—Elected by Bd. of Ed. Districts													
Sup. Ct., App. & Dist. Judges	Varies													
District Attorneys/Some Counties					X	X							X	X
<b>State Offices—Statutory</b>														
Com'rs. of Insurance	X	X							X	X				
State Treasurer	X	X							X	X				
<b>Local Offices</b>														
County Com'rs.	4-yr. Staggered Terms—Elected by Districts													
County Attorneys/Some Counties					X	X			X	X			X	X
County Clerks					X	X							X	X
County Treasurers					X	X							X	X
County Reg. of Deeds					X	X							X	X
County Sheriffs					X	X							X	X
Township Bd. (Trustee, Treas., & Clerk)	4-yr. Staggered Terms													
Precinct Committeeman & -woman	X				X				X				X	
City Governing Bodies			X	X			X	X			X	X	Some 2-yr. & 4-yr. Terms	
School Boards			X	X			X	X			X	X	Some 4-yr. Terms	
Some Special Districts			Varies											

\* Each primary is preceded by a period for nominations.

The registration officials are required to keep their offices open beyond normal office hours the last three business days before the closing of the registration books. Registration is now permanent throughout Kansas, except that a change of name or address or the failure to vote in a general election necessitates re-registration.

Kansas statutes permit registration of persons who are under the age of 18 but will become 18 before the next general election. Since the registration requirements for the general election apply also to the primary, the attorney general has ruled that persons who will be 18 by the time of the general election are entitled to register and vote in the primary.

The secretary of state and the county clerks or election commissioners are key officials in national, state, county, and township elections. Nominating petitions or declarations of intent to run in the August primaries are filed with these officials before June 20 of an election year. Candidates for offices above the county level file with the secretary of state; candidates for county, township, or special district office file with the county clerk or election commissioner. In counties with more than 130,000 people, county election commissioners assume the election duties of the city election commissioners and the county clerks.

In addition to receiving nomination papers, county clerks and election commissioners arrange for publishing the official notices of the election and of the candidates. They and their deputies process applications for absent-from-state and other ballots, and draw up the poll books for the precinct election judges. They prepare the form of the ballot, rotating the candidates' names so the name of each candidate will be at the top of the list for his or her office on approximately the same number of ballots. They oversee printing of the ballots and distribute them to the polling places.

Under the Campaign Finance Act of 1974 and amendments to it, candidates and political parties are required to appoint treasurers to handle their funds. The treasurers are required to make four reports to the secretary of state during election years. Reports are timed to give opposing candidates access to them, for use as they see fit in their own campaigns.

After the election, the Board of County Commissioners officially canvasses the returns from each polling place, and the county clerk or election commissioner issues a certificate of nomination or of election to each successful candidate. Later the county commissioners apportion the costs of the election among the townships and cities.

In general, the secretary of state performs the same duties for district and state offices as the county election official does for county and township offices. The secretary of state receives nomination petitions, arranges the form of the state and district ballot, helps administer some of the absentee voting laws, assembles election returns from each county, and acts as a member of the State Canvassing Board.

City elections are conducted in the spring, the city clerk acting as chief administrative official. The governing body of a city acts as canvassing board. Members of the boards of education of unified school districts are elected on the first Tuesday of April in odd-numbered years, at the same time as city elections.

On the Kansas ballot, candidates are grouped by office rather than party. Voters must mark their choice for each position; they are not able, by making a single mark, to cast a vote for all the candidates of one party. The names of the candidates for each office are listed, followed by their postal address and, on the general ballot for a partisan election, by their party designation. In nonpartisan elections, the name of the candidate is the only identification appearing under the title of the office.

For each office, a blank line is included. Thus, voters may "write in" a candidate whose name does not appear on the ballot.

## Voting

The original suffrage provision of the Kansas Constitution stated that the voting privilege should be extended to white male persons 21 years of age or older who had resided in Kansas for at least six months and in the township or ward for at least 30 days, and who either were citizens of the United States or had declared their intention to become citizens.<sup>4</sup> Persons under guardianship, those who were "non compos mentis" or insane, and those who had been convicted of treason or a felony (unless their civil rights had been restored) were specifically denied the right to vote.

By an amendment in 1867, persons who had been dishonorably discharged from the military service of the United States, found guilty of defrauding the government of the United States or any state, or found guilty of giving or receiving a bribe, also were denied the right to vote.

Two other amendments to the suffrage provisions were proposed at this time: one to eliminate the word "white" from the suffrage requirements, the other to eliminate the word "male." Both proposals were defeated by decisive margins. With the ratification of the 15th Amendment to the U.S. Constitution in 1870, the word "white" became obsolete in the Kansas suffrage provision.

While the plea of women for the vote was rejected at the Wyandotte Convention, the legislature in 1861 did allow women to vote in school district meetings.<sup>5</sup> Thirty-six years later, the legislature granted them the right to vote in city and school elections. In 1911, an amendment allowing equal suffrage for Kansas women was adopted.

Prompted by the war environment in 1917, a strong majority of voters passed an amendment restricting suffrage to citizens of the United States. From 1917 until 1971, the Kansas suffrage laws provided for general suffrage for all citizens over 21 years of age, with certain exceptions. In 1971,

the voters approved lowering the age from 21 to 18. A whole new article on suffrage was approved by the voters in 1974, at which time durational residence requirements were dropped.

The people of Kansas, like those of other states, make limited use of their voting privileges. Normally about one-quarter of those who are eligible vote in primaries, and approximately one-half of those who are eligible vote in general elections in non-presidential years. More people vote in presidential elections, but seldom do as many as 70 percent of eligible voters exercise that right.

## **Absentee Voting**

Inevitably, some eligible voters must be absent on election day from the precinct or township in which they reside. The number of absent voters may seem so small as to be of little significance in the outcome of most elections. In close elections, however, the absentee vote can be considerably important.

Kansas has had absentee voting laws for military personnel since its inception. In 1901, absent railroad workers were provided for, and in 1911,<sup>6</sup> this law was amended to include the public. Today these laws mostly affect voters who are absent from their homes, are serving in the military, or are sick or physically disabled.

During World War II, when many eligible voters were serving in the armed forces, the federal government passed an act to facilitate their voting.<sup>7</sup> The Kansas Legislature in 1942 enacted a law permitting Kansas citizens serving in the military forces to take advantage of the provisions of this federal law. The Kansas law was amended in 1953 to include times of emergency as well as war, and to apply to military dependents<sup>8</sup> and others in the federal service.

Today any registered voter may apply for an advance ballot as late as the Saturday preceding the election in which the vote will be cast. Advance ballots are available at least 20 days prior to the election and may be submitted at any time prior to election day.

## **Initiative, Referendum, and Recall**

There is no provision in the Kansas Constitution for citizens either to initiate state laws or propose amendments to them. On the other hand, referendums are required by the constitution under three circumstances: (1) Proposals made by two-thirds of the legislature to amend the state constitution are submitted to the voters for ratification. (2) Direct approval of the voters is required if the state wishes to borrow for purposes other than repelling invasion, suppressing insurrection, or defending the state in time of war. (3) All banking laws must be submitted to the voters before going

into force, but by judicial decision this provision has been construed to apply only to laws concerning banks having authority to circulate currency.<sup>8</sup>

Initiative, referendum, and recall were elements in a package of reforms introduced in Congress in the early 1900s for local governments. In 1909, the Kansas Legislature allowed voters in first- and second-class cities to initiate ordinances by petition. These two laws were repealed in 1975, and a new law applying to all cities was enacted. Under this law, 25 percent of the voters in a first-class city or 40 percent of the voters in a second- or third-class city may propose an ordinance, which the governing body must either enact or submit to the voters.<sup>9</sup>

Interest in the initiative was revived by Governor Joan Finney, who incorporated it into her populist campaign; she subsequently urged the 1991 legislature to adopt both the constitutional and statutory initiatives, but the legislature was not willing to act.

Kansas has experimented with recalling public officials.<sup>10</sup> In 1974, as part of the revision of the election article of the constitution, the voters approved a broad recall provision directing the legislature to establish the procedures and grounds for recall. This was done in 1976.

The 1976 legislation provides a two-stage procedure for all statewide officers, members of the legislature, and members of the Kansas Board of Education. A preliminary petition of 10 percent of the voters and 100 sponsors is required to file an application with the secretary of state. If the secretary of state finds the application legally sufficient, he or she prescribes the form of the petition for recall. An election must be held if these petitions are signed by a number of voters equal to 40 percent of the votes cast for that office in the last election.

Although there are different requirements for sponsorship, the procedures are much the same for local offices—except that the county election officer is involved rather than the secretary of state. In both instances, the question of whether the specified official shall be recalled is presented directly to the voters. If the majority vote in the affirmative, the office is declared vacant and is then filled according to the law specific to that office.

## Chapter 5 Notes

1. W.W. Admire, *Political and Legislative Handbook for Kansas* (Topeka, Kansas: G.W. Crane and Co., 1891).
2. Marvin A. Harder, "Electoral Politics in Kansas: A Historical Perspective," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 37-73.
3. Marvin A. Harder, "The Decline of Party Organization," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 145-149.
4. *Kansas Constitution*, Article 5, Section 1, as it existed before 1917.
5. *Kansas Session Laws*, 1861, Chapter 76.
6. *Laws of 1911*, Chapter 181.
7. Public Law 712, 77th Congress.
8. *State v. Dietrick*, 117 Kan. 105.
9. K.S.A., 12-3013.
10. See the third edition of this book for a discussion of this history.



## Chapter 6

# The Governor: The Person and the Job

A recurring conundrum of democratic government is how much power should be given to the chief executive. Efficiency seems to require that the chief executive should have the sole responsibility and the accompanying power to administer the laws. Yet the possibility of abuse of power suggests that executive control should be scattered among many officials. The evolution of the position of governor in the American system of state government reflects assorted attempts to solve this perplexing problem.

Because of their experience with colonial governors, who in 11 of 13 colonies were the appointees of the disliked British monarch, the framers of early state constitutions showed a distinct mistrust of the executive. Consequently they made the executive subordinate to the legislature. In most cases the governor was not given veto power over legislation or the authority to call or dissolve the legislature. He possessed limited power of appointment and removal. Other officers in the executive branch were appointed by the legislature and responsible to it. Only in New York and the New England states was the governor elected by the people; in the other states the legislature appointed him.

During the 19th century, American governors gradually gained power, and election by the people became the common way of selecting them. Their term of office was extended from one to two years, and in some states to four. The legislature came to have less control over the appointment of executive officers—but this did not automatically mean the governor gained power, for more and more executive officers were elected. The prevailing



idea was that democratic government would be more secure if governmental power were divided.

At this stage, the Wyandotte Convention met in 1859 and drew up the Kansas Constitution. According to this document, the Kansas governor was just one of six elected executive officers. By 1865, after the legislature had held four annual sessions and established the statutory framework of government, the governor had the power to appoint only the officers of the militia and members of six part-time boards, but no full-time administrators. Gradually the governor has obtained more appointive power, and now designates the administrative heads of most important state agencies.

Except for the addition of the item veto in 1904, the constitutional position of the governor remained much the same from 1861 until 1972, when the new executive article was adopted. Some changes that were approved over the years did strengthen the office of governor:

- The term of office was extended from two to four years, making it possible for the governor to put more time and energy into running the affairs of Kansas state government than to running for reelection.
- The number of elected state administrative officials was lowered to four.
- The governor's position in relation to the lieutenant governor was strengthened. The two now run as a team so the governor can integrate the lieutenant governor more fully into the administration and make him or her a more useful assistant.
- The governor has been authorized to submit executive reorganization orders, which become effective unless either chamber of the legislature disapproves. Through this device, the governor has been able to stimulate executive reorganization.

Informal leadership of the legislature and political leadership of the state are important avenues for augmenting the governor's powers, but they are so intangible that they cannot be measured. It is clear that the power and authority of the office of governor have increased since Kansas became a state in 1861.

## **The Person**

Unlike earlier proposed state constitutions, the Wyandotte Constitution did not establish any requirements for the office of governor except to forbid members of Congress or officials of the state from holding the office. This requirement was dropped in 1972 when the new executive article was adopted. The four state officers now provided for in the constitution (governor, lieutenant governor, secretary of state, and attorney general) are to have such qualifications as may be required by law. The legislature has not established formal qualifications.

However, informal qualifications seem to exist in the minds of the voters. Until 1990, when Joan Finney was elected governor, there seemed to have been an informal guideline that a woman could not serve. No woman had even been nominated, but now this tradition has been broken. In various periods of the state's history the pattern has been different, but legislative leaders recently have been favored by voters to become governor. Of the 10 persons elected governor since 1950, five had served as state legislative leaders before their election. Two were elected with private business as their immediate background, two had served as attorney general, one (Finney) was state treasurer, and one was secretary of state.

Voters seem to consider whether the candidate has a pleasing personality. Is she or he tactful and a good speaker? To what organizations does the candidate belong? Is she or he married, with children? Is the candidate intelligent without being an "ivory tower intellectual"? Is he or she known to be honest, temperate, witty, and just plain "human"? What is the candidate's occupation? Is she or he a "God-fearing" person who holds membership in a church? Has she or he had military service? Is the candidate a longtime resident of the state? Is she or he experienced in public affairs?

A candidate need not satisfy *all* these informal requirements, but will have to meet a considerable number of them. These are the kinds of qualifications party leaders look for in the candidate they will support at the primary.

An examination of the backgrounds of the 38 men and one woman who have been elected governor of Kansas reveals that 22 were in their 40s when elected.<sup>1</sup> Twenty-four had prior experience in the state legislature, and many had experience either in state administrative office or local government. Thirteen of the 39 governors were attorneys and six were newspaper journalists. Five had been bankers and six were farmers or livestock ranchers.

Eight of the governors elected since 1900 were Democrats. Not all governors have announced their religious preferences, but of those announcing, all except one have identified with Protestant sects. Early governors were not active joiners, but later incumbents have belonged to a number of associations. All but one had experience in public affairs at the time of election; the nature of this experience is shown in Table 10. All but one governor were married, and he had an unmarried sister who made her home with him and served as hostess at the executive mansion.

## **The Office**

The office of governor may be described in many ways, but especially helpful is a 1981 study by Marvin A. Harder titled "The Governor of Kansas," with the descriptive subtitle "An Analysis of Decision-making Opportunities, Constraints and Resources." Parts of his work are summarized on the adjoining page.

## The Roles of the Governor

1. The governor as appointer: A governor begins to recruit the men and women of his administration the moment he is elected.
2. The governor as policy developer: A governor must rely on his own staff for the preparation of his legislative program.
3. The governor as policy bargainer: A governor will be involved in bargaining with legislative leaders about the "laundry list." The laundry list includes the high-priority policy interests of both parties.
4. The governor as policy implementor: Governors are policy implementors. That means that they communicate with agency managers, directing their attention to obstacles that arise in the implementation of policies and programs.
5. The governor as adjudicator: Governors are judges in two respects. Informally, they hear appeals from one or more agencies involved in a jurisdictional or some other kind of controversy. Formally, they receive petitions for clemency, for commutations of sentences and pardons.
6. The governor as crisis manager: The crises a governor most often faces in Kansas are caused by emergency weather conditions, loss of or threat to life and property resulting from tornadoes, droughts, floods, or blizzards. Occasionally the crisis is of human origin.
7. The governor as representor: Though the governor is expected to represent the people of Kansas at various in-state meetings, at which his presence is often purely ceremonial, it is outside the state that the governor may influence public policies in the performance of his representor role.
8. The governor as representative: The representational role is performed by reading mail, answering letters, receiving telephone calls, receiving visitors, and attending meetings in various cities and towns in the state. Because nowadays a governor is expected to be a representative, his office is provided resources to assist him.

**Conclusion:** The roles of a governor have been described in different ways. The eight roles described and analyzed above are certainly not mutually exclusive.

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Source: Marvin A. Harder, *The Governor of Kansas: An Analysis of Decision-making Opportunities, Constraints and Resources* (Topeka, Kansas: KU Capitol Center, 1981).

The person, the powers, and the times interact to determine how the office of governor works.<sup>2</sup> Harder, who had the advantage of serving on several occasions in the governor's office, analyzes some of the possibilities and factors that restrict the governor's authority.

In Kansas the governor is elected at the general election in nonpresidential years. The candidate receiving the largest number of votes is declared the winner, even if this number is not a majority of the votes cast.

The governor's term of office begins on the second Monday of January following the election, and lasts four years. From 1860 until 1974, governors were elected for two-year terms. When the new executive article was adopted in 1972, arrangements were made for four-year terms beginning in 1975. Until then, although there had been no restriction on the number of terms, only one governor served more than twice. Until 1974, of the 35 governors, 19 were elected for two two-year terms and one was elected for four consecutive two-year terms. Now a person may not serve more than two successive four-year terms as governor.

According to the Kansas Constitution, the governor (like all other officers under the constitution) is subject to removal from office "on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." The House of Representatives draws up articles of impeachment and then appoints a board of managers to present the articles to the Senate. Concurrence of two-thirds of all senators is necessary for conviction. Impeachment proceedings have been instituted only once, against the first governor, Charles Robinson—but the Senate failed to convict him.

Should a vacancy in the office of governor occur because of death, impeachment, or resignation, the lieutenant governor acts as governor until the term expires. This situation has occurred three times in Kansas history: Nehemiah Green became governor in 1868 when Samuel J. Crawford resigned the governorship two months before his term expired to command the Nineteenth Regiment; Frank Hagaman took over from Frank Carlson for nearly two months in 1950 when Carlson was elected to fill an unexpired term in the U.S. Senate; and Fred Hall resigned in 1957 to accept an appointment by his successor, John McCuish, to the Kansas Supreme Court.

Without the assistance of a personal staff, the governor could not perform the requisite legal and extralegal duties. By statute the governor is authorized to appoint a private secretary, a pardon attorney, and other employees as the governor deems necessary and as appropriations are available. Not being determined by statute, the internal organization of the governor's office varies with the incumbent. Some governors have staff assistants who are on the payrolls of other agencies.

The governor normally has one full-time special assistant for legislative liaison, but during the session additional assistants usually are employed to maintain close contact with the legislature. Former legislative leaders often

are employed temporarily for these duties. Reviewing the bills passed, analyzing their likely ramifications, and coordinating the actions and responses of state agencies to the new legislation is a time-consuming and crucial operation.

Another special assistant has the task of helping the governor make appointments to state boards and commissions, which are so numerous that it is time-consuming to keep the records straight. Even more important from the governor's perspective is the need to ensure that all regions of the state and all party constituents are appropriately included in these appointments (which the governor can use to recognize service to the political party as well as personal support). In a sense this assistant is the "personnel officer" for unclassified appointments.

In 1991 the governor had an executive secretary and a number of special aides such as press secretary and research assistant. The press secretary arranges all news conferences and prepares press releases. Although a large part of the press secretary's time is devoted to public relations, he or she is responsible for keeping the governor informed as to what is happening on the state and national scenes. This involves reading from 18 to 20 newspapers daily, analyzing their contents, and briefing the governor.

Some activities are initiated within the governor's office to provide temporary impetus and prestige; the operation may later move to a different place in the organizational structure. Emergency medical services campaigns and energy conservation programs are illustrations of the type of undertaking that might receive a promotional boost from the governor.

The governor's office budget for SFY 2002 was \$1,972,660 to support a staff of approximately 34. Generally the legislature approves the governor's budget request for the office.

## **The Governor as Chief Executive**

The governor has general supervision over most state agencies. With the reorganizations of the 1970s and 1980s, most of Kansas state government is under one of its 10 "cabinet departments," a name that derives from viewing them as analogous to the cabinet departments at the national level, where secretaries are appointed by the president and serve at the president's pleasure.

Boards and commissions are appointed by the governor, but they are not as directly responsible to the governor as are the cabinet secretaries. Board and commission members, and the administrative officials they appoint, consult with the governor and his or her staff regarding policy matters and furnish information concerning the operation of their agencies. The budgets, financial transactions, and personnel matters of cabinet departments, boards, and commissions are processed through the Department of Administration. Thus, the governor and staff have many opportunities to guide

**Table 10**  
**Governors of Kansas: 1859–1995**  
**Years of Public Office Experience Before Becoming Governor**

Governor	Local Gov't	State Government			National Government			Total
		Adm	Legis	Judicial	Adm	Legis	Judicial	
Robinson (R) 1861–63				1				1
Carney (R) 1863–65				2				2
Crawford (R) 1865–68				1				1
Harvey (R) 1869–73				5				5
Osborn (R) 1873–77				2	3		3	8
Anthony (R) 1877–79				3			3	6
St. John (R) 1879–83				4				4
Glick (D) 1883–85	4			14				18
Martin (R) 1885–89	12			1				13
Humphrey (R) 1889–93				4	6			10
Lewelling (P) 1893–95								0
Morrill (R) 1895–97	6			10			8	24
Leedy (P) 1897–99				4				4
Stanley (R) 1899–1903	7			2				9
Bailey (R) 1903–05				4	2		2	8
Hock (R) 1905–09				4				4
Stubbs (R) 1909–13				6				6
Hodges (D) 1913–15				8				8
Capper (R) 1915–19								0
Allen (R) 1919–23				5				5
Davis (D) 1923–25	7			12				19
Paulen (R) 1925–29	4			2	4			10
Reed (R) 1929–31				3			1	4
Woodring (D) 1931–33								0
Landon (R) 1933–37								0
Huxman (D) 1937–39	6			1				7
Ratner (R) 1939–43	4			6				10
Schoeppel (R) 1943–47	10			3				13
Carlson (R) 1947–50				4			12	16
Arn (R) 1951–55				2			1	3
Hall (R) 1955–57				4				6
Docking, G. (D) 1957–61								0
Anderson (R) 1961–65	6			4	4			14
Avery (R) 1965–67				4			8	12
Docking (R) 1967–75	3							3
Bennett (R) 1975–79	10			10				20
Carlín (D) 1979–87				8				8
Hayden (R) 1987–91				14				14
Finney (D) 1991–95				16				16
Graves (R) 1995–2003				8				8
<b>Totals</b>	<b>81</b>	<b>57</b>	<b>143</b>	<b>2</b>	<b>6</b>	<b>30</b>	<b>0</b>	<b>319</b>

Type of Experience	Governors	Type of Experience	Governors
Local Government	13	State Judicial	2
State Legislative	24	National Administrative	2
State Administrative	15	National Congress	4

*This table includes only those elected to the governorship.*

Sources: James T. Titus, "Kansas Governors: A Resume of Political Leadership," *The Western Political Quarterly*, Vol. XVII, No. 2 (June 1964), p. 364; and additional information for the last seven governors.

and influence the operations of these agencies despite their appearance of organizational independence on the official organization chart.

Because of demands on the governor's time, however, the relatively small staff is able to provide only limited supervision to the many agencies shown in Figure 19 in the next chapter. The result is that some agencies operate with minimal management from the chief executive, and with only casual coordination.

Several important departments are headed by elected state officials and are not directly responsible to the governor. These offices include attorney general, secretary of state, State Board of Education, state treasurer, and commissioner of insurance. A few other administrative agencies come under the direction of the Supreme Court. Through the Department of Administration, the governor and staff are able to exercise some control over the operations of these agencies, but the extent of control is less than for cabinet departments.

Much of the governor's leverage over state government comes from the power of appointment, as most statutes establishing an office provide for the governor to appoint the officials who determine policy. Despite Kansas' administrative reorganization and move to cabinet government, there remain some smaller agencies, advisory commissions, and councils that are headed by boards or commissions. Months or even years may elapse before a new governor has the opportunity to appoint a majority of the members of a board.

Some appointments made by the governor require Senate confirmation, although there is no express provision in the constitution authorizing Senate participation in the appointment process. In 1975 the attorney general intervened on behalf of an appointee of Governor Robert Docking, challenging the constitutionality of the requirement of Senate confirmation of appointments to the Kansas Adult Authority (now the Kansas Parole Board). The Office of the Governor, the Kansas Senate, the Kansas House of Representatives, and the Legislative Coordinating Council were allowed to file briefs supporting the view that the legislature may require Senate confirmation of appointments. The case arose over one of a group of appointments made in the closing hours of the Docking administration. The Kansas Supreme Court held in *Leek v. Theis* (217 Kan. 784) that the concept of separation of powers was not a barrier to Senate participation in the appointment process.

Even when she or he makes an appointment without senatorial consent, the chief executive's choices are somewhat limited. In the first place, the prospective appointee must be willing to serve. In some instances the statutes set forth qualifications of citizenship, residence, and professional competence. Some appointments are limited as to the political affiliation of the appointee. The nine members of the Board of Regents, for example, must be "from among the members of the two political parties casting the highest and second highest number of votes respectively for secretary of state

at the last preceding general election," and no more than five may belong to the same party.

Another limitation regards the place of residence of the appointee. Six boards must include one member from each congressional district; two other boards must include one member from each of six districts set by statute. Even without these restrictions, there is a tendency for gubernatorial appointments to be fairly evenly distributed among the congressional districts; this represents one of the informal requirements the governor tries to satisfy in making appointments. These prompt the governor to ask questions such as: Are all sections of the state represented in appointive offices? To whom do I owe a favor for supporting me in the last election? Is there any party faction that needs a share of appointments?

The governor also may fill vacancies in certain state or county offices, in the supreme or district courts, and in the U.S. Senate. Persons appointed to fill such vacancies hold office until the next general election.

The governor decides which agency programs will be submitted to the legislature, and at what levels of funding. The state budget director reviews agency requests for appropriations and makes recommendations to the secretary of the Department of Administration. Most agencies must be content with the programs and amounts the governor recommends, but sometimes agencies and special interest groups try to obtain moneys beyond those in the governor's budget. Special arrangements are made for each new governor to become familiar with the budget requests before taking office.

Kansas has operated for many years with an unusual legislative executive group known as the Finance Council. Members of the council are allowed to attend budget hearings, but the governor clearly is responsible for submitting the budget to the legislature. Governors have differed in their willingness to involve the Finance Council in the administrative affairs of state—but the governor must always consider the role of the council's legislative members in determining the outcome of budget requests. Until 1976 the Finance Council had to approve the rules and regulations of the Department of Administration, but recent Kansas Supreme Court decisions have transferred certain powers from the Finance Council to the governor.

As chief executive, the governor helps enforce the laws by extraditing criminals and offering rewards. The power of extradition is derived in part from the United States Constitution, which says: "A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

This authorization of extradition was implemented by the Kansas Uniform Criminal Extradition Act of 1937,<sup>3</sup> which superseded earlier laws dating back to territorial statutes. Under this act, the Kansas governor is given the duty "to have arrested and delivered up to the executive authority of



any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state."

Similarly the governor, upon request of the prosecuting attorney involved, is empowered to requisition from the executive authority of any other state the return of a fugitive from that state. In doing so the governor issues a warrant to an agent, commanding the agent to receive the fugitive and convey him or her to the proper officer of the county in which the crime was committed.

Offering of rewards is a second way in which the governor supports law enforcement. The governor is authorized to offer rewards up to \$5,000 for information leading to the apprehension, delivery, or conviction of a criminal.

The governor is authorized to employ special attorneys with the power of assistant attorneys general, to make investigations to ensure that the criminal laws of the state are enforced. Instead of employing his or her own attorneys, the governor may request the attorney general to prosecute in all criminal or civil matters relating to the office of governor.

According to the Kansas Constitution, "the pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law." The legislature has enacted some regulations and restrictions upon the governor's pardoning power: The governor may pardon<sup>4</sup> or commute the sentence of any person convicted for any offense against a state law, provided the governor notify the trial judge and prosecuting attorney of the county in which the conviction took place, and provided the governor give 30 days' notice in the official county paper. Upon granting a pardon or commutation, the governor must certify this action to the clerk of the appropriate district court.

Pardons must be written and attested to by the Great Seal of the State. There are statutory restrictions on commutations, varying according to the penalty. A sentence of capital punishment may be reduced to life imprisonment or to a term of not less than 10 years at hard labor, while any sentence for imprisonment, with or without hard labor, may be shortened. A fine may be reduced. To each regular session of the legislature the governor must communicate a list of all persons who have been pardoned in the preceding year. Governors differ in the extent to which they commute sentences.

The Kansas Constitution provides for a militia which, in general, includes all able-bodied male citizens between the ages of 21 and 45. But in 1885, when the Civil War was over, skirmishes with Indians were winding down, and the need for an active militia had passed, the legislature established two classes in the militia: the Kansas National Guard and the Kansas Reserve Militia. Only the guard functions today. Under the constitution the

governor is commander in chief, appointing the adjutant general as chief of staff. The adjutant general administers the National Guard.

The National Guard has an annual encampment that all its members, both enlisted and officers, are required to attend. The governor, as commander in chief, has the power to order the National Guard into active service "in cases of breaches of the peace, tumult, riot, or resistance to process in this state, public disaster or imminent danger thereof." Any sheriff or mayor may request the commander in chief to call out the guard.

As chief executive, the Kansas governor represents the state in the adoption of interstate agreements. Such compacts cover three areas in particular: rivers (for an equitable distribution of water for use in the Republican River and Arkansas River basins and for automatic changing of the state boundary line as the Missouri River changes its course); oil and gas conservation; and interstate control of crime. The nature of these agreements is discussed in greater detail in Chapter 12. The governor also represents Kansas in all other official business with other states.

When a third-class city attains a population of more than 2,000 inhabitants, the governor declares by public proclamation that it is a second-class city. Similarly, when a second-class city attains a population of more than 15,000, the governor declares by public proclamation that it is a first-class city.<sup>5</sup>

By statute the governor is "authorized and directed" to issue annual proclamations calling for the observance of and display of the flag on the following days: Arbor Day, the last Friday in March; Mother's Day, the second Sunday in May; Flag Day, June 14; American Indian Day, the fourth Saturday in September; General Pulaski's Memorial Day, October 11; and White Cane Safety Day, October 15. Occasionally a law is passed permitting the governor to issue an executive order in the form of a proclamation. Beyond the required proclamations, the Kansas chief executive may issue proclamations to designate a certain day, week, or month as a special occasion. Examples are Newspaperboy Day, Music Week, and Dairy Month.

The governor is an ex officio member of four boards: the State Finance Council; the State Board of Canvassers, which canvasses the results of state general elections and, in case of a tie vote for any state office except governor and lieutenant governor, determines by lot which of two candidates shall be elected; the Kansas Commission on Interstate Cooperation; and the Kansas Armory Board, which obtains and equips sites for armory purposes. The functions of some of these boards are presented in greater detail in other chapters.

## Chief Legislator

The organizational chart of Kansas state government suggests a strict separation of powers between the chief executive and the legislature. This is not the case, for the governor has legislative duties that stem from the constitution and the statutes, and also offers political leadership to the legislature in matters of policy formulation.

Under the 1974 legislative article to the constitution, the governor has 10 calendar days in which to consider bills. This provision frequently is important, for many bills are passed in the last few working days of a legislative session. This causes the Division of Printing to become backlogged, and the governor may not receive an engrossed bill until several days after it has been passed.

No matter what action the governor takes, she or he must record the number and title of each act presented for approval. This record shows the date the bill was received and the date on which the governor either approved it or returned it (with objections noted) to the legislature. Every act that become law, including those that become law without the governor's signature, must be deposited in the office of the secretary of state without delay. Governors vary in the number of bills they veto, but most veto comparatively few—and most vetoes are sustained. Table 11 records the use recent governors have made of the veto.

**Table 11**  
**Use of Veto by Governor: Selected Years**

Year	Number of Laws Enacted	Whole Law Vetoes	Item Vetoes	Number of Vetoes Overridden
1951	527	2	1	0
1961	473	4	1	0
1971	334	16	5	4
1981	398	12	1	0
1988	405	2	9	0
1989	313	2	8	0
1990	368	0	3	0
1992	327	27	12	13
1995	270	3	1	0
1997	192	2	0	0
1998	204	1	13	0
1999	173	0	1	0
2000	184	2	1	0
2001	217	1	1	0

Source: *Kansas Session Laws*.

The governor may veto an entire bill or any of the items in an appropriation bill. Normally the governor vetoes only a few items, and most item vetoes are sustained. But the use made of the veto does not tell the full story. The governor may send word to Senate or House committees, informing them that he or she will veto a bill if it is passed. This action or "veto threat" may be just as effective as a veto itself. The governor has a wide choice of ways to influence legislation and exercise leadership in the arena of lawmaking.

## **Chief of the Party**

The foundation of the governor's legislative leadership stems from his or her position as titular head of his or her party. Sometimes the legislature elects as its leaders men and women who are friendly to the governor and the governor's legislative program. During sessions in which the governor and the legislative majority are of the same party, the governor has held daily conferences with the speaker of the House, the House majority floor leader, the president of the Senate, and the majority leader of the Senate. Sometimes the state party chairperson has met with them. This group, with the governor acting as chairperson, may make "party decisions" on such matters as which bills to push and which to kill. Although the decisions of this group are not documented, the vast majority are accepted by most members of the majority party in the legislature.

Circumstances and personalities are a part of the complex of interpersonal relationships that control the result of these processes. When the governor and either or both chambers of the legislature are of different parties, the relationship between the two branches may become strained or even hostile. This happens within a party, too, as in 1991, when the House Democratic leadership considered—but ultimately did not succeed in overriding—a controversial measure vetoed by the Democratic governor.

In presidential years, the governor often is involved in selecting state delegates and alternates to the national convention of the governor's party—and most governors attend the convention. Sometimes the governor actively supports one of the party's candidates for president.

Delegations call upon the governor to gain support for some piece of legislation, and citizens write to the governor about controversial bills. The chief executive has no vote in the legislature, but people interested in particular legislation recognize the governor's position of leadership. Newspapers recognize this, too, editorially praising the governor's leadership or decrying the lack of it. Although the Kansas Constitution provides that "the legislative power of this state shall be vested in a house of representatives and senate," the governor actually wields considerable power in the legislative process, well beyond that assigned under the formal constitutional division of powers.

Administrative officers, who usually have received their appointments from the governor, consult the governor on matters of policy—but the governor cannot legally force them to do so. Although the governor may not, in some cases, have the power to remove someone from office, he or she exercises considerably more administrative supervision than the statutes indicate.

Another source of the governor's nonstatutory power is the prestige the office holds in the eyes of the people of the state. School children who visit the statehouse—and adults, too—want to see the governor, or at least view the executive offices. The governor is invited to speak at conventions, celebrations, commencements, and the like. Many invitations must be declined, but even so the governor may be away from the capitol for two or three days a week, particularly in spring, when commencements and conventions are abundant.

When people want something done, they often write directly to the governor, whether the favor concerns a parole for a cousin, a job with the state for a friend, or a slot at the state medical school for a daughter or son. In a very real sense, in the minds of the people, the governor *is* the head of Kansas state government.

## Chapter 6 Notes

1. The principal source for this paragraph is an article by James E. Titus in the *Western Political Quarterly*, Volume XVII, No. 2, titled "Kansas Governors: A Resume of Political Leadership." I have brought his article up to date by adding information on the six most recent governors.
2. For analysis of how the whole environment of the state interacts to affect how a governor may operate, see Marvin A. Harder, "The Kansas Environment," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 5-11.
3. K.S.A., 62-727 to 757.
4. A pardon is a complete release from an unexpired sentence; a commutation is a reduction of a sentence or penalty.
5. In 1953 the legislature allowed cities to stay in their class even if they exceeded the minimum population for the next class.



## Chapter 7

# Structuring the Executive Branch

After establishing the three grand branches of government, the Wyandotte Constitution left to the legislature the primary responsibility for organizing these branches. Governors could and did make *recommendations* to the legislature. But it was not until 1972 that the governor's hand in reorganizing the executive branch was strengthened with a new executive article allowing the governor to issue executive reorganization orders that go into effect unless either the House or the Senate passes a resolution disapproving the order.

With its 40,808 full- or part-time employees, executive department management and direction is a task that extends well beyond the Office of the Governor. Leadership and direction come from the governor and his or her immediate staff, but many others are in the chain of command.

Some governors and legislatures have structured and restructured agencies in search of the most efficient means of organizing the executive department; other administrations have chosen not to tamper with restructuring. Statewide interest has tended to correspond with nationwide periods of administrative reorganization. Kansas in the 1950s, for example, had its own "little Hoover Commission," paralleling the efforts of the national Hoover Commission to restructure the U.S. executive branch.

### **Trends in State Administrative Organization**

Many of the present problems of state government arise from the mushrooming of state functions during Kansas' century of existence. Figure 17 shows the relatively simple outline of administrative agencies in 1865. The



growth of state agencies manifests dramatically when this organizational chart is compared with the state's current one.

## History

Table 12 shows growth in the number of state agencies from 26 in 1865 to 142 in 1950. The classification of agencies by major function at various intervals suggests the changing nature of state government, from primarily regulatory to service-oriented.

When the Commission on Executive Reorganization conducted its study in January 1971, it listed "nearly 200 executive branch agencies." Although the statutes define an agency, there are many subtleties of definition that may explain how various studies count dissimilar numbers of agencies.

The huge number of separate agencies presents problems of coordination. Organizational charts tend to oversimplify complicated relationships between the governor, the boards or commissions, their executive secretaries, the legislature, and affected interest groups. The administrative structure seems to have grown unheeded over the century, with little attention to any pattern or design. Various parts of Kansas state government have existed as quasi-independent agencies, operating with limited knowledge of the operations and functions of other agencies.

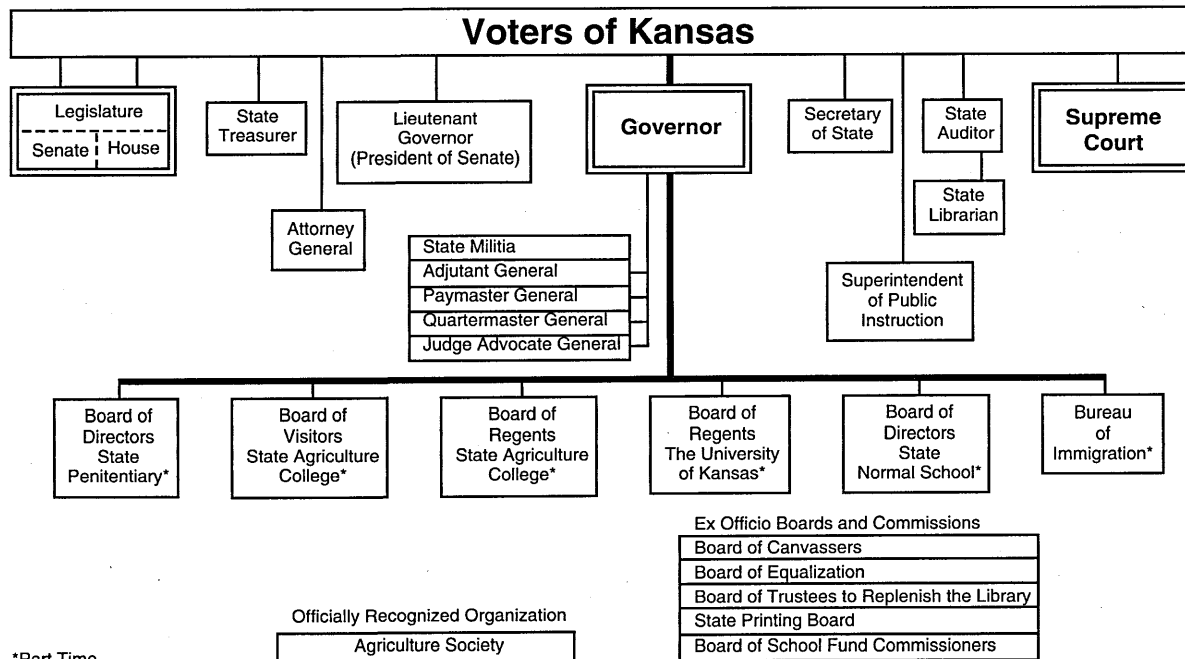
During most of the state's history, the practice was to have boards or commissions manage the state agencies. Normally the board or commission was appointed by the governor, and the board in turn appointed a secretary or executive director to supervise the day-to-day operation of the agency in conformance with whatever policies the board determined. There were wide differences within state organizations as to how this system actually operated. The governor's interest, time, and experience; the area of operations; the immediate past history of the board's personnel; and the apparent concern of the public all were factors influencing how much attention the agency and its governing body received.

Similarly, the board members may be active or may let the secretary have a free hand in running the agency. The experience, knowledge, philosophy, and popularity of a board's secretary or executive director greatly affect the way the agency is administered and operated. The organizational charts of Kansas state government show only the *formal* patterns of relationships between the governor, the boards, and the secretaries. They do not attempt to portray the casual relationship patterns that correspond with the wide variation in operating conditions and personal interactions.

The board or commission type of organization fitted nicely into this pattern of state government. New agencies normally were created as the result of a perceived need, of which a segment of the state's citizens had been able to persuade the legislature. Special interest groups were anxious to see that "their" agency functioned properly, and to have sympathetic persons in

Figure 17

Organization of Kansas State Government: January 1, 1865



Source: Jack F. McKay and Howard Hallman, *A Survey of State Governmental Organization in Kansas, 1865–1950* (Lawrence, Kansas: Bureau of Government Research, University of Kansas, 1950).

Table 12

**Number of State Offices, Agencies, Departments, Ex Officio Boards,  
and Institutions\* in Kansas by Function:  
Selected Years**

	1865	1885	1905	1925	1950
I. General Government . . . . .	11	17	22	20	35
II. Protection to Persons and Property . . . . .	4	7	13	10	26
III. Highways and Trans- portation . . . . .	0	0	0	2	2
IV. Natural Resources . . . . .	1	7	12	16	17
V. Health . . . . .	0	0	5	10	11
VI. Hospitals and Institutions for the Handicapped . . . . .	0	5	6	8	9
VII. Correction . . . . .	1	2	5	6	6
VIII. Education . . . . .	7	8	15	17	14
IX. Public Welfare . . . . .	0	1	4	5	7
X. Miscellaneous . . . . .	2	2	1	7	15
<i>Totals</i> . . . . .	26	49	83	101	142

\*Because institutions now are tallied separately, these totals are not comparable to those in later studies.

Source: Jack F. McKay and Howard Hallman, *A Survey of State Governmental Organization in Kansas, 1865-1950* (Lawrence, Kansas: Bureau of Government Research, University of Kansas, 1950), p. 14.

charge of it. To the extent that such agencies could be freed from gubernatorial control, these groups had little to fear—even from an unsympathetic governor.

Board- or commission-run agencies had their own special funds and, for the most part, their own personnel and support. The boards and commissions seemed desirable as a means of representing regions of the state and a host of interest groups. It was assumed that the wisdom of three or five commissioners would be greater than that of a single administrator. In a board type of organization, each of the two political parties could have some representation. This was consistent with and encouraged by widespread distrust of the executive, which can be traced back to colonial times.

The use of boards and commissions was further encouraged by efforts to compartmentalize state government and to have nonpartisan administration for certain state operations. For example, the professional social worker, the professional educator, and the citizens who supported these functions

wanted program administration to be insulated from partisan politics. If such principles are valid for these areas, could they not with equal validity be extended to others? Thus, the pressures are strong for state government to become a collection of semi-independent agencies.

The board or commission style of organization was more tolerable, however, when the functions of state government were few and simple. As the people of the state have come to expect increasingly more sophisticated services, and as state government has assumed many regulatory activities, this type of organization has presented greater difficulties.

## **Moves for Coordinating Activities**

Within the state there are two avenues through which greater coordination can be achieved: the governor and the legislature. But significant problems develop when either of these avenues is tried.

In many ways the governor, as chief executive of the state, is the most likely person to integrate agency activities. It is the governor who normally appoints the boards and commissions. The lengthening of the gubernatorial term to four years, and the creation of 11 cabinet-level departments, have increased the governor's potential to integrate the executive department. Furthermore, the governor, through control of fund requisition by subordinate state executives and control of spending, may exercise substantial authority over the daily proceedings of the executive department.

Despite the governor's substantial power, the extent to which the governor can coordinate state agencies is controlled by the demands on his or her time and energy; some governors have also been limited by their own philosophy of what government should do. A governor, for example, may believe that the executive is but one of three coordinate branches of government, and may envision a restricted leadership role.

The legislature, through its control over agency finances and its power to create and define agency duties, can play a profound role in coordinating and supervising. Through the device of earmarking special funds, the legislature has sought to simplify its problems; but the existence of such funds and their widespread use encourages agencies to have a sense of autonomy. The committee organization of the legislature frequently makes it difficult for the legislature to be an effective coordinator. The special interests that support particular agencies make legislative efforts at coordination even more challenging.

More recent efforts in the 1970s and 1980s have rested, though not exclusively, on the concept of strengthening the office of governor. The obstacles hampering current administrative reorganization can best be understood in the context of administrative history. State agencies have been relatively independent, and there have been few efforts to make Kansas state government a tidy organizational framework in which all lines of authority

lead to the governor. With more activity between sessions of the legislature and expanded legislative staffs, legislative oversight of administration has increased.

The current administrative structure reflects the work of the 1970 Kansas Commission on Executive Reorganization. The commission consisted of four House members, four senators, and eight members appointed by the governor. The group appointed a small staff and met extensively. It accepted the traditional views with regard to consolidating state agencies, and filed a report in 1971 recommending that all of state government be fitted into a framework of eight cabinet departments.<sup>1</sup>

Each chamber of the legislature created a Committee on Governmental Organization, and efforts were made for the two committees to meet jointly. They soon separated, however, each chamber proceeding with legislation to reorganize state government. The committees decided to focus on the two departments that likely would be easiest to reorganize: the Department of Administration and the Department of Revenue, each of which already had a single administrator. Nevertheless, the bills were sufficiently controversial that legislation was not passed until 1972.

That November, the voters approved the new executive article, which provides that the governor may submit reorganization orders. Table 13 shows the development of cabinet-style departments, some of which were created by executive reorganization orders and others by legislation. Even those created by executive reorganization orders frequently were further amended by legislation.

As of 1997, 11 departments had been created in six of the eight functional areas that the commission in 1971 had proposed for restructuring Kansas government, including four departments in the one area of health, social services, and penal; two in the area of economic development, labor, and employment; and two in the area of agriculture and natural resources. Specialization and professionalization, coupled with the interest groups that operate these areas, explain these moves for separateness.

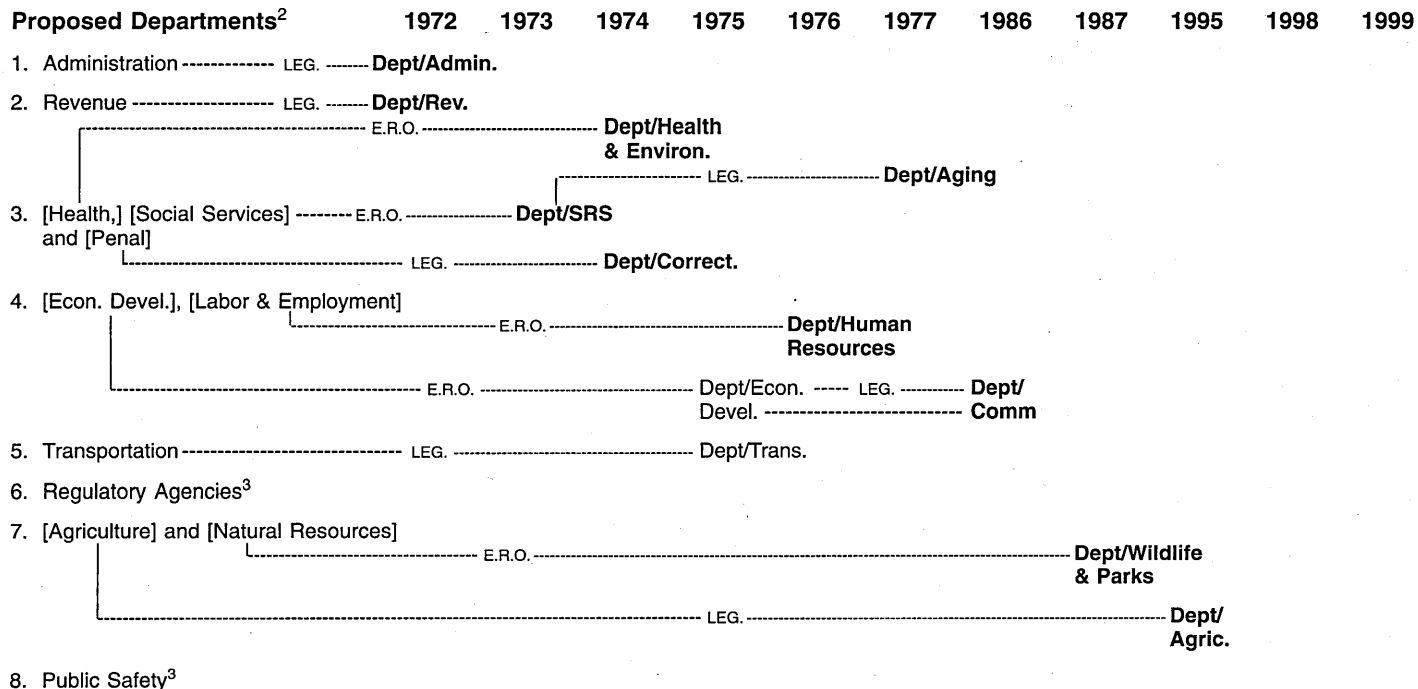
The creation of a new Department on Aging illustrates some of the reasons for these developments. Those who supported the concept of a separate department felt that state programs for the aged received insufficient attention within the Department of Social and Rehabilitation Services. They also objected to having their programs associated with the public-assistance programs of the "welfare" department.

In the original area of economic development, labor, and employment, a department of human resources was established separate from economic development, which later was renamed the Department of Commerce and Housing.

In the major functional areas yet to be reorganized (regulatory agencies and public safety), the legislature considered the creation of a Department of Regulatory Agencies but decided against it. The proposal to create

Figure 18

Major<sup>1</sup> Reorganizations in Kansas State Government: 1972–2001



<sup>1</sup> Chart includes only reorganization involving whole executive departments.

<sup>2</sup> As proposed by The Kansas Commission on Executive Reorganization, 1971.

<sup>3</sup> Reorganization not implemented.

<sup>4</sup> Present departments are in bold type.

LEG.—created by Legislation

E.R.O.—created by Executive Reorganization Order

Table 13

## Summary of Executive Reorganization Orders in Kansas

Year	Order No.	Order
1972	1	Reorganized Board of Social Welfare to Department of Social and Rehabilitation Services.
1973	2	Proposed abolishing of three functions of State Finance Council (disapproved).
1974	3	Created Department of Health and Environment.
1974	4	Proposed Mine-Land Conservation and Reclamation (disapproved).
1974	5	Proposed to allow governor to appoint state auditor and state treasurer (disapproved).
1975	6	Established State Board of Appeals as separate state agency.
1975	7	Established a Consolidated Department of Economic Development.
1975	8	Abolished Podiatry Board of Examiners and transferred duties to Board of Healing Arts.
1975	9	Abolished State Education Commission and transferred duties to State Board of Regents.
1975	10	Abolished Office of Emergency Medical Services and transferred duties to Department of Health and Environment.
1975	11	Abolished Governor's Committee on Criminal Administration and transferred functions to new committee.
1975	12	Proposed to abolish elective office of treasurer of state (disapproved).
1975	13	Proposed to abolish office of Insurance Commission (disapproved).
1976	14	Created Department of Human Resources.
1977	15	Abolished Children's Commission and Transferred to Department of Health and Environment.
1977	16	Proposed Creation of Division of Services for Aging (disapproved).
1978-79*		
1980	17	Abolished Division of Vocational Rehabilitation and established Rehabilitation Services in SRS.
1981	18	Proposed reorganization of Water Board (disapproved).
1981	19	Proposed to abolish Energy Office (disapproved).
1982	20	Established juvenile offender services in SRS (approved).
1983-85*		
1986	21	Reorganization of Department of Agriculture (disapproved).
1987	22	Consolidated Fish and Game Commission and Parks to Wildlife and Parks.
1988-91*		
1992	23	Reorganized Division of Housing within Department of Comm. and Housing.
1992	24	Merged Savings and Loan Department and Bank Commission (disapproved).
1992	25	Separated Department of Health and Environment into two separate departments (disapproved).
1993-97*		
1998	26	Transferred Marketing Division of Department of Agriculture to Comm. and Housing Department (disapproved).
1998	27	Relating to the state's administration of federal Individuals with Disabilities Education Act (disapproved).
1998	28	Relating to Kansas Human Rights Commission Advisory Commission on Hispanic Affairs (disapproved).
1999	29	Established the Commission on Emergency Planning and Response (approved).

\*No reorganization orders were proposed during these years.

a Department of Public Safety raises the issue of how the attorney general should be related to such a department. The circumstances leading to the creation of cabinet-level department status for agriculture are discussed in the chapter on agriculture. Reorganizing education raises other interesting questions as to how this important function should relate to the governor and the executive department. Both higher education and the supervision of elementary and secondary education have constitutional status and separate boards, yet the Division of Budget and the governor review the budgets of both groups.

An analysis of the current administrative organization of the state reveals numerous agencies headed by boards or commissions, and some independently elected officials charged with administrative functions. Figure 19 delineates these agencies. Some have subordinate divisions that by definition could be listed as separate agencies, further complicating the chart. This is particularly true of the educational and welfare institutions. In many cases the institutions have sufficiently large budgets that the legislature considers them individually.

This enumeration of agencies and activities makes it evident that much of Kansas state government still cries to be reorganized. As the demands on government change, the emphasis and thrust of reorganization change. With the creation of 11 cabinet-level departments, great progress has been made, but the executive branch still cannot be described as a closely integrated operation with all lines of authority leading to and away from the governor. (Some would question whether this is a desirable goal.) Because it is important to maintain a system that allows many points of contact with the citizenry, Kansans may decide they do not want an organization that is too neat and tidy.

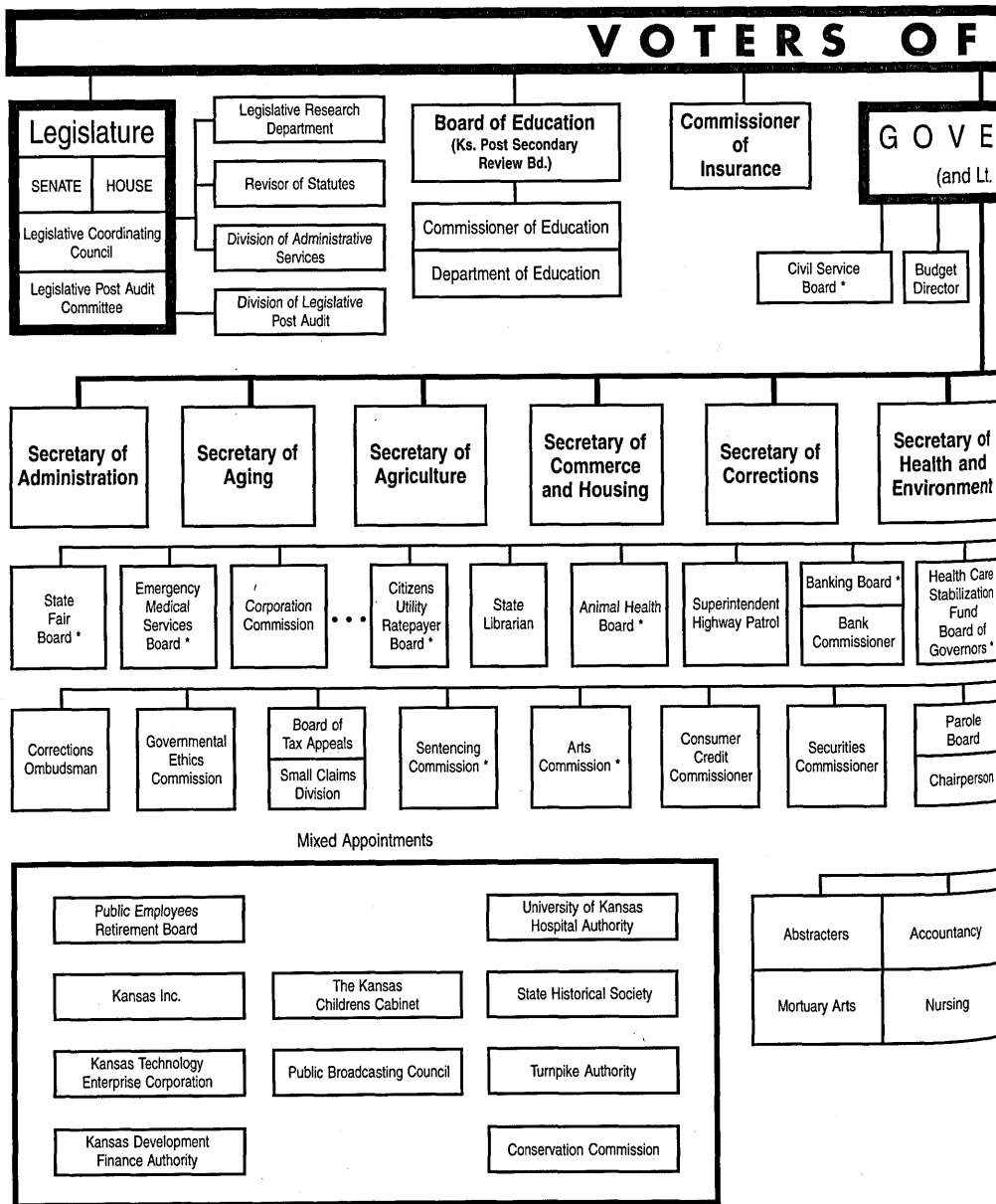
## **Growth of Administrative Rules and Regulations**

Because of the increasing complexity of government regulation, and the need to enforce government regulation in a more systematic way, in 1984 the legislature passed the Kansas Administrative Procedure Act (KAPA) and the Act for Judicial Review and Enforcement of Agency Actions, more commonly known as the Kansas Judicial Review Act (KJRA). Together these acts provide due process in the enforcement of agency regulations.

After World War II, Kansas, like many other states and the federal government, found itself delegating more and more regulatory authority to the executive branch. Because legislatures are ill equipped to determine the details of regulating complex activities, they pass legislation authorizing the executive branch to publish and enforce administrative rules and regulations. The regulation of food service establishments, wastewater discharge facilities, adult and child care facilities, and pharmacies are but a few of the

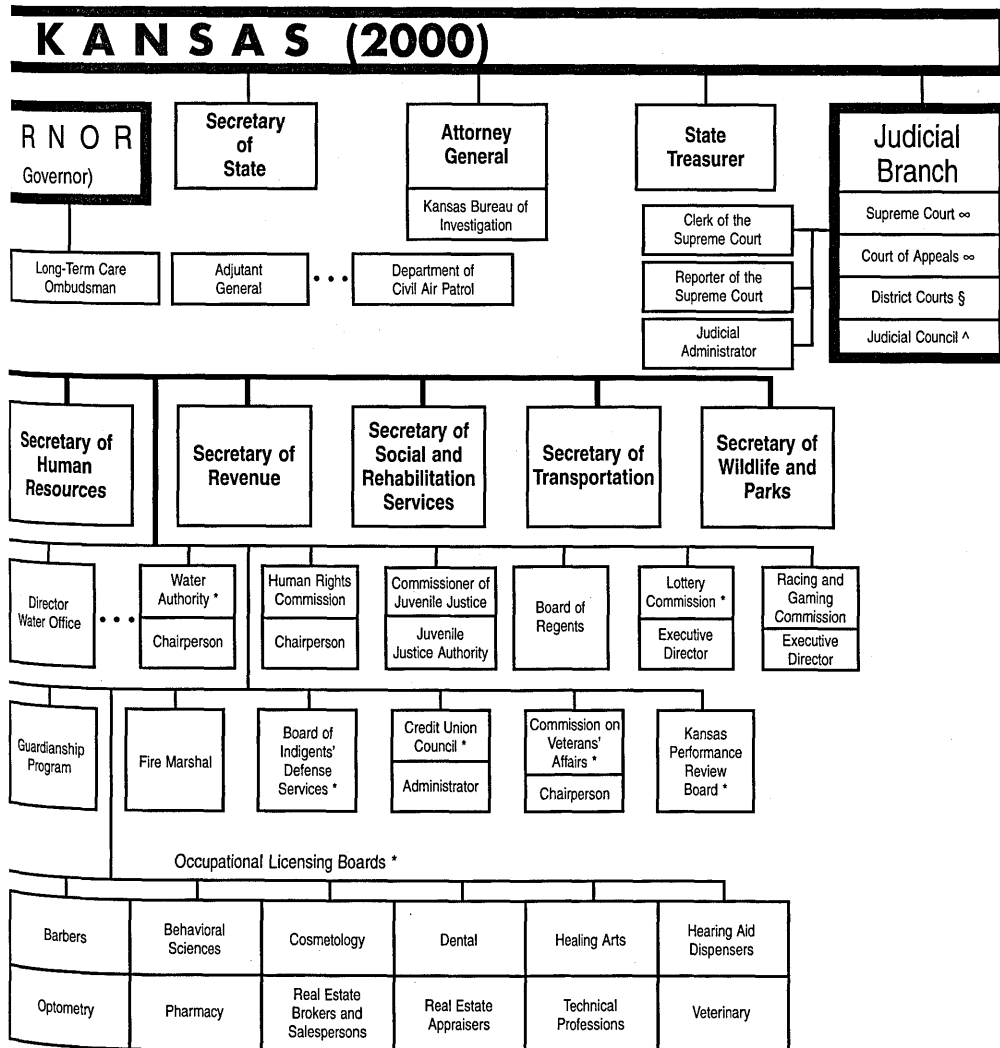


Kansas State Government



Source: Adapted from Kansas Legislative Research Department, September 1996.

Organizational Chart



**LEGEND**

- ^ Chairs of the House and Senate Judiciary Committees serve *ex officio*.
- ∞ Judges and justices are appointed by the governor from nominees of the Supreme Court Nominating Commission. Once appointed, they are retained in office with voter approval.
- § At the option of the judicial district, judges may be appointed by a non-partisan method or directly elected. Appointed judges are subject to retention elections.
- \* Members serve part time.
- Appointing authority
- ... Attached

activities regulated in this fashion. These statutes usually call for sanctions for those who violate those rules and regulations.

Until the passage of KAPA, each set of administrative regulations contained its own set of rules for providing due process to those who incurred sanctions or had licenses denied, suspended, or revoked. KAPA provides a uniform method of due process for most of these regulatory functions, and KJRA provides for review in the courts of agency decisions.

## **Privatizing Kansas State Government**

Over the years there have been various calls to apply private business methods to government and its activities—sometimes under the banner of “economy and efficiency,” and more recently under the call to “privatize” government or to “outsource” what were generally considered “government activities.” This has led to number developments.

In Kansas, without question the most controversial of these actions has been the privatization of foster care services for children (discussed in Chapter 18). There are other simpler activities, like contracting out the processing of payments for health insurance for some retired employees, or buying computer programs instead of hiring computer experts to design them.

In 1994, the legislature, by a concurrent resolution, called for the creation of the Kansas Council on Privatization, specifying the appointment of a diverse group of individuals. Among other broad reasons given for creating the council was this: “The governor and the legislature are in need of specific recommendations that will increase the efficiency and effectiveness of state government, strengthen the role of the private sector, and lead to cost savings and reduce the tax burden of Kansas citizens.”<sup>2</sup> The Koch Foundation of Wichita generously funded the work of the council.

The council reported in 1995, and in 1996 the Kansas Performance Review Board was created by the legislature. The board officially opened its offices July 1, 1997. In SFY 2001, it was authorized three employees. According to its reports, it has made recommendations with cost savings totaling millions of dollars. However, in the 2002 budget, the governor recommended that the board be abolished and the statute repealed “as an unnecessary duplication of state audit activities.”

## **Elected State Officials**

The move to reduce the number of elected state administrative officials has made some progress. The proponents of this reform argue that it is desirable to vote for fewer officials and to make those officials more accountable to the voters.

In 1966, voters dropped the superintendent of public instruction as a constitutionally elected officer, replacing that post with a commissioner of education appointed by an elected state Board of Education. When the new

executive article was adopted in 1972, only four elected officials were provided for: the governor, lieutenant governor, attorney general, and secretary of state. This left the state printer as an official who had to be elected according to another section of the constitution. This situation continued until 1974, when the entire provision on state printing was deleted from the constitution, paving the way for the legislature to establish the Division of Printing in the Department of Administration. Some duties of the state auditor were transferred to the office of legislative post auditor, even before the constitution was changed in 1972 to strike the auditor from the list of elected state officials. More of the auditor's duties were transferred to other state officials, and the office subsequently was abolished.

The office of state treasurer had been established in the constitution and provided for in state statutes. These statutes came into control when the new executive article to the constitution, which did not mention this office, was adopted. In 1974, Governor Docking (a Democrat) proposed Executive Reorganization Order No. 5, making the office of state treasurer appointive. The office at that time was held by a Republican, so the Republican legislature disapproved the order. In the following year a new governor, this one a Republican, submitted Executive Reorganization Order No. 12, making the office of treasurer appointive. By this time, however, a Democrat had been elected treasurer, and she hotly contested the action as a "power grab" by the governor.

At the same time, by Executive Reorganization Order No. 13, the governor had proposed that he be allowed to appoint the commissioner of insurance—an office that had long been provided for by legislation. The timing was such that the legislature considered these two orders almost as a package and rejected both of them. Later the terms of both offices were extended to four years, so all elected state executive officials now serve four-year terms.

The attorney general, the secretary of state, the commissioner of insurance, and the treasurer all engage in administrative functions that are not unlike the work performed by the governor and the persons the governor appoints. These officials are elected by the voters and directly responsible to them, providing a special status and a degree of independence from the governor that is not characteristic of other state administrators. (The commissioner of insurance and the treasurer will be discussed in detail in later chapters.)

### *Attorney General*

"Next to the governor of the state, the attorney general is probably the officer with the greatest power and authority of any officer under our constitution."<sup>3</sup> This is the view of former Kansas Attorney General Harold Fatzer, who cites the multiplicity of the attorney general's duties at both the state and local levels.

The attorney general represents the state in all cases that come before the Kansas Supreme Court, and the governor or legislature may require the attorney general to prosecute or defend the state in the courts of other states or in federal court. The attorney general is required to advise and assist other state officers in all civil matters. The attorney general also is required to render advice and assistance to all 105 county attorneys, and may be asked for formal opinions interpreting provisions of the statutes. A few agencies have an assistant attorney general who does legal work for those agencies, but some attorneys general have urged that the legal work for all state agencies be consolidated in the attorney general's office.

The attorney general is an important law enforcement official. While the director of the Alcoholic Beverage Control Division has been assigned primary responsibility for enforcing the provisions of the Alcoholic Beverage Control Act, the county attorneys and attorney general also have duties in connection with the enforcement of this act. In the event of any failure or alleged failure by a county attorney to enforce criminal laws locally, including alcoholic beverage control, the attorney general may supersede the county attorney in the enforcement of such laws.

The attorney general is also charged with prosecuting all ouster suits against public officials who are alleged guilty of not performing the duties of their offices properly. The attorney general represents the governor in all proceedings for the extradition of fugitives from justice, and exercises supervision over the Kansas Bureau of Investigation.

Whenever a Kansas resident dies without a will or any known heirs, the attorney general represents the state in probate procedures to conserve the estate for the benefit of the state's Permanent School Fund. The attorney general is also required to pass judgment on the validity of all municipal bonds issued in Kansas, and of surety bonds required of certain state officers and employees. The attorney general is a member of the Committee on Surety Bonds and Insurance, the State Board of Canvassers, the State Records Board, and the State Election Board.

In addition to the assistants who are responsible for specific departments such as Consumer Protection, several other assistants are employed in the Office of the Attorney General.

### *Secretary of State*

The secretary of state has been described as the chief housekeeper of state government. This official is custodian of important state papers and performs numerous ministerial tasks important for the successful administration of the affairs of state. He or she is responsible for publishing the *Kansas Directory*; *Election Statistics*; *Legislative Directory*; *Directory of County Officers of Kansas*; *Kansas Facts*; *Kansas Election Laws*; *Trademarks and Service Marks*; and *Constitution of the State of Kansas with Amendments*.

Particularly important is the secretary of state's function as administrator of election laws. He or she receives the filings of candidates for district, state, and national offices, and notifies the county clerks of these filings. The secretary of state receives the abstract of the votes cast for offices in each county. As a member of the State Board of Canvassers, he or she participates in the official counting of county election returns, declares who was elected, and transmits to each chamber of the legislature a list of newly elected members.

Articles of incorporation are filed with the secretary of state. The maintenance of records for 64,000 active and 75,000 inactive corporations is one of the major duties of the office. The office receives the required reports concerning conflicts of interest under the State Governmental Ethics Act and the reports required by the Campaign Finance Act.

Lobbyists must register with the secretary of state, who is the custodian of all enrolled bills and resolutions. When the legislature adjourns, the secretary of state supervises the publication of *Session Laws* and concurrent resolutions, and distributes copies of the laws to the officials entitled to receive them. The secretary of state makes these, as well as *Kansas Statutes Annotated*, available for sale to the public.

### *Lieutenant Governor*

The office of lieutenant governor has been substantially restructured in the past two decades, but the most important function still is to succeed to the governorship should that office become vacant.

Historically, the primary duties of the lieutenant governor were legislative. As presiding officer of the Senate, which the lieutenant governor was for many decades, the duties frequently were quite limited. The senators elected from their own ranks the president pro tem, and it was this officer—rather than the lieutenant governor—who functioned as real leader of the Senate. When the time came to rework the executive article, the legislature proposed and the voters accepted the concept of making the lieutenant governor an officer of the executive department; therefore they deleted the provision that the lieutenant governor be president of the Senate. This action was accompanied by legislation freeing the lieutenant governor from most statutorily imposed duties, making him or her available to assist the governor. In recent years, governors have usually assigned specific duties to lieutenant governors, often appointing them to cabinet posts.

The fact that the lieutenant governor and governor are now nominated and elected as a unit emphasizes the executive orientation of the office. As one who may succeed to the office of governor, the lieutenant governor theoretically should share the governor's philosophy of government. Both Republicans and Democrats strive to field a governor/lieutenant governor team that represents the major population centers of the state.

Contrary to the practice of some states, the Kansas Supreme Court has held that the absence of the governor from the state does not entitle the lieutenant governor to act as governor. The lieutenant governor becomes governor only when the office becomes vacant or the governor becomes disabled. Should the office of lieutenant governor become vacant, the president of the Senate would assume the place of the lieutenant governor on any statutory boards or commissions. The president of the Senate would assume the office of governor if the offices of governor and lieutenant governor both became vacant. If all three offices became vacant, the speaker of the House would ascend to the governorship.

## Chapter 7 Notes

1. Marvin A. Harder, "The Cabinet System," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 217–221.
2. Kansas Senate Concurrent Resolution 1626, 1994 Session.
3. Harold R. Fatzer, "The Attorney General," *Your Government* (Lawrence, Kansas: Government Research Center, University of Kansas, Vol. 5, No. 1, 1949), p. 4.





## Chapter 8

# Taxing and Spending

The revenue structure of the state is complex, and largely the product of unplanned growth.<sup>1</sup> As the functions and services of government have been expanded to meet the changing technological, social, and economic needs of the people, more revenue has been added by turning to new sources of capital or raising tax rates.

In a sense, there is just one source of revenue to the government of Kansas: its people. Every taxpayer is called upon to support the federal government, Kansas state government, the county government, the city government, the school district, and other local government units. The legislature determines what will be taxed in the state and at what rates; it also determines which local units of government may levy taxes, and sets maximum rates of taxation.

Because of the intermingling of functions and activities between governmental units, it is no simple matter to determine fair shares.<sup>2</sup> Local officials act within the framework established by the state legislature in setting the level and quality of services they believe local citizens desire. These decisions may be tempered by the ease or difficulty of obtaining federal or state assistance for particular programs.

This intermingling of funds is evidenced by the fact that the second-largest source of all state revenues (27.1 percent in SFY 2002) is federal grants. In turn, more than 36.3 percent of total state expenditures (all funds) go for aid to local units. Some of these concerns will be discussed in Chapter 12. This chapter emphasizes the revenues collected by Kansas state government for the operations of Kansas state government—and how those revenues are spent.

Kansas has long used a system of special funds to finance state government. One fund, known as the "General Fund," produces about half the dollars needed to operate Kansas government. The rest of the money comes from a large number of special funds. The general and special funds have their own sources of revenue, and usually these revenues are dedicated to the performance of an identified operation, such as student payments to help finance university education; banker's licensing fees to support the banker's board; or gasoline taxes for roads. The legislature has broad control over the setting of revenues to be collected and the expenditures from these special funds.

The existence of special funds both simplifies and complicates the financing of state government. Legislators, interest groups, and the public may disagree as to whether the special funds should be available for a particular activity. Groups that raise funds may claim some right to control the use of those funds, making it difficult for the legislature to balance the needs of the government from function to function. On the other hand, citizens are more willing to pay for services from which they directly benefit. Special funds also encourage the legislature to view parts of state government as separate entities, rather than as a whole.

In addition to the state General Fund and special revenue funds, Kansas has highway funds, trust funds, agency funds, and others. Some are administrative devices to facilitate state operations; others exist to keep portions of state operations separate and fiscally responsible, and to pay state obligations such as bonds for the Kansas Turnpike and for state college campus dormitories.

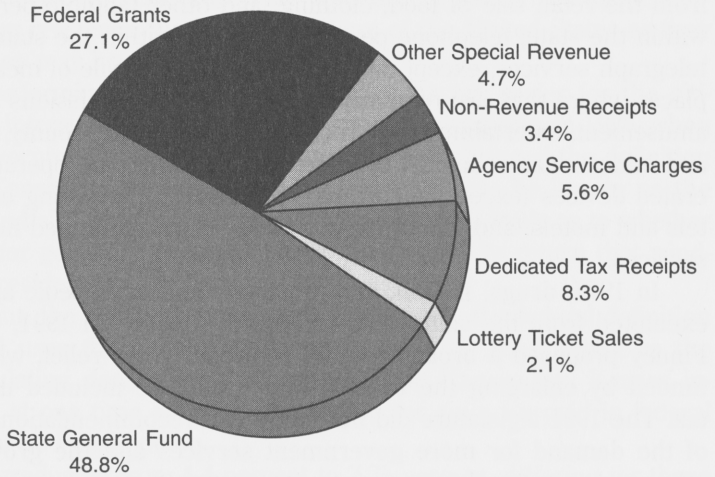
The legislature and the news media tend to pay greatest attention to the condition and soundness of the state *General Fund*, in part because the more widely accepted services of Kansas state government are financed by that fund. There tends to be more competition for dollars in the General Fund because the other funds carry more restrictions. Sometimes confusion arises as to whether statistics and comparisons are being made between revenues and expenditures in the state *General Fund* or in the total of *all* funds. As shown in Figure 20, in SFY 2002 the state General Fund accounted for 48.8 percent of *all* receipts.

In terms of *all* funds in SFY 2002, roughly \$5 of every \$10 is expected to come from taxes, \$2 from federal grants, \$1 from agency earnings and the sale of goods and services, and \$2 from a variety of other revenue sources, including licenses, lottery sales, interest on state funds, and others. This contrasts with the 94 percent of *General Fund* revenues that came from taxes.

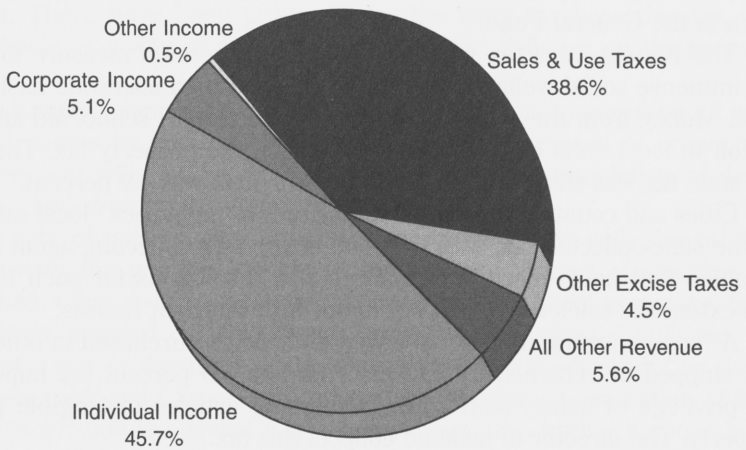
Most people expect to pay their "fair share" of the costs of government. But opinions differ as to what is fair as expressed in tax rates, and upon what the taxes or charges should be based. These decisions are the job of the legislature, and the revenue mix varies from year to year.

**Figure 20**  
**State Revenues: SFY 2002**

**All Funds**



**State General Fund**



Source: *The Governor's Budget Report*, SFY 2002, Vol. 1, pp. 7 and 12.

## Taxes

### *Sales Taxes*

In recent years, approximately one-fifth of all funds have come from the general sales tax of 4.9 percent, which is levied upon the gross receipts from the retail sale of food, clothing, and other tangible personal property within the state; telephone personal property within the state; telephone or telegraph services, except interstate services; the sale of meals or drinks in places where they are regularly sold; the sale of admissions to any place of amusement, entertainment, or recreation except state, county, or district fairs and educational, religious, or charitable activities; the operation of coin-operated devices (except laundromat appliances); the renting of rooms by hotels and motels; and laundries, dry cleaners, and a limited number of other services.

In 1977, drugs, insulin, and prosthetic and orthopedic appliances were exempted from the state sales tax. More recently, in 1991, Governor Joan Finney proposed a broad program of property tax relief, which was to be funded by enlarging the base of what would be included under the sales tax. The 1991 legislature did not follow her recommendations. But because of the demand for more government services and the growing trend for other states to tax these services, the matter surfaced again in 1992 and a few changes were made at that time.

The consumer pays the sales tax to the retailer. The retailer collects the full amount of the tax, and it is unlawful for a retailer to assume the tax. On or before the 20th of each calendar month, every retailer must make a return to the director of taxation. All revenues collected or received from these taxes are deposited each week with the state treasurer, who credits them to the General Fund.

The Kansas sales tax was essentially a Depression measure to pay for the immense social welfare program established on a statewide basis at that time. Money from the sales tax also was to go toward school aid and distribution to local units of government to reduce the property tax. The rate of the state tax was started at 2 percent, and in 1992 was 4.9 percent.

Cities and counties have been authorized to "piggyback" local sales taxes on the state-collected tax, with the state acting as a collecting agent for communities that have enacted ordinances and resolutions for such taxes. To this extent the sales tax rate is not uniform throughout Kansas.

A "compensating use" tax is levied on articles purchased in other states and shipped or returned to Kansas. This is a 4.9 percent tax imposed for the privilege of using, storing, or consuming articles of tangible personal property. The director of taxation collects this tax.

### *Income and Inheritance Taxes*

Kansas amended its constitution in 1933 to adopt a state tax on income. In 1966, the state adopted a withholding plan for collecting the income tax, and a further constitutional amendment allowing for conformity between the federal and state income tax laws. This amendment authorizes the legislature to adopt by reference the income tax laws of the United States as they exist and as they may be enacted by Congress.

Federal conformity makes the collection of the tax easier for the citizen, but raises interesting problems for the state. For example, in 1986, when the federal government lowered its tax rates but also changed the definition of "income," Kansas found itself receiving what came to be known as the "income tax windfall." Charges and counter-charges were made as to whether the candidate for governor eventually kept his promise to return that windfall to Kansas residents.

In any event, the Kansas income tax form accepts the federal definition of income and uses the amount reported to the U.S. government as the basis for calculating deductions and rates for the Kansas tax. Kansas income tax laws at one time allowed a deduction for amounts paid in federal income tax, but no longer do so.

Rates are graduated from 4.4 percent to 7.75 percent, differing for those married and filing a joint return and those filing as singles. A tax is imposed upon income derived through estates from any kind of property held in trust. Individuals in business partnerships are liable for income tax only as individuals. Corporations, on the other hand, pay a tax of 4.5 percent on their income and a surtax of 3.35 percent on amounts above \$50,001.

The income tax has been an important source of revenue for state government. There have been proposals for the state to share this tax with local schools as a way of relieving school district reliance on the property tax.

The Kansas inheritance tax, established in 1901, is imposed on all property that passes by will; by laws regulating the succession of property in the absence of wills; or by deed, grant, or gift in contemplation of death. The tax is levied on nonresidents as well as residents.

The rate of taxation and amount of exemption vary with the relationship between the grantee and the grantor. Three classes of grantees are established: Class A—the surviving husband or wife, lineal ancestors, lineal descendants, adopted children, lineal descendants of adopted children, and spouse of a son or daughter of the deceased; Class B—brothers or sisters of the deceased; and Class C—all others. An inheritance exemption of from \$15,000 to \$75,000 is allowed Class A survivors (the higher amount being for the surviving spouse only), \$5,000 for Class B survivors, and none for Class C survivors. The rate of tax varies by class and amount of inheritance.

*Cigarette and Tobacco Taxes*

A cigarette tax, established in 1927, is levied on all cigarettes sold, distributed, or given away in the state, at the rate of 11 cents a package. Seventy-five percent of the proceeds from the sale of cigarette stamps is deposited to the state's General Fund and 25 percent is distributed quarterly to the treasurers of the 105 counties in proportion to their population. Within the county, the treasurer places half of the amount received in the county's General Fund and distributes the other half among the cities of the county in proportion to their population.

*Cereal Malt Beverage and Liquor Taxes*

An excise tax on cereal malt beverages was added in 1937. The repeal of the prohibition amendment to the state constitution in 1948 led to the Alcoholic Beverage Control Act and a tax on alcoholic beverages in 1949. The rate of the liquor gallonage tax varies with the beverage. Beer and liquor taxes are paid to the director of the Division of Alcoholic Beverage Control and credited to the General Fund.

To provide revenue for county and city use in enforcing the liquor control act, an additional tax of 4 percent on the gross sales of each retail store is collected from the consumer and reported by the retailer. Forty percent of the amount collected is credited to the General Fund, and the remainder goes to the County and City Alcoholic Liquor Control Enforcement Fund. On the 15th of March, June, September, and December of each year, the state treasurer apportions this fund to the counties—50 percent on the basis of population and 50 percent on each county's equalized tangible assessed valuation for the preceding year. Within the county, the county treasurer credits the county's General Fund with 50 percent of the amount distributed by the state, and 50 percent is divided among the cities in the county on the basis of population—regardless of whether they allow alcoholic beverages to be sold.

*Highway User Taxes*

Under the original Kansas Constitution, the state was prohibited from being a party in carrying on any works of internal improvement.<sup>3</sup> The coming of the automobile made this provision unduly restrictive, because it prevented the state from engaging in the important task of building highways.

As early as 1913, Governor George Hodges recommended a constitutional amendment exempting highways and bridges. Each succeeding governor remarked on the inadequacy of the plans of counties and benefit districts for equipping the state with a highway system, and in 1928 the legislature submitted a constitutional amendment to the voters. The amendment was adopted by a four-to-one vote that November. One section of the amendment permitted the state to engage in highway construction, but pro-

vided that no property tax could be levied and no bonds could be issued by the state for the purpose of constructing such highways. Another section gave the state the power to levy special taxes on motor vehicles and motor vehicle fuels, to be used for highway purposes.<sup>4</sup> Additional support for highways comes from operators' and chauffeurs' licenses and manufacturers' or dealers' licenses.

While fees for motor vehicle registrations have varied, the rates established by the 2002 session of the legislature are shown in Table 14. In that year, more than \$137 million is expected from this source.

**Table 14**  
**Schedule of Fees for Motor Vehicle Registration**

Type of Vehicle	Rate
Passenger Cars	\$13.00 to \$35.00
Motorcycles	\$15.00
Trucks and Truck Tractors	\$35.00 to \$1,925.00, depending on weight and use
Trailers	\$15.00 to \$35.00, depending on weight
Electrically propelled vehicles	\$13.00
Buses	\$15.00 to \$60.00, depending on capacity

Source: K.S.A., 8-143.

For years Kansas imposed a ton-mile tax on motor carriers, but in 1955 this tax was repealed. In its place the registration charges on trucks were raised, with higher rates established for trucks traveling more than 6,000 miles per year.

When this tax was enacted in 1925, gasoline was taxed at two cents per gallon. That rate was increased by one cent in 1929, 1944, and 1949; by two cents in 1969; and by one additional cent in 1976. The current rate is eight cents per gallon, collected by the director of taxation. One and three-quarters percent is credited to the State General Fund. Then an amount is withheld sufficient to refund taxes paid on gasoline not used for highway travel, and \$2.5 million is credited to the County Equalization and Adjustment Fund. One-eighth of the remaining amount is credited to the State Highway Fund, and the remaining seven-eighths is divided between the State Freeway Fund (65 percent) and the Special City and County Highway Fund (35 percent).

Different formulas have been used in the distribution of gasoline tax revenues to the cities and counties. Some of the money goes directly to cities on the basis of population, and some goes to the counties for their own use and for further distribution to cities and townships. The money given to cities must be used for streets and highways, and the money given

to counties may be used directly by the county or used to match grants of federal aid to secondary roads.

Since 1931, motor vehicle operators and chauffeurs have been required to be licensed. The licenses are issued by the Motor Vehicle Department only after the applicant has proven his or her competence as an operator or chauffeur. The fee varies with the type of application, but is nominal. Fifty percent of fees received from motor vehicle operators and 25 percent of fees from chauffeurs are credited to the State Safety Fund, which provides money for driver training courses in Kansas schools. The remainder of these fees is credited to the State Highway Fund.

Dealers receive dealer license plates costing \$10 each. These registration fees are collected by the county treasurer, who retains a small fee and sends the bulk of the amount to be credited to the Highway Fund.

### *Property Taxes*

Of all taxes included in the present system, the oldest is the property tax. Taxes are levied on real estate, tangible and intangible personal property, and the property of public service corporations. A century ago, Kansas state government received approximately half of its revenues from the property tax; today it gets less than 1 percent from this source. States have generally moved away from property taxes to support state government, leaving property taxes for local units, which depend on them for their operations.

A number of factors account for this nationwide decline in the importance of property taxes for *state* revenues. States have discovered tax sources they can use more easily and feasibly than can local units of government. Further, states, including Kansas, have had difficulty providing for the equal assessment of property throughout the state. When comparable property is assessed differently in varying areas of the state, a state property tax is unequal. At the time of this writing, the fairness of the present assessment process was being challenged in the courts. The legislature may have to make changes to bring about greater uniformity. With the new school aid formula described next, and the required much higher property tax in effect being levied statewide for "local" purposes, statewide uniformity of assessment becomes more important.

In 1992, in a major shift of how local education is funded, the legislature passed a new school aid formula. For reasons discussed in Chapter 16, the state legislature required school districts to levy a 32-mill levy. The amount raised by this levy becomes a deduction within the district from the total amount per pupil that the state guarantees the district. In effect, this levy reduces the amount of other state revenues needed to support the local per-pupil guarantee. In this manner, the state is indirectly using the property tax to fund local education. In recognition of the state's responsibility



for education, the state guarantees to each district a total number of dollars per pupil.

The state of Kansas, however, continues to levy several property taxes, such as special levies authorized for state buildings at educational and charitable institutions. Although the legislature on its own authority could have made such levies, they were authorized by a constitutional amendment. Through this device, a referendum was held on whether to have such levies. The amendment did not set the amount of the levies, leaving this to the legislature. The legislature now provides for a levy of one mill for the Kansas Educational Building Fund and one-half mill for the State Institution Building Fund. In some years, levies have been made for the Correctional Institutional Building Fund.

Over the years, a popular reaction against the taxing of household effects developed. This stemmed from the difficulty of locating and viewing such personal effects and the problem of making assessments uniform, even within the same assessment district. Some citizens resented an assessor's appearance at their door each year to view their household belongings, including such personal items as rings, watches, cameras, and silver table service. Moreover, in many counties automobiles had come to be an important part of the personal property assessed. In 1964, the constitution was amended to exempt from taxation household property not used in the production of income.

Property tax administration has gone through many changes since Kansas became a state. With the creation of a state tax commission in 1907 and its subsequent development into the State Department of Property Valuation, and more recently with the creation of the Division of Property Valuation within the Department of Revenue, the state has assumed responsibility for the general supervision of local assessing. Although townships, cities, school districts, and special districts have their own budgets and levy property taxes separately, the county is the primary unit for assessing property; the other subdivisions use the assessments made by the county. The Board of County Commissioners appoints the county appraiser, who in some cases is also the county clerk.

In addition to levies on real and personal tangible property, for much of the state's history there was a tax on intangible property. This was eliminated in 1982, but cities, counties, and townships were authorized to impose a local tax on earnings from intangibles.

### *Severance Tax on Minerals*

Significant quantities of oil and gas are produced in Kansas; and although the issue of a severance tax periodically had been raised, it was not until 1957 that Kansas enacted one. Supporters of school aid saw in the severance tax a way to accumulate more money for schools. Oil producers claimed they were paying what amounted to a severance tax in the form of property

taxes, because their wells were valued on the basis of production. Local governments, which get most of their revenues from the property tax, feared that a state severance tax would reduce their revenues.

The 1957 law was tested in the courts and found to be unconstitutional because of a technicality.<sup>5</sup> When the legislature met again, it was unable to settle on a new severance tax. Finally in 1982 a new severance tax law—covering oil, gas, coal, and salt—was adopted. The rate is 8 percent on oil and gas, minus property tax credits of 3.67 percent on oil properties and 1 percent on gas properties; \$1 per ton on coal; and 4 cents per ton on salt. Ninety-three percent of these revenues go to the state General Fund.

### *Other Taxes*

Since 1871, out-of-state insurance companies doing business in the state have been required to pay a tax of 2 percent of gross premiums. All insurance companies have to pay certain admission fees and annual fees for the privilege of doing business in Kansas. These collections go into a special fund used primarily to maintain the Office of the Commissioner of Insurance. Insurance companies also pay a tax of 2 percent on premiums for fire and lightning insurance. All but 3 percent of this tax goes to the firefighters' relief association of the city, county, township, or fire district where the insured property is located. In addition, since 1939 each fire insurance company has had to pay a levy of not more than 0.75 percent of its gross cash receipts to the state insurance commissioner. This is deposited in a special fund for the maintenance of the Office of the State Fire Marshal. These fees from insurance companies are primarily regulatory, and do not provide the state with significant revenues.

Since 1866, Kansas has levied a corporation franchise tax. All domestic corporations that have received their charters at least six months prior to December 31 of any year must make a report to the secretary of state showing the condition of the corporation at the close of business on December 31 of the preceding year. The annual rates of franchise taxes for out-of-state and domestic corporations vary according to the amount of paid-up capital stock.

Cities and counties are authorized to issue licenses for the retailing of cereal malt beverages. Wholesalers and distributors of such beverages are licensed by the state director of revenue. The fee is \$300, which must be paid annually as long as the license is renewed. Wholesalers must obtain a separate license for each establishment they operate.

Another tax of limited importance is the excise sales tax of 3 percent for the privilege of selling, licensing, or disposing of the rights to perform musical and dramatic musical compositions. This tax was established in 1939; it is paid to the state treasurer annually, on or before March 15, based on the gross receipts of the preceding calendar year.

A grain tax is levied against every grain dealer and producer. The tax, levied in lieu of all general property taxes, is one-half mill per bushel upon all grain handled or produced. It essentially is a tax for the privilege of producing or dealing in grain. All dealers are required to register with the clerk of the county in which they propose to do business. At the time and place of making a personal property return to the local assessor, all dealers and producers must furnish a statement of the number of bushels of grain they handled or harvested in the preceding calendar year. The county clerk then computes the tax to be paid by each dealer and producer, including the amount of the tax on the dealer's personal property tax statement. The money collected from this tax is credited to the county's General Fund. The tax on grain dealers has been one-half mill per bushel since the tax was established in 1941. Since 1945, the tax has been levied only on the grain of producers who harvest more than 1,000 bushels.

In addition, fees are charged when licenses are issued by examining boards. About 20 percent of fees collected by these agencies is credited to the General Fund; the remainder goes to special funds from which the legislature appropriates money for the boards to use in their operations.

There also is a tax assessed against employers to provide payment to employees when they are out of work. The unemployment tax does not actually constitute a revenue to the state, because the state merely acts as custodian for the funds acquired, and must use the money to pay benefits to those covered under the Unemployment Compensation Law. This tax is discussed in more detail in Chapter 19.

## **Federal Grants-In-Aid**

Financial aid received by Kansas from the federal government plays an important part in the state budgetary process. Kansas received its first monetary grant-in-aid in 1890, in the form of a payment to Kansas State College (now Kansas State University) for instruction in agriculture, English, and science. Other minor grants were begun in the first quarter of the 20th century, and in the late 1920s, federal grants for highways began to filter in. After 1935, several grants-in-aid were commenced for social welfare and health purposes.

The amount of federal aid received increased greatly for several decades, as shown in Table 15; but more recently, federal aid has been declining. Kansas and other states are being driven to find disparate sources of revenue for many of the programs they had been encouraged to adopt. This has placed grave fiscal constraints on Kansas and other state governments.

Despite various efforts to restructure the federal grant mechanism, most federal grants are used for specific programs and cannot be used to support general operations of state government. In SFY 2002, approximately 65 percent of federal grants are expected to be available for assistance and relief.

**Table 15**  
**Federal Aid to Kansas: Selected Fiscal Years**

Year	Amount of Grant	Total Operating Revenue	Percent Federal Aid of Total State Receipts
1915	116,348	5,260,011	2.21
1925	303,617	14,732,716	2.06
1935	8,030,792	35,877,301	22.38
1945	7,789,419	74,311,983	10.48
1950	37,587,230	180,303,212	20.84
1970	201,901,484	762,937,970	26.46
1980	595,181,000	2,405,717,000	24.74
1990	945,858,000	5,204,963,000	18.16
2000	2,224,737,002	8,444,389,000	26.3
2001 (est.)	2,595,982,823	9,274,442,000	28.0
2002 (gov. rec.)	2,547,924,145	9,398,692,000	27.1

Sources: C.J. Hein and James T. McDonald, *Federal Grants-in-Aid in Kansas*, Special Report #50 (Lawrence, Kansas: Governmental Research Center, University of Kansas, 1953), p. 17; also Division of Accounts and Reports, Department of Administration, financial reports (for 1970, 1980, and 1990); and the Governor's Budget Reports for 2000, 2001, and 2002.

Other large categories of federal grants were for the support of education and research (20 percent) and transportation (11 percent).

## Agency Service Charges

About 6 percent of state revenues come from charges that are so clearly identified with particular agencies that they are classified as "agency service charges." In most instances, these charges cover only a portion of the actual cost of the services. Examples include tuition paid by students at state institutions of higher learning, and charges to the families of patients at mental hospitals.

## Other Revenues

Revenue collection in some funds is not particularly related to the time frame in which the money will be spent. Thus, there are "idle funds" that can be invested. In an enterprise with an \$8 billion budget, sound management requires attention to cash flow. Through prudent investment, these funds can yield meaningful returns. It is the function of the Pooled Money Investment Board to do this according to statutorily imposed restrictions.

Moneys are collected from allowing others to use state land and property and from the sale of state property. Licenses and permits are issued and fees collected. Substantial amounts are invested and returns received from investments by the Kansas Public Employees Retirement System (KPERs). This becomes state money and is used to pay the pensions of retirees.

A comparatively recent new revenue source for Kansas is the moneys coming from the national tobacco settlement. Kansas has received and will continue to receive significant amounts of money from this source. The amounts change yearly because payments depend on the profitability of the companies and adjustments for inflation. It is projected to continue well into the future. For example, after 2018, it is estimated to vary from 53 to 70 million dollars. The legislature has established the Kansas Endowment for Youth Fund. Money in this fund is invested and managed by KPERs to provide ongoing interest. Moneys are transferred from the KEY Fund to the Children's Initiatives Fund, discussed later.

## **Administration of the Kansas Tax System**

When the property tax was almost the sole source of revenue for state and local governments in Kansas, there was no state administrative organization to provide for its assessment and collection. The county clerk was responsible for assessing the property, and the county treasurer for collecting the tax and paying the state treasurer the amount due.

In 1972, the Department of Revenue was established as a cabinet department, with a secretary appointed by and serving at the pleasure of the governor. Alcoholic beverage control and automobile and driver registration were consolidated into this new department. The Division of Taxation and the Division of Property Valuation were established within the department. The Board of Tax Appeals is concerned primarily with appeals from rulings made by the director of taxation and the director of property valuation, applications for emergency warrants and levies, and equalization and review of appeals from taxpayers on their property assessments. In 1975, the Board of Tax Appeals was reestablished as a separate agency.

The legislature has sought to consolidate the collection of state taxes within a single agency. With the expansion of governmental activities and a corresponding increase in the cost of government, there has been a search for new bases of taxation as well as increased rates for existing taxes. The inability to secure equitable property assessment, and the realization that taxes based solely on property as a measure of the taxpayer's ability to pay were not equitable, led the legislature to turn to other revenue sources. Despite the abandonment of the property tax as a major source of *state* revenue, the state has continued its efforts to supervise the administration and equalization of local property assessments without hampering local operations.

## State Treasurer

While other state agencies collect most state revenues, the treasurer acts as custodian of *all* state money. All fees and taxes collected by state departments and agencies must be deposited in the state treasury. Departments and agencies that receive small amounts of revenue make their deposits monthly, while the larger revenue-receiving departments make their deposits weekly or even daily. The treasurer makes receipts in duplicate, one copy being sent to the controller, who examines and audits the receipts.

The state treasurer is responsible for the safekeeping of all state money deposited in banks designated as state depositories by the Pooled Money Investment Board.

Over the strenuous objections of the incumbent Democratic state treasurer, the legislature in 1996 restructured the Pooled Money Investment Board. The state treasurer continues as a member of the board, but is no longer its chair. The governor appoints members of the board and appoints the chair. No more than three members may be of the same political party. While attached to the state treasurer's office, the board approves the budget and appoints a director of investments. Previously, the state treasurer had the authority to invest or reinvest state and municipal funds. The statutes prescribe the broad categories of sureties in which the board may invest.

The financial operations of Kansas state government are sufficiently large that it is both necessary and profitable to provide close management of state funds so moneys can be invested to the greatest advantage when not needed for state expenditures. The state treasurer reported, for example, that in one year—by reducing the number of active state bank accounts and equalizing the amount of the active account awards—it had been possible to reduce the average daily balance in the active accounts by \$8 million. This money was then placed in accounts upon which the state drew interest.

The Pooled Money Investment Board is responsible for establishing the rules and procedures for selecting banks to receive both active and inactive funds. The statute fixes the interest rates banks must pay on the inactive accounts. Banks wishing to participate apply for inactive accounts, and awards are made according to each bank's combined capital and surplus, in proportion to the total combined capital and surplus of all applying banks. Moneys, investments, and funds of this board, as well as of the state treasurer's office, are subject to audit by the legislative post auditor.

Under formulas established by the legislature, the state treasurer apportions money to local units of government from the Local Ad Valorem Tax Reduction Fund, the County-City Revenue Sharing Fund, the County and City Alcoholic Liquor Control Enforcement Fund, the Special City and County Highway Fund, and the County Equalization and Adjustment Fund.

After the controller has prepared and signed warrants to pay the claims against the state, the treasurer verifies that there are adequate funds to pay the warrants and then signs them.

All bonds of the state and its instrumentalities, including cities and counties, are registered with the state treasurer. As fiscal agent for the state, the treasurer receives money and pays both interest and principal to the bond holders. The treasurer serves as an ex officio member of the Committee on Surety Bonds and Insurance, and of the Board of Canvassers.

## **Balancing Revenues and Expenditures**

The state uses taxes that are responsive to inflation, the result being that state revenues have increased along with inflation. The fiscal philosophy of Governor Robert Docking during his eight-year administration was characterized by budgets that were "austere but adequate." Subsequent governors have used similar language to summon the state to husband its resources.

By statute, the state is obligated to maintain a reserve of 7.5 percent of the anticipated ending state fiscal year balance for daily cash flow management. Revenues do not necessarily come into the state treasury to coincide with demands for funds. The reserve allows for better management of the state's fiscal responsibilities.

Calls for fiscal responsibility, fiscal restraint, and distribution of state "surpluses" have been sounded from state leaders with varying degrees of political partisanship. Reasonable persons may disagree as to how large a cash balance is necessary to operate the state, because of its many special funds and because of the uneven flow of disbursements and income. Some philosophically believe it is sound policy for government to keep operating balances at an absolute minimum to discourage government expansion.

Tax increases are never popular, yet the recent past suggests that expenditures are likely to proliferate more rapidly than revenues within the existing structure. Pleas for greater state aid to school districts and other local units of government, for new and better highways, and for augmented services must be reconciled with the willingness of the people financially to support the state and its operations.

## **Spending the Dollars**

Budget processes and concepts have changed over the years in Kansas; currently the budget is described as being "revenue driven." The budget is a thick document containing countless figures and copious information about state operations. But it is much more, in that it is one of the few documents in which all activities and programs for state services are presented. In the decisions reflected by the budget recommendations, state activities are balanced one against another in their claim for state support. Money recom-

**Table 16**  
**State of Kansas Budget Calendar**

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<b>Calendar Year Prior to Beginning of the Fiscal Year</b>	April 15	Agencies & Budget Division identify programs planned to operate 15 months later and end 27 months later.
		Agencies prepare issue papers about these programs.
	June 1	Budget Division makes allocations of total amounts agencies may request (based on revenues estimated to be collected 13 months later and ending 25 months later).
	June 15	Programs documented.
	August 1	Call for estimates of appropriations needed for the desired programs.
	November–December	Governor's budget hearings.
<b>Next Calendar Year</b>	January	Legislature gets budget from governor (six months before the beginning of the budget year).
	Late April	Legislature adopts appropriations bills for upcoming fiscal year.
	Early May	Agency officials and others begin work on the next fiscal year's budget.
	July 1	<b>Fiscal year' begins.</b>
<b>Second Next Calendar Year</b>	January 1	<b>Fiscal year continues.</b>
	January–April	Legislature receives and responds to requests for supplemental or additional appropriations for current fiscal year.
	June 30	<b>Fiscal year ends.</b>

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\*Fiscal years normally are identified by the calendar year in which they end. For more detail, see the seven-page description of the budget process in Vol. 1 of the FY2002 Budget Report, pages 203-210.

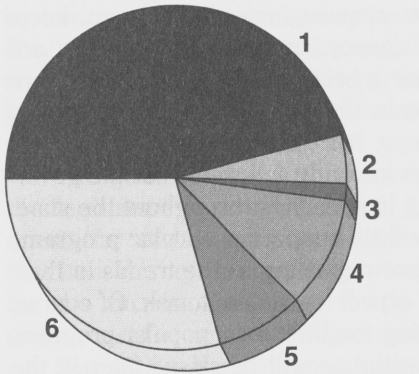
\*\*Most state agencies follow this schedule annually, but some agencies, primarily fee fund agencies, have been moved to biennial budgets rather than annual budgets.



**Figure 21**  
**Expenditures: SFY 2002**

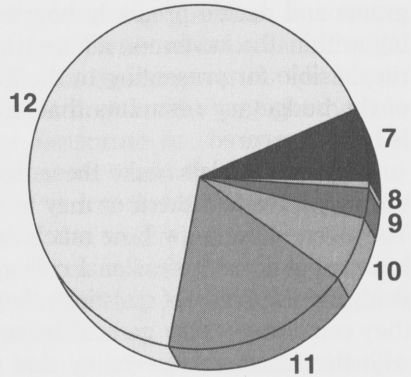
**By Function**

**All Funds**



1. Education (46.0%)
2. Public Safety (4.6%)
3. Agriculture & Natural Resources (1.6%)
4. Transportation (10.4%)
5. General Government (8.3%)
6. Human Resources (29.1%)

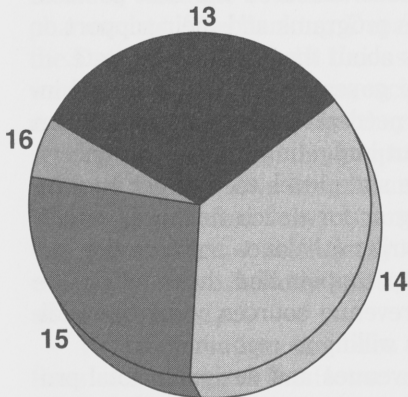
**General Fund Only**



7. Public Safety (6.8%)
8. Agriculture & Natural Resources (0.7%)
9. Transportation (2.8%)
10. General Government (6.1%)
11. Human Resources (17.9%)
12. Education (65.6%)

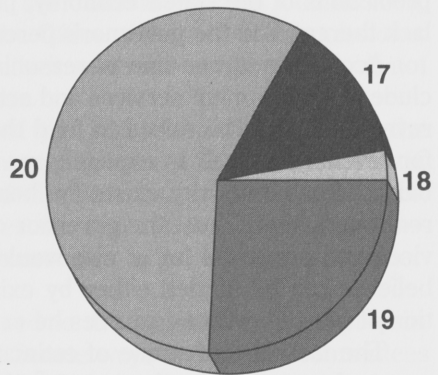
**By Category**

**All Funds**



13. State Operations (31.4%)
14. Aid to Local Governments (36.3%)
15. Other Assistance (26.6%)
16. Capital Improvements (5.7%)

**General Fund Only**



17. Other Assistance (13.9%)
18. Capital Improvements (2.8%)
19. State Operations (25.9%)
20. Aid to Local Governments (57.5%)

mended for one agency is no longer available for others. The decision as to how much the governor will recommend is the governor's alone, but it is the job of the Division of the Budget to collect, analyze, and present information enabling the governor to make sound choices.

Agencies are told well in advance what allocation of state revenues they can expect to receive during the next fiscal year, a 12-month period beginning July 1 (see Table 16). Agencies are then expected to review their programs and decide precisely how much to request for each program, keeping within the revenues allotted to the agency. In this way, agencies are responsible for presenting to the governor a balanced program, fully aware of the budgetary restraints that will exist in the year for which the budget is being prepared.

Agency officials make these decisions knowing full well what the governor may have told them or may be saying in speeches throughout the state. They generally know how much or how little support particular programs have; what their professional colleagues are regarding as the trends in their field; and the kinds of questions they can expect legislators to ask. Of course, they can always "play games" by requesting too little for a popular program, with the reasonable certainty that their estimate will be raised later in the process.

Approximately 10 months before the year begins, agencies start informing the budget division of their requests. Budget analysts assigned to the agency review the requests and justifications. In November and December (seven and eight months before the year begins), the governor holds any necessary hearings for agency officials appealing decisions of the budget division. The governor makes his or her decisions, the final estimates are consolidated, and the budget is prepared for formal submission to the legislature. In allocating funding, the governor considers such factors as the condition of the state treasury; revenue estimates based on the best possible predictions of the state's economy; previous programs and their support or lack thereof; and the governor's perceptions about the needs of the state.

According to one line of reasoning, the governor's program should include all government services and activities needed by the citizens, and then revenues should be raised to fund them. But budgeting includes a concern for revenues as well as expenditures. At the state level, the budget *must* be balanced; no authority exists for borrowing or for deficit financing of current operations. Thus, the governor must strike a balance between the services and programs he or she would like to support and those he or she believes can be funded either by existing revenue sources or by the addition of tax and revenue sources he or she is willing to recommend.

The task becomes one of estimating revenues and designing total programs that can be implemented within the revenue estimates.<sup>6</sup> With inflation, which affects state revenues as well as expenditures, disagreements may develop concerning how much revenue the state will receive 18 months

in the future under existing legislation. Some legislators are convinced that when the governor and his or her advisers want to promote a new program or expand an existing one, they tend to project low estimates of the cost—and find ways to implement the program through existing revenues or small tax increases. If they are not in sympathy with a program, the cost estimates tend to be higher.

When a new governor has been elected, the budget director is required by law to report the budget estimates to the incoming governor as soon as they are known, and to make available to the governor all information, staff, and facilities of the budget department. The incoming governor (or his or her representative) is entitled to attend all hearings on the tentative budget and then to review, amend, and approve or disapprove it.

The governor has a thick budget document ready for presentation to the legislature by early January. In recent years, the detailed budget requests for each agency item have included the amount actually spent for that item during the last fiscal year, the amount estimated to be spent during the current fiscal year, the “c level” budget (or optimistic agency request), and the amount the governor recommends.

Since 1989, the governor by law has been required to submit a budget compatible with the current resources of the state. Revenue estimating has become formalized, with a revenue-estimating group including experts from the Department of Revenue, the Legislative Research Department, and the Regents universities. The governor’s current resources budget must be within the limits of these estimates—but other budget proposals may be made to the legislature, as Governor Joan Finney did in 1991.

The paragraphs above describe the *annual* budget process used for most agencies. In 1994, the legislature provided that 20 specified agencies prepare and use *biennial* rather than annual budgets. Most of the agencies included were the boards for licensing professional groups like barbers and pharmacists. The Banking Department, the Consumer Credit Commission, the Department of Credit Unions, and the Office of Securities Commissioner were included. All of the agencies get their revenues predominantly if not exclusively from the groups they regulate.

Up to this point, the preparation of the budget has been chiefly the work of the executive branch, and more particularly of the governor’s staff. While the governor may recommend desirable amounts to the legislature, the governor must realistically consider the reactions of the legislators—especially the ones likely to play important roles in the legislative consideration of the budget.

When the budget has been presented to the legislature, the appropriations committees of the House and the Senate ways and means committees may start their review and consideration.<sup>7</sup> This involves deliberation, hearings, further justification, and occasionally additional requests by state agen-

## The Kansas Budget Process: Concept and Practice

In all but three states, budget preparation is primarily a responsibility of the governor. He or she supervises the gathering of information needed for budget decisions, analyzes that information, and transmits a recommended fiscal plan to the legislature.

Design of the budget preparation phase must resolve several issues. The first is the selection of levels for which discrete fiscal plans must be submitted.

The trend among states has been to structure budget preparation with "programs" as the fundamental budget units. A program is usually defined as *a coherent and interdependent set of activities undertaken in pursuit of a defined goal or objective*.

... A second question of process design is the substance and detail to be included within budget submissions.

Fixed-ceiling budget preparation redistributes the responsibility for rationing decisions. Under a fixed-ceiling system, line agencies are given one or more expenditure targets and are required to prepare plans that contain expenditures within those limits.

The fixed-ceiling approach recognizes a fundamental characteristic of modern state government. Its enormous size and its decentralized character mean that the bulk of the knowledge, expertise, and reliable judgment about the technology of service delivery resides with those who operate programs—that is, with line agencies.

Stripped of all but the essentials, budgeting resolves to the following question ... "How can limited funds be divided among alternative uses in a way that will produce maximum benefit?"

The most important value judgment embedded in this discussion is that public budgeting should be judged according to the same criteria of effectiveness and efficiency that prevail in the private marketplace.

This means that the information upon which public sector budget decisions are based must resemble information that would be required by individuals, businesses, or farmers determined to make correct economic choices.

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Source: Lynn Muchmore and Harley Duncan, *The Kansas Budget Process: Concept and Practice* (Topeka, Kansas: KU Capitol Center, 1982).

cies. These legislative committees have their own staffs to assist in analyzing requests and arranging hearings for agency officials.

The legislature's control over expenditures is not affected by the estimates of the Division of the Budget, for the legislature may raise or lower the governor's requests as it desires; in effect, it may remake the budget. State officials may try directly or indirectly to persuade the legislature to restore cuts the governor has made.

The text of appropriation bills as proposed in the governor's budget is the starting point for committee use, but it is a legislative decision as to what the bills eventually will contain. In general, appropriation bills are treated in the same way as other measures before the legislature, except that the governor does have an item veto with respect to such measures. Being laws of limited duration, appropriation bills are not included in the *General Statutes*. They are, however, printed in the *Session Laws*.

The appropriation bills of the major state agencies frequently are not passed until the closing days of the session, but the practice of the legislature is to have all measures passed and approved before the new fiscal year begins.

The budget division of the Department of Administration has certain duties regarding execution of the budget. To provide a degree of flexibility in appropriation legislation, any state agency may submit a request to the budget director for authority to transfer part of its funds from one item to another. If this request is approved by the budget director, the governor may consider it. If the governor approves, the amount is then transferred from one line item on the appropriation to another line item, and this action is reported to the Division of Accounts and Reports.

The act that created the Division of the Budget emphasized its continuous responsibility to stay in touch with state agency operations; budgeting cannot appropriately be regarded as an annual event. The budget division is directed to "analyze the quantity and quality of services rendered by each agency and the needs for such services and for any new services." Further, it is expected, according to the statutes, to provide management analysis to all state agencies.

The law also permits the use of a system of allotments. Under such a system, the amounts appropriated by the legislature are divided into sums that the agencies may spend only during the time for which they are allotted. Allotments are intended to prevent an agency from spending too much during the first months of a fiscal year and then having to seek supplemental appropriations during its waning days. Under an allotment system, an appropriation is an authorization to spend, but it may be further controlled. In Kansas, the allotment system becomes effective only upon the advice of the budget director and the secretary of the Department of Administration. While a system of allotments may be useful for executing a budget, it has not customarily been used.

## Recent State Budgets

The determination of exactly how many dollars will be given to each state agency, and what the money may be spent for, is a time-consuming process every year. The pattern that emerges establishes the priorities of Kansas state government, and in a sense each year is incremental, building on the past. Major changes seldom occur in a single year. Table 17 records the percentages of all fund operations spent for the major functions of Kansas government. Education stands out as the most highly supported state function. More than three of every four state dollars go for education, human resources, or transportation.

In Table 18, each citizen's share of expenditures has not been adjusted for inflation, but the table does indicate each citizen's financial involvement in state government.

Consistently, slightly more than one-third of the total funds of Kansas state government goes for state operations; slightly less than one-third is given to local units of government; and approximately one-fourth is spent as assistance payments, grants, and benefits.

**Table 17**  
**Expenditures, All Funds, by Function: 1997, 1998, 2002**

Function	1997	1998	2002
Education	43%	47%	46%
Human Resources	25	25	29.1
General Government	11	11	8.3
Transportation	14	11	10.4
Public Safety	4	4	4.6
Agriculture & Natural Resources	2	2	1.6
<i>Total (in millions)</i>	\$7,809.4	\$7,894.2	\$9,152.3

Source: The Governor's Budget Report, SFY 1997, 1998, and 2002.

In light of the constitutional restrictions on borrowing, spending and revenue raising are closely related. As Kansans' expectations about government services have increased, and as government officials have become more aware of resource limitations, both have sought ways to control government and determine priorities. Some believe in keeping government "lean and lank" by seeing that it does not raise "too much" money. Thus, conservatives view limits on revenue raising as being just as crucial as reducing spending. Limiting revenue raising becomes a *means* of controlling spending.

**Table 18**  
**Per-Capita Expenditures, All Funds: 1998**

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Expenditures divided by population = Per-capita expenditures  
 \$9,152,300,000 divided by 2,688,418 = \$3,404 (\$9.33 per day)

It is difficult to over-estimate the importance of revenue raising and spending decisions. To the accountant, these decisions represent dollars to be accounted for; to the public, these decisions determine whether a given service is available and what the level of that service will be.

### **The Legislature in Financial Administration**

While the duties of the legislature have been discussed earlier, attention must be focused here on the legislature's importance in determining where the money to run Kansas state government will come from, and where it will go. These are among the most important decisions any legislator makes. Much media attention is devoted to the General Fund, but the legislature must consider and control *all* state funds.

The legislature responds to requests to transfer money from one fund to another. For example, in 1983 it decided the highways were entitled to receive some sales tax revenues because the tax was collected on the sale of auto parts and repairs. Therefore, some of the sales tax dollars that previously had been used to support General Fund agencies were no longer available. There were other "demand transfers" from the General Fund, involving an amount expected to be more than \$271.4 million in 2002.

The legislature may make changes that affect the local government revenue tax structure. In 1992, the legislature made major changes in the way K-12 education is funded. As a way of changing the total tax mix for local education, school districts were required to levy a 35 mill property tax. (This rate was below what many districts were then levying and below what has been changed over the years.) The state agreed to grant state aid to districts on a per-pupil basis. Typically the amount has been increased each year. The effect was to increase the amount and percentage of state funds distributed to local school districts. The expected effect of these changes was more competition among state agencies, with the possibility of a need to raise more money to fund the new program. Some legislators were concerned that if school districts became less dependent on property taxes, other local governments would seek to raise their levies. Thus, changes at the state level clearly affect the local government revenue structure.

As noted earlier, almost half the revenues collected by the state go into funds other than the General Fund. Under this type of financing, the legislature earmarks the revenues from particular sources to be spent for particu-

lar purposes. Whenever a new function of state government is assumed, there ideally should be a new revenue for financing it; alternatively, its financing may be tied to an existing source of revenue.

The system of special funds is designed to simplify budgeting and financing. Demands for new or expanded services and changes in revenues occasionally have upset state financing arrangements, making it necessary for the legislature to find ways of funding the area in which trouble has developed. On the positive side, the system has stabilized taxes and charges, and in some respects has simplified the problems of state finance.

Moreover, it has come to be accepted that some revenues should be used only for accomplishing certain functions. For instance, it is commonly held that gasoline taxes and auto license fees should be used only for constructing and maintaining highways. In fact, the Kansas Constitution *requires* that these funds be used only for these purposes.

In this framework, it is not surprising that interest groups come to regard the special funds as their own private funds. Similarly, local governments come to rely on certain state funds, and practical problems arise if different distributions are made.

The existence of these special funds, and the practices that surround them, have both simplified and complicated the legislature's financial work. It has become notably difficult for the legislature to obtain the "big picture" of Kansas state government.

The Kansas Legislature has numerous other ways of exerting influence on the administration of finances. While the extent to which the legislature studies monetary minutia varies from agency to agency, the legislature normally specifies purposes for appropriations. Most larger agencies have their appropriations divided among salaries and wages, other operating expenses, and items for capital improvements and repairs of all sizes. The use of detailed appropriations necessitates more separate appropriation accounts, and makes desirable the flexibility that arises from the governor's legal authority to allow transfers from one item to another within the same appropriation.

Since 1992, the legislature has required that a "children's budget" be prepared. It identifies more than 400 programs that have a special impact on children directly or on children through their families. In 2002, these programs are expected to cost about \$3,500 million. In 2002, only 22 of these programs will be funded, at about the \$40 million level, from the "tobacco fund" money referred to earlier.

Through the Legislative Coordinating Council, the Legislative Post Audit Committee, the Ways and Means committees, and other legislative committees, legislators may become closely involved with financial and other administrative matters. This is particularly true of interim committee members, who meet frequently with administrative officials.



The timing of the legislative sessions fits well into the spending process. The legislature may adjourn in the knowledge that it will reconvene before the end of the year for which it has appropriated money.

The legislature has additional controls over the procedures and framework under which the budget is prepared and executed. For example an act of the legislature established and empowered the Division of the Budget. Moreover, the legislature receives reports from the legislative post auditor and may act to correct any irregularities. The legislature may also appoint committees to examine the work of various state agencies.

The Finance Council, composed of legislative leaders and the governor, may by unanimous vote authorize expenditures from the State Emergency Fund. Such money may be used only to preserve the public health and protect persons and property from extraordinary conditions arising after the regular appropriations have been made; make absolutely necessary repairs or temporary replacements of any state building or equipment destroyed or damaged by sabotage, fire, flood, wind, tornado, or act of God; or, in limited circumstances, supplement funds that already have been appropriated.

## Chapter 8 Notes

1. Readers interested in more detail about the structure of state and local taxes will find *Kansas Tax Facts: A Handbook of State and Local Taxes* of substantial assistance. This publication of the Legislative Research Department, now in its fifth edition, is updated with annual supplements.
2. For a more detailed description of taxes and expenditures in Kansas state and local government, see Darwin Daicoff's chapter, "Tax and Expenditure Policy," pp. 7-25 in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University Press of Kansas, 1994.
3. *Kansas Constitution*, Article 11, Section 9.
4. *Kansas Constitution*, Article 11, Sections 9 and 10.
5. *State, ex. rel. v. Kirchner*, 182 Kan. 437.
6. Richard Ryan and Darwin Daicoff, "Estimating Revenues of the State General Fund in Kansas" (Topeka, Kansas: KU Capitol Center, 1983).
7. Marlin Rein and Sherry Brown, "The Appropriating Process in the Kansas Legislature" (Topeka, Kansas: KU Capitol Center, 1982).

## Chapter 9

# Managing the Operations of Kansas State Government

**T**he grand organization of the executive department, as discussed earlier, may be useful in achieving the elusive goal of making Kansas state government more efficient and economical. But much more is required in the “micro operations,” the daily coordination and direction of the activities of 40,000-plus state employees. The governor looks to the secretary of administration to provide much of this coordination. As a framework, the legislature has created six divisions within the Department of Administration, which has 850-plus employees who oversee the management of state government.

### **The Budget Division as Manager**

Chapter 8 on taxing and spending highlighted the operations of the Division of the Budget. The importance of the decisions made in the budget process is illustrated by the fact that the director of the budget division has by statute a special relationship with the governor—one not shared by the heads of the other divisions within the Department of Administration.

The determination of how many dollars a particular agency will have in any given year, and precisely how and when the agency will be allowed to spend those dollars, essentially controls what the agency and its officials will be able to accomplish that year. The Department of Administration is involved in the day-to-day priority setting and operation of the entire state government, including the executive branch.

Department of Administration budget analysts become the link between the governor and agency officials, providing information and presenting pro-

grams to help determine their eligibility for funding in light of funding constraints. Division analysts are not expected to be as familiar with program details as each agency's own budget officials, but they are expected to impart the perspective of the broader state interest. Some directors of the Division of the Budget have encouraged their analysts to transfer to the agency budget offices, and reverse transfers occasionally are made.

Budgets are set once a year, but budgeting is a year-round process. The budget analysts work with agency budget officials and agency heads to monitor how the agencies spend their appropriations. This is part of the process of preparing for the next year's budget—a task that is never very far away. It's also important to remember that even after dollars have been asked for and appropriated, they do not spend themselves. Agency officials and employees must arrange for the dollars to be spent—and only on specified items and in specified ways.

## **Accounting and Reporting the Spending**

The Division of Accounts and Reports within the Department of Administration is required to formulate and maintain a system of central accounts. The director designs, revises, and directs the use of accounting records and fiscal procedures, and prescribes a uniform classification of receipts and expenditures for all state agencies. The system is designed to provide records that will at all times, for all state agencies, show—by funds, accounts, and other pertinent classifications—amounts appropriated, estimated revenues, actual revenues or receipts, amounts available for spending, total expenditures, unliquidated obligations, actual balances on hand, and unencumbered balances of allotments or appropriations. A separate account is established for each line item of the appropriations. Before obligations may be incurred, the state agency must request that the needed amounts be set aside for purchases or spending during the designated period.

The director of the Division of Accounts and Reports pre-audits all claims, bills, accounts, and demands arising from contracts made by the state. This refers to the examination of all receipts, accounts, bills, claims, and demands for funds in the state treasury arising from activities carried on by state agencies. The director ascertains that each obligation has been incurred in accordance with the law and the relevant rules and regulations, and that the amount is correct and has not previously been paid. Before any payment may be made on any account, the director must approve it. He or she must be satisfied that the bill or claim on state funds was ordered by an act of the legislature or contracted by a duly authorized agent of the state in accordance with state law. Having determined that the amounts are legally due the claimants, the director issues warrants countersigned by the treasurer, who receives a duplicate copy of the director's record of all warrants.

The treasurer must send to the director a copy of all receipts and documents reflecting moneys received by the state treasury. The director examines and audits these receipts.

At least monthly and annually, the director prepares a report showing the fiscal condition of each fund. On or before November 15 of each year, the director reports on the financial transactions of the preceding fiscal year.

The director of Accounts and Reports designs and directs the use of inventory records showing all fixed and movable property belonging to the state. These records are based on physical inventories verified by inspection.

When the office of auditor was abolished in 1974, some of the auditor's duties were transferred to the director of the Division of Accounts and Reports. With the consent and approval of the state Municipal Accounting Board, the director formulates and prescribes a uniform system of fiscal procedures for auditing, accounting, and reporting to be used by municipalities. A minimum audit program is prescribed. Audit reports are filed and reviewed by the staff of the division.

## **Purchasing**

The Division of Purchases is responsible for centralized purchasing in the state. This includes buying, renting, or otherwise providing supplies, materials, equipment, and contractual services for all state agencies. The purchasing director may authorize any state agency to make its own purchases of specified supplies, materials, equipment, and contractual services under prescribed conditions and procedures. The division may maintain store-rooms, fix standards of quality and quantity, develop specifications, and consult with the state agencies that use the supplies. The division may require state agencies to report the stocks, supplies, and materials on hand, and may prescribe the manner of inspecting the supplies and materials.

In general, all purchases are made from the lowest responsible bidder after competitive bids have been received. The director of purchases determines who is the winning bidder. If there are two equal bids and one is from an out-of-state bidder, the law requires that preference be given to the bidder from Kansas. The director of purchases may reject any or all bids, and may call for a new letting of bids. Contracts for the construction, improvement, reconstruction, and maintenance of state highways and the acquisition of rights-of-way for state highway purposes are specifically excluded from the control of the Division of Purchases. These contracts are made by the Department of Transportation under different laws.

## Information Systems and Communications

The present-day Division of Information Systems and Communications (DISC) was started as a computer services bureau within the Department of Administration in the 1960s and then, in 1972, was statutorily established as a separate division within the department. The legislature had become concerned about the proliferation of expensive mainframe computers among state agencies, resulting in unnecessary duplication, proliferation, and incompatibility in these rapidly changing technological systems. By creating this new division, the legislature initially sought to reduce the potential number of large mainframe computer systems to one, and to provide central review and approval of all computer purchases by all agencies of the state.

While these initial purposes have continued to motivate legislative concern, DISC has evolved into a complex organization, primarily in response to changes in technology and the legal environment, as well as in legislative and administrative perceptions concerning the multitude of ways technology might be used to increase the responsiveness and efficiency of state government operations.

In an attempt to add functionality to the state's telecommunications system while also lowering costs, the department added an Office of Telecommunications in 1979. Then, in 1984, Federal Judge Greene issued a consent decree between the U.S. Justice Department (under authority granted to it by the Federal Anti-Trust Act) and American Telephone and Telegraph (a previously regulated national monopoly). The decree was intended over time to make interstate telecommunications an unregulated free market service and to deregulate the market in goods such as telephones, switches, and house wiring.

These legal changes gave state government an opportunity to acquire a state-of-the-art, digital telecommunications system, together with ownership of its approximately 36,000 telephones, while also lowering the \$20 million cost of telecommunications goods and services. In preparing to respond to this opportunity, the legislature combined the Division of Computing Services and the Office of Telecommunications into the present DISC.

Meanwhile, with each passing year computers became smaller, more powerful, faster, and less expensive per unit of computing capacity. Because of these technological and price changes, the computing process became less expensive and more decentralized, and considerably more dependent on a low-cost, reliable telecommunications network capable of transmitting digital signals for voice, data, image, and compressed television. In total, these many changes were designed to prepare state government for entry into the "information age."

It remains to be seen whether the administration and the legislature will use these tools of automation and information technology to their maximum advantage in holding the line on the rising cost of operating state government.

## **Architectural Services**

The legislature in 1965 created the Division of Architectural Services within the Department of Administration, integrating the state architect, whose office had been independent for 60 years. In addition to making plans, specifications, and estimates for the construction and repair of state buildings; supervising construction of all state buildings; and inspecting construction materials; the division was responsible for the care, management, and control of the statehouse, the State Office Building, and other state properties in Topeka.

The division has never had a large enough staff to provide full architectural services for the construction of all new buildings connected with Kansas state government. For many years, associate architects were appointed, under general supervision of the state architects, to plan and design major state construction projects. The actual working relationship between the governor and the state architect has varied, but the pattern has been for the state architect to recommend one or more associate architects, the appointments being made after consultation with the governor.

It has been alleged that partisan politics entered into these appointments, and that contributions to political campaigns sometimes helped an architect obtain a state contract. Specifically, charges were made in 1973 that the successful candidate for the largest building project at the University of Kansas Medical Center made a financial "kickback" to one of the governor's advisers. Legislative committees were appointed to investigate and the matter was prosecuted in court, with one architect found guilty. Legislation was enacted to remedy the process, providing for special ad hoc committees of state officials to select architects and negotiate contracts for architectural services.

Further changes were made in 1978, when the office was substantially restructured. Many duties of the Division of Architectural Services and its director were reassigned, and all professional employees were placed in the unclassified service. A seven-member State Building Advisory Commission was established to recommend to the secretary of administration candidates for director of architectural services, and to advise the secretary on standards for planning, designing, and constructing state buildings. A Joint Committee on State Building Construction also was created, consisting of six legislators who make recommendations to the legislature on all agency five-year capital improvement plans and monitor all state capital construction projects.

## **Printing Services**

For many decades, Kansans elected a state printer, who was responsible for providing services for the state. At one time this included even the printing of some textbooks used in the public schools. In 1974, voters ap-

proved a constitutional amendment deleting the provisions pertaining to printing. This made it possible for the legislature to decide how state printing should be handled. The conclusion was to keep the state in the printing business, and to establish a Division of Printing within the Department of Administration. The legislature did, however, authorize the purchasing of some printing services.

This development was related to efforts to adopt a new printing method for legislative bills and other documents such as the *Kansas Statutes*. The legislature had authorized "computer bill drafting." It was possible, with new equipment, to have a totally mechanized system by which bills could be entered into the computer in their earliest stage, kept current throughout the legislative process, and then printed as session laws and statutes.

## **The Department of Administration as Business Manager**

The governor, working through the secretary of administration and the budget director, provides central direction to his or her administration. Finances are key. Only a few funds are not covered by the operation of the Department of Administration. Agency officials must deal with the department at each critical stage of obtaining funds and getting them released to be spent. In this way Kansas government has changed dramatically from a simpler time when, for example, the superintendent of a state hospital worked independently with legislative committees to obtain appropriations for the institution. Governors differ as to how they use the Department of Administration, but in every case it is a powerful agency.

The Department of Administration also uses personnel to coordinate and direct the activities of Kansas government; it is in essence a management arm of the secretary and the governor. Concerns over merit employment and government efficiency have led to laws and regulations restricting how agency officials may spend the dollars the legislature has appropriated for personnel services. This is the subject of the next chapter.



## Chapter 10

# Personnel Services

**T**he recruiting and maintaining of a work force to carry out the activities of Kansas state government is no small task. The legislature may make wise policy decisions and it may provide dollars for programs; but without an adequately trained and motivated work force, the best-intentioned programs are likely to be ineffective. The Division of Personnel Services in the Department of Administration has a prominent responsibility in this area—one that is shared with the lowest line supervisor and many other management officials.

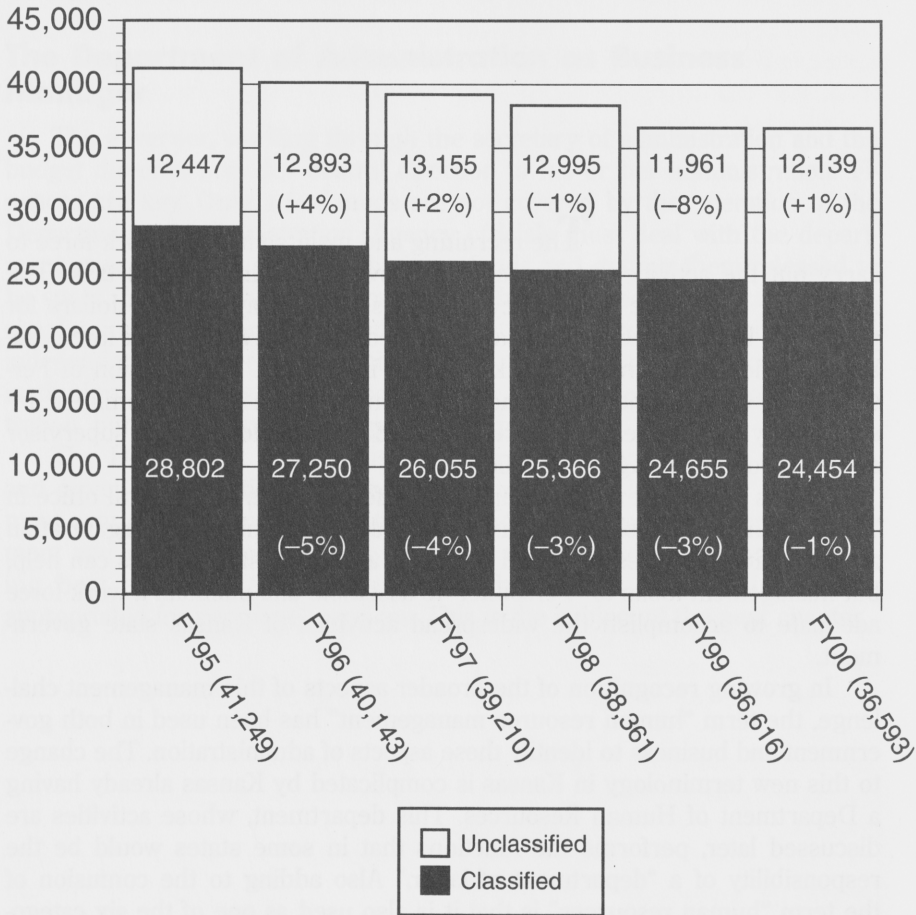
This is not a task that a comparatively few persons in a central office in Topeka can accomplish by themselves. Budget, administrative organization and reorganization, research and planning, and other staff devices can help, but management looks to “Personnel” to assemble and maintain a work force adequate to accomplish the widespread activities of Kansas state government.

In growing recognition of the broader aspects of this management challenge, the term “human resource management” has been used in both government and business to identify these aspects of administration. The change to this new terminology in Kansas is complicated by Kansas already having a Department of Human Resources. This department, whose activities are discussed later, performs the functions that in some states would be the responsibility of a “department of labor.” Also adding to the confusion of the term “human resources” is that it is also used as one of the six categories of functions of Kansas state government in the annual budget.

Kansas state government accomplishes its objectives through people. Salaries and wages constitute the biggest single item in the budgets of most

state agencies. Kansas state government is the largest employer in the state, with its 40,808.2 personnel (the number of full-time equivalent employees authorized in the 2002 budget, excluding student employees). Most of these are in the classified service. The remainder are unclassified employees, most of whom are on the teaching staffs of Kansas colleges and universities. A few unclassified employees are the chief appointees of the governor, charged with setting policy and managing Kansas state government.

**Table 19**  
**Number of Kansas State Government Employees**



Source: Fiscal Year 2000 Comparison Report, The Governor's Budget Report with Legislative Authorizations.

Table 19 records the recent changes in the number of Kansas state government employees on the state payroll in six recent years. Despite increases in the number of people in the state and a continued increase in the total state budget, the number of employees has declined. A number of factors explain this. Precisely how much of this decrease is due to increased efficiency, privatizing state services, "out sourcing state service," closing of facilities, and other factors is difficult to determine. Data in this table differ from the later table in that the later table is based on the number of full-time positions **authorized**, not those filled.

## Historical Background

In 1915, Kansas became the ninth state to adopt a general civil service system.<sup>1</sup> However, after five years of operation, the law was completely inoperative for two decades,<sup>2</sup> during which the legislature resorted to the simple expedient of making no appropriations to the civil service agency, and vacancies on the Civil Service Commission were not filled. Since the original state constitution prescribed a maximum tenure of four years for all state officers, the political leaders had a convenient excuse for removing employees who had received appointments under the system.

Some people thought the constitutional provision on tenure was an obstacle to an effective merit system. Consequently, when pressures again led the legislature to consider a personnel program in the late 1930s, the constitutional uncertainty provided the means for securing a direct expression of popular sentiment. In 1939, the legislature approved submitting to the voters a proposed constitutional amendment that would partially repeal the four-year tenure proviso and authorize the enactment of a merit system. The amendment was adopted by a ratio of almost two-to-one in the regular election of 1940.

With this popular mandate, the legislature passed a new civil service law in 1941.<sup>3</sup> The act provided for a three-member, unpaid Civil Service Board, which appointed a professional director. The director was given civil service tenure and had authority to appoint the subordinate personnel of the department. The board served as the policy-determining and appellate body of the department. It adopted a set of civil service rules and regulations and a compensation schedule for the classified service. The director of civil service was responsible for the day-to-day activities of the department, and served as secretary and technical adviser to the board. The director also coordinated the preparation of examinations, the rating of candidates for state employment, and the maintenance of lists of eligible candidates.

In 1953, as part of the fiscal reorganization, the personnel administration system in the state was revised. During the early stages of setting up the Department of Administration, no thought was given to including the

**Table 20**  
**Full-Time Equivalent Positions**  
**by State Agency (Recommended): SFY 2002**

FTE Positions		FTE Positions	
<b>General Government</b>		<b>Education</b>	
Over 1,000 Employees		Over 1,000 Employees	
Judiciary	1,815.5	Kansas State Univ.	3,178.0
Dept. of Revenue	1,162.0	K-State/ESARP	1,264.9
999 to 100 Employees		Univ. of Kansas	4,485.1
Dept. of Admin.	893.7	UKMC	2,448.7
Attorney General	111.0	Wichita State Univ.	1,727.3
Corporation Comm.	211.0	999 to 100 Employees	
Insurance Dept.	159.0	Dept. of Education	244.9
Dept. of Comm. and Housing	139.0	Emporia State	758.1
Bd. Indigents Def. Serv.	165.0	Fort Hays State	722.6
99 and Fewer Employees		Kansas Historical Soc.	146.5
38 Agencies with	916.1	K-State Vet. Med. Ctr.	254.5
Sub-total	(5,572.3)	Pittsburg State	794.0
		School of Deaf	194.0
		School for the Blind	103.5
		99 and Fewer Employees	
		3 Agencies with	67.0
		Sub-total	(16,389.1)
<b>Human Resources</b>		<b>Public Safety</b>	
Over 1,000 Employees		Over 1,000 Employees	
SRS	4,046.7	None	
Dept. Human Res.	1,002.3	999 to 100 Employees	
999 to 100 Employees		Adjutant General	317.8
Dept. on Aging	161.0	Dept. of Corrections	328.0
Health & Environ.—Health	567.0	El Dorado Corr. Fac.	468.5
Kan. Neur. Inst.	672.5	Ellsworth Corr. Fac.	224.0
Larned State Hosp.	741.8	Highway Patrol	885.1
Osawatomi St. Hosp.	487.4	Hutchinson Corr. Fac.	515.0
Parsons State Hosp.	515.1	KBI	238.0
Rainbow MHF	155.4	Lansing Corr. Fac.	710.0
Comm. on Vets. Aff.	557.2	Larned Corr. Men. Hlth.	186.0
99 and Fewer Employees		Norton Corr. Fac.	266.0
1 Agency with	13.0	Topeka Corr. Fac.	250.0
Sub-total	(8,919.4)	Winfield Corr. Fac.	201.0
		Atchison Juv. Corr. Fac.	120.0
		Beloit Juv. Corr. Fac.	104.0
		Larned Juv. Corr. Fac.	136.0
		Topeka Juv. Corr. Fac.	226.0
		99 and Fewer Employees	
		6 Agencies with	123.8
		Sub-total	(5,299.2)
		<b>Total</b>	<b>40,808.2</b>
<b>Transportation</b>			
Over 1,000 Employees			
Dept. of Trans.	3,250.5		
No Others			
Sub-total	(3,250.5)		

personnel function.<sup>4</sup> However, as finally approved, the bill made personnel one of the department's four divisions. The inclusion of personnel was opposed by a few persons who feared this would mean the abandonment of the civil service concept.

Essentially, the Civil Service Department was transferred to the Department of Administration and became the Personnel Division. When this occurred, the Finance Council became responsible for approving division rules and regulations, and made many crucial decisions—until 1975, when the Kansas Supreme Court ruled that Finance Council participation in such decisions of the executive department constituted a legislative usurpation of executive authority. For administrative purposes, the Civil Service Board is attached to the Department of Administration.

Personnel activities have been thoroughly studied as governors and legislators seek to make state employees more responsible to them and to the citizens they represent. In the last two decades, the concept of an independent civil service commission as the best vehicle for structuring the public personnel function has come under substantial challenge. After decades of supporting civil service commissions as the best way to ensure a merit system, in 1970 the National Civil Service League adopted a model calling for personnel to be headed by a single administrator who reports to the chief administrative officer. Personnel was to become part of the management team, but there was to be an independent hearing officer to entertain complaints and make reports to the chief administrator. Literature in public personnel administration is replete with references to the "new" public personnel administration (a term that has various connotations, but usually includes integrating personnel administration into the management sector of the organization).

It can be argued that Kansas adopted this position in 1953, when personnel services became part of the Department of Administration. But a number of reports pointed to the fact that the division had continued to see its role largely as guardian of the merit system. The movement for personnel to become more integrated with management was stimulated by studies in 1976 and 1977, and by the appointment of a new director of the Division of Personnel Services who was committed to this approach.

The word "service" was added to the name of the division to emphasize this focus, and the directorship was put in the unclassified service. The director is now appointed by the secretary of administration and serves at the pleasure of the secretary, rather than being in the classified civil service. New legislation allows the secretary to authorize agencies to perform many personnel functions that previously had been performed by the central personnel agency. This continues to be one of the major trends in the personnel field and in Kansas.

Such decentralization of personnel activities must recognize the substantial size variations of the many state agencies. (Table 20 illustrates these

differences.) In 2002, 11 state agencies are expected to employ more than 1,000 employees, 60 percent of the total number of state workers. These agencies are sufficiently large that they have sizable personnel offices and personnel specialists such as training and classification technicians.

Additionally, in 2002 there are likely to be 41 agencies that employ between 100 and 1,000. This group of medium-sized agencies employ 37.3 percent of the total number of state employees. In general, these agencies have one or more staff members assigned to personnel duties. Their numbers, and the degree of specialization possible in the personnel office, vary—but most do have clearly identified personnel staffers, at least part time.

The 53 agencies that are expected to have fewer than 100 workers employ only about 3 percent of the total number of state employees. While personnel services must be made available to these agencies, many do not have an employee devoting full time to personnel duties; in the main, they depend on the central Division of Personnel Services (DPS). Thus, many different relationship patterns exist between agency management officials and the DPS.

Agency personnel officials are appointed by the agency head and are responsible to that person, while employees of the central personnel office within the Department of Administration are responsible indirectly to the secretary of administration and to the governor. Agency personnel officials usually are organizationally and physically closer to the operating officials. Their sympathies are more likely to be with the agency head and operations managers. They are apt to view problems from the perspective of individual agencies, rather than the perspective of overall state policy.

On the other hand, the central personnel office has the vantage point of comprehending all facets of state employment. Its staff members are more likely to recognize statewide ramifications of bending a rule or accommodating a local situation. The central office is charged with operating a merit system, and it knows about the agency officials who are looking for ways to meet the agency's needs to recruit or reclassify a position to retain an employee or sometimes to play political or personal favorites. Thus, the attitudes of the two groups of officials frequently differ. Both points of view have much to support them, and some balance must be found to preserve the concept of state as single merit employer, while allowing personnel to act effectively as a staff arm for management in the crucial task of recruiting and maintaining an adequate and effective work force.

## **The Changing Environment**

Interpretation and application of the Kansas Civil Service Act statutes and regulations remained philosophically unchanged from their adoption in 1941 until the early 1990s. For 50 years, employees were appointed on the merit of principles or fitness to perform the work of the position. Selection

methods such as civil service testing for all positions and classification study methods established in 1941 remained largely unchanged during this period.

Beginning in the early 1990s, sweeping changes in the culture of state government and in the field of human resources redefined the roles and responsibilities of DPS. A shift in the priorities and needs of the work force at large; a move to decentralize processes to give agencies greater flexibility; technological advances; and increased desire for information from employees, agency officials, and applicants moved DPS operations from a stable, constant environment into a dynamic environment.

In the late 1980s and early 1990s, several state agencies, the governor's office, and the legislature looked for ways to improve efficiencies in state government. These initiatives came together in the form of Kansas Quality Management (KQM), and resulted in a greater emphasis on employee training and development, and in granting employees more autonomy in decision making. The philosophy of continuous improvement, strongly supported by the governor, was pervasive in state government.

Workforce demographic changes, including a declining recruitment pool due to a smaller working generation, necessitated new and different approaches for recruitment and retention strategies. Kansas had a booming economy and a low unemployment rate, which meant more difficulty in recruiting state employees. Increasing numbers of employees were eligible for retirement and new workplace expectations existed for newly recruited employees. All of these influences made it necessary for the state to plan how it would meet its work force needs.

In addition to the changing demographics of the state's work force, crises in recruiting and retaining employees in certain job classes resulted in innovative programs. Bonus programs to hire and retain workers with critical skills, such as information technology, engineering, and corrections work, provided additional tools to agencies to improve the state's competitiveness in terms of salaries. The advent of affordable, powerful personal computers has also had a significant influence on state government. Expectations of self-service and one-stop service have redefined how government delivers services to its constituents. The Internet has created a medium for almost instantaneous access to information, which in turn has created an expectation of quicker and more timely personnel actions.

This changing environment has resulted in a fundamental change in culture for DPS. The state's integrated Statewide Human Resource and Payroll (SHaRP) system provides DPS the capability to easily access a huge amount of information about the state's work force. This capacity has allowed for the decentralization of many human resource functions, and now the focus has moved beyond the centralized management of the state's work force to an emphasis on statewide strategic work force planning.

A central component of the decentralization process consists of “delegated authority agreements” between DPS and state agencies. These agreements outline each agency’s role and responsibilities in relation to DPS. The agreements cover position classification, SHaRP access authority, Fair Labor Standards Act determination authority, drug screening and alcohol and controlled substance testing, and SHaRP interface authority.

As the DPS sheds its centralized, regulatory watchdog role, its resources are freed to develop and implement new programs that recognize the unique needs of individual agencies, while striving to maintain the “state as a single employer” concept. The new paradigm calls for building partnerships with agencies in order to understand and meet their needs and the needs of the changing work force.

## **Traditional Personnel Activities**

### *Classifying Jobs*

Establishing or “creating” a position is a crucial step in acquiring an employee to do a necessary job. But the very first step is budgetary approval for the position. A new program, or expansion of an existing one, requires budget approval, which includes the appropriation of dollars to pay the new employee’s salary.

As a sizable institution, the state of Kansas employs people who are called upon to perform a wide variety of duties. In fairness to the employees, and in the public interest, it is essential to distinguish these job levels. One key mechanism is job descriptions, which are drawn up to evaluate fairly the duties of each employee. Before an employee can have in writing a description of the responsibilities of the job, the supervisor must identify his or her expectations of the employee. Descriptions for a new position generally are prepared by the supervisor, and revised descriptions for an existing job normally are written by the employee and reviewed by one or more levels of supervisors. Then that particular job must be assigned to one of the many classes of positions that DPS has established and reviews on an ongoing basis.

It is the responsibility of “personnel” to “classify” jobs. In the bigger agencies with delegated authority, this means the personnel office of the operating agencies. In others it may be the DPS. Classification involves each job being assigned to a group of similar positions and then to a precise level that determines how much the state will pay the person performing those duties. In 1995, after a comprehensive classification and job rate study, 1,200 job classifications were reduced to approximately 760. Many obsolete and superfluous job classes were eliminated and a number of new job classifications were created. The classification staff is continually engaged in reviewing the duties and responsibilities assigned to positions in the state service: new classes are established, specifications of existing classes are



revised, classes are consolidated and periodically abolished. Most classification studies are undertaken at the request of the relevant state agency, although personnel services may review classifications on its own initiative.

For years, all new classes and position transfers from one class to another were approved by the Finance Council. However, the Kansas Supreme Court ruled this function to be an administrative matter that should be performed by the governor. Since reclassifications call for financial adjustments, the director of the budget division must be consulted. After the agency director obtains approval to include the position in the budget, the personnel division must approve the duties, the qualifications, and the precise position in the range. Some agency officials have complained that the procedure for establishing a new position is too cumbersome.

As a result of inflation and the low pay scale of state employment as compared with the private sector, the division has received many requests to reclassify positions to higher-ranking categories. Because of a limited staff, the division has been forced to resist this pressure to “upgrade” jobs.

Beginning in 1978, the Department of Administration was authorized to contract with agencies to reclassify their own jobs (within certain limits and subject to review). As of 2001, 24 agencies had such authority.

Agencies without delegated classification authority must submit all allocation and reallocation requests to DPS for review by classification teams. The teams are made up of certified classifiers from state agencies and led by DPS consultants. The teams provide an opportunity for team members to gain a broader perspective of the classification process by evaluating reallocation requests from agencies other than their own. In addition, this process provides for a more consistent application of the classification system on a statewide basis.

For years, agency officials have criticized the lengthy approval process for classification changes. Some have felt that the personnel officers responsible to them should be able to assign a job to a class—and thus, in most instances, determine the salary. Others were satisfied to have this done by personnel staffers outside their agency.

The decentralization of authority in reclassification has led to quicker decisions for the agencies having this authority. Whether this delegation is successful will depend on whether professional and objective judgments are made in assigning jobs to ranges and keeping all job classes in reasonable relationship with each other. Without strong leadership and control, Kansas state government may find that it is no longer a single employer paying the same rates for the same job.

Management officials may be able to inflate salary ranges in their organization for their employees and themselves. They may feel justified for many reasons: isolation of the work location, the special expertise of an employee, the threat of losing an employee and having to train a replacement, or other job-related reasons they genuinely believe are in the best interests of the

# Condensed Job Class Specification Sample State of Kansas Office Assistant IV

## Definition of Work

### *Summary*

This is clerical work of average difficulty and is performed under general supervision. An employee in this class is responsible for providing clerical support in diverse office situations. The work may require the operation of standard and electronic office equipment.

### *Standard Classification Factors*

Factors include varying levels of supervision, difficulty, complexity, consequences of action or decisions, contacts, physical demand, environmental conditions, and supervision/leadership.

### *Distinguishing Factors*

- Differs from Office Assistant III where less difficult work is performed under general supervision.
- Differs from Office Specialist where work is of considerable difficulty and diversity; errors could result in significant consequences.
- Differs from Office Supervisor where most of the work is supervisory.

## Examples of Work Performed

- Directs the clerical functions and work production, flow and review of a record and files system, unit or similar section of a state department.
- Analyzes office procedures and systems and devises and implements modifications, normally subject to approval of an administrative supervisor.
- Prepares periodic budget reports.
- Solves problems referred by subordinate workers.
- Responds to questions from other offices or the public.

## Required Knowledge, Abilities, and Skills

- Knowledge of the principles of office management.
- Knowledge of record keeping and reporting.
- Ability to communicate effectively both orally and in writing.
- Ability to apply, interpret and explain technical and varied rules and regulations, policies and procedures.
- Ability to develop effective office procedures and practices.
- Ability to establish and maintain effective working relationships.

## Minimum Requirements

Limited independent work experience in office support/clerical work.

state. Other supervisors may finagle higher pay ranges for employees they personally like.

Increased pay levels for subordinates mean increased pay levels for supervisors. The result may be that agencies compete by offering different rates for essentially the same job—a situation that promises to be costly for the state, in both dollars and employee morale.

### *Pay Administration*

The greatest difficulty faced by agencies and DPS revolves around pay issues. The disparity of resources between large and small agencies is a state-wide problem. Some agencies often have external sources of funding, such as grant and federal monies, that can be applied to supplement employee salaries. Other agencies are generally funded through the State General Fund, limiting salaries to legislatively funded base salaries. The ability of agencies to pay employees competitive salaries varies considerably. It is the responsibility of DPS to try to ensure pay equity among state agencies. DPS uses the classification system, as well as pay plan structures, to maintain that equity. Although DPS has the authority to establish the pay philosophy and system, the system must be funded by the legislature. This has, at times, stymied new pay initiatives for state employees.

In 1995, DPS consolidated a number of pay plans into two pay plans for classified employees—one for hourly employees and one for salaried employees—and moved from a monthly pay schedule to biweekly pay. Each class of positions is assigned to a grade. New employees typically start at the entry level of the pay grade for their particular class, but beginning in 1995, agencies are now able to start an employee at a higher step based on special circumstances.

Employees move through the pay matrix in “steps.” Each year, state employees receive an official performance review. A satisfactory or exceptional performance rating qualifies employees for a yearly step movement. New employees beginning on step 4 receive an additional “six-month” step, and then the regular step at one year of service (providing two step movements in the first year). Generally, each step is 2.5 percent more than the previous step. As the state budget allows, the legislature may also fund a general increase to the pay matrix.

By statute, DPS is required to conduct salary surveys to ensure competitiveness with comparable employers. Job classes are reviewed on an ongoing basis in an effort to maintain equity in the pay system, as well as maintain competitiveness in recruitment efforts for the state. Salary surveys and reclassifications are carefully considered by DPS. In addition to the issue of consistency of pay among agencies, DPS must also be aware of pay compression, i.e., lower rank-and-file employees receiving pay increases that their supervisors do not.

Most pay systems call for supervisors and managers to receive a higher salary than line staff. To ensure that supervisors' pay remains higher than line staff, DPS reviews the specific job class being reviewed, and then determines which other job classes will also be affected to counter any compression issues.

Classified state employees with 10 years of service and a satisfactory rating are rewarded with a longevity bonus, authorized by statute. The bonus is calculated on years of service with the state, and issued to eligible employees once a year. Other bonus programs exist in the state system, but are tied to special qualifying events or skills.

Unclassified positions are generally not subject to the pay matrices. Unclassified position salaries are established by the employing agency, and pay increases are funded by the legislature through a merit pool. This provides additional recruitment and retention flexibility for the agency.

## **Recruitment and Selection**

DPS serves employees and agencies with a number of recruitment and employing programs. By statute, DPS prepares a central notice-of-vacancy list that advertises open state jobs. This list is posted to the Internet weekly, and is based on reports run from SHaRP. The list includes positions in both the classified and unclassified service. From these lists, interested individuals may begin the process of applying for a state position.

To apply for classified state jobs, applicants must register their education, job experience, knowledge, and skills with DPS through an employment registration process. Applicants assess their own proficiency levels in a variety of areas measuring competencies in a qualitative based system. The current forms are divided into seven occupational categories. Applicants complete the categories relevant to their education, skills, and other work and life experiences. Unclassified positions do not require completion of the registration forms.

After completing their registration form, applicants may be assigned to a specific vacant position. A standardized employment summary form is submitted to the employing agency, along with any additional information requested by the agency. Eligible applicants may claim veteran's preference at this time. DPS operates an employment and information office, the Civil Service Employment Information office (CSEI), to assist applicants during these processes. This office also is a resource to agencies. CSEI offers central access and recruitment services to agencies for advertising purposes. DPS often represents state agencies at job fairs across the state, and recruits for the state as one employer.

The new employment and registration process has received awards for its ability to meet agency needs, as well as simplifying the process for applicants. Unlike the majority of other states, Kansas does not require appli-

cants to take "civil service" tests or limit agencies to the top five candidates for interviewing. Applicants now self-report their skills based upon their education and experience, rather than receiving a score for their knowledge, skills, and abilities.

In 1997, DPS offered agencies and applicants increased access job listings in Kansas government by posting vacancies to the Internet. SHaRP has also automated a significant portion of the selection process, all resulting in decreased time required to fill vacancies. Applicants register using any of the seven occupational category books, based upon the skills they possess. Changes in the skills registration process have resulted in a nearly 75 percent reduction of time required by the applicant to complete the form. The result is a qualitative assessment of work experience and knowledge, and does not limit the recruiting pool to individuals who do well on tests.

With the abolishment of the "rule of five," which limited agencies to the top five test scores for interviews, agencies are able to select candidates from a larger pool. The selection system also provides flexibility to agencies, allowing them to use a variety of screening tools, including resumes, questionnaires, work samples, behavior-based interviews, and job-related exercises.

Innovations have also moved DPS forward as a service provider. DPS continues to decentralize selected functions and processes. Reductions in regulations as a method to eliminate burdensome processes have given agencies additional flexibility and authority. Delegated authority, bonus programs, and flexibility in starting pay for agencies give agencies increased autonomy in their daily HR functions.

### *Training*

The Division of Personnel Services is paying more attention to training employees. One major goal is to help agencies and their personnel officers provide instruction that allows employees to further their personal development. In large organizations such as Kansas state government, communication problems inevitably develop between supervisors and subordinates. Teaching supervisors to become more effective managers of their own time, and that of their employees, becomes an important and sizable task.

The 1978 Kansas Civil Service Reform Act directed that state employees be provided supervisory and management development training. DPS initiated supervisory training shortly thereafter, and in 1993 implemented a Certified Public Manager training program in partnership with the KU Public Management Center.

Some generalized training programs can be provided by central personnel, but most technical training must be done within agencies—in many cases by the most senior and qualified technicians. Personnel services therefore must create an agency environment that encourages and nurtures training. The personnel trainer becomes the catalyst.

Fully effective training programs promote individualized career development. Career counseling, sabbatical leave programs, career ladders, and management internships are parts of the state personnel operation—but agencies differ widely in the extent to which they can and will develop such refinements.

As quality management was introduced into the state's business practices, the Department of Administration, the Public Management Center, and state agencies formed a partnership to develop the Comprehensive Management Education and Training Strategy (CMETS). This program, like KQM, was based on these four principles: improved service to employees and agencies, process improvement, employee development, and employee involvement. The CMETS partners review all centrally provided training and education opportunities to ensure inclusion of the four quality goals.

By statute and regulation, the Department of Administration is responsible for supervisory training, quality management training, new employee orientation guidelines, and training for lead workers. A CMETS evaluation team has reviewed all of the programs, except for the lead worker.

In addition to required courses, DPS provides certification programs to employees through partnerships with other divisions and agencies. The Information Technology (IT) Project Manager Methodology course certifies public sector IT professionals in project management techniques. This three-week course is provided in partnership with the Division of Information Systems and Communication (DISC). The Certified Public Manager program certifies public managers in management techniques and philosophies. This program is a partnership between DPS and the KU Public Management Center, and is accredited by the National Consortium of State Certified Public Manager Programs. DPS trainers also provide seminars and conferences for the professional development of employees.

Companion courses, Executive Development and Employee Leadership, were developed in partnership between DPS and the KU Public Management Center to encourage process improvement and encourage employee input. College credit for certain training programs, including CPM and supervisory training, provide additional credit for managers in the state system with minimal costs.

## **Conditions of Employment**

Hours of work for full-time employees are determined by the appointing authorities of the state agencies, and each agency is required to report its time schedule to the secretary of administration. Most agencies now operate on a 40-hour week.

The establishment of a merit system was followed by a clear policy regarding vacations and sick leave. Classified employees with fewer than five years of service earn 3.7 hours of annual leave per bi-weekly pay period.

Employees with longer service earn up to 6.5 hours per period. The state also offers military leave, jury duty leave, disaster service leave, funeral leave, and a shared leave program. Sick leave is earned at the rate of 3.7 hours per pay period regardless of the length of service.

The civil service law directed the personnel agency to establish standards of performance and "a system of service ratings."<sup>5</sup> This system was installed in 1947 and has often been revised. The current system calls for "priority outcomes" to be identified for each position and performance feedback indicators to be highlighted. At the beginning of the rating period, the supervisor and the employee establish the priority outcomes expected for the rating period. The employee's overall rating (exceptional, satisfactory, or unsatisfactory) is determined by success at achieving the priority outcomes and any highlighted performance indicators. Exceptional or unsatisfactory ratings require explanation by the supervisor. Each employee is rated by his or her immediate superior, and space is provided for the employee's signature as evidence that the rating has been made known.

One controversial issue of government employment is whether employees may participate in political or other organizations that seek to influence government policy. Kansas law requires any employee in the classified service to resign prior to taking an oath of office for a state office upon filing for a public office elected on a partisan basis. Further, the law makes it a Class-C misdemeanor for any officer or employee to influence directly or indirectly any officer or employee in the classified service to become a member of any organization, to pay or promise to pay or make a contribution, or to take part in any political activity.

As a part of the governmental ethics program, as of July 1, 2000, Kansas law prohibits any state employee from accepting or requesting meals, gifts, entertainment, and travel (with a few exceptions). The Governmental Ethics Commission has issued guidelines as to what employees may do, and will issue advisory opinions as requested.

### *Labor Unions*

Since 1972, Kansas has had a law prescribing the processes by which public employees may organize into unions and negotiate with their employers. This law covers both local governments and the state. The law may be described as a "meet and confer" law, but there are provisions for memorandums of understanding, memorandums of agreement, and fact-finding and impasse procedures that go beyond the typical meet-and-confer requirements. The Kansas Public Employee Relations Board (PERB) was created to hold hearings, establish procedures for preventing improper practices by employers or employee organizations, establish panels of mediators, and facilitate the organization of public employees and the handling of union/management relations.

One of the most far-reaching determinations to be made in organizing employees is what constitutes a proper, appropriate unit for "meeting and conferring." If the unit is too large, employees have difficulty gaining recognition as a bargaining unit, and interests are so diverse that negotiation is hampered. If the unit is defined too narrowly, the administration has many small units with which to deal, and one union may "play off" the state against another.

As employees in state agencies applied to PERB for elections to determine whether a majority of employees in the bargaining unit wanted union representation, it was necessary for the board to come to grips with this issue. The Department of Administration urged the board to set up a smaller number of units for the state, but the board rejected the request. In 1997 there were 59 units among Kansas state employees.

When 30 percent of employees in a unit sign a petition, an election is held to determine whether the employees want to form a bargaining unit. In each election, employees may vote to have no group represent them. Run-off elections may be held if necessary to obtain a majority decision. To date, 41 units have held meet-and-confer meetings, and most have signed memorandums of agreement. Within these units there are 14,300 state employees. The largest is the Administrative Services Unit, which includes 1,570 employees in 60 state agencies. Four other units have more than 1,000 employees each. The secretary of the Department of Administration signs the memoranda for the state. Labor matters that require the passage of legislation are submitted to the next session of the legislature.

Most organizing activity has been in the classified service. The unclassified faculty at Pittsburg State University and Fort Hays State University, and the graduate teaching assistants at the University of Kansas, are the only units among employees in Kansas higher education that have sought recognition and memorandums of agreement.

In the several efforts to amend the law as it applies to state employees, a number of changes have been proposed. The question of who is to be the "governing body" at the state level with regard to state employees is not easy to resolve. Since the legislature is in session for a comparatively short time, and since it has so many other tasks, it probably cannot function effectively in this role. On the other hand, wages, fringe benefits, and working conditions make up such an important part of the state budget that the legislature is not able to delegate this responsibility.

The law clearly states that both state and local employees are prohibited from engaging in strikes. Despite this provision, work stoppages have been organized at the University of Kansas Medical Center. Kansas and other states have found it difficult to enforce this provision. Any organization of public employees is also prohibited from endorsing candidates, spending any of its income directly or indirectly on partisan politics, and advocating or opposing the election of candidates for public office.



### *Separations, Retirement, and Turnover*

For a wide variety of reasons, there is a large turnover in state employment. Turnover is costly from the agency point of view as well as that of personnel services. Turnover means more vacancies and more transactions to handle. For the employing agency, turnover means a break in service and the shifting of employees to absorb the work of the employee who has left. When a new employee does become available, there is an orientation and training period during which production is not likely to be up to the normal level.

A career service should provide an orderly way for separating employees who are no longer fully efficient because of their advancing age. In 1961, the legislature established the Kansas Public Employees Retirement System (KPERs) to provide retirement benefits for most state employees. Each participating worker contributes 4 percent of her or his salary, and the state contributes at a rate that has varied from 7.3 to 2.44 percent. Effective July 1, 2001, the employing agency contributes 4.18 percent for retirement benefits and 0.6 percent for a group life and disability insurance program. In 2001, local units of government contribute 2.77 percent plus .6 percent for group life and disability. Retirement benefits are set at 1.75 percent for each year of credited participating service, based on the employee's final average salary. For those employed before the system became effective, benefits are based on 1 percent for each year of service. This is in addition to the Federal Old Age and Survivors' Insurance Program, which covers all state employees and the employees of many local governments.

At one time there were separate retirement systems for employees of the Kansas Highway Patrol, the Kansas Bureau of Investigation, district court judges, district court reporters, and school employees—but now the systems have merged into KPERs. Non-teaching employees under the Board of Regents are included in the state system, while teaching employees are under the Board of Regents retirement plan.

The new system allowed local units of government to participate, and a substantial number have done so. As of January 2001, there were 1,419 units of local government under the state retirement system.

Most employees leave state employment voluntarily, but any employee may be dismissed at any time for cause. If a dismissed worker has served his or her probationary period and gained "permanent" status, he or she is entitled to a hearing before the Civil Service Commission. If the commission finds insufficient cause for dismissal, or finds that the employee was dismissed for political, religious, or racial reasons, the employee will be reinstated and paid salary for the time since being laid off.

In a 1978 revision of this law, the presumption in a dismissal hearing was changed to make the aggrieved employee bear the burden of proof. If the employee is to be reinstated, he or she must prove that the appointing

authority did not act reasonably. Permanent employees are allowed to make similar appeals in instances of suspension or demotion.

Persons who have been appointed provisionally or are serving their probation are not entitled to an appeal. They are merely entitled to a statement of the charges, and they may ask for administrative appeals only within the agency. Before making the formal appeal, the aggrieved employee must already have appealed to the appointing authority and been dissatisfied with that decision. In SFY 2000, the Civil Service Board received 48 appeals, of which it heard 47. It affirmed the decision of the appointing authority in 11 cases, 10 were settled, 10 withdrawn, six defaulted, five were modified, and three were reversed.

The number of case dismissals is not an accurate measure of supervisor effectiveness in weeding out unsatisfactory employees, nor is it a measure of examining procedure effectiveness in selecting qualified employees. Actually, dismissals occur only in the most unusual cases. If an employee is not suitable, she or he may be reassigned; in some cases, the supervisor will encourage the employee to resign. In public employment it is important, and sometimes difficult, for the reviewing authority to hear the case in such a manner that the employee feels fairly treated and the supervisor feels that she and her work are not being critiqued.

## **Newer Personnel Activities**

### *Drug Screening*

State government has embarked on a drug screening program as part of its Comprehensive Drug-Free Workplace Program. All final applicants in safety-sensitive or commercial driver positions are screened for drugs, and incumbents in such positions may be tested for drug use on the basis of reasonable suspicion. If employees test positive, they are eligible to obtain counseling and then return to work in a drug-free workplace. Approximately 2,500 positions in 36 agencies are covered by this program. Throughout the state, personnel services has sponsored a program titled "Proud to be Drug Free" to prevent alcohol and drug abuse by increasing public awareness and education.

### *Equal Employment and Affirmative Action*

The State Affirmative Action Plan for Equal Employment Opportunity is mandated by Kansas Executive Order 93-159. The plan reaffirms the State of Kansas' commitment to nondiscrimination and equal employment opportunity through affirmative action to ensure equal treatment of applicants and employees without regard to race, color, national origin, ancestry, sex, age, religion, or disability.

The goal of the plan is to achieve a work force that includes a representation of qualified minorities, women, and persons with disabilities that approximates their availability in the state resident work force.

### *Health Promotion*

Healthquest, an employee health promotion program, was implemented in 1989 to enhance employee health and assist in the containment of health care costs. Classes and self-help programs in weight management and smoking cessation are offered regularly at many locations across the state.

Exercise equipment has been distributed to more than 141 Kansas work sites. The program also provides to all state employees a health education newsletter and access to a 24-hour toll-free assistance referral service called LIFEline.

### *Flexible Benefits Plan*

The state offers employees what has come to be known as a Cafeteria Benefits Plan, which allows them to select and pay for certain dependent care and medical/dental expenses with pre-tax dollars. Deferred compensation plans also allow state employees to supplement their retirement earnings with pre-tax contributions to their individual retirement accounts. Administration of these benefits is requiring increased attention from personnel staffers.

## **Unsolved Problems**

The search continues to find the most effective way to recruit and maintain a fully competent and motivated staff to perform the services of Kansas government. The last decade has seen a major decentralization of personnel authority from the central personnel office (DPS) to the operating agency personnel offices. In some agencies, authority has been further decentralized from agency personnel offices to field (or institutional) personnel offices. There is increasing recognition that first-line supervisors and intervening levels of supervisors, up to and including the governor, *all* play important roles in managing and directing the activities of state workers. The supervisor sets the work environment, and her or his attitude toward the employees in the unit is crucial to operational effectiveness.

How much farther Kansas state government can appropriately go in decentralizing personnel authority depends on several factors: How able and well-trained are the agency officials? Will agency managers and their personnel officers weaken the merit system, or will they be so impressed with the need to recruit high-quality employees that they will maintain high standards? What is the present level of partisan maturity of the political leaders in the state, who reflect what citizens want and will stand for? Is Kansas at a period in its political history when sophisticated demands for specialists in

state government will allow the state to move away from a formal civil service system, yet maintain a high level of merit employment? This will take an extraordinary level of political leadership and restraint.

The four-year term for the governor, the creation of a cadre of cabinet secretaries who depend on the governor for their appointment and continuation in office, and other administrative reorganizations suggest further efforts to integrate personnel into the management of Kansas state government. No one seriously supports the return to a spoils system, yet proposals to abolish civil service without alternatives raise questions as to where the personnel reforms may lead. Kansas' goal must be to incorporate reforms that will strengthen state employment without making personnel decisions that would be susceptible to political favoritism or inflexible bureaucracy.

In a public personnel office, it is not easy to find the correct balance between a "policing" operation (which is necessary to maintain a civil service merit system) and a service operation (which views personnel as a staff arm of management). That is the current challenge for all engaged in Kansas state personnel work.

## Chapter 10 Notes

1. *Session Laws*, 1915, Chapter 156.
2. William H. Cape and Edwin O. Stene, "State Civil Service in Kansas" (Lawrence, Kansas: Governmental Research Center, University of Kansas, 1954), pp. 5-12.
3. *K.S.A.*, 75-2925.
4. Peter Bart and Milton Cummings Jr., "The Transfer of the Kansas State Civil Service Department" (Inter-University Case Program, University of Alabama, 1956).
5. *K.S.A.*, 75-2943.



## Chapter 11

# The Role of the Courts and the Criminal Justice System

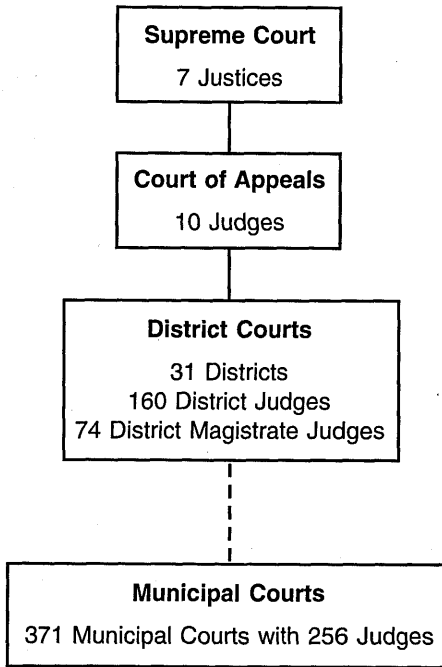
Until 1972, the Kansas judicial system followed a pattern familiar to many American states. It was characterized by a hierarchy of tribunals, a proliferation of local courts established to make justice widely available, and the popular election of judges. In 1972, the voters approved a new judicial article vesting the judicial power of the state in *one* court of justice. This marked the official adoption of a unified court system consisting of a Supreme Court, district courts, and other courts provided for by law.<sup>1</sup> Major legislative changes have now implemented the system.

### Early Courts in Kansas

Courts in the area began in territorial days.<sup>2</sup> The first judicial officers appointed in the territory apparently were justices of the peace named by Governor Andrew Reeder late in 1854. President Franklin Pierce appointed three judges to serve as the territorial Supreme Court. These judges may have held court as district judges earlier, but there are no records to prove this. In any case, it is certain that they did not convene as a court of last resort for the territory until July 30, 1855, when Reeder and the territorial legislature became embroiled in a bitter feud.

The governor had called the territorial legislature to meet at Pawnee (now part of the Fort Riley military reservation). The legislators met there, but decided to move their meeting to Shawnee Mission, in what is now Johnson County. Reeder maintained that the legislature did not have the power to adjourn to a different meeting place; therefore, he refused to sign the acts adopted at Shawnee Mission. The legislature then requested the

**Figure 22**  
**The Kansas Judicial System**



Source: Office of Judicial Administration, 2001.

Kansas Supreme Court to convene and rule on the validity of the Shawnee Mission session.

The Supreme Court took the question under special advisement, not as a court but as individual judges. Chief Justice Samuel Lecompte and Associate Justice Rush Elmore recorded their view that the assembly was legal and its enactments valid. Relying on this informal opinion, the legislature proceeded to enact a general body of laws for governing the territory. The third judge, Saunders W. Johnston, wrote a brief statement arguing that the members of the court had no right to render opinions except in regularly presented cases. It should be noted that Lecompte and Elmore were southerners and Johnston was a northerner, and that the Shawnee Mission gathering became known to Free-Staters as the "Bogus Legislature."<sup>3</sup>

The territorial court, so inauspiciously inaugurated, functioned until it was replaced by state courts in 1861. The first session of the Kansas Supreme Court was held on October 28 of that year.



## **The Kansas Supreme Court**

The Supreme Court originally consisted of a chief justice and two associate justices, elected for overlapping six-year terms. In 1900 a constitutional amendment changed the court's composition to seven justices, the justice with highest seniority holding the position of chief.

The legislature has established minimum qualifications for justices: that they be admitted to practice law in the state and have at least 10 years of experience as a practicing lawyer, judge, or teacher in an accredited law school. There are neither constitutional nor statutory provisions relating to the disqualification of justices or the selection of a substitute for a justice who may have disqualified himself or herself.<sup>4</sup> In 1987, the base salary of the chief justice was \$58,000; associate justices received \$56,500. Beginning in that year, the legislature provided that justices (and other elected state officials) would receive the same cost-of-living increases allowed classified employees under the state pay plan. Currently the chief justice receives \$112,704 and the other justices \$109,756.

The constitution requires the Supreme Court to hold one term each year in Topeka. By statute the first Tuesdays in January and July are fixed for its convening. The Supreme Court has both original and appellate jurisdiction. Original jurisdiction includes the three extraordinary remedies of quo warranto, mandamus, and habeas corpus. Statutes define the court's appellate jurisdiction. It now includes, as a matter of right, all Class A and B felony cases and cases in which a law has been declared unconstitutional. The Supreme Court may grant a petition to review a decision of the court of appeals.

The Kansas Supreme Court has established rules for assigning cases to its "summary calendar" and its "general calendar."<sup>5</sup> Screening panels of three justices are established to determine which cases are assigned to the summary calendar. For cases on the summary calendar, each side is allowed 15 minutes of oral argument. For cases on the general calendar, 30-minute arguments are permitted for both appellant and appellee.

Opinions must be submitted in writing, and the justice delivering the opinion must file with the clerk the syllabus to be published in the official reports. Approximately one-third of the cases filed are dismissed; the remainder are decided after full argument on the merits of the case. In SFY 1991, the Supreme Court terminated 291 cases, writing opinions in 203 of them. In about one-half of the opinion-writing cases, the lower court decision was affirmed.

The legislature in 1957 submitted a proposed constitutional change to allow for the nonpartisan selection of Supreme Court justices. The proposal, which was approved, was patterned after the system used in Missouri. To fill vacancies on the Supreme Court, the governor appoints from lists of three persons nominated by the Supreme Court Nominating Commission.

## **State of the Judiciary February 2001 Chief Justice Kay McFarland**

I welcome this opportunity to report on the state of the Kansas Judicial Branch to the Legislative Branch and to Governor Bill Graves pursuant to K.S.A. 20-320.

### **NONJUDICIAL SALARY INITIATIVE**

We came before the 2000 Legislature with a court system in crisis, resulting from an antiquated pay plan that did not allow the Judicial Branch to compete with the private sector or city or county governments in attracting and retaining qualified nonjudicial personnel. . . .

In June of 1999, I appointed a commission of Judicial Branch employees representing a wide spectrum of responsibilities and geographical areas to study and address the problem. This commission did an outstanding job and came up with a proposed new pay plan that was feasible economically, and yet broad enough in scope to meet our needs. . . .

### **FY 2001 SHORTFALL**

The very success of the NJSI has created a major fiscal problem in our FY 2001 operation. . . .

Approximately 97 percent of Judicial Branch funding goes to salaries. Only 3 percent is designated for other operating expenses (OOE). This disproportionately high percentage attributable to salary expense is because the counties have the responsibility of bearing virtually all expenses of the district courts other than salaries. The 3 percent of the budget attributable to OOE consists of essentially fixed costs. Notwithstanding these facts, our FY 2001 OOE request was cut by \$939,083 (temporary help was reduced \$513,390 and judicial travel was reduced \$425,693). These cuts represented a 38.75 percent reduction from the total OOE (all categories) request which was \$2,423,706.

Judicial Branch use of temporary help differs somewhat from the traditional use of temporary help. . . .

The Judicial Branch travel category also is essential rather than discretionary. . . .

The bottom line is that it is not possible to cut temporary help or judicial travel costs without crippling vital and very cost-efficient programs which serve the people of Kansas. Indeed, these expenses are necessary for the basic delivery of court services to the citizens of Kansas. . . .

### **THE UNDERLYING PROBLEM**

The success of the NJSI pay plan, the reduced savings from personnel turnover, and the resulting inability to make up the cuts in our FY 2001 maintenance budget were in sharp focus and of great concern when we received the Division of the Budget's recommended cuts in our submitted FY 2002 budget. . . .

One key to overcoming these problems, in my view, is for us to follow the spirit of our Constitution and have the Legislative Branch fulfill its check of the judiciary by dealing directly with our budget rather than through the "middle man" of an Executive Branch agency. . . .

#### **NJSI COMMITTEE**

The NJSI committee continues its work. Employee classifications are being examined and more accurate job descriptions are being developed. . . .

#### **TECHNOLOGY**

Technology has allowed the Judicial Branch to make the courts more easily accessible and understandable for Kansas citizens. . . .

#### **SENIOR JUDGE PROGRAM**

For the past several years we have made excellent use of the senior judge program. This continues to be a win-win endeavor. . . .

#### **JUDICIAL RETIREMENT AGE**

Under current law, judges and justices must retire at the age of 70, but may finish serving the term during which the judge attains the age of 70. Senate Bill 46 would provide a mandatory retirement age of 75 for all judges and justices. . . .

#### **FOSTER CARE**

Issues surrounding children in foster care have often made headlines in recent years. . . .

#### **KANSAS CHILD SUPPORT GUIDELINES**

Another facet of child and family programs is the continuing revision of the Kansas Child Support Guidelines. . . .

#### **CASA AND CITIZEN REVIEW BOARD PROGRAMS**

Court Appointed Special Advocate (CASA) and Citizen Review Board programs continue to be an important ally in our fight to keep children safe and achieve permanency for children. . . .

#### **ALTERNATIVE DISPUTE RESOLUTION**

In 1988, the Dispute Resolution Commission was established by the Supreme Court. Several district courts had already adopted mediation programs in divorce cases involving minor children. . . .

#### **INTERPRETERS**

In every judicial district, there are participants in court proceedings whose first language is not English. . . .

#### **SENIOR CITIZENS LAW DAY**

As a public service, I have initiated a program this month entitled Senior Citizens Law Day which will provide public service local programs aimed at senior citizens' legal issues. . . .

#### **THE PEOPLE OF THE JUDICIAL BRANCH**

Before concluding, I want to tell you how much I continue to be impressed with people of the Judicial Branch who serve the people of Kansas so well. . . .

#### **CONCLUSION**

The business of the Judicial Branch continues to be the administration of high quality justice in the most accessible, uniform, fair, timely and cost-efficient manner possible. . . .

The commission consists of a chairperson selected by the Kansas Bar Association and two members from each congressional district. One of these members must be a lawyer selected by the members of the bar association residing in that district; the other, a lay member, is appointed by the governor. The members of the commission are forbidden to hold appointive or elective public office or any official position in a political party. Members of the commission are ineligible for nomination to the Supreme Court during their tenure on the commission and for six months thereafter.

Once appointed by the governor, a justice serves for at least one year. At the first general election after the justice has completed one year of service, his or her name is submitted on a nonpartisan ballot. The voters are merely asked whether the justice should be retained in office. The justice does not "run for election" in the traditional sense; the justice stands on the record of his or her service. If the vote favors continuance in office the justice serves for six years, at the end of which another referendum is held. There is no limit to the number of terms a justice may serve. If the voters decide against continuing a justice in office, a vacancy is created and the process begins anew. Kansas Supreme Court justices are prohibited from contributing to or holding offices in political parties, and from participating in political campaigns.

Critics of this system claim that it does not eliminate politics from the courts, that it gives too much power to a select group of lawyers, and that the plan for popular rejection eliminates only the most glaringly unsatisfactory judges. Proponents hail the system as a happy compromise, keeping the best characteristics of the method of appointing judges while maintaining an element of popular control.

In 1965, the legislature enacted the Judicial Department Reform Act, which allowed the grouping of judicial districts so as to divide the state into six judicial departments. Each of the six justices is assigned to a department, and supervises the work of the district courts in his or her department. The Office of Judicial Administrator was established to assist in this work, maintaining information with regard to the case load in each district court. District judges are assigned to hear cases in other districts to equalize the dockets of the courts and facilitate the hearing and deciding of cases. Judicial conferences are held at least annually, allowing the justices to assemble all their district judges to consider the business of the department.

## **Appellate Courts**

It was not until January 19, 1977, that the state had an intermediate court of appeals to which cases could be taken from the district court, the basic trial court in Kansas. From the beginning of statehood, the Kansas Supreme Court heard appeals from all district courts. While not specifically

provided for in the 1972 judicial article, the court of appeals was created in 1975 by the legislature as one of the courts provided for by law.

The basic function of the Kansas Court of Appeals is to relieve the work load of the Kansas Supreme Court and to expedite the hearing and disposition of cases. The court of appeals has a chief judge and nine associate judges who are appointed in the same fashion as are members of the Supreme Court.

The court of appeals may hear cases as a full court or in panels of three judges. It is based in Topeka, but may hear cases in any part of the state. The Supreme Court has original jurisdiction in mandamus, quo warrant, and habeas corpus; and appellate jurisdiction as a matter of right in Class A and Class B felony cases and cases in which a statute is declared unconstitutional. All other types of cases are appealed to the court of appeals. The Supreme Court may grant a petition to review a decision of the court of appeals, but otherwise an appellate court decision is final. Either the Kansas Supreme Court or the Kansas Court of Appeals may order the transfer of pending cases to the Supreme Court. In SFY 2000, the appellate court terminated 2,240 cases.

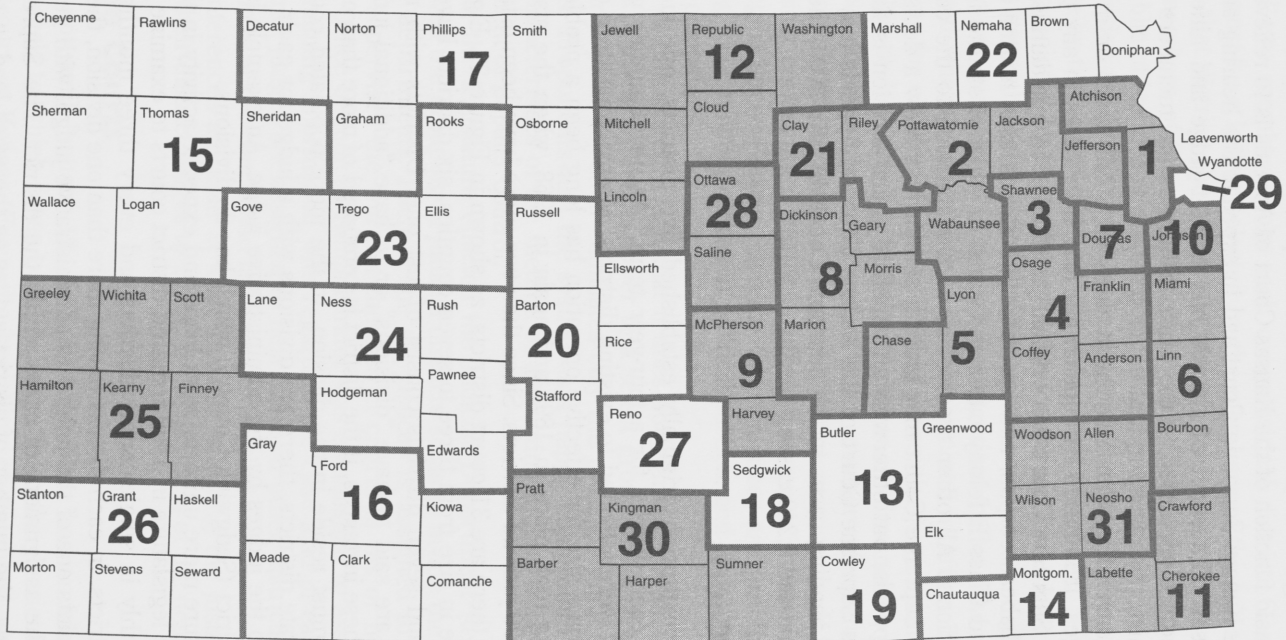
## **District Courts**

The constitution originally established five districts, one judge to be elected in each district for a four-year term.<sup>6</sup> As new counties were organized, they were attached to existing districts. Maintaining these districts at an appropriate size for effective operation has long been a problem. Major redistricting took place in 1895 and again in 1968, when the state was divided into 29 judicial districts. Since then two more have been established.

Today there are 31 court districts, as shown in Figure 23. Eighteen districts range in size from three to seven counties, six districts have only two counties, and seven districts consist of just one. Districts with more than one judge are said to have "divisions" or to have "additional judicial positions." In these instances, if the district is composed of more than one county, the judge must reside in the division. In the more populated counties that form separate districts, there are divisions with a judge for each. Cases are assigned to the judges by the administrative judge. An example is the 18th judicial district (Sedgwick County), which has 25 divisions.

To ensure more uniform work loads and expedite activity in the district courts, the legislature in 1968 required district courts to examine their case loads monthly in single-county districts and every three months in multi-county districts. In each district having more than one division, the Supreme Court appoints one of the judges as administrative judge, with general control over the assignment of cases within the district. The Supreme Court may increase the number of district judges as the work load in the district demands.

**Figure 23**  
**Kansas Judicial Districts and Departments: March 2001**



Political Process—14 districts or 45% (counties = 53)  
 Merit Selection Process—17 districts or 55% (counties = 52)

Source: Office of Judicial Administration: 2001.



The district courts in Kansas have long been the general trial courts, with broad civil and criminal jurisdictions. Civil actions of divorce may begin in a district court, as may claims involving any amount of money and prosecutions of felonies and misdemeanors. Before court unification, district courts acted as appellate courts for the probate and county courts, justice of the peace courts, city courts, and municipal courts.

In rural Kansas the typical arrangement was (and is) for the district judge to ride his or her circuit, visiting the county seats in the district and holding court at that time. To help the judge as well as the attorneys and citizens having business with the court, a clerk of the court is appointed in each county. This official handles the records and serves as a local representative for the district judge.

Until 1974, when the new judicial article was added to the constitution, district judges were elected for four-year terms on a partisan ballot, some being elected at each general election. The article called for the continuation of the election of judges in districts unless the voters in the district had adopted and not subsequently rejected a nonpartisan system. The legislature, pursuant to the constitution, established a nonpartisan system for selecting district judges. The plan was submitted to the voters in the 29 judicial districts existing in 1974, and was adopted in 23 of them. Currently 17 of the 31 districts use this plan.

Following the Kansas Supreme Court pattern, nominating commissions consisting of lawyers and lay members are appointed in each district. In districts consisting of one county, the lawyers in the county elect three members; in two-county districts they elect four members; and in districts of three or more counties they elect a number of members equal to the number of counties in the district. A corresponding number of nonlawyer members are appointed by the county boards of commissioners.

The chairperson of a nominating commission is a justice of the Supreme Court or a district judge appointed by the chief justice. The chairperson presides but does not vote. The members of the commission have staggered four-year terms. The commissions are to nominate persons of recognized integrity, character, and ability, and are to work "to the end that persons serving as district court judges will be the best qualified therefor."<sup>7</sup> The commissions nominate to the governor at least two but not more than three persons for district judgeships and associate district judgeships; the governor makes the appointment. The appointee fills a four-year term if appointed to a new judgeship, or the remainder of the unexpired term to which appointed.

The question of whether a judge shall be retained in office is submitted to the voters; if they vote affirmatively, the judge serves another term. If the vote is negative, the office becomes vacant and the selection process begins again. During the transition to the new system, judges whose terms expired in 1976 were required to run for reelection in the districts that had

adopted the nonpartisan selection of judges. The procedure is much the same for district magistrate judges, but they are appointed by the nominating committee rather than the governor, and only the voters in their counties decide whether they will be retained.

County, probate, juvenile, and magistrate courts were consolidated as of January 1977 and two new categories of judgeships were created: associate district judges and district magistrate judges. Initially these judgeships were filled by election. Associate district judges had to be lawyers, and thus the incumbent judges of countywide courts of probate, juvenile, civil, and criminal jurisdiction who were lawyers could—and in most cases during the transition did—run for and win associate district judgeships.

In 1987, associate district judges were reclassified and became district judges. Nonlawyers who had been judges of local courts were eligible to run in most districts for the post of district magistrate judge. The Supreme Court has the authority to convert district magistrate judgeships into associate district judgeships when an incumbent magistrate dies or resigns. The legislature has, however, imposed a restriction on the total number of employees in the judicial branch at the state. As nonlawyers, district magistrate judges have somewhat less jurisdiction.

Each judicial district has an administrative judge who may assign judges from one court to another within the district. All cases (except those in municipal courts) are filed in the district court, and the administrative judge assigns cases to individual judges. The administrative district judge is required to develop a plan for the equal distribution of work within the district. District judges provide for regular meetings of the judges to review the status of the docket. Districts courts are authorized to establish specialized divisions to handle various types of cases. It might appear that these specialized courts represent a return to the pre-unification structure. But in fact a case may be handled within the district court structure, with judges in the divisions working toward a solution if more than one division is involved.

For example, it is hoped that a judge in the juvenile division will be aware of a proceeding in the domestic division that involves a divorce of the juvenile's parents. District administrative judges have broad powers to supervise the personnel and fiscal matters of the district and to evaluate the effectiveness of the court in administering justice. The four metropolitan districts are required to have trial court administrators, and other districts may request that the Supreme Court allow them to have such administrators.

Every county is required to have at least one clerk of the district court—an office all counties had as an elective position before unification. The administrative district judge now appoints one or more clerks for the district court in each county, with the approval of the other district judges. One of the persons so appointed is designated as chief clerk for that district. Dur-



ing the transition, it was planned that there likely would be a district judge, district associate judge, or district magistrate judge in each county. As district magistrate judges retire, the public may become accustomed to having "circuit-riding" district judges rather than resident judges. Table 21 shows the volume and type of cases handled in SFY 2000.

As part of the court system restructuring, the state has moved to fund the district courts—but in 1997 this is still a joint state/county operation.

**Table 21**  
**Summary of Case Loads, Kansas District Courts: SFY 2000**

	Cases Filed	Cases Terminated
<b>Civil Cases</b>		
Regular Actions	22,199	20,345
Domestic Relations	34,989	33,825
Limited Actions	<u>125,995</u>	<u>119,295</u>
<i>Total, Civil</i>	183,183	173,465
<b>Criminal Cases</b>		
Felonies	17,234	18,534
Misdemeanors	<u>21,259</u>	<u>21,870</u>
<i>Total, Criminal</i>	38,493	40,404
<b>Total Civil and Criminal</b>	221,676	213,869
<b>Other Actions</b>		
Traffic Cases	196,165	193,518
Formal Juvenile Cases	24,505	21,754
Decedent Estate Cases	4,531	4,617
Fish and Game Cases	4,344	4,061
Guardianship/Conservatorship Estates	2,304	2,323
Trusts	147	143
Small Claims	12,947	12,947
Determinations of Descent	1,376	1,328
Adoptions	2,025	2,025
Treatment Proceedings	2,049	2,049
Miscellaneous Probate Actions	<u>2,717</u>	<u>2,150</u>
<b>Total Other Actions</b>	253,110	246,915
<b>Total Statewide Caseload</b>	<u><u>474,786</u></u>	<u><u>460,784</u></u>

Source: Office of Judicial Administrator, State of Kansas, "Annual Report of the Courts of Kansas, 1990–2000 Fiscal Year," p. 1.

The state pays the salaries of all court personnel (district judges, clerks, court reporters, and court service officers) and their travel expenses. The counties provide the courtrooms and pay for their utilities and maintenance.

### **Small Debtors' Courts**

The legislature in 1913 authorized boards of county commissioners, the mayor and council, or the commission of a city to establish small debtors' courts as a special type of local court. When such a court was established, "a reputable resident citizen of approved integrity who is sympathetically inclined to consider the situation of the poor, friendless, and misfortunate"<sup>8</sup> was to be appointed judge. Information is not available as to how many debtors' courts were ever established, and the statute was repealed in 1976 as part of the unification act.

To accomplish much the same purpose, the legislature in 1973 passed the "small-claims procedure act"<sup>9</sup> providing for a simplified system through which people may file a claim for less than \$300. The court supplies forms for the plaintiff and defendant. A court trial is held, but no party is permitted to be represented by an attorney before judgment. The purpose of this procedure is to allow for the speedy trial of small claims, with necessary safeguards to protect all parties involved. Judgments may be appealed. Small-claims procedures are being used frequently, particularly in urban centers, one of which reported a need for a separate district magistrate judge just to handle such cases.

### **Municipal Courts**

All cities are authorized to establish municipal courts. The jurisdiction of these courts extends only to violations of city ordinances. If in the course of hearing such violations it appears that state criminal laws have been violated, the cases are transferred to district court. Traffic violations are by far the most common. In most cities of the second and third class, the judges are elected; in cities of the first class and in mayor-council-manager cities of the second and third class, judges are appointed. Some of these judges are nonlawyers, who are required to attend a Supreme Court-sponsored training program, be examined, and be certified. The training program is funded by a 50-cent fee on cases handled by the municipal courts. In 2001, there were 371 such courts in Kansas.

Early plans regarding court unification called for the immediate consolidation of all municipal courts in second- and third-class cities, and for the consolidation within three years of all remaining municipal courts. This part of the proposal was highly criticized, with the result that the municipal courts were excluded from the proposal and allowed to continue. The primary issues were funding and the disposition of the fines and forfeitures collected

by such courts. The cities felt that they needed these revenues for their continued operations.

## **The Work of the Courts**

The courts provide forums for deciding controversies between individuals that arise from damages sustained by an injured party or from the breaking of contracts. They also decide cases in which it is alleged that a person has violated a criminal law. When the criminal laws are broken, a public prosecutor represents the state in bringing action against the alleged offender. In most counties the county attorney is the public prosecutor, but in the five most populous counties (Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte), the office of county attorney has been replaced with that of district attorney. The district attorney is deemed to be an officer of the judicial district, not a county official.

Figure 24 portrays the steps involved in a criminal prosecution. These steps are typical of those followed in most states, with the possible exception that indictment by information is used much more commonly than indictment by grand jury. District courts must summon a grand jury when they are presented with a petition containing from 100 to 700 signatures, depending on the size of the county.

Another important function of the courts is to act as protector of the people's liberties, which are guaranteed by the state constitution. A review of the numerous annotations of the Bill of Rights to the Kansas Constitution suggests this role for the courts. A review of cases, and indeed a constitutional history of the several provisions, would be necessary to measure the full contribution of the courts in this field.<sup>10</sup>

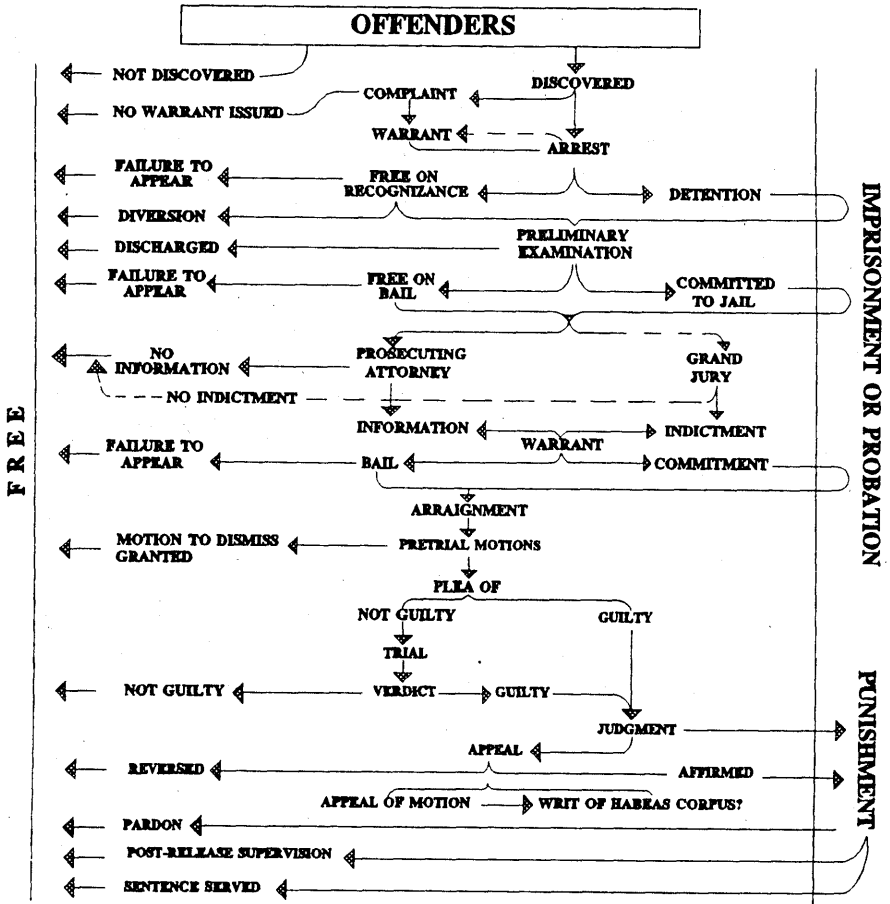
## **The Judicial Council**

As a move to coordinate and improve judicial procedures, the Judicial Council was established in 1927. It is composed of a Supreme Court justice, a judge from the court of appeals, two judges from different district courts, four lawyers, and the chairperson of the House and Senate judiciary committees. Except for the latter two, all are appointed by the chief justice of the Supreme Court for four-year terms.

The Judicial Council is an advisory group having the power to make recommendations concerning the work of the judiciary. The council collects and publishes data on the work load of the courts, and from time to time has made and supported suggestions that have improved court operations.

The council was one of the groups that had urged a reorganization of the state courts into a unified system. A plan that had long been urged by the American Bar Association was used as the starting point in reforming the court system in the state. Although this plan contributed to the initial stimulus for the reorganization effort, some people were convinced that the

Figure 24  
Steps in Kansas Criminal Prosecution: 1997



Source: Chart by Francis H. Heller, professor emeritus of law, University of Kansas, with the assistance of David G. Gottlieb.

movement would profit from a wider base. Therefore a judicial study committee was authorized by the legislature, appointed by the Supreme Court, and attached to and funded through the Judicial Council. This committee developed the proposal in more detail. The Institute of Judicial Administration, a nonprofit consulting group, was employed to assist in the study. After the plan was developed, another larger committee was formed to help secure the adoption of the reform.

The council has worked for the adoption of the code of civil procedures, the code of criminal procedures, and the new criminal code. Action on the part of the council facilitated the development and adoption of the probate code. Council studies in the areas of fresh pursuit, interstate extradition, divorce pleadings, and uniform court records have led to improvements in those judicial procedures.

## **Problems**

Court reorganization has clearly made Kansas courts more a state function, the state assuming more of the total cost of judicial operations. The counties in turn provide the facilities in which the judges hold court.

A timely resolution of controversies is important; this was a powerful consideration in the reform and restructuring of the Kansas court system. The Kansas Supreme Court has established time standards for various types of cases, as shown in Table 22. The median age of cases at termination shows that in 2000, the time schedules were being met.

The timely resolution of cases presents difficulties for the courts because more and more cases are being filed. Population growth is a factor,

**Table 22**  
**Time Standards for Kansas Cases: SFY 1999–2000**

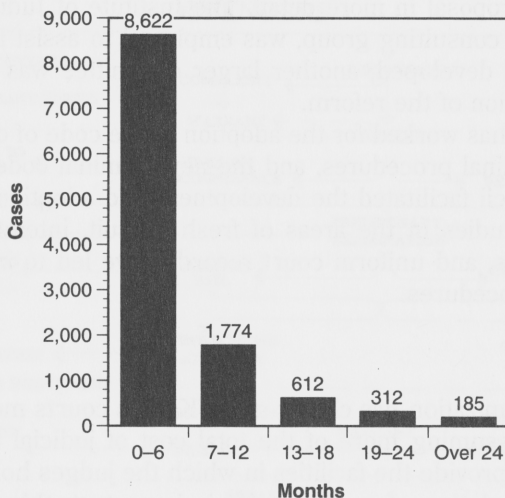
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<b>Case Type</b>	<b>Time Standard</b>	<b>Median Case Age at Termination</b>
Felony	120 days	92 days
Misdemeanor	60 days	35 days
Regular Civil	180 days	81 days
Limited Actions	60 days	41 days
Domestic Relations	120 days	72 days

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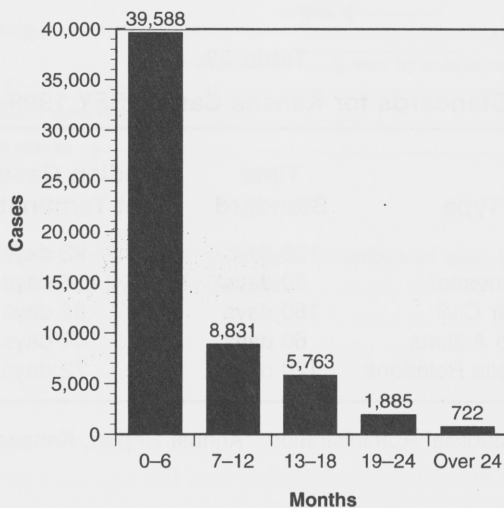
Source: Office of Judicial Administration, "Annual Report, Kansas Judicial Branch, FY 1999–2000," p. 3.

**Figure 25**  
**Age of Pending Criminal Cases: June 30, 2000**



Source: Office of Judicial Administration, Annual Report of the Courts of Kansas, 1999-2000 Fiscal Year, p. 6.

**Figure 26**  
**Age of Pending Civil Cases: June 30, 2000**



Source: Office of Judicial Administration, Annual Report of the Courts of Kansas, 1999-2000 Fiscal Year, p. 2.

but most observers attribute the increase to the litigiousness of modern society and to other changes in the social and economic climate.

The unification act required that the district court budget be centralized at the county level. Judges who previously had worked under budgets for their courts and their county commission support personnel were made a part of the district court and their budgets were centralized. Once a county approves the budget worked out by the administrative district judge, the district judge is responsible for administering it. Under the auspices of the district court, it may now be easier to employ support personnel for the court.

The mix of state and local dollars in supporting Kansas courts is changing. Some legislative opposition to unification was caused by a fear that the state would be asked to support more costs of the total system. The other side of the argument is that the costs of the entire judicial branch are relatively small, and that the state should pay the amounts needed. It is estimated that the courts pay more than \$5 million in fees to the state coffers. The exact mix of support is likely to be the subject of change and controversy over the next several years.

The restructuring of the courts has incorporated the concept of a bench made up entirely of lawyers, who are selected in a highly structured manner and retained in office subject to the approval of the voters. This move has been accompanied by efforts to provide closer policing of the code of ethics of both lawyers and judges. Substantial time will be required for the system to be tested and accepted by the public.

During the last two decades, as the nation has become more concerned about law enforcement and failure to rehabilitate criminals, a system of criminal justice has developed in which the courts, the police, and corrections officials form the three most crucial units. Judges are being called upon to develop dialogue and interrelationships with law enforcement officials and corrections officials, which it is hoped will make the criminal justice system more effective. Some may view this as impinging on the independence of the courts; but as Kansans have become frustrated over the problems of law enforcement, they have become more aware that not one of the three parts of the criminal justice system can *by itself* solve the problems of crime in an interrelated society.

Increased attention is being paid to the administration of justice in Kansas. The creation and development of the Office of Judicial Administrator, the more recent establishment of a trial court administrator in the four biggest counties, and the creation of an administrative judgeship in each district reflect this trend. These are significant developments, expected to further equalize the work of the courts—and they may be helpful in the more orderly and timely dispensing of justice.

## Chapter 11 Notes

1. For a review of the role of judges in the Kansas judicial system see C.K. Rowland, "The Role of Discretion in the Kansas Court System," *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 223-253.
2. T.M. Lillard, "Beginning of the Kansas Judiciary," *Kansas Judicial Council Bulletin*, 28th Annual Report (1954), p. 3.
3. *Ibid.*, pp. 4-6.
4. *Aetra v. Travis*, 124 Kan. 350, 354; *Barber County v. Bank*, 123 Kan. 10, 14.
5. *Rules Enacted by the Supreme Court of the State of Kansas*, 1991 edition, p. 29.
6. This provision, which formed Article 3, Section 5, of the original constitution, was eliminated in 1958, when this article was amended.
7. K.S.A., 20-2093.
8. *Session Laws* of 1913, Chapter 170.
9. K.S.A., 61-2701 et seq.
10. A further analysis of this subject is available in a master's thesis at the University of Kansas: Phillip E. Jones, "Civil Rights and Liberties in Kansas: A Summary of Legislative and Judicial Action in the Fields of Equal Rights, Religious Liberty, and Liberty of Speech and Press."



## PART II

# GOVERNMENTS WORKING TOGETHER

**T**he state government in Topeka exists for one purpose only—to provide services to the citizens of the state. But in today's complicated and specialized world, few governmental services and programs are carried out by one level or unit of government acting alone.

Responding to local pressures and to its own administrative needs, the Kansas Legislature has created more than 3,950 units of local government.<sup>1</sup> Cities, counties, townships, school districts, and a variety of special districts have been established to provide specific types of governmental services. The state itemizes the powers and duties of these governments. Despite a strong adoption of and reliance on the federal system of government at the national level, the United States has on the state and local scenes what political scientists refer to as a "unitary" form of government—one government with many parts. There have been limited modifications of this concept, which will be discussed later.

Cities, counties, townships, school districts, and special districts all are parts of Kansas state government. The diversity of their size, population, wealth, and functions sometime makes it difficult to generalize accurately about them; but they are important in the delivery of services to the people. For many purposes, individual citizens are more closely and intimately affected by these smaller units of government than by the governments in Topeka or Washington, D.C. While the government in Topeka sets the framework and context in which local units may act, local officials normally have choices about what they do, how they do it, and what the quality of services will be.

Chapter 12 describes the general structure within which the governments interact, and identifies some of the practical considerations that affect this interrelationship. This discussion is followed by a chapter on city government and a chapter on the general-purpose units of rural local government—counties and townships. School districts, as units of local government, could logically be discussed in Part II; however, since they generally engage in only one function, they are treated in Chapter 16, which focuses on education.

**Table 23****Number of Local Governmental Units in Kansas: 1997**


---

<b>Level of Government</b>	<b>Number of Units</b>
County	105
Township	1,370
City	627
Special District	1,524
School District	<u>324</u>
<i>Total</i>	3,950

---

Source: U.S. Bureau of the Census, *1997 Census of Governments: Governmental Organization*, issued August 1999.

## Notes

1. The League of Kansas Municipalities in 1991 published *Local Governments—An Inventory of Governmental Taxing Units*. The league's careful study identified 4,025 taxing units—approximately 3 percent more than the U.S. Bureau of Census identified. Primarily because of the regularity with which U.S. Bureau of Census information is available (and thus trends can be identified), we have chosen to use the census information.



## Chapter 12

# Kansas and Other Governmental Units

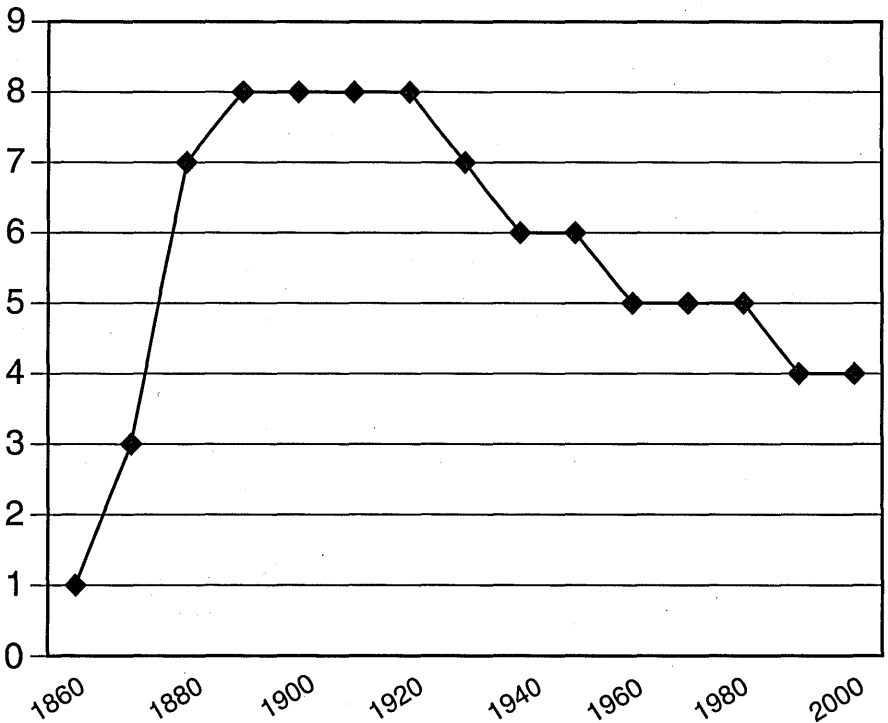
**I**n a narrow sense, the term "intergovernmental relations" refers to the association between two or more units of government. But since governments can act only through its officers and agents, these relations consist of the contacts and dealings of the officials of one governmental unit with the officials of another. These affiliations are in some instances highly formal, as in the amending of the U.S. Constitution; or they may be quite informal, as when a city governing body agrees to cooperate with the county in improving a street that forms a common boundary. Today these relationships exist in practically all areas of government, and they take many forms.

Newspapers bring to attention the more dramatic instances of intergovernmental cooperation, such as sponsoring an important capital improvement or apprehending a notorious criminal. But the preponderance of intergovernmental relationships are carried on through routine correspondence and contacts between administrative officials. For example, city police officers call upon the county sheriff and deputies when needed, and the county appraiser makes assessments of real property that are used for computing city, township, and county taxes. In many other ways local officials, without any particular notice or ado, cooperate in doing the work of government. Otherwise, many of the services Kansans expect from their government simply would not exist.

## National-State Relationships

The general framework for national-state joint ventures is established by the U.S. Constitution. Kansas is entitled to two senators to represent the interests of the state, and an appropriate number of members of the United States House (currently Kansas has four House members, a reduction from the five to which the state was entitled from 1950 to 1992). Over the years, the number of House members from Kansas has changed, as shown in the accompanying graph. Kansas will continue to have four seats under the 2000 U.S. census.

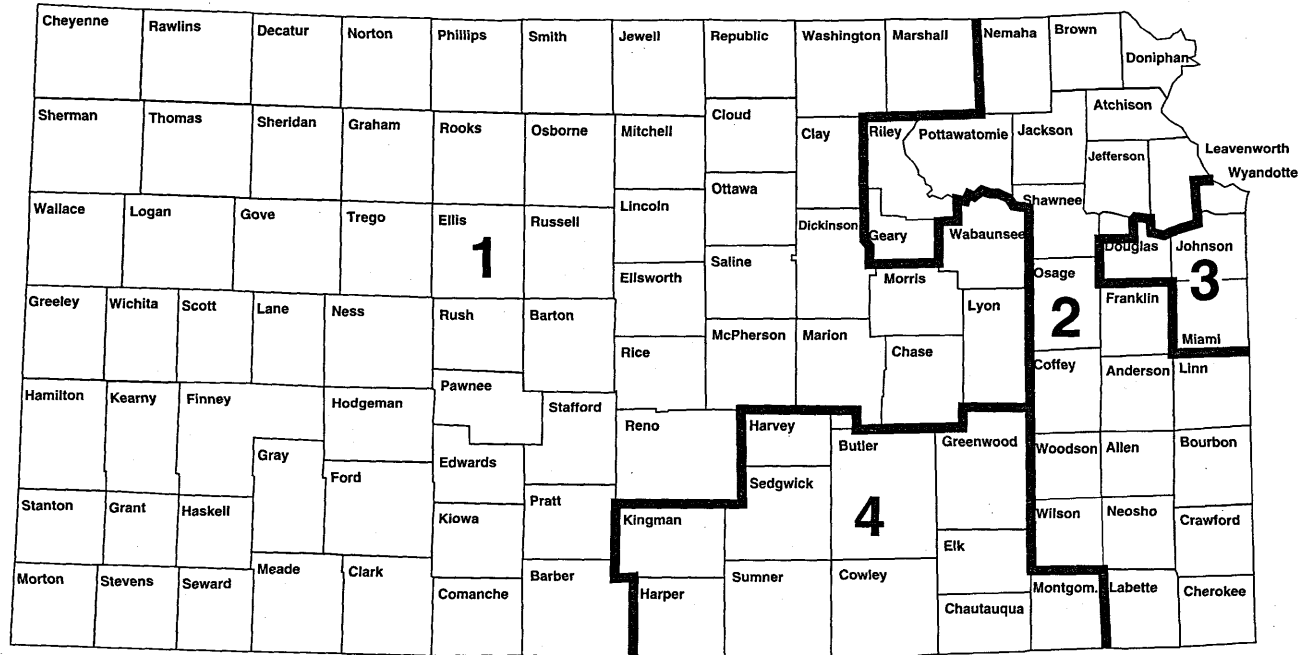
**Figure 27**  
**Kansas' Congressional Representation, 1860–2000**



Source: U.S. Bureau of the Census (2001)

Figure 28

U.S. Congressional Districts in Kansas: 1992



Source: Institute for Public Policy and Business Research, *Kansas Statistical Abstract, 1991-92*, p. 120; data from 1990 U.S. Census.

Requests can be made to the KU Public Management Center for assistance in getting a map of the 2002 legislative apportionment.

Figure 28 illustrates the boundaries of the current congressional districts. It is the responsibility of the Kansas Legislature to draw these district lines. As a result of both the 1980 and 1990 federal censuses, the Kansas Legislature and the governor were able to agree on redistricting laws—but in each case federal courts made minor modifications.<sup>1</sup> Population deviations between the four districts are small, less than one 1/100 of 1 percent. In general, county lines are followed, but in 1992, several counties were split to permit more equal districting.

It is expected that the Kansas legislature will in 2002 reapportion the U.S. Congressional districts on the basis of the 2000 Census.<sup>2</sup>

Although there have been relatively few formal changes in the constitution, the pattern of federal-state relations has changed greatly during the federal government's two centuries. Wars, depressions, recessions, and other times of crisis have prompted Congress to make a more thorough search of the provisions of the constitution, and power has been found for expanding the operation of the national government. Sometimes with hesitation, the U.S. Supreme Court has in the recent past set a pattern of acquiescing in the exercise of this power. From the power to regulate commerce, Congress has found that it has the power to regulate labor-management relations in companies engaged in interstate commerce. Expansions in this and many other areas have led some people to fear that federalism is gone.

There can be no doubt that the tremendous expansion of the power of the national government has wrought many changes in the long-established tendency of federal-state relations. However, expansions at the federal level have occasioned expansions at the state level as well. State welfare and highway programs illustrate this point, as increasingly the federal and state governments have found ways to cooperate in providing services. "Cooperative federalism" turned into "creative federalism" and the "new federalism" in the Reagan years, when federal aid was drastically cut and states had to retrench their activities.

In spite of many changes, the basic framework of federalism remains. The national government and the state governments legally are equal units, each with its own power to collect taxes and spend money on governmental activities. The federal government has only those powers provided by the constitution; other spheres of governmental activity are reserved to the state governments or to the people, but these spheres are not listed. There also are many fields of governmental activity in which both national and state governments may participate, their precise limits being determined periodically by Congress and the U.S. Supreme Court.

In the early years of Kansas statehood, national-state relations consisted largely of having state and national officers request help from each other when domestic peace was threatened by Native Americans, outlaws, or guerilla forces fighting for or against slavery before and during the Civil War. Law enforcement cooperation between national and state officers is still im-



portant, but most national-state relations today occur in other areas such as agriculture, welfare, health, education, and highways.

Cooperation between the federal government and the state frequently takes the form of grants-in-aid. The amount of money Kansas received from federal grants at 10-year intervals over the past 80 years is shown in Table 15. Aid programs have grown from one grant in 1905 to huge numbers in SFY 2002, when more than 27.1 percent of state funds are expected to come from this source.

The grants-in-aid programs have not been adopted without dissatisfaction. People who oppose federal grants to the states often argue that it is unnecessarily complicated to pay taxes to the national government, then have the national government return the money to the states. Because national officials must be paid to collect the taxes and to account for what is received and paid to the states, their salaries could be saved if the taxes were paid directly to the states. Some opponents also believe that their state is not receiving its proportionate share of grants. Other opposition to federal grants, whether conscious or unconscious, comes from distaste for the governmental program or activity covered by the grant.

Much of the argument over federal grants centers on the degree of federal control that comes with them. Undeniably, federal grants are accompanied with some federal supervision—but the amount and type varies greatly from grant to grant. The state agency receiving the grant may be required to submit a plan indicating how the money will be spent. The plan may be a simple or complicated document, depending upon the program. Usually the federal agency supervising the grant also requires periodic reports from the state agency, and frequently sends inspectors or auditors to review the work done by the state agencies.

Most differences of opinion about the program are settled through conferences between federal and state officials; but if a state agency persists in an activity the federal agency considers illegal or improper, the federal agency may cease the grant. While the federal government seldom takes such drastic action, the threat of it is always in the background, influencing state agencies to operate according to federal guidelines.

National requirements that accompany grants may require states to maintain certain standards with respect to the state personnel employed in programs covered by the grants. For example, the federal government requires that merit systems be used in hiring all state employees whose salaries are paid in full or in part by federal funds.

The supporters of federal grants generally look to the bright side of supervision. They do not view the requirement of merit system coverage and the interchange of ideas and information, stimulated by the national supervising officials, as “interference” or federal control, but merely as desirable aspects of the program that contribute to its efficiency. They are not

likely to be disturbed by the shift of power to Washington, for they remember that they elect U.S. senators and congress members.

Supporters of federal grant programs point to the national nature of many areas customarily handled by states. They suggest that homelessness, drug abuse, urban blight, and related social ills are so overwhelming that national rather than state solutions are necessary.

Argument about federal grants-in-aid probably will persist, but it seems likely that Kansas will continue to accept federal aid. The state's tax structure is predicated on a continuation of federal grant programs, even as their proportion of state revenues continues to decline. This decline presents a major challenge to those in Kansas (and other states) who are charged with raising adequate revenues for state operations.

## **Interstate Relations**

### *Interstate Compacts*

Article 1, Section 10, of the United States Constitution provides a formal method for states desiring to set up governmental machinery for dealing with problems that affect two or more states. States may, with the approval of Congress, enter into compacts or agreements with one another. Congress has ruled that congressional approval is not necessary for some types of agreements, contracts, and compactlike transactions. The precise number of compacts<sup>3</sup> or agreements Kansas has entered into depends upon how closely the terms are defined and how amendments are counted.

A good example is the compact the Kansas Legislature authorized the governor to sign in 1935 concerning crime prevention and the enforcement of criminal laws. The governor signed the compact in 1936. This led to a further compact in 1947, providing for out-of-state supervision of parolees. Today all 50 states are members of this compact, which provides for the overseeing of parolees and probationers of one state by the authorities of another.

After a several-year controversy about gaming compacts with Native American tribes, the legislature in 1996 passed the Tribal Gaming Oversight Act. This act transformed the Kansas Racing Commission into the Kansas Racing and Gaming Commission, and delineated in substantial detail how gaming activities were to be monitored both on and off Native American reservations.

### *Law Enforcement and Extradition of Persons Accused of Crimes*

When a person who commits an offense against state law flees across a state line, officers of the state in which the suspect committed the crime usually request help from the officers of the state to which the suspect has fled. The officers of the second state arrest and hold the suspect for the appropriate authorities of the first state.

Once the suspect is in the custody of the officers of the second state, the state in which the crime was committed must make a formal request that the suspect be returned. This request and the subsequent legal proceedings are called extradition. In Kansas, the county attorney forwards the request for extradition to the governor, who makes a formal request to the governor of the state in which the suspect is being held. Generally the governor of the second state grants the request.

#### *Licensing Reciprocity between States*

A third type of interstate relation is found in the activities of licensing boards, described in a later chapter. Legal provisions for reciprocity exist in the case of most boards. The amount of recognition given to licenses from other states varies, but the general rule is that a Kansas license will be granted for licenses obtained in a state having requirements similar to those of Kansas.

#### *Administrative Relations with Other States*

In day-to-day activities, Kansas agencies often deal with similar agencies in another state. For example, the Materials Division of the State Department of Transportation has the duty of inspecting all materials used in state highways to ensure that they meet quality standards. The easiest and best place to inspect most of these materials is the plant where they are produced. The transportation department stations inspectors at all Kansas plants producing highway materials. Since several oil companies in Kansas sell their products to highway departments in other states, the other states are also interested in having those products inspected. This the Kansas inspectors do, and the transportation department bills the other state—just as Kansas is billed by other states for the inspection of products to be used in Kansas.

#### *Commission on Interstate Cooperation and Associations of State Officials*

The Kansas Commission on Interstate Cooperation was established in 1941. It has 20 members: seven members of the Committee on Interstate Relations of the Kansas Senate, seven members of the Committee on Interstate Relations of the Kansas House of Representatives, and six members of the Governor's Committee on Interstate Relations. The governor's committee is composed of the governor, the attorney general, the secretary of the Department of Administration, the director of the budget, and two other administrative officials designated by the governor.

Each of the 50 states has a commission on interstate cooperation, and all are affiliated with the Council of State Governments. The council is a voluntary organization maintaining its national office in Lexington, Kentucky.

Each state pays membership dues to the council, which is run by a board of managers chosen by the state commissions on interstate cooperation.

Also affiliated with the council are eight specialized associations of state governmental officials. These are the:

- Governors' Conference;
- National Association of State Budget Officers;
- National Association of Attorneys General;
- National Association of State Purchasing Officials;
- Conference of Chief Justices;
- National Conference of State Legislatures;
- Parole and Probation Compact Administrators' Association;
- National Conference of commissioners of Uniform State Laws.

The council and associations hold national and regional conferences, form committees to study problems of concern to state officials, conduct research on interstate issues, and publish information of interest to the states. They also recommend uniform legislation on interstate problems for state legislatures to consider. (This procedure is discussed in Chapter 4.)

The Council of State Governments and its related voluntary associations are effective at achieving cooperation among the states. These groups also voice the states' opinions to federal officials on problems confronting both the national and state governments. The governors and the state legislators have also formed separately staffed national organizations which, in addition to participating in the more traditional intergovernmental relations, lobby Congress and the White House to influence federal actions. Kansas contributes funds to each of these organizations.

## **State-Local Relations**

The state has much tighter control over local units of government than the national government has over the states. The powers and duties of local officials are set forth in state statutes, as modified by home rule. When a local government wants to do something not authorized by these statutes or by the constitution, it must ask the legislature for a law permitting it to undertake the new activity.

Many activities of local officials, particularly county officials, are concerned with what might be considered state rather than county activities. The sheriff and county attorney are examples, as most of the laws they enforce are state laws. The district courts in which county attorneys prosecute cases are state courts, and the laws under which they act are state laws. The state itself generally depends on county officials for the enforcement of state laws, since the state has only a limited number of law enforcement agencies.

State-local relations frequently are somewhat arbitrarily classified as legislative or administrative. In Kansas the range of administrative supervision over local government officials by state officials has increased steadily. In the past two or three decades, this increase has been especially noticeable in the administrative supervision exercised over some local governmental functions, such as public health and highways.

The supervision exercised by a state official over a local official differs from the supervision a state official may exercise over a subordinate state official. State and local officials may have different, and not necessarily compatible, goals. Some local officials are elected, or closely associated with those who are locally elected; therefore they feel a strong obligation to act in accordance with the desires of local voters. They are likely to feel emphatic pressure to keep local property taxes down. State officials, who have a much broader constituency, may not feel these pressures as strongly.

The increase in the amount of supervision state administrative officials exercise over local officials in Kansas has not been accompanied by a noticeable decrease in the amount of legislative supervision over local officers. While there has been a general trend toward turning some of the supervision over to state administrative officials, at every session the legislators are still burdened with a substantial amount of business pertaining to local governments. Administrative supervision has the advantage of being a year-round process, whereas legislative supervision usually is exercised only while the legislature is in session. When the needed supervision is specialized or technical, administrative supervision seems to be more effective.

The inducement offered by the federal government in the form of grants-in-aid has been significant in increasing administrative supervision. If local units of government want to participate in a federally sponsored program, the federal government frequently attaches the requirement that a single state agency supervise the local officials in administering the program.

The administrative supervision exercised by state officials over local governmental officials in Kansas takes many forms, and varies considerably from function to function. Local officials are required to file an annual budget for their local unit, and some are required to file an annual audit. Local bond issues must be submitted to designated state officials, who review their legality.

This state supervision applies rather generally to all financial aspects of the operation of a local unit of government. State supervisory activities are exercised by the attorney general, who reviews transcripts for issuing municipal bonds; by the state treasurer, who acts as the fiscal agent for paying bonds; by the Division of Accounts and Reports, which reviews the audit reports of local units; by the Department of Revenue, which supervises the assessment of real property by counties; and by some other state agencies.

Finding the most efficient and economical arena for administering governmental services is difficult. Both the state of Kansas and the local units

have an interest. Most state-local programs now are based on the *county* as the local unit of administration. But on occasion, both county and state officials question whether many counties are large enough in area and population to be efficient administrative units. Unless the counties are willing to cooperate and make more use of jointly provided services, it is probable that over the next half-century more responsibilities for these services will be transferred to the state. The state programs then will likely be administered through large districts established to meet the administrative requirements of each service or activity.

## National-Local Relations

Because most national programs in which local governments participate are channeled through a state agency, they actually are national-state-local programs. There are, however, some programs in which the local government deals *directly* with an agency of the national government. One such is the program of federal aid under which cities may apply for federal aid to build or improve municipal airports. Applications go directly to a regional office of the Federal Aviation Agency, and subsequent dealings are between the city and the national agency.

Aid may be given to local school districts by the Department of Education in a number of circumstances, including when:

- the revenue available to the school from local sources has been reduced because of the acquisition of real property by the national government;
- the local school system provides education for children who reside on property owned by the national government;
- the local school provides education for children whose parents are employed by the national government;
- there has been a substantial and sudden increase in school attendance because of some activity of the national government.

School districts may apply directly to the Department of Education for aid. Direct contacts between cities and the federal government have expanded because of programs sponsored by the Office of Economic Opportunity and the Department of Housing and Urban Development. Several Kansas cities have local agencies for urban renewal or public housing. While such agencies are authorized by state law, they deal directly with the federal government.

## Relations among Local Units

Like many other states, Kansas has numerous units of local government (see Table 23). It is therefore not surprising that there are frequent contacts between local officials. This is particularly true when one consid-

ers that local boundaries have little bearing to many of the services and problems.

Fiscal relations between local units of government in Kansas center on assessment, taxation, and the distribution of state grants and shared taxes. Local property taxes are collected by the county treasurer, who distributes them to the local units that levied them. State grants-in-aid and shared taxes usually go to the county treasurer, who gives the cities or townships their share. Less frequently, a tax levied by one local unit is given to and spent by another. The budgets of townships and rural school districts often are prepared with the help of the county clerk.

Local units of government generally carry out their functions independently of the local units around them, but there are instances of both formal cooperation (a city-county health unit) and informal cooperation (services provided for other units by the city street or county highway department). The mayor of a small town, for instance, may talk to the county engineer about having the town's main street resurfaced when the county road connecting the town with neighboring towns is resurfaced. The city agrees to pay the county for its share of the costs, and the county proceeds to resurface the city street. A bill is sent to the city, which reimburses the county.

Intergovernmental relationships in the state cover a wide range of activities and vary greatly in their formality, ranging from a simple oral agreement between officials of two units to a complex written agreement involving the spending of millions of dollars by several government agencies whose officers know each other chiefly through correspondence. As technological progress changes the day-to-day living habits of the people of the state, intergovernmental relations increase and become more complicated as well.

## **Which Government Will Provide What Services?**

There is no one overriding principle explaining which government performs what services. Geography, history and tradition, interest, willingness to experiment, the severity of the problem, sensitivity of officials, financial capacity, and many other factors influence each decision. Logic and the balance of relationships between governments have on occasion been factors in arriving at the answer to this question. Yet, despite the existence of broad study groups such as the U.S. Advisory Commission on Intergovernmental Relations, the present system does not represent a plan that has been thoughtfully developed over the years.

One of the prices American citizens pay for having so many units of government (and one of the advantages they enjoy) is that the citizen may go to the unit of government likely to be most effective in getting the job done or the problem solved. For example, local school budgets are formulated by local school boards. But the amount of money available in any given

year for salary increases depends on state aid and on the amount the state legislature authorizes school boards to increase their budgets. Therefore teachers must turn their attention to the state legislature when it is considering school aid and school budgets. Later in the process they may focus on the school board's deliberations on teacher salaries.

Another illustration may reinforce the point. Law enforcement has traditionally been a local function because Americans have not wanted a national or a state police. But their concern and frustration about crime have led to large-scale national campaigns in this field. Amid charges and counter-charges as to the effectiveness of federal programs, dollars have flowed from Washington to Topeka and in turn to local law enforcement agencies. The people setting the priorities for spending these dollars are not the people who would be called on if the dollars had all been raised and spent locally. The point is not whether the programs have been better or worse than they would have been if they been supported only locally. They have been *different* programs, and different people have made the decisions in a context quite unlike the one that would have pertained had the national program not been developed.

There are many ways of providing a service. Communities differ as to what level and quality of service they want and are willing to support. Difficult as it may be to get a consensus on the details about quality of service, decisions must be made—and with a precision that can be problematic for budget analysts, governors, and legislators. Appropriations are made in precise numbers of dollars, and the appropriations largely determine the number of employees and their level of experience for a given program; thus they determine the quality of the service. The Kansas Legislature makes many of the most crucial decisions in this connection for the services of state government. It also establishes the range and circumstances within which local officials must operate, and thus further refines the choices about what services and what quality of services will be provided locally.

The state legislature does not make these decisions in a vacuum. The legislators listen to state officials, to local officials, to their constituents, and to other citizens and groups throughout the state. The legislators recognize that state and local officials constitute parts of the various publics to which they must respond. It is in this milieu that some of the most major decisions regarding intergovernmental relations are made. If this seems complicated, it should—for the process is an involved and intricate one.

Any realistic analysis of intergovernmental relations must leave room for the personal factor. Government officials move from one governmental unit to another. The lobbyists and activists on the government scene respond like individual people. Their previous experience may lead them to contact persons they view to be helpful, even when logically they might seem to be better served by approaching government at some other point. The people in government employment, whether officers or staff employ-



ees, are conscious of their professional contacts and professional standing. They generally are more comfortable working with someone in the same profession, and this, too, may influence how they approach a problem.

## **Bringing Government Programs Together**

There are no perfect mechanisms for bringing government programs together. It might seem reasonable to assume that they should be combined at the point where they make contact with the citizens they are designed to serve. But different people want different services, in different amounts, and at different levels of quality. Government programs are aimed at the citizenry as a whole, yet they must be offered to each citizen individually.

The individual citizen has only rough means for passing judgment on all the governmental programs and activities being performed at a given time. Citizens may express themselves in referendum elections, in petitions they sign or do not sign, in meetings they attend or do not attend, in support they give or do not give to political organizations, and in the officials they elect and their interactions with them.

The programs of the various levels of government are directly compared or evaluated to only a limited extent. The dollars decided upon for the governments and their activities reflect the priorities of the citizenry. An earlier chapter presented the expenditures approved by the legislature for the many functions of Kansas state government. In addition, the federal Congress and the governing bodies of each of almost four thousand smaller governmental units in Kansas made decisions about the level of support they would give to the programs and activities the state performs.

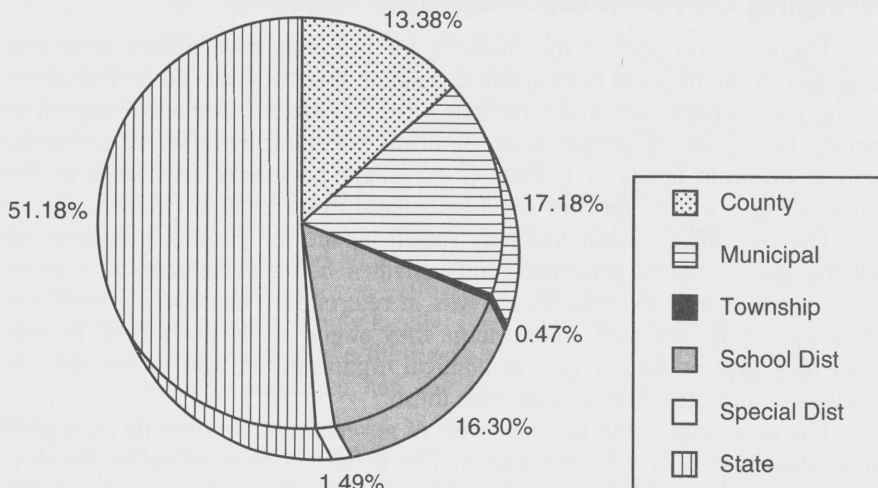
## **The Intergovernmental Fiscal Scene**

One of the major reasons for the expansion of services and activities provided by the national government is its ability to tax and spend. For many reasons, the enormity of the federal treasury has made it a target for many groups promoting certain programs. Some are concerned about whether Congress can resist the pressures to support worthwhile causes and programs. So long as the money is available, and so long as some states and local units are receiving some of it, others join the fray to get their share.

From time to time there have been discussions about trying to divide revenues by assigning each tax to a "proper" government, thus simplifying government finances. The goal is to ensure that the governmental unit collecting the money is responsible for deciding how it is spent. Despite the logic of this position and the fervor with which it is argued, little progress has been made in this direction.

No single group of elected or appointed officials meets, holds hearings, and decides the revenue mix between the federal, state, and local govern-

**Figure 29**  
**State and Local Tax Revenues by Level of Government:**  
**Kansas, 1989–1990**



Source: Data from U.S. Bureau of the Census, "Government Finances in 1989–1990," p. 62. Includes general revenue only.

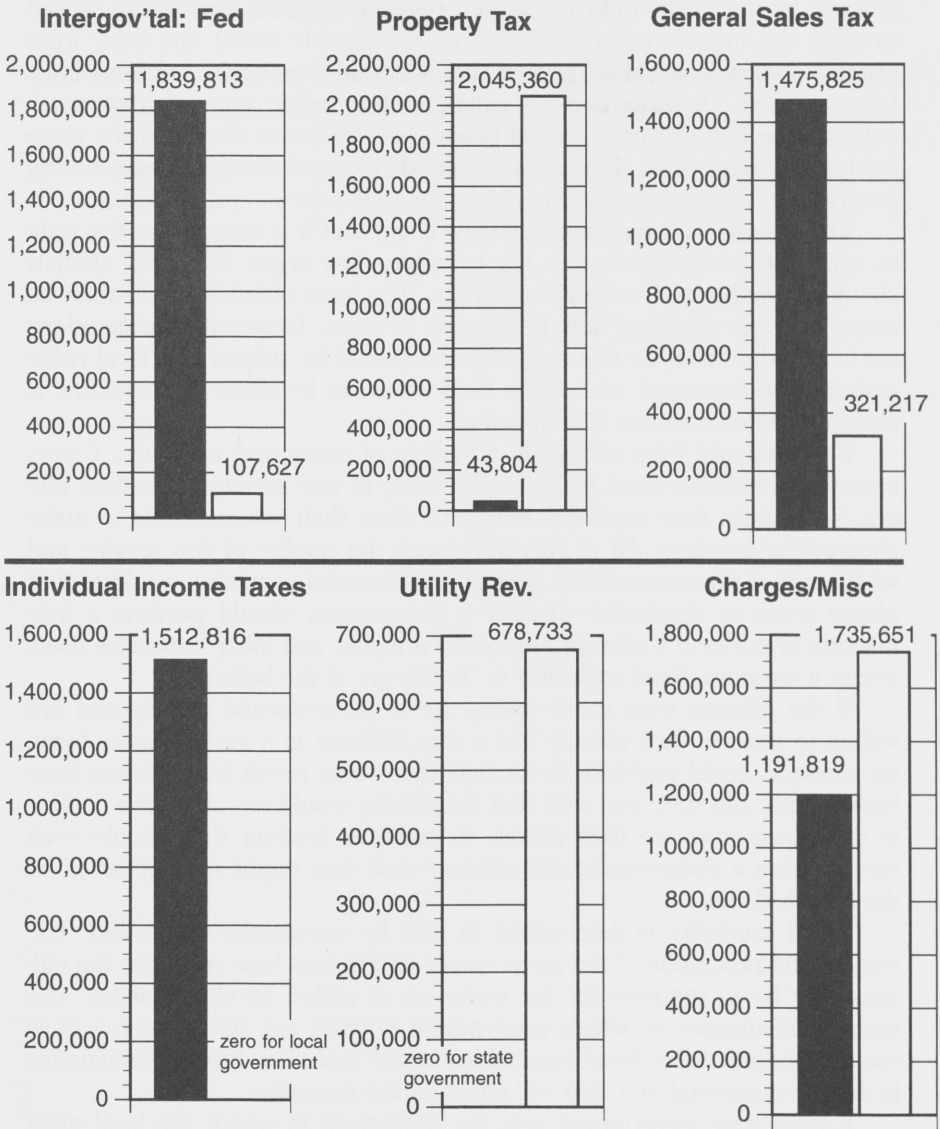
Note: Although the U.S. Bureau of the Census no longer collects this information, the graph describes the general interrelationship that is thought to exist in 2001.

ments. On the contrary, officials in Washington, responding to pressures from all around the nation and the world; officials in Topeka; and officials in each county of the state have a part in deciding the mix. Given its federal structure, Congress is not responsible for funding (or supervising funding) of state governments in the same way that state legislatures are responsible for their local units of government. The revenue mix changes from time to time. In recent years state taxes have generally risen in comparison with federal and local taxes. Kansas state government shares with local units about one-third of its revenues. In turn it gets over one-fourth of its revenues from the federal government.

Kansas state and local governments collect general revenues from their own sources, as shown in Figure 29. Approximately half (51 percent) of the total revenues are collected by Kansas state government. Cities, school districts, counties, special districts, and townships follow in order of the percentage they take in. Data is collected in a fashion that does not allow the inclusion of intergovernmental revenues in this figure. The importance of

Figure 30

Comparison of Revenue Sources of Kansas State and Kansas Local Governments: SFY 1997



Source: U.S. Bureau of Census, Kansas State and Local Government Finances by Level of Government, 1996-97.

Note: The Advisory Commission no longer updates this information. However, it is likely that the graphs reflect the general pattern in 1997.

in thousands

- Kansas State Gov't
- Local Governments

federal aid to states and local governments, and of state aid to local governments, has been presented elsewhere.

While Kansas state government has shifted substantially away from using the property tax to fund its operations, other revenue sources have come into use by local units to broaden their revenue base. As Kansas has moved to sales and income taxes (collected on a statewide basis) and away from property taxes, it is not surprising that state aid to schools and local units has increased. The state is being called upon to collect taxes that are available for use by local units. Some people believe states should share more freely with local units through some kind of broad state revenue-sharing program.

The groups with the opposing view claim that it is enough for the state to authorize local units to act. For example, they argue that local officials should be authorized to levy a sales tax. The local officials would then be responsible for deciding how the money is spent. Different considerations are involved in whether this authorization should be subject to a local referendum. The increased use of the local sales tax by cities and counties is evidence of movement in this direction.

Governments have access to a variety of taxes and revenues. Correspondingly, citizens seem to be more willing to pay certain taxes than others. Frequently, they are most willing to allow their governments to make charges for services. All of this influences the quality of the service and which unit of government will perform it. Financial capability would at first glance seem to determine whether a government should perform a new function or perform a present function at a higher and more expensive level. Yet, in a measure, fiscal capability is "in the eye of the beholder."

If the citizens want more money for a governmental activity and are willing to raise it, they usually find a way. Citizens in a small Kansas town, for example, could envision the savings that would result from closing their high school. But they may fear that the closing would foreshadow a decline in the whole town, so they choose to continue funding the school—even though from a dollars-and-cents point of view that might not appear to be the best decision.

Fiscal capability is determined in part by community leadership. The esteem and reputation of the government determines how receptive the citizens may be to requests for tax increases or added service charges. The timing and manner in which government officials ask for more revenues can greatly affect the fiscal capabilities of the unit. The level of confidence in the governmental unit also will affect citizen response.

Kansas state government sets the framework in which the local units operate, and they in turn become part of the system for delivering governmental services to Kansans.

## **Chapter 12 Notes**

1. In re: Kansas Congressional District Reapportionment cases, No. 82-1335, No. 82-4096, filed 1982, and *State of Kansas, ex rel., Robert T. Stephan, Attorney General, Plaintiff, v. Bill Graves, Secretary of State, et al.*, No. 92-4097R, filed 1992.
2. Requests can be made to the Public Management Center for assistance in getting a map of the 2002 legislative apportionment.
3. Compacts approved by the legislature are found in *Kansas Statutes Annotated*. A number were identified in the third edition of this book.



## Chapter 13

# Counties, Townships, and Special Districts

**T**he territorial legislature established 36 counties and 15 more were added by 1861, but some of these were outside the boundaries of what was to become Kansas. Major additions were made in 1867 (35 new counties) and 1873 (22 new counties). Many legislatures added counties and changed county boundaries or names. Some of the expansion was found to be unjustified and was later reversed. A conspicuous illustration was Garfield County, which was dissolved by court action and became Garfield Township in Finney County. This early period also was marked with rivalries between cities for the privilege of becoming county seats. By 1893, the current pattern of 105 Kansas counties had emerged.

The county system was created largely because of the state's desire to perform "state" functions locally. Most such functions are assigned to the county in the nature of duties, the counties having little choice as to whether they will perform them. Secondarily, the county serves as a unit of local government and performs services demanded locally. Legally a county is a quasi-municipal corporation, as distinguished from a city, which is a municipal corporation.

It is possible to overstate the extent to which the county exists as an instrument of the state. Perhaps most important is the fact that most policy-determining county officials are *elected*. While they can do only what the legislature has authorized or directed them to do, they have many ways of accomplishing functions. These elected officials seek to enforce the laws, and in other ways to conduct the affairs of county government as their constituents wish. Topeka and the state officials are far away in comparison to the local voters, whom a county official must please to be reelected. In this

sense, the county is a unit of local self-government. The county also is increasingly becoming a unit of general-purpose local government, in that more of the functions given to counties—such as recreation and health care—are permissive and voluntary.

To understand county government in Kansas, it is helpful to be aware of the vast differences among Kansas counties in many of their essential characteristics. County populations range from 452,869 to 1,534. Only 22 counties (21 percent) have more than 25,000 people, and the median county has 7,835 people. Thirty-four counties have fewer than 5,000 people. Wide differences in population are accompanied by variations in the amount of real and personal property, from \$5,470,791,536 in Johnson County down to \$20,615,108 in Elk County. Since counties rely heavily on the ad valorem property tax, this variation in valuations presents numerous problems when the legislature tries to write uniform laws regarding county revenue.

As the resource bases differ for counties, so do the problems. In 1999, four counties (Comanche, Hamilton, Ness, and Phillips) reported zero crimes per 1,000, while Shawnee county reported 104.5. Per-capita personal income varies from \$39,355 in Johnson county to seven counties with slightly under \$18,000. In the decade between 1990 and 2000, 56 of the 105 counties lost population. Some counties gained substantially. Similar changes are expected in the future.

## **Organization of County Government**

Most chief officials are elected and responsible directly to the voters. This results in considerable diffusion of responsibility with regard to the work of the county. In a measure, each county official works independently of the rest.

### *Board of County Commissioners*

Insofar as there is a central governing body for the county, it is the board of county commissioners. The board approves the county budget, which determines the amounts available to the elected county officers for supplies, equipment, and salaries so they can hire deputies and other personnel to operate the county offices. Until recently, the legislature set the salaries for elected county officials. But in 1976, the legislature authorized the commissioners to set salaries for the other elected officials. A year later, the legislature made the boards of county commissioners responsible for setting their own salaries.

The duties of a board are reflected in the fact that it also serves ex officio as the county board of health and the board of highway supervisors. The board has a miscellany of other powers and duties, including the power to maintain a public library; create special benefit districts for sewers, fire protection, and public lighting; establish and maintain public parks; and main-



tain abandoned cemeteries. Many special laws enable certain counties to engage in still other functions.

From 1861 until 1974, Article 4 of the Kansas Constitution required that counties be divided into three districts for electing commissioners. The new election sections of the constitution omitted the district requirement, mandating that there be at least three commissioners in each county, elected in the manner prescribed by law. Counties may now elect three, five, or seven commissioners by districts for staggered terms of office. In 2001, four counties had enlarged their boards to four commissioners.

### *County Clerk*

The county clerk acts as secretary of the board of county commissioners and maintains the records of the board. Until 1977, the most important duty of the clerk, and one of the most time-consuming, was the assessment of real and personal property. In counties with populations in excess of 20,000, the function of appraising real property has been separated from the other work of the county clerk. Even in these larger counties, however, the clerk is involved in the property tax process, for the budgets of the local units of government are submitted to the clerk.

Frequently it is the county clerk who, under supervision of the county commissioners, prepares the county budget. The clerk is responsible for "extending the property tax rolls"—a technical term referring to the operation of examining the assessed valuations assigned by the appraisers and identifying each taxpayer's share of the total amount needed to fund the local budgets. The county treasurer collects the property tax and then distributes it to the local units. The process provides safeguards for assigning and collecting the taxpayer's dollars.

In most counties, the clerk is the chief administrative official in elections. She or he receives the nomination petitions of candidates for county offices, has ballots printed and distributed, and administers the laws pertaining to absentee voters.

These election and budgeting duties make the clerk an important official for all units of local government. In many parts of the state, the clerk helps township, school district, and city officials prepare and even administer their budgets.

While the relationship between clerk and county commissioners varies considerably from county to county and hinges largely on personalities, the clerk in some instances is given even broader administrative duties.

### *County Treasurer*

The county treasurer is the custodian of county funds. He or she receives money due the county from the state; collects the ad valorem property tax for tax-levying jurisdictions in the county, and distributes it according to the levies made by the local units; pays out county funds upon proper

authorization of the county commissioners; collects automobile registration fees and sends the money to the state; and issues other licenses. The original Kansas Constitution provided that county treasurers could serve no more than two consecutive terms. In 1968, the voters deleted this prohibition, so today there is no restriction on the number of terms a person may serve as county treasurer.

### *County Sheriff*

The sheriff is the chief law enforcement officer of the county, charged with maintaining law and order and enforcing state law as well as acting as a servant to the court. The sheriff and deputies serve subpoenas, and process and execute orders of all courts of record in the county. The sheriff also maintains the county jail and is responsible for the safekeeping of those who are committed to jail.

The sheriff is elected for a four-year term. Currently there is no term limitation, although from 1862 until 1964 the constitution forbade sheriffs from serving more than two consecutive terms. The salary of the sheriff depends on the population of the county. The county commissioners allow other expenses, including the hiring of deputies. The sheriff is entitled to retain a portion of the fees he or she collects.

### *County Attorney*

In all but the five most populous counties of the state, the county attorney acts as prosecuting attorney and is an important law enforcement official. As public prosecutor, the county attorney conducts criminal investigations and determines whether there is enough evidence in a case to warrant prosecution. In some instances, she or he may have to decide whether to prosecute for a more serious crime or for a lesser one that can be proven more easily. The five largest counties, each of which forms a separate judicial district, have district attorneys who serve as public prosecutor.

The county attorney also may investigate public official and file ouster proceedings. In some counties, the county attorney gives advice to county officials on legal matters and represents the county in civil cases. However, many counties now hire a county counselor to perform these functions, leaving the county attorney to pursue criminal matters full time.

### *Register of Deeds*

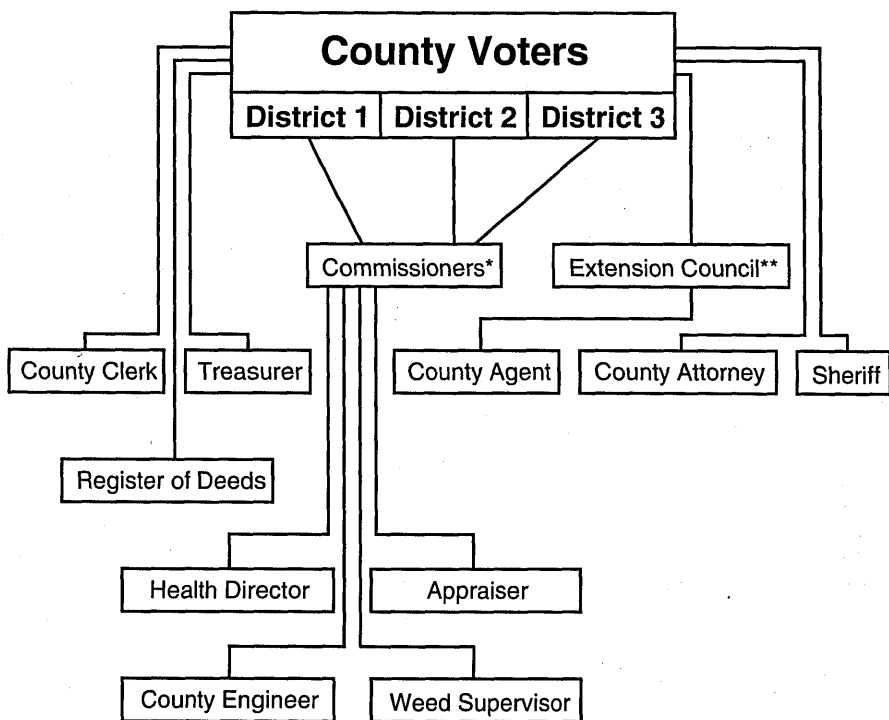
The register of deeds is concerned primarily with the routine but important service of permanently recording the ownership of real property. She or he registers liens and conditional sales contracts for real estate. In this manner the individual citizen is more secure in ownership of property, and does not need to retain property documents.

Other Officers

**County Coroner.** In 1963, the legislature authorized the judge of the district court to choose a district coroner from two licensed practitioners of medicine nominated by the local medical society or societies. This system replaced a procedure of elected county coroners. Under the election system, many coroners were not physicians, nor were they trained in criminal investigation—both of which are necessary qualifications. A district coroner is appointed for each judicial district and may, with the approval of the district judge, appoint deputy coroners.

Figure 31

Typical Government Structure of Kansas Counties: 2001



\* Also the board of equalization, board of road supervisors and, with the health officer, county board of health. Seven counties have appointed county administrators.

\*\* Elected by farm voters and sits with county commissioners on extension budget matters only.

The district coroner holds inquests regarding persons who may have died by unlawful means, or when the cause of death is unknown. In these cases, six citizens of the county are impaneled to form a coroner's jury. The coroner may subpoena witnesses. The jury renders a verdict indicating the "means, weapons, or accident" that resulted in the death, and whether it was feloniously caused. The coroner then issues a warrant to the sheriff for apprehending the suspect. In some instances the coroner performs an autopsy.

*County Administrator.* As county functions and services have expanded, the commissioners in 13 counties have appointed county administrators/managers. The administrator works for and assists the board of county commissioners, but is not responsible for the work of the other elected officials.

*Others.* In addition to these elected county officials, there are a number of appointive offices. One of the most important is the county engineer, whose duties will be discussed in a later chapter.

*County-City Consolidation.* In 1996, residents and officials in Wyandotte County and the city of Kansas City persuaded the Kansas Legislature to allow these two governmental units to merge and form a single city-county government. Similar consolidations had taken place in other parts of the United States, but this was a first for Kansas. The move was encouraged by the fact that Kansas City, Kansas, geographically made up most of Wyandotte county. The legislation was permissive, and in some respects could be regarded as an extension of legislation that for years has encouraged cooperation between government units in Kansas.

## **County Home Rule and Modernization**

The above listing of county officials and summary of their duties suggest the extent to which authority and administrative power are diffused. No single official or group of officials is responsible for county affairs. Although cities experienced two major structural reform movements in the 20th century, most county governments in Kansas, especially the smaller ones, continue largely unchanged.

County officials and others have for a long time been interested in home rule (self-government or limited autonomy in internal affairs). In the 1960s, the matter had been considered by the Kansas Legislative Council. Later the Kansas Advisory Council on Intergovernmental Relations (KACIR) adopted the position that there should be home rule for Kansas counties. In its 1974 platform, the Kansas County Commissioners' Association adopted a plank urging the legislature to grant county home rule.

As counties have taken on additional local functions and have come to behave as units of local government—as distinguished from acting as agents of the state—they have seen more need to control their local affairs. Home rule can be granted to local units either through the constitution, as has been done for cities, or through the legislature by statute. It is true that what one legislature grants, another legislature may take away; but the reality is that once a legislature grants home rule, it is not likely to be rescinded.

Procedurally it was easier to obtain home rule by legislative enactment than by persuading the legislature to approve a constitutional change and then submitting it to the voters. KACIR preferred to obtain home rule by means of a constitutional amendment, but endorsed in principle the stand of the county commissioners for a statutory grant of home rule.

The legislature in 1974 granted home rule to counties by empowering them to transact all county business and to exercise whatever powers of local legislation and administration they deemed appropriate, with certain specified restrictions. Counties were specifically forbidden to consolidate; to alter their boundaries; to change the limits on bonded indebtedness; and to pass any resolutions that would affect the courts, the election procedures, or the election of county officers. They have no power to deviate from legislative acts that apply uniformly to all counties, or to exempt themselves from state laws merely because a county has adopted a county charter, such as the one proposed for Johnson County. Counties are subject to the limitations the legislature enacted for the county levy of retail sales taxes. Counties cannot supersede city home rule enactments without the consent of the city governing body.

Counties may use the home rule provision by passing ordinary resolutions or charter resolutions. (Counties typically designate their enactments as resolutions, which are comparable to ordinances passed by city governing bodies.) An ordinary resolution would be used for an action that is a local matter but is not covered by an enumerated power given to the counties by statute. For example, one county board used its home rule authority to establish the position of county administrator. There have been several court decisions to define local affairs at the county level, and the attorney general has rendered opinions.

One of the early opinions illustrates the interrelationship between county home rule and legislation with regard to consolidation. One county had sought under home rule to restructure some of its county offices; consolidate some offices, records, and services; and abolish the elected office of county clerk. The attorney general ruled that the county could not make these changes under home rule, but that it could make them under 1974 legislation concerning the consolidation of functions and offices.

Legislation in 1970 had permitted certain counties to adopt a consolidated law enforcement plan, but in 1974 the legislature authorized any two or more units of government to consolidate or perform jointly any adminis-

trative procedure or function being performed by government units individually. Additionally, any local unit was allowed to consolidate its administrative operations, procedures, or functions within the unit itself, and elective offices could be abolished subject to voter approval. Voters could initiate consolidations by petition. Between home rule and the consolidation law, counties have substantial statutory authorization for modernizing county government.

County charter resolutions exempt a county from all or part of any statute, and allow the county to substitute or make additional provisions. Charter resolutions require the unanimous vote of the board of county commissioners and are subject to a protest referendum, or they may be adopted by a majority vote of the board if a referendum is scheduled.

## **County Government and the Property Tax**

County government has long been involved in the assessment of real property. The commissioners act as an appeal board at the local level, to hear and adjust the values assigned to real property by the local assessor. Historically the assessor has been elected in some counties, and in others the county clerk has functioned as assessor. At one time the township trustees were ex officio assessors, and had to be appointed to serve as assessors unless they chose not to do so. In most counties the clerk cannot do all the assessing alone; therefore, deputy assessors are appointed. The large number of persons doing the assessment and the part-time nature of the job have contributed to different assessment practices and levels of assessment. The state has made an extensive effort to make assessment more uniform, thus improving its quality despite the fact that the state has increasingly made less use of the property tax as a source of state revenue.

Township trustees no longer are involved in the assessment process, and increasingly the function has also been removed from the county clerk's office. Since 1977, boards of county commissioners have been required to appoint county appraisers for four-year terms. In counties with more than 20,000 residents, the job must be full time. In less-populated counties, persons may be appointed to serve either full time or part time. In both cases, the person appointed must be a certified Kansas appraiser. In a number of smaller counties, the county clerk has been named part-time appraiser.

The extent of the difference between assessment levels has long been known, because the Division of Property Valuation annually publishes the results of the assessment ratio study. All sales of real estate are reported to the division, and the ratio of the assessed valuation of property to its sale price is computed. For example, if a property assessed at \$1,300 sells for \$10,000, the assessment ratio is 13 percent. The ratios of the properties that have been sold are analyzed county by county, so it is possible to see how evenly the properties that have changed ownership during the year have

been assessed. The closer the concentration of ratios, the more equitable the assessment. The median ratios for each type of property, for each county, and for the state as a whole are reported in the study.

Thus, property owners in counties with a high ratio pay more than property owners in counties with a low assessment ratio on the *state's* property tax levy. However, counties with high sales ratios receive proportionately more state-shared funds than counties with low ratios.

So long as most of the money raised from the property tax is levied by *local* units of government, uniformity of assessment *within* a county is more important than uniformity of assessment *between* counties. Substantial differences that exist within some counties are revealed in the annual assessment ratio studies. Dissatisfaction with assessment methods has led to the appointment of state and local study groups, and to the legislature's having effected many changes in procedures and in the placing of responsibility for the assessment. Procedures first were simplified by permitting the adoption, on a local-option basis, of a system of appointing an appraiser. Later they were simplified with the requirement that county commissioners appoint certified appraisers.

Throughout most of the state, the *county* is the assessment district, but counties may combine to form a single assessment district. The law now provides for the continuous appraisal of property. The appraiser is legally required to install and maintain any records and data on property that may be required by the State Division of Property Valuation. The division issues manuals and guides for property appraisers, including the values to be assigned to automobiles and farm equipment. The responsibility and authority of the State Division of Property Valuation have increased over the years.

In the assessment process, the appraiser is responsible for seeing that no property escapes taxation. He or she prepares the assessment rolls and serves as clerk to the county commissioners when they meet as the board of equalization to hear complaints about assessments and to equalize assessments throughout the county. In 1992, the legislature required all counties with more than 10,000 parcels of property to appoint at least one hearing officer for taxpayer appeals. The county board may make changes it considers proper, and the assessments do not become final until they are equalized by the State Board of Tax Appeals. This board hears the appeals of those who are dissatisfied with their assessments *after* they have appealed to the county commissioners; it also hears the appeals of those whose property has been appraised by the Division of Property Valuation.

For decades, the Kansas Constitution required all real property to be assessed on the "uniform and equal" basis. In 1975, the constitution was amended to allow agricultural property to be assessed on a "use" basis, but the legislature was not able to develop a plan acceptable to its members and to the governor. With inflation, new homes and other buildings tended to be added to the tax rolls at values that were higher than those of older

houses. With the emphasis on local control of assessments, and the state using the property tax only minimally to fund *state* government, wide disparities on assessment levels arose from county to county. Court action was threatened to challenge the fairness of the assessment. Because the last general reappraisal of property had occurred in 1965, a number of sessions of the legislature sought answers to the problem of when and how to reassess the property in the state.

In 1985, the legislature mandated that all 1.5 million parcels of real property be reappraised effective in 1987. The governor had threatened to veto the reappraisal bill unless the voters had a chance to approve a "classification" amendment. The voters got this opportunity in 1986, and they chose to establish in the constitution four classes of property and the percent of appraised value for each. The governor was concerned that the typical homeowner's assessment (and therefore taxes) would increase greatly because property was typically valued in the state at less than 10 percent of its market value, despite the statutorily mandated rate of 30 percent.

The new appraisals caused great consternation throughout the state, and the new tax bills met with cries of outrage. Homeowners were, by the constitution, to be assessed at 12 percent of the market value of their property—but businesses were to be assessed at 30 percent (the level at which the state had been assessing utilities). Within the business community, the impact of being assessed at 30 percent of market value differed greatly. As part of the legislative compromise in the bill, the 30 percent figure was accepted on the basis that the property tax on inventories would be repealed. Businesses that previously had paid taxes on large inventories found that their total taxes were reduced, even though the assessments on their real property were higher. Many small businesses with low inventories found that they did not gain much by the lowered inventory tax, and their total taxes were much higher (at a 30 percent level rather than the previous 8–10 percent level).

The legislature met in special session in 1989 to search for an acceptable solution to the reappraisal dilemma. While some temporary relief measures were passed, the legislature failed to find a broad answer. Subsequent sessions of the legislature have been unable to forge a widely accepted remedy. Reactions to the new appraisals were so strong that increasing attention was turned to establishing, by a constitutional amendment, maximum rates that could be levied on real property in the state in a single year. Other proposals were made to change the classifications of property and the constitutionally mandated percentages.

The 1989 reappraisal legislation included provisions for subsequent mandatory reappraisals in an effort to keep appraisals current. Changes were made by the Division of Property Valuation in its annual ratio studies. With constitutionally established percentages for the four classes of property, more attention was turned to the "appraised" value and its relationship to "sales"



value. Theoretically this figure should be 100 percent, but a frequently accepted norm is to allow 10 percentage points of deviation. In 1995, with this as a guide, the median sales ratios for residential properties were not within acceptable range in approximately one quarter of the counties' appraisals. Similar information is presented each year for each of the four classes of properties. The annual report examines the property sales in their relation to the appraised values on a number of other criteria, such as the coefficients of dispersion. Concern over the deviations within and between counties has led to requests by county commissioners for audits by the State Division of Property Valuation, and legislative efforts to improve the uniformity of appraisal in the state.

The assessment of each parcel of property determines each owner's share. The county treasurer totals up the amounts that units of government have called for from the property tax, then establishes the rate by dividing the amount to be raised by the value of the property in the taxing district. Normally this is expressed in the number of mills (10ths of cents) an owner must pay for each dollar of the assessed valuation of his or her property. A 16.2327 mill rate, for example, means that a property owner must pay 1.62 cents for each dollar of assessed valuation. Sometimes the rate is expressed in terms of the tax for each \$100 or for each \$1,000 of assessed valuation. Thus, a 16.2327 mill rate means just over \$1.62 per hundred dollars or \$16.23 per thousand dollars of assessed valuation.

The issue has been made more complicated because present school financing calls for school districts to collect a required statewide levy for schools. As more money is collected statewide from the property tax, it becomes more important for assessments to be uniform throughout the state. The need for greater uniformity increases the call for state supervision and control over the assessment process. With computer technology, it becomes administratively possible to have central statewide assessment of property. There remains the question of whether this is *politically* practicable, given the commonly expressed philosophy of local control of local affairs.

## County Functions and Finances

The building and maintaining of roads constitutes the most important function of counties in terms of dollars spent. County commissioners have wide discretion in spending highway funds. For decades, social welfare was their second-biggest function, but in 1973, this function was transferred to the state.

While they are of limited financial significance, such services as noxious weed eradication, county fairs, parks, libraries, public health, and agricultural extension are performed by the county, whose functions are expanding both in number and magnitude. They include operating airports, ambulance services, hospitals, mental health clinics, and solid waste refuse

**Table 24**  
**Kansas Property Tax Levies for**  
**County Government by Mill Rate: 1996**

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Rate of Levy (Mills)	Number of Counties
12.00-15.99	1
16.00-19.99	0
20.00-23.99	2
24.00-27.99	6
28.00-31.99	9
32.00-35.99	12
36.00-39.99	6
40.00-43.99	7
44.00-47.99	9
48.00-51.99	6
52.00-55.99	8
56.00-59.99	6
60.00-63.99	5
64.00-67.99	6
68.00-71.99	5
72.00-75.99	5
76.00-79.99	6
80.00-83.99	1
84.00-87.99	2
88.00-91.99	1
92.00-95.99	1
96.00-99.99	1

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Source: *Kansas Government Journal*, January 2001, unnumbered.

disposal; encouraging economic development; providing fire protection; and orchestrating planning and zoning. Since the passage of the 1966 constitutional amendment eliminating the office of county superintendent of schools, the county has been less involved in education.

County expenditure figures are somewhat misleading because of variations in the total expenditures by individual counties and variations in what they spend for particular functions. Counties that have adopted the county-unit road plan (described in Chapter 21) generally spend more for roads than counties having township roads.

Counties generally get more than half their revenues from the property tax. Many problems are presented by this heavy reliance. The general sentiment that the property tax is yielding as much of the total costs of government as can reasonably be expected has resulted in strong pressure to keep

the property tax rate down. Moreover, the county must share the property tax with other units of local government.

Counties, along with other units that depend largely on the property tax, have experienced financial problems in the inflationary period since World War II. While the total valuation of property has increased, it has not kept pace with the heightened demand for tax dollars. Counties have found it necessary to ask the legislature for relief, which has taken various forms. In some instances the legislature has raised the amount of the levy the county could make for a particular function. It also has increased the total levy the county could make, and has excluded from the aggregate levy limit some levies or parts of levies authorized for particular functions.

Because of the wide variation in assessment ratios and in the total assessed value of property, individual counties are able to raise different amounts from the same mill rate levies. A mill rate that may raise adequate funds for one county may be wholly inadequate for another. The distribution of the mill-rate levies for 1996 by counties for county government is shown in Table 24.

Any county, or any two or more contiguous counties, may—subject to voter approval—levy a half-cent or full-cent sales tax. Votes have been taken in a number of counties.

Another important source of county revenue is funds returned by the state, which in some states might be called “state aid.” Like other property tax-levying units of local government, the county receives a share of the Local Ad Valorem Tax Reduction Fund. The state distributes the liquor control enforcement tax to counties on the same basis: within the county, 50 percent goes to county government. The state distributes 50 percent of the cigarette tax to counties, each county’s share being determined by its population. Within the county, half the amount received is credited to the county’s general fund and the remainder is divided among the towns of the county. Some gasoline tax revenues are shared with the counties.

Because of requests for additional state aid, there is every indication that state aid to counties will be at least continued, if not increased. In general, counties have not been able to use service charges or utility “profits” to finance their operations to the extent that cities have.

## **The Future of County Government**

Despite the growth of Kansas cities, the county is an important unit of government in Kansas—and promises to continue to be. Besides being central to the operation of the other units of local government, the county is important because of the functions it performs for the state. With the increasing use of nonpartisan elections in cities, political partisanship at the county level becomes more conspicuous. Political parties are organized along county lines, and in a sense the state’s party organization is a loose associa-

tion of county political leaders. For decades the county was essentially the unit of representation in the House, and it is still used in many instances to form House and Senate districts.

With county home rule and provisions for consolidating local governments, counties now have authority to experiment with internal reform. In spite of great changes in transportation and communication since the time when counties were established, county boundaries have remained unchanged for decades. While specialists in various fields have endeavored to identify the minimum population necessary for efficient county performance, it would be difficult to establish any precise minimum population for such a general-purpose unit of government.

However, the relatively small populations and low valuations in some counties calls into question their continued existence. As Kansans become more accustomed to multi-county districts for the House and Senate, the consolidation of counties may become more politically feasible.

## Township Government

Like Kansas counties, its townships were organized in substantially their present pattern by 1900, as shown in Table 25. The number of townships continued to increase slightly until 1930, but in the last decade the number of townships has decreased. Although the average county has 14 townships, there are marked differences; the number of townships ranges from one in Kiowa and Wichita counties to 31 in Reno County. Kansas ranks second nationally in number of townships, and generally may be described as the

**Table 25**  
**Number of Townships in Kansas: 1870–1997**

Year	Number of Townships	Year	Number of Townships
1870	365	1948	1,551
1880	1,002	1950	1,550
1890	1,509	1960	1,546
1900	1,484	1970	1,538
1910	1,498	1976	1,466
1920	1,533	1991	1,414
1930	1,552	1997	1,370
1934	1,551		

Sources: *Kansas Government Journal*, April 1977, p. 139; League of Kansas Municipalities, "Local Governments in Kansas: An Inventory of Governmental Taxing Units," 1991, and U.S. Bureau of the Census, *Census of Governments, Government Organization*, Vol. 1, various issues.

southernmost and westernmost state in which townships were consistently organized.

The most populous township in the state is Riverside in Sedgwick County, with 14,364 residents. More than half the townships (789) have fewer than 200 residents, and 101 have fewer than 50. Kansas has seven townships with more than 5,000 persons, generally in urban counties.

All land in Kansas is either in a township or a city of the first or second class. Cities of the third class are for most purposes part of the township in which they are located. The total population of townships in 1991 was 513,916. This is essentially the "noncity" population, and would in most cases be defined by the U.S. Bureau of the Census as "rural."

Historically, township offices have included a trustee, a clerk, a treasurer, two justices of the peace,<sup>2</sup> and two constables,<sup>3</sup> all elected. The trustee, clerk, and treasurer now form the township's auditing board, which is responsible for supervising township finances. In counties that have not adopted the county-unit road system, the auditing board also acts as the board of highway supervisors.

Meetings of the township auditing board and board of highway commissioners frequently are held simultaneously. Decisions concerning the construction and maintenance of township roads are made at these meetings. In general, road work is done in accordance with plans, specifications, and general regulations prepared by the county engineer.

To a limited extent, the township trustee is the general supervisor of township government. She or he divides the township into convenient road districts and appoints road overseers. In addition, the trustee is an election judge. In some townships, the trustee may be the road overseer. In some townships, the trustee has duties relating to prairie dog eradication, cem-

**Table 26**  
**Kansas Special Districts: Selected Years**

Year	No. of Districts
1952	724
1962	880
1972	1,136
1982	1,370
1987	1,387
1992	1,482
1997	1,524

Source: U.S. Bureau of the Census, *Census of Governments*, Government Organization, Vol. 1, No. 1, various issues.

eteries, and water and sewer systems. The duties of the clerk and treasurer are described by their titles.

There tends to be little interest in township government and offices. The property tax is the main source of revenue for townships. As property tax-levying units of local government, they share in the state's distribution of the Local Ad Valorem Property Tax Reduction Fund. Townships also receive aid from the state's gasoline tax.

In parts of the state where the counties have assumed management of roads, township government has almost atrophied. But as is true of other units of government, once established they are difficult to abolish. Township government has materially changed where the county-unit plan for roads has been adopted, but township government continues throughout the state.

## Special Districts

As shown in Table 26, the number of special districts in the state has more than doubled in the past 40 years. The district form of organization has been used to accomplish a wide variety of purposes, but typically each district provides only services. Thus, citizens in a given area may join with

**Table 27**  
**Kansas Special Districts: 1991**

<b>More Common Districts</b>		<b>Less Common Districts</b>	
Cemetery Districts	728	Airport Authorities	4
<b>Community College Districts</b>	19	Ambulance Districts	6
<b>Conservation Districts</b>	105	Community Building Districts	3
<b>Drainage Districts</b>	77	County Rural Road Districts	2
Fire Districts	323	Industrial Districts	2
Hospital Districts	32	<b>Irrigation Districts</b>	7
<b>Library Districts</b>	37	<b>Municipal University Districts</b>	1
<b>Lighting Districts</b>	9	Park, Recreation, or Museum	3
<b>School Districts</b>	304	Regional Libraries	7
Sewer Districts	74	Transit Authority	1
Special Improvement Districts	26	<b>Vocational School Districts</b>	1
Township Zoning	9	Water or Sewer Districts	3
Watershed Districts	95		

Districts in boldface type are discussed in the appropriate function chapter.

Source: League of Kansas Municipalities, "Local Governments in Kansas—An Inventory of Governmental Taxing Units," 1991.

their neighbors to obtain a service that the general-purpose unit of government for their area does not want or cannot perform.

The best and most complete report<sup>4</sup> on special districts has been prepared by the League of Kansas Municipalities. The league reports in 1991 a total of 1,556 special districts with taxing powers, while the Bureau of the Census differentiates between special districts on the basis of whether they may levy property taxes. In 1987 the bureau reported 639 districts with property-taxing authority and 748 without such authority.

The most common kind of special district in Kansas is the cemetery district; 728 exist at this time. Many such districts have been organized by third-class cities or townships. Some special districts operate essentially as townships. In 1991 they levied about \$2 million in property taxes.

In 1991 there were 323 active fire districts, many operating in close conjunction with townships. A township may operate a fire department and contract with an adjoining district to provide free fire protection. The residents of the adjoining area may use the service through a district contract.

Each Kansas county has conservation districts. These at one time were known as soil conservation districts, but as explained in Chapter 20, their functions have been modified.

There are numerous other special districts with taxing authority, as shown in Table 27. In each instance they number fewer than 100, and the services they perform vary widely.

The League of Kansas municipalities identifies 41 other types of boards and commissions that do not have independent powers of taxation but do have some characteristics of government units. Such groups in many instances are designed to promote citizen involvement in government.

## Chapter 13 Notes

1. *Kansas Statistical Abstract 1991–1992* (Lawrence, Kansas: Institute for Public Policy and Business Research, University of Kansas, 1993).
2. The justice of the peace was established by the constitution as the judicial officer for the township. The jurisdiction of this court was never large and later was restricted, and in 1973 the office was abolished.
3. The law enforcement officer in the township was the constable, but this office has been abolished.
4. League of Kansas Municipalities, “Local Governments in Kansas—An Inventory of Governmental Taxing Units,” 1991.



## Chapter 14

# City Governments

**K**ansas once was primarily an agricultural state—and many people still view it that way. But the reality is that the percentage of urban population in Kansas has gradually increased, until by 1990 more than 79 percent of the people in Kansas lived in incorporated places. The movement of out-of-state people to expanding industrial areas, and the continued migration of the farm population to the cities, account for this change. New farming methods and improved transportation have made it possible for farmers to become city dwellers while continuing their farming.

Kansas has a large number of towns and cities (628<sup>1</sup>) in relation to its population, but many are small; in 2000, more than half the towns (340) had fewer than 500 people, and of these, 195 cities had fewer than 200 people. In these small towns, the government is likely to undertake few functions and to be relatively simple and informal.

At the other end of the population scale is Wichita, the largest city of the state and home to about 12 percent of the state's population. There are 32 other cities with 10,000 or more people. In all, these 33 cities account for 60 percent of the Kansas population. Topeka, Lawrence, and Wichita are classed by the U.S. Bureau of the Census as metropolitan, and Wyandotte and Johnson counties are parts of the Kansas City, Missouri, metropolitan area.

Table 28

## Number of Places in Kansas and Percent of Population

Year	Places			Percent of Total Urban Population
	Urban	Rural	Total	
1860	2			9.4%
1870	8			14.2
1880	17			10.5
1890	34			18.9
1900	40			22.4
1910	53			29.1
1920	62	463	525	34.8
1930	62	508	570	38.8
1940	64	525	589	41.9
1950	78	525	603	52.1*
1960	87	531	618	61.0*
1970	100	532	632	66.1*
1980	103	526	629	66.7*
1990	96	537	633	69.1*

\*Includes only population in places defined by U.S. Bureau of the Census as urban (over 2,500). In 1990, this excluded 12 percent of the population living in the 538 incorporated places defined as rural. Information for 2000 was not available at press time.

Source: Adapted from U.S. Bureau of the Census. *U.S. Census of Population: 1980*, "Number of Inhabitants: Kansas," pp. 18-7 and 18-9.

## The Cities and the State

In Kansas, as in other states, many of the early towns were incorporated by acts that applied only to the one town being incorporated at the time. These charters created the town legally and set forth its powers. As more towns were incorporated, statutes were passed to provide general provisions through which local citizens could petition the county board of commissioners to allow for the incorporation of new towns.

For decades it was common practice to meet the legislative needs of towns and cities through these special laws, generally enacted at the behest of the council or citizens of the concerned town or city—but occasionally over its objections. There were so many instances that a national movement began for the purpose of restricting this legislative practice. The Ohio Constitution, after which the Kansas Constitution was modeled, contained such a restriction on state legislative action, with the result that a similar provision was inserted into the Kansas Constitution.

In interpreting this provision, the Kansas Supreme Court was called upon to distinguish between "laws of a general nature" and "general laws." In 1906 the constitution was amended, and the courts were assigned the duty of determining whether a given law was repugnant to this provision of the constitution. The present legislative article, adopted in 1974, dropped the prohibition against special legislation but did not change the later article in which the legislature is prohibited from conferring powers to corporations by special acts. The new legislative article retained the provision that all laws "of a general nature" were to have uniform operation throughout the state, with the exception of special authorization for "urban areas."

The legislature has established three general classes of "cities," based on population. First-class cities are those with a population in excess of 15,000; second-class cities are those with a population between 2,000 and 15,000; and third-class cities are those with fewer than 2,000 residents. Until 1953, third-class cities that reached 2,000 and second-class cities that reached 15,000 would certify the fact to the governor, who then issued a proclamation advancing the city to the next class. On occasion, cities have reached the required population without changing class, a practice that has been legitimized. Second-class cities may continue in that category until they reach a population of 25,000, at which time they are required under current law to become first-class cities. Similarly, third-class cities may continue in their category until they reach 5,000.

There are instances in which towns or cities have reached one class and then had their population fall below the required level. Such cities frequently remain in the higher class. Thus, the actual population range in each class is greater than the general number range would indicate.

Special acts for individual cities made it possible for the legislature to give particular attention to the variances between cities. But these acts also presented problems, including the fact that valuable legislative time was devoted to essentially local matters. From the point of view of the city, special acts brought flexibility, for normally a city could get a special act passed without much difficulty. However, the city frequently had to delay its plans until the legislature met and enacted the desired law. Most important, the system divided responsibility for municipal affairs between the state legislature and the city's governing body.

In Kansas (as in most other states), cities have been regarded as creatures of state, and judged to have *only* the powers provided by the legislature or the constitution. Kansas has experimented with giving cities more authority over their own affairs, in a movement referred to as "home rule." Home rule may be granted by legislative or constitutional action. The aim is to provide self-control over all local matters without disturbing or lessening the power of the state over matters of statewide interest. Numerous court cases have distinguished between local and statewide concerns.

The home rule movement sprang forth in Kansas as early as 1949. But it was not until after a study, and endorsement by both the Legislative Council and a special governor's committee on constitutional revision, that the legislature in 1959 approved for submission to the voters a broad constitutional amendment for home rule, patterned after the Wisconsin plan. The voters approved the constitutional amendment for home rule in 1960, and it became effective the next year.

This amendment empowers cities "to determine their local affairs and government, including the levying of taxes, excises, fees, charges, and other exactions." No specific definitions were included as to what constitute "local affairs." But the intention of the legislature and the voters seems to have been clear, since the amendment itself provides that it "shall be liberally construed for the purpose of giving to cities the largest measure of self-government." An assortment of court cases have tested the implications of home rule; but in general, cities have been upheld when making enactments under home rule.

This broad grant of power was made to all Kansas cities, but it has several restrictions. The legislature may limit the revenue-raising powers of cities so long as it treats all cities in a class uniformly and creates no more than four classes of cities. Further, cities may exercise these powers of local determination and government subject only to (1) legislative enactments "of statewide concern applicable uniformly to all cities," (2) other enactments applicable uniformly to all cities, and (3) enactments prescribing limits of indebtedness. Cities exercise these powers by enacting ordinances through their regular procedures.

Additionally, each city is given the power to enact charter ordinances, which exempt it from state laws that would otherwise apply to it. A city may not pass such ordinances for the purpose of releasing itself from the operation of laws of statewide concern applicable uniformly to all cities, other laws applicable uniformly to all cities, and laws prescribing debt limits. The effect of this provision is to allow any city governing body to change any of the laws the legislature had enacted or might enact especially for it. Because of this broad grant to cities in determining their local affairs, there is less need for the legislature to enact special laws. The exact number of such ordinances is not known, despite a statutory requirement that they be filed with the secretary of state. The cumulative total is thought to be in the thousands.

Cities have passed thousands of "ordinary" ordinances by using this constitutional grant, which allows them to determine their local affairs and government. A general act, which the legislature passed after the adoption of city home rule, repealed numerous statutes granting powers to cities, noting that with home rule such grants no longer were necessary.<sup>2</sup> However, a number of statutory grants of powers remain in effect, and cities continue to use them and their home-rule power as a basis for their actions.

## Kansas Constitution Article 12: Corporations

**Cities' powers of home rule.** (a) The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated, and cities may be dissolved: *Provided*, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.

(b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: *Provided*, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness. All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as herein provided for in subsection (c).

(c) (1) Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.

(2) A charter ordinance is an ordinance which exempts a city from the whole or any part of any enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject . . .

(3) No charter ordinance shall take effect until sixty days after . . .

(4) Each charter ordinance enacted shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities.

(d) 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.

(e) This amendment shall be effective on and after July 1, 1961.

This discussion of city-state relations has been limited to interactions between the legislature and the cities. However, there are increasing contacts between state administrative agencies, cities, and city officials. These relationships will be described in later chapters.

## **Municipal Powers**

### *Police Powers*

While they are related, there is a difference between "police power" and the "power to police." In the American framework, police power refers to the broad power of the state to make necessary regulations for promoting the health, safety, and morals of its citizens. The courts consider this to be an extensive power of the state government, and many state laws are based on this power. The courts have not been willing to define the power in detail, but they have upheld regulations enacted under this grant that they consider reasonable.

The state legislature exercises the police power, but it also has authorized cities to use this authority. For a time, second-class cities were given the power to "enact, ordain, alter, modify, or repeal any and all ordinances not repugnant to the constitution and laws of this state, and such as it shall deem expedient for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules, and regulations as may be necessary to carry such power into effect."<sup>3</sup> After the constitutional grant of home rule was adopted, this and the other two comparable grants to first- and third-class cities were repealed. The power of cities to determine their local affairs and government includes the police power.

The governing body of the city (the city council or commission) exercises this power by passing ordinances. The enforcement of these ordinances normally is the responsibility of the marshal or police force. Other sections of the statutes authorize the establishment of police departments and the appointment of police officers. City police are charged with apprehending those who violate state law, as well as those who violate city ordinances.

Some standards of law enforcement suggest a minimum number of police officers for each thousand people in the city. Considering the need for 24-hour coverage, a relatively small number of Kansas cities are able to pay more than a few officers to be on duty at a given time. In the median Kansas town with a population of about 500 (and indeed in all third-class towns), relatively little can be done in the way of an organized police effort. These conditions make the sheriff the primary law enforcement officer in most of the state.

In large cities, law enforcement is a major function, and departments are organized with respect to the specialties of police work. When city po-

lice find that a state law has been violated, the offender is turned over to the county sheriff and the case is prosecuted in district court.

As in other states, Kansas law enforcement officials pour an enormous amount of their time and energy into traffic and related problems, leaving insufficient resources for criminal investigation. The Kansas Bureau of Investigation, the State Highway Patrol, and other law enforcement entities such as the county sheriff agencies frequently are invited to assist city police departments.

Licensing is used primarily for regulation of certain businesses and professions. In 1961, following adoption of the home-rule amendment, the legislature passed a general law authorizing cities to require licenses and establish fees for the privilege of engaging in any business, trade, occupation, or profession; but this law has been repealed, and the courts have ruled that this power already is authorized by the constitutional grant of home rule. However, the amount of a licensing fee may not be based on the income of the licensee or the amount the licensee collects for sales or services. Rather, the fee is likely to be a flat amount, or one related to the number of square feet used by the person or company being licensed.

### Zoning

Zoning is predicated on the police powers of cities, restricting the right of individual property holders to use their property entirely as they see fit. By setting aside designated areas for residences, retail businesses, and industry, city governments find it simpler to provide the necessary streets, sewage, fire, police, and sanitation services for each area. Furthermore, zoning safeguards the value of property. It guides the future development of the city and aims to make cities more attractive and pleasant places. Zoning is an integral part of city planning and management.

The governing bodies of all cities in Kansas are authorized to appoint planning commissions, which recommend the establishment of zoning districts and set their boundaries. Most cities with more than 1,000 people have a planning commission. After a hearing, the city council or city commission may adopt the regulations recommended by the planning commission. Once such regulations have been adopted, the zones may not be altered until any proposed changes have been submitted to the planning commission and publicized. If a protest petition is filed by 20 percent or more of the property owners in front of or behind the land to be rezoned, the city governing body may approve the change only by a three-fourths vote.

Generally, zoning looks to the future. All property employed in nonconforming uses when a zoning ordinance is adopted may continue to be employed for that purpose. Only *new* nonconforming uses are forbidden, and modifications of existing structures employed in nonconforming uses are closely restricted. Some governing bodies have tried to phase out nonconforming uses over a number of years.

Boards of zoning appeal may be established in cities where zoning ordinances have been enacted. Such boards are allowed to make exceptions to the zoning ordinances.

### *Fire Protection and Prevention*

First-class cities are specifically authorized to maintain fire departments, and other cities are allowed to buy fire trucks and equipment and to make needful rules and regulations for the use of the equipment. All cities may make regulations with regard to building materials and construction practices that might lead to fires.

It is estimated that 37 cities in Kansas maintain full-time, paid fire departments. Many others fund some full-time firefighters but depend mostly on volunteers. City fire departments frequently arrange to provide fire protection services to the surrounding rural areas, and some townships contribute to the support of the department. For years the legislature has made a specific item appropriation to the University of Kansas to support its Fire Service Training program, which includes an annual fire school. FST employs a staff of instructors who provide on-site training throughout the state.

### *Power to Acquire and Maintain Streets*

Cities may acquire streets by dedication, prescription, purchase, or eminent domain. When a plat is filed, land indicated for a public use is considered dedicated, and no specific acceptance (beyond the filing of the plat) is required.

Many cities have developed around township and county roads. When incorporated, the city has taken over the maintenance of these roads. Other streets have been added as new areas are platted. All cities with planning commissions are able to exercise considerable control over land plats within the city and within three miles of the city limits. Where there are such commissions, plats must be submitted to the commission and must be approved by the city governing body before they are accepted.

Roads usually are improved at the expense of the adjoining property holders. Once the roads are improved, however, the city is authorized to maintain them. Various provisions govern the circumstances under which the classes of cities may repave a street, either wholly or partly at public expense.

While city streets form only a small percentage of the road mileage in the state, they carry a substantial percentage of its traffic. A city may ask the state Department of Transportation to maintain the state highways within city limits, or a city may receive a payment and maintain the highways on its own. Counties make similar arrangements with cities.



### *Ownership and Regulation of Public Utilities*

All cities in Kansas are authorized to purchase or construct and operate utilities to supply the city and its inhabitants with natural or artificial gas, water, electricity, heat, street railways, or telephone service. Any such action must be approved by a majority of voters. After obtaining approval, the city may issue bonds for up to 15 percent of the valuation of real property in the city. Where municipal plants exist, the city may sell the product or service to all persons and businesses within and outside the city at rates set by municipal ordinance. Municipally used utilities are not subject to regulation by the Kansas Corporation Commission.

Most municipal utilities are operated as departments or divisions of city government, with the council or commission being directly responsible for the operation of the utility. Frequently the governing body appoints a superintendent of the utility. However, the governing body of any city with a utility has authority to appoint a board of commissioners to operate the utility. In several cases special legislation provides that these boards may be elected and may be independent of the governing body.

Privately owned utilities must obtain city franchises to enter streets, alleys, or public parks or grounds. The city is given the power to contract with utilities to further the interests of its citizens. It can set standards of service as well as maximum rates (provided these are not inconsistent with the rates determined by the Kansas Corporation Commission). The city may require additions and extensions of a utility plant. Upon receiving complaints about a franchise or contract, the KCC may hold a hearing and instruct a city to change a franchise or contract. Occasionally, representatives of cities appear before the commission at hearings regarding rates and regulation of privately owned public utilities.

Cities may purchase a privately owned utility when its franchise expires. This may transpire without the consent of the utility if the voters approve. Under these conditions, special commissioners determine the value of the utility, subject to appeal to the courts by either party.

### *Power to Undertake Public Improvements and Services*

Cities are authorized to engage in a wide variety of public improvements and services, including acquiring and maintaining public parking lots, squares, and markets both within and outside the city. Cities may establish and maintain cemeteries; they may also build docks, wharves, river terminals and drains, canals, and other flood-control improvements that frequently are financed from general tax levies. In addition, cities may construct and maintain sewers and drainage systems. A city governing body may divide the city into as many sewage districts as it deems necessary, the cost to be borne by the owners of the benefited property. Lighting districts may also be established in first- and second-class cities. Streets and sidewalks are

common and important types of public improvements, largely financed by special assessments against the benefited property.

All cities are authorized to collect refuse or to contract for such service. First- and second-class cities are also allowed to acquire and operate off-street parking lots.

### *Other Activities*

Cities may establish special boards to supervise and manage municipal libraries, recreational facilities, and municipal universities. These boards are appointed by the mayor and the governing body. They are responsible for managing one function, and they normally recommend to the city governing body the tax levy needed. To accomplish the functions assigned by the statutes, cities have been granted certain incidental powers, such as the power to take private property by eminent domain, to enter into contracts, and to tax.

## **Municipal Finance**

Municipal revenues are divided among several funds, the number varying from city to city and class to class. The legislation authorizing revenue collection specifies the fund to which the revenues must be credited. Expenditures from the funds may be made only for the purposes indicated. Each fund must balance, and transfers between funds generally are restricted. This system of funds tends to create inflexibility, so the legislature has allowed an increasing number of cities to make a single levy for a general operating fund, instead of requiring them to maintain separate funds for each function. In addition, cities are authorized to establish bond and interest funds for public improvements, public utilities, and other purposes.

Within and between classes of cities there are substantial variations in the amount and sources of revenues and the amount of expenditures for particular functions. With respect to revenues, about half the total revenue for municipal government comes from ad valorem taxes on real and personal property. The legislature has authorized cities to levy property taxes for some of the funds. Within the mill rate limits established by the legislature, city governing bodies used to be allowed to levy as much property tax as they considered appropriate. In addition to the limits for individual funds, there also were aggregate limits that a city could levy. However, as pressures increased to raise revenues, some levies were taken out from under the aggregate, and thus these levies may be made irrespective of the levies for other funds. Because of the differences that exist between various counties with regard to assessment levels, tax limits expressed in mill rates have limited effectiveness.

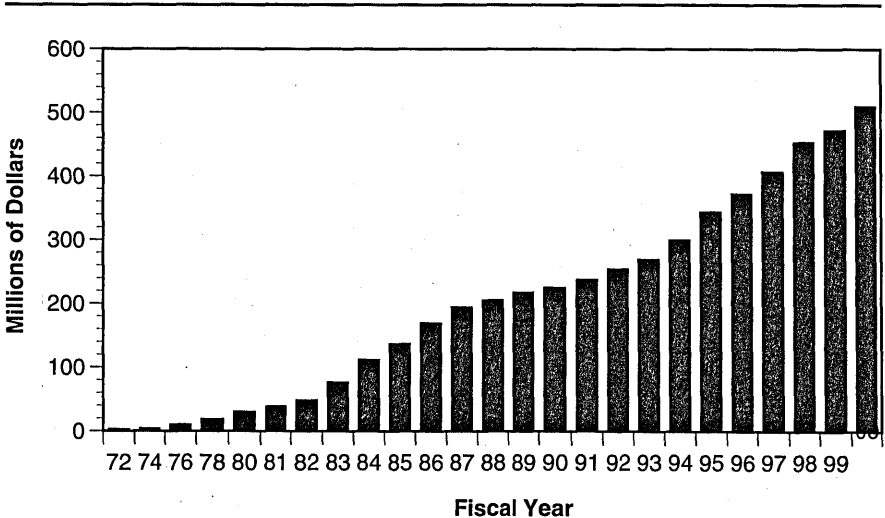
The legislature has chosen various ways to limit the amount of property tax that local units of government could levy. Limits were set for indi-

vidual funds, and an aggregate overall property tax mill levy limit was set. The aggregate property tax lid was allowed to expire in 1999 and individual fund limits were suspended. In its place, local government bodies are required to publish a resolution indicating that they propose to raise their property levy over that of the previous year. In this way, citizens presumably know what is going to happen. Since case law has established that such budget measures are outside the purview of the general statutes allowing referenda, aggrieved citizens and taxpayer groups need to express themselves before the budget is adopted.

In Kansas, the county acts as the assessing and collecting agent for all property taxes. A city's governing body certifies to the county the amount of tax to be collected for the city, within statutory limits. This amount is computed into the total tax to be levied against each parcel of property. The county treasurer collects the tax for all units that levy a property tax, then distributes the money to the cities and other units.

Cities have tried to acquaint the legislature with their difficult financial circumstances. Increasingly, cities have turned to the sales tax and to ser-

**Figure 32**  
**Kansas Local Sales Tax Receipts: 1972–2000**



Sources: Data from *1974 Supplement to Tax Facts*, *1977 Supplement to Tax Facts*, and *1992 Supplement to Tax Facts*, and the Research and Revenue Analysis Division, Kansas Department of Revenue.

vice charges to finance city government. The legislature has authorized all cities after a popular referendum to levy a one-half-cent or a full-cent sales tax. After a similar referendum, counties may levy a countywide sales tax shared with the cities in the county. In 1995, 66 of the 105 counties had such county-wide sales taxes. A total of 450 cities received revenues from one or both of these sales tax provisions.

Kansas cities receive several types of aid or shared taxes from the state, such as the fund for reducing local ad valorem taxes, which is distributed to the counties—50 percent on the basis of the county's assessed valuation and 50 percent on the basis of its population. Within the county, the revenue is distributed among all property tax-levying local subdivisions that comply with the budget law (except school districts). Each unit receives a share based on the relationship of the amount of property tax it levied the preceding year to the total amount levied by all units within the county. Bond and interest funds are excluded from these computations and do not receive any part of these shared revenues.

The tax for enforcement of liquor control is distributed among counties on the same basis as the fund for reducing local ad valorem taxes. The county keeps half of the enforcement tax; the other half is divided among all cities of the county on the basis of population. Within the county, the city-county revenue sharing fund is distributed on the same basis as the tax for enforcement of liquor control.

Cities receive several payments for streets and highways. A portion of state revenues from the tax on gasoline and special fuels goes to the Special City and County Highway Fund. Cities may also receive grants from the state to maintain state highways in cities at the rate of \$2,000 per lane-mile. Cities may enter into agreements to maintain county roads within cities. Upon special application, in certain cases cities may share in federal and state funds for highway construction.

All cities receive payments from the state for the Firemen's Relief Fund, and a few cities are given federal grants, administered by the state, to encourage certain public health functions.

Cities assess charges for services such as trash collection and sewage disposal; for the use of municipal swimming pools, cemeteries, and airports; and with the sale of certain kinds of property. Municipal property may be rented. Of a somewhat similar nature are transfers made by municipally owned utilities; the utility generally makes some payment to the city in lieu of taxes. However, some cities make much more substantial transfers from utility funds to other funds. Occasionally these transfers are sufficiently large that property taxes are lower than in similar cities.

Cities also receive revenue from licenses, occupation taxes, and fines and fees, notably from parking meters. There are a limited number of other miscellaneous sources of revenue.

In addition to the revenues needed to finance the normal operating costs of city government, a city may borrow money to make many municipal improvements. When money is needed to finance a revenue-producing function of the city, bonds usually are issued against and secured by the future revenues from the city operation in question. Such revenue bonds frequently are issued for the construction or expansion of municipal waterworks, power plants, and sewage disposal plants.

Cities also may issue general obligation bonds, which are obligations against the city's general revenues and credit. These bonds are to be distinguished from special assessment bonds, used to finance municipal improvements that benefit the adjoining land to the extent that the owners are required to pay for the improvements. Streets, sidewalks, and sewers frequently are financed through special assessment bonds, while a city hall might be financed with general obligation bonds. The city usually acts as the collecting agent for special assessment bonds. In case of default, the bond holder's avenue of recourse is first against the benefited property and secondarily against the city.

A considerable share of city revenues currently is spent to retire debt and pay interest on bonds. In some classes of cities, more than one-third of total revenues is spent for this purpose.

Many cities are pressed to find enough money to carry on the necessary services. The home rule constitutional amendment in 1960 seemed to provide some financial relief to the cities, but the legislature soon prohibited cities from raising revenues from some anticipated sources. The League of Kansas Municipalities has been active in pointing out that cities need additional revenues.

**Table 29**  
**Forms of City Government in Kansas: 2000**

Form of Government	1st Class	2nd Class	3rd Class	Total
Mayor-Council	3	49	507	559
Commission	0	10	1	11
Commission-Manager	15	20	4	39
Mayor-Council-Manager	5	11	0	16
Modified Mayor-Council	1	0	1	2
Consolidated City/County	1	0	0	1
<i>Total</i>	25	90	513	628

Source: *Directory of Kansas Public Officials*, 2000 edition, p. 246 (published by the League of Kansas Municipalities).

## Forms of City Government

All classes of Kansas cities are allowed to operate under any of the three standard forms of city government and two statutorily allowed modifications: the mayor-council plan, the modified mayor-council plan, the commission plan, and either of two variations of the city manager plan. As Table 29 shows, most Kansas cities use the oldest of these forms of city government, the mayor-council plan.

Most authorities differentiate between the "strong" and "weak" mayor-council forms of city government. In Kansas, the mayor has only selected powers given to that office under the strong mayor variation. The typical Kansas weak mayor is elected at large in all classes of cities. He or she presides over the council and has a veto; has the power of requiring reports from any municipal officer; and has general supervision over the affairs of the city. On the other hand, the mayor's appointments of other city officers must be confirmed by the council, and the mayor may pardon only with council consent. Most important is the fact that the 90 percent of cities with the mayor-council form of city government are third-class cities in which government is likely to be informal and casual. Under such circumstances, it is unlikely that many mayors succeed at developing their positions as strong executives.

In 1976 the legislature authorized a modified mayor-council plan calling for a seven-member council—four members elected by districts and three at large. Two cities have adopted this form.

The Kansas Legislature was quick to respond to the national reform movement that ushered in the commission form of city government in the early 1900s. In 1907, the same year in which the Iowa Legislature approved the commission plan for Des Moines, the Kansas Legislature allowed its first- and second-class cities to adopt the commission plan of city government. Six years later, third-class cities were allowed to operate under this plan.

In first-class commission cities there usually are commissioners of finance and revenue, streets and public improvements, water works and street lighting, parks and public property, and police and fire. The commissioner of police and fire serves as mayor. Second- and third-class cities are organized along slightly different lines, with a mayor and two commissioners.

Under the commission plan, the commissioners act together, forming the governing body of the city. They enact ordinances, appropriate money, and adopt revenue measures. Individually, each commissioner acts as the administrative chief of the departments assigned to him or her. While the mayor presides over the commission, he or she does not have a veto and is merely another commissioner when transacting commission business. This form of city government has been losing popularity, and in 1991 only 15 second- and third-class cities used the plan.

Two types of city manager government are authorized for all classes of Kansas cities. The older variation is the commission-manager plan, first allowed in 1917. Under this format, three or five commissioners are elected at large, forming the governing body that passes ordinances, appropriates money, approves the budget, and selects a city manager. So far as policy and administration can be separated, the commission makes decisions on policy and the manager carries them out. Since the manager serves at the pleasure of the commission, he or she may be removed at any time, with or without cause. The manager is responsible for the day-to-day supervision of city business.

In 1935 the legislature authorized the mayor-council-manager plan. In this configuration, mayor-council cities continue under their general plan of operation, except that after a successful referendum the council selects a manager, who assumes responsibility for tending city affairs. Under this plan the manager assumes some duties of the mayor under the older mayor-council plan.

Three differences remain between the mayor-council-manager and commission-manager plans in first- and second-class cities. Elections under the former plan are partisan, while under the latter plan they are not. The members of the governing body are elected at large under the commission-manager plan but by wards in first- and second-class cities using the mayor-council-manager plan. The city's governing body has more members under the mayor-council-manager plan than under the commission-manager plan.

While most cities in Kansas use the mayor-council form of city government, more than half the urban population lives in cities using the city manager plan. Wichita, Overland Park, Lawrence, Emporia, Shawnee, Hutchinson, Salina, Parsons, and Atchison use this plan, along with more than one-fourth of the second-class cities, including some of the larger ones. Most manager cities previously had commissions and now operate under the commission-manager plan. Only one city has abandoned the manager plan.

Home rule has given cities the authority to make changes in the form, structure, and operation of their government. Because the statutes regarding city government have not been uniform, cities have been authorized to enact charter ordinances; some have even devised "hybrid" forms. Clearly, Kansas cities are allowed some diversity in the way they operate under any of the five general forms of city government discussed above.

With one consolidated city-county government unit established and functioning, others may look to this pattern of operation. However, this special circumstance, with Kansas City making up such a large part of Wyandotte county, may make it unique and infrequently duplicated.

## Problems

Any discussion regarding the problems of municipal government today seems to involve finances, particularly revenues. Because citizens are requesting more and better services, cities are searching for new and better ways of raising money. Increased state aid is looked upon with favor by some Kansans, not only as a popular way of accruing revenues but as a way for cities to realize more benefits from the money their residents contribute to the state. To others, an increase in state aid appears less desirable because they fear that state *control* will accompany it. The action of the legislature in 1999 to, in effect, repeal property tax limits may open up this avenue for cities to raise more revenue. However, many feel there are more equitable revenue sources than the property tax.

State officials gradually are becoming aware that at least four areas of the state—Topeka, Wichita, Lawrence, and Kansas City, Kansas, with adjoining Johnson County—are highly urbanized, beset with many of the problems of metropolitan government. These areas evidence pressing problems of intergovernmental relations involving water, sewage disposal, law enforcement, and city planning.

In short, the home rule amendment may have eased somewhat the legal position of cities. But now there is strong concern about improving their financial capacity by increasing their power to raise revenues.



## Chapter 14 Notes

1. The Kansas League of Municipalities uses this figure. It differs slightly from the U.S. Bureau of the Census figure of 633, which includes four areas known as "Census-Designated Places."
2. *Laws of 1963*, Chapter 90.
3. *K.S.A.*, 14-401, as it was prior to 1965.



## PART III

# DELIVERY OF SERVICES

The state government in Topeka and the 3,800 other units of government scattered throughout Kansas' 82,000 square miles exist to provide services for the citizens of the state. Parts I and II of this book were introductory, describing the service framework. Part III focuses on the functions Kansas government implements to provide these services.

The delivery system established for one service differs from that used for another, and even the delivery systems used in related activities may vary considerably. Law enforcement, for example, is primarily a local function—yet the state operates the major correctional facilities. Delivery systems are not static, and may change quite rapidly. In 1972, the entire delivery system for welfare switched from a state-supervised, locally administered system to a state-operated system.

To emphasize the service aspect of government may require some explanation. An inmate at the state penitentiary is not likely to view confinement as a service—but from the perspective of the total citizenry, this and other “regulatory” activities may appropriately be so regarded. Regulation for part of society is often a service for society at large.

The number of such programs and activities is so large that it has been necessary to be selective in the following chapters.



## Chapter 15

# Enforcing the Law

**W**hen Kansas achieved statehood in 1861, law enforcement was rudimentary. Primary responsibility for the protection of property, preservation of order, and guarantee of civil rights rested with the elected county sheriff and two constables in each township. For further assistance, the sheriff could appoint deputies and call out the militia in his county. Formal prosecutions were handled by the elected county attorney, but many reported violations of the law were taken before a justice of the peace, and the arresting officer or complaining party assumed responsibility for presenting the case against the defendant. The state government assumed little responsibility for the enforcement of laws. Other than the governor, who could call out the state militia, no state agency had the authority to employ peace officers.

### **The Broad Outline of the Delivery System**

After 1880, and particularly in the first two decades of the 20th century, law enforcement changed. The increase in population, mobility of the populace, growth of commerce and industry, and increased interdependence compelled greater uniformity of enforcement.

To be effective, some of the new laws and administrative regulations required that there be more inspection of products or persons. Such surveillance can be performed by specialized state agencies created for this purpose, more easily than by local law enforcement officers. A few of the new duties assumed by the state are illustrated by the agencies and officers created between 1870 and 1920: Board of Agriculture, 1872; state sealer of

weights and measures, 1877; Board of Health, 1885; silk commissioner, 1889; state sugar inspector, 1889; livestock sanitary commissioner, 1905; dairy commissioner, 1907; and Kansas Board of Review, 1917. In addition to these specialized state agencies, the State Highway Patrol, Kansas Bureau of Investigation, and Alcoholic Beverage Commission were created to carry out the more traditional police functions.

Despite the importance of state agencies, most law enforcement is performed locally and viewed by most citizens as a local function. Law enforcement officials have developed professional associations, and the exchange of technical information and records yield greater efficiency in operating their departments. Aside from the numerous specialized state agencies operating in the areas of their expertise, most law enforcement is achieved by county and city officials.

During the 1980s, the most important development in law enforcement and corrections was recognition of the concept that there is or should be a *system* of criminal justice—a system made up of law enforcement, the courts, and correctional services. As discussed in Chapter 11, the federal government has done much to stimulate and encourage this approach. Persons enter the system, move through it, and then—it is hoped—leave the system to become self-sufficient members of society. The parts of the system must be viewed in the context of the system as a whole, for people who move through it are affected by the way they are treated in each of its parts.

The three components of the criminal justice system interact. A judge, for example, may withhold the sentencing of those found guilty until they have been sent to the Topeka Correctional Center for psychological testing and evaluation. The secretary of corrections then assigns him or her to the facility that holds the most promise for rehabilitation. In some cases the emphasis is on detention and isolation from the community, as detention has a way of making the offender aware of the seriousness of criminal behavior. In the later stages of his or her term the offender may be trained for a job on the “outside.”

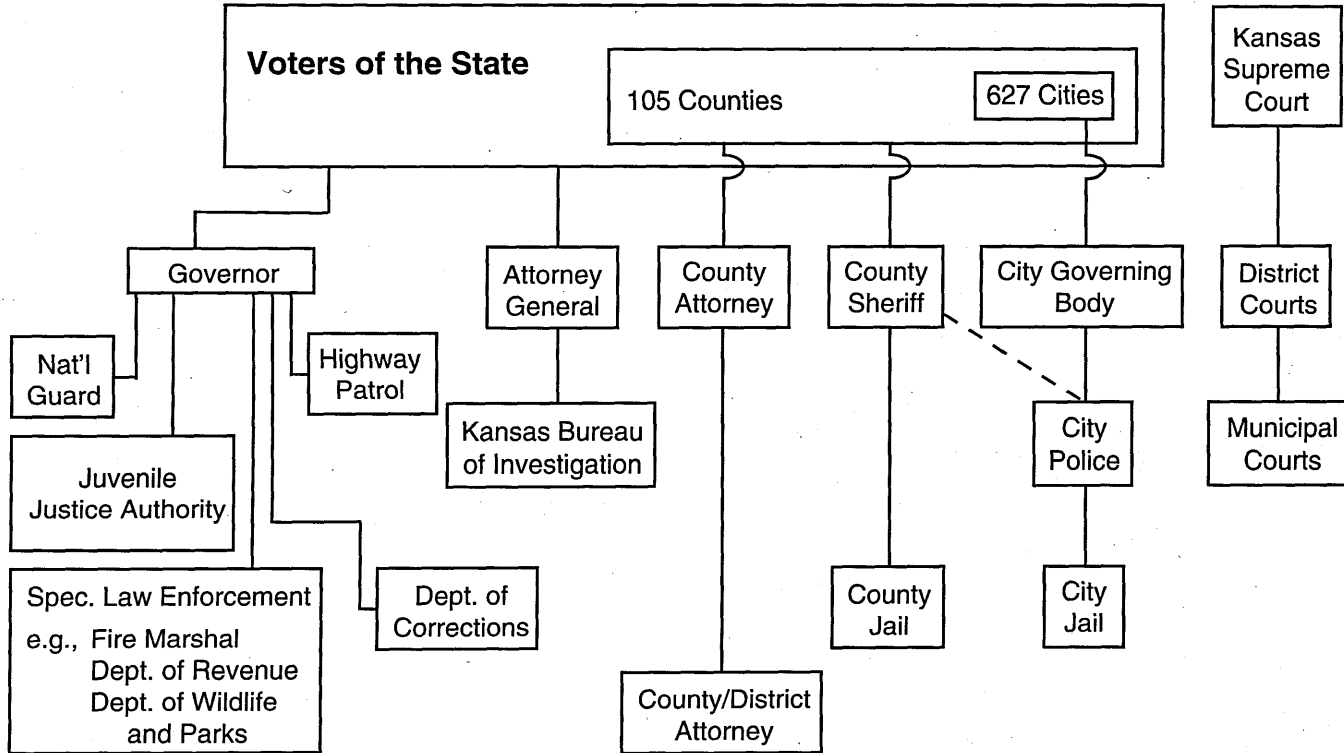
## **State Law Enforcement Agencies and Personnel**

### *Governor*

The governor, as chief executive officer of the state, is ultimately charged with enforcement of all laws. In the words of the Kansas Constitution, “The supreme executive power of the state shall be vested in a governor, who shall be responsible for the enforcement of the laws of this state.”<sup>1</sup>

The constitution does not provide details about methods the governor employs to carry out this mandate. Presumably, though, the governor may engage special investigators to ascertain whether a law has been violated, and may file in the appropriate court a complaint against any offender.

Figure 33  
Law Enforcement



Historically, in extreme situations of "forcible obstruction to the execution of laws or reasonable apprehension thereof," the governor may call out the state militia.<sup>2</sup> The concept of a militia has, however, changed greatly since the early days of statehood. Today the governor has authority to appoint an adjutant general, who is the commanding officer of the Kansas National Guard. The maintenance of the guard, which is composed of able-bodied persons who volunteer for service, is a joint federal-state program.

The guard may be called to duty by the governor in emergencies, and is most frequently called at the request of local law enforcement authorities during a natural disaster. This duty may involve some law enforcement, but includes many other types of services. In times of national emergency, when entire units of the National Guard may be summoned, they become part of the U.S. Army. The guard is financed by both the federal and state governments.

Helpful as the guard may be, it is not practical to use it for the day-to-day activities of law enforcement. Consequently, the governor is compelled to rely on other agencies created by the constitution and the legislature to assist in executing the laws.

### *Attorney General*

The office of attorney general is discussed elsewhere, but it also deserves mention for its role in law enforcement. The attorney general is expected to prosecute, on behalf of the state, cases referred by the governor and the legislature. He or she consults with and advises all county attorneys on matters pertaining to their official duties. This consultation usually takes the form of written opinions clarifying statutes and lending the moral support of the office. Occasionally the attorney general takes an active part in investigating suspected violations of law at the local level.

A good example of the attorney general prosecuting cases at the request of the governor and legislature is litigation against both Colorado and Nebraska over water issues. Both lawsuits involve filing cases before the U.S. Supreme Court, will consume at least 10 years each, and represent efforts by the state to ensure adequate water flows across the state borders. To pursue these litigation efforts, the attorney general has been authorized to hire attorneys expert in water rights litigation, secure "expert" witnesses, and enlist the assistance of other state agencies (e.g., Department of Agriculture's Division of Water Resources, Kansas Water Office).

The attorney general has also successfully defended before the U.S. Supreme Court the state's law permitting persons designated as sexual predators to be held for rehabilitation programs after their criminal sentences have been served.



In addition, the legislature has specifically required the attorney general to enforce laws dealing with monopolies, unfair trade discrimination, oil prorations, gambling, intoxicating beverages, advertising, futures trading, and grain inspection.

### *Kansas Bureau of Investigation*

Established in 1939 within the Office of the Attorney General, the Kansas Bureau of Investigation (popularly known as the KBI) has a legislative mandate to investigate any matter at the request of the attorney general. However, the KBI is better known as, and promoted by its agents as, a service agency for *local* law enforcement officials. In this capacity, the bureau investigates all major felonies if requested to do so by local officers. The bureau provides assistance in training professional law enforcement officers; provides background checks for persons appointed to certain state boards and commissions and within the regulated gaming industry; and maintains a repository of all felony arrests, charges by prosecutors, and final court dispositions. It also maintains laboratory facilities in Topeka, Great Bend, Pittsburg, and Kansas City. For SFY 2002, 238 positions were authorized for the KBI.

As part of its investigative activities, the KBI maintains a fingerprint file and other identification records, which are available to local officers. It also has access to a nationwide FBI database that includes DNA information. It operates a communications system to provide for the exchange of information between Kansas law enforcement officials and those of other states, federal agencies, cities, and counties. The director of the KBI, assistant attorneys general assigned to the KBI, and agents who investigate narcotics violations are in the unclassified service. All other KBI personnel are classified.

### *Kansas Highway Patrol*

Somewhat larger and quite distinct from the KBI is the Kansas Highway Patrol, which was established in 1937. Its major activities are limited by statute to enforcing laws regarding the inspection of motor vehicles, vehicle licenses, drivers' licenses, and the patrolling of highways in the interest of safety. All troopers have the full powers of local peace officers and are permitted to assist local officials in apprehending fugitives.

The organization of the Highway Patrol is unusual in several respects. The superintendent is appointed directly by the governor and serves at the governor's pleasure. If the superintendent is promoted from the ranks and his or her services are later terminated, he or she then assumes a rank not lower than the one previously held. All other employees are in the classified civil service, and all officers must have served in the ranks for five years before they may be promoted. Special statutes forbid officers from accepting gifts or being politically active.

In lightly populated counties, the patrol plays a crucial role, for troopers are the only police officers to patrol the state highways. Because a sheriff usually does not have enough deputies to cover an entire county, he or she frequently restricts the department's activities to county roads. In this respect, the Highway Patrol supplements local law enforcement. The patrol has extended its functions further into criminal areas than was the original intent of the law by participating in raids; publishing a weekly bulletin listing stolen property, automobiles, and wanted persons; and maintaining a statewide radio network to assist local peace officers. For SFY 2002, the patrol is authorized to fill 885.1 positions.

The highway patrol provides security for the governor, including pilots for the state airplane, drivers for the governor's car, and in the governor's office. The importance of this responsibility was noted in 2000 when a woman armed with a knife was stopped by the governor's security agent as she attempted to enter the governor's private office.

In 1988, the legislature approved the transfer of motor carrier inspector activities from the Department of Revenue to the Highway Patrol. Now the patrol issues permits, weighs vehicles, and enforces laws affecting commercial carriers using Kansas highways. The Capitol Area Security Police were also transferred to the highway patrol to ensure that enhanced training and accountability were achieved. With increased risks of attack against the governor and other public officials, it was deemed appropriate for the Capitol Security office to be better trained and monitored.

### *Department of Revenue*

The Department of Revenue collects most state taxes. Within the department are two divisions specifically charged with law enforcement. Most taxes are collected by the director of taxation, but the Division of Alcoholic Beverage Control is responsible for enforcing the liquor laws. The director of taxation enforces the tax on motor vehicle fuels and the transportation of oil and liquid fuels. The director's deputies and auditors may request the assistance of local peace officers to enforce the motor fuel laws of the state. Within the department is a Field Services Bureau responsible for enforcing and securing compliance with state laws regarding sales, income, inheritance, and most other taxes.

When the Department of Revenue was established in 1972, the Alcoholic Beverages Commission and its activities were transferred to the department. The director of the Division of Alcoholic Beverage Control (ABC) is appointed by and serves at the pleasure of the secretary of the department. All agents are employed by the director and are civil servants. The agents concern themselves with the illegal sale of liquor. Their services are particularly appreciated by small police departments lacking trained investigators. The ABC in turn depends on local officers to relay to it the names of licensees suspected of law violations. The Alcoholic Beverage Control

Board of Review considers proposed rules and regulations officially promulgated by the secretary. Actions of the director of the division may be appealed to the board.

### *State Fire Marshal*

The state fire marshal, who is appointed by the governor for a four-year term, is primarily concerned with inspections of public buildings in the interest of fire protection. The marshal is also a law enforcement officer, for by statute he or she is required to investigate all fires suspected to be of incendiary origin. While the marshal and deputies do not have the general authority of a peace officer, they do have power to subpoena records and witnesses, and at any time to enter any building in which there has been a fire to investigate its cause. Local officers view the marshal and staff of investigators in much the same light as they view the ABC. These investigators are specialists in the detection of arson, and thereby supplement the local officers. The activities of the fire marshal are financed by a dedicated tax on fire insurance premiums.

### *Conservation Officers*

Following the practice of many other states, Kansas has a separate agency responsible for enforcing its fish and game laws. The secretary of wildlife and parks appoints conservation officers, who have power to arrest persons violating fish and game laws or rules and regulations. Many of these officers serve as federal game protectors and also as deputy sheriffs in their counties. The organization and activities of the Department of Wildlife and Parks in conserving wildlife are discussed in Chapter 20.

### *Other Agencies*

The legislature has conferred on many other agencies the responsibility for enforcing specialized laws. Most of these agencies merely investigate and report their findings to the local sheriff and the county attorney or attorney general. Some have the right to inspect records and premises, and to subpoena records and witnesses to a hearing. In this category fall such agencies as the Kansas Corporation Commission, the Insurance Department, the state Department of Health and Environment, the state Department of Agriculture, and the Banking Board.

## **Local Enforcement Agencies**

In terms of the number of police officers, investigations, and arrests, the major work of law enforcement is done by local officers who enforce state as well as local laws. Chiefly these local officers are the sheriff and the county attorney elected in each county, and the police officers appointed in each city. In 1995, 68 of the 627 Kansas cities had 10 or more full-time

police employees.<sup>3</sup> One hundred thirty-seven cities had one or more full-time police officers but fewer than 10. The other cities had no full-time police employees, and depended on county sheriffs and their deputies for police protection. State agencies employed about one-eighth (12 percent) of the total law enforcement personnel in the state (excluding correction officers).

The existence of statutory authority and local police officers does not guarantee that laws will be enforced, because other factors frequently cause sub-optimal enforcement. First, there is no clear definition of jurisdictional responsibility between city and county police officers. City police officers are required by law to enforce state laws as well as municipal ordinances. In larger cities this is a necessity, because the sheriff's force in the county is not large enough to provide adequate service to both urban and rural areas.

The Comprehensive Action Plan of the Governor's Committee on Criminal Administration called attention to one aspect of this problem by referring to the "fragmentation and duplication of existing police services." The sheriff may wish to be consulted on all violations occurring within a city, as the voters there are constituents just as validly as are the rural voters. On the other hand, if the city police officers are more experienced than the sheriff or deputies, they may be reluctant to jeopardize a case by revealing information to the county officers. They also may decline to share credit for solving a case. However, a city cannot ignore the sheriff, because the prosecution and detention of prisoners for state offenses is exclusively a county function.

A second major problem for local law enforcement departments is personnel. Employment as a police officer in some parts of Kansas is viewed as an interim job until the officer can locate other employment. In many instances, police work is supplemented with other employment.

A major development in this connection has been the establishment of the Kansas Law Enforcement Training Center (KLETC). Since 1951, the legislature, by a line item appropriation to the University of Kansas, has provided a modest allocation to sponsor an annual training school for peace officers (a term that includes both police officers and sheriffs). Gradually the item has been increased to allow for a limited regional training program.

In 1968, the legislature took first steps toward establishing near Hutchinson an academy for the purpose of training state and local law enforcement officers. As a unit of University of Kansas Continuing Education, this agency offers all levels of training in law enforcement, with a basic course of 400 hours. Since 1969, all persons appointed as law enforcement officers must have completed the basic course or do so within one year.

The training center is viewed as a significant step toward greater professionalization of police work in the state. Another landmark would oc-

cur if law enforcement personnel could move more freely between departments, with less attention to seniority. Agencies increasingly recruit outside their own departments to fill the job of chief, and this practice probably will be extended to others on the force. The inclusion of local law enforcement officials in the state retirement system will no doubt encourage the mobility of peace officers, at least within the state.

Related to the problem of personnel is that of financial support. Scanty budgets are common, resulting in low salaries and equipment scarcities.

A final factor is a traditionally cautious attitude of the public toward the police, which reduces the effectiveness of law enforcement at the local level. A concern that the police not be given "too much" power has led to a multiplicity of law enforcement agencies, unwillingness to have a state police force, and some restrictions on personnel, such as the former constitutional limitation of two consecutive terms as sheriff. Moreover, as a result of urban living, many citizens prefer not to become involved in other people's problems (and altercations), with the result that observers or bystanders frequently do not report to the police and do not help in ways that would tend to improve law enforcement.

These problems by themselves might not be considered serious, but there has been a concomitant increase in the number of law violations. This increase stems from a larger and more mobile population, a greater number of laws, and a generally more complex society. The services of a specialist are now required to detect and prosecute many kinds of violations, and this may involve the expenditure of large sums of money. There are several solutions, including greater local financial support, consolidation of city and county forces, an increase in training, and expansion of state-level law enforcement activities.

Limited progress has been made in Kansas toward solving these problems. Efforts to professionalize local employees and raise personnel requirements encourage governing bodies to pay higher wages to law enforcement officials. Local budgets have increased, and law enforcement departments have improved their financial positions. The Kansas Law Enforcement Training Center holds much promise for improved law enforcement.

## **Corrections**

Those whom law enforcement officials have apprehended and the courts have found guilty of breaking a law may be fined; released on probation; or sentenced to a county jail, community corrections facility, or Department of Corrections facility. Adult male felons (those convicted of a felony, as distinguished from a misdemeanor) who have been convicted and sentenced to one year or more of confinement are turned over to the Department of Corrections, as are adult female felons with sentences of more than 30 days.

Those found guilty of misdemeanors or given short sentences are confined in local jails.

There is confusion and difference of opinion as to the proper philosophy of confining an adult offender, and the purpose confinement serves.<sup>4</sup> Society is protected from a criminal's acts while he or she is incarcerated, and the offender is punished by denial of freedom. Yet society has gradually come to realize that most of those who are confined eventually are released. Whether they then conform to the laws and restraints society imposes depends in great part on the treatment they received at the corrections institution. The progressive view of correctional institutions is that they should be rehabilitative and educational, rather than merely custodial. Because of these considerations, attention has in recent years been directed toward improving and modernizing the Kansas corrections system. Society as a whole has become increasingly aware that "correctional institutions" have been asked to do what is extremely difficult—and what may in some cases be impossible. The department also opened a facility at Larned for mentally ill inmates. This facility is a recognition that not all prisoners are equally capable of distinguishing "right from wrong" or have become mentally incapacitated during their prison term.

The department also reflects the same demographics as the state at large with an increasing older population that requires services related to diminished mental capacity and increased health problems. That has changed the required health care services within the institutions and increased both management and budget requirements. The department has contracted with a private firm, Prison Health Services, Inc., since 1994 for all medical and mental health services at correctional facilities. Additional oversight and management services are provided by the University of Kansas Medical Center.

Despite the fluctuating statistics on crime, many citizens have felt their personal safety on the streets and in their homes threatened. Legislators and the public have become aroused. Society has insisted on stricter law enforcement and stiffer sentencing. The result has been a perceived need for more prisons and other detention facilities.

At the same time, civil rights groups and prisoners themselves have become litigants in the courts, challenging the handling of inmates who have been forced into crowded cells and treated inhumanely. Prisoners in some states have obtained federal court intervention. In 1989, the Federal District Court in Kansas mandated that the prison population at two of the state's oldest institutions, Lansing and Hutchinson, be reduced before July 1, 1991.

In Kansas, the need for more prisons coincided with rethinking of the purposes and uses of social and rehabilitation institutions. Some buildings and grounds at Topeka, Osawatomie, Winfield, and Norton state hospitals were in effect declared unneeded by the Department of Social and Rehabilitation Services. These facilities were remodeled and became overflow facilities for the Department of Corrections, allowing the department to meet

*JOUETT E. ARNEY , et al., Plaintiffs, v.  
GOVERNOR JOAN FINNEY , et al., Defendants*  
Case No. 77-3045-R

United States District Court for the District of Kansas  
766 F. Supp. 934; 1991 U.S. Dist. Lexis 7924

MEMORANDUM AND ORDER

RICHARD D. ROGERS, UNITED STATES DISTRICT JUDGE

This case is now before the court upon the motion of defendants to modify a prior order of this court dated April 13, 1989 by enlarging the designated operating capacities at four housing units in the state prison system. The court has issued a tentative order in reaction to the instant motion and solicited reaction from members of the plaintiffs' class. Two hearings have been conducted on this matter, and the court is now prepared to rule. The court shall grant the motion in part and deny the motion in part as further detailed in this opinion.

Some background discussion of this case is necessary in this matter. Prior to issuing the court's order of April 13, 1989, the court heard evidence regarding conditions of confinement at prison facilities in Lansing and Hutchinson, Kansas. The following directives were part of the court's order:

- Double-celling may occur in the medium security unit at KSP (Lansing) but shall not extend beyond July 1, 1991.
- "Outside dormitories" (R & S units) at Kansas State Penitentiary (Lansing) shall not be used to house inmates after July 1, 1991.
- Prior to July 1, 1991, the inmate population at other institutions operated by the Department of Corrections shall not exceed the operating capacity of those institutions or the "maximum capacity" of each institution as defined by the Department of Corrections 1986 Capacity Report, whichever is greater.
- A population management system which assures that the Kansas inmate population remains within the operating capacity of the state's correctional institutions shall be in effective operation no later than July 1, 1991. No facility shall be permitted to operate with a population beyond its operating capacity after that date. In the event that the population of any institution exceeds the established operating capacity, immediate notice shall be given to the Court. The State shall then be permitted thirty days in which to reduce the population to its operating capacity. If the State fails to reduce the population within that time, then inmates shall be released or transferred as needed to restore the institution to its operating capacity.
- Modification of this Order shall only be permitted by agreement of the parties or by order of the Court on the basis of a clear showing of a grievous wrong.
- Except for the population limits imposed in this Order, this case shall be closed six months after defendant's compliance with the terms of the order and obtaining accreditation at KSP, KSIR, and KCIL per ACA and NCCCH standards.
- Although the Court has not disposed of the entire litigation, relief described in this order shall be considered final.

the federal district court order for reducing the prison population at the two older correctional institutions. This was not enough, however, to meet the expected need for more prison cells, so in 1989 the legislature authorized construction of the first stage of a new security facility at El Dorado. The new complex was designed so other sections could be added as the need arose. The prison was opened in June 1991, and in SFY 2002 has the capacity for 1,540 prisoners.

The legislature has experimented with various types of administrative organizations for supervising state penal institutions. The Commission on Executive Reorganization recommended in 1970 that the legislature create a department of health and social services, which would have included correctional and probationary activities. The legislature instead saw fit in 1973 to pass the Penal Reform Act, providing for the Department of Corrections, with a secretary to be appointed by the governor. This act also provided for the appointment of a citizens' advisory board to the secretary of corrections, which appoints an ombudsman for the correctional institutions. The board consists of 15 persons, three of whom are appointed by each of the following: the governor, attorney general, chief justice of the Kansas Supreme Court, president of the Senate, and speaker of the House.

Many other parts of this reform legislation were important for the future of corrections in the state, including mandatory training programs for correctional personnel; efforts to structure an incentive program for inmates, whereby they could move to less restrictive custody; programs of work release; and the granting of greater secretarial authority to assign and reassign prisoners.

The legislature in 1961 established the Kansas State Reception and Diagnostic Center at Topeka. The primary function of this institution was to evaluate all male felony offenders sentenced to one year or more. The inmates at the center are examined, interviewed, and observed intensively. After considering the evaluation, a judge may place the convict directly on court-supervised probation. While not always successful, the aim of this program is to find and apply to each offender the program most likely to rehabilitate him. The Reception and Diagnostic Unit has taken steps to expand the general and vocational education programs at Kansas penal institutions. Administrative changes were made in 1990 to make this facility a part of the Topeka Correctional Facility.

The Kansas State Penitentiary at Lansing is the oldest corrections institution in Kansas. It was provided for in the Wyandotte Constitution of 1859, begun in 1864, and interrupted by the Civil War, the original structure being completed in October 1867. A medium-security prison has been built near the old facility. At one time the Kansas Correctional Institution for Women operated as a separate facility at Lansing. These three prisons are now jointly administered as the Lansing Correctional Facility, housing almost one-half of all persons confined by the state.



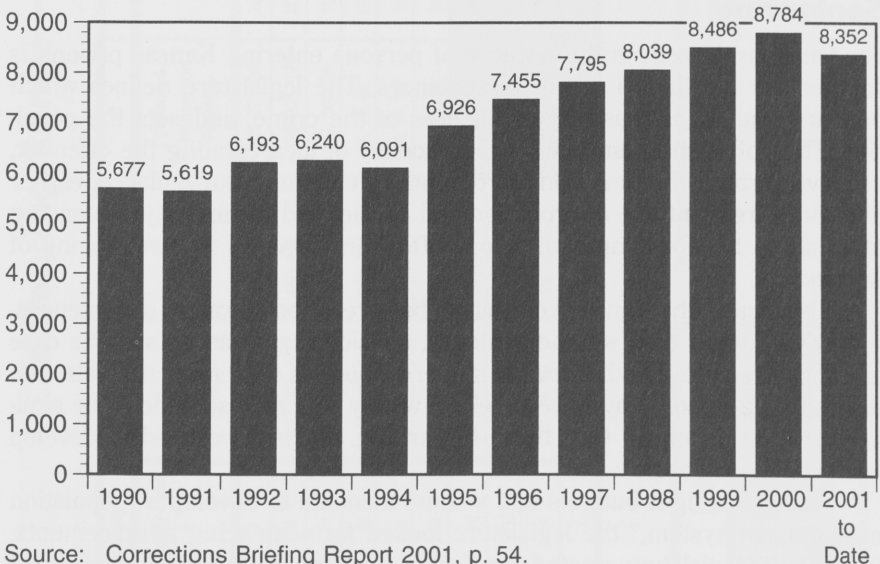
The state's second-largest detention facility is at Hutchinson; it was built and operated for many years as the Kansas Industrial Reformatory for young offenders. As inmate populations increased and it became necessary to expand the number of prison beds, older male inmates were assigned to Hutchinson. Since 1990, the institution has been operated as the Hutchinson Correctional Facility, with maximum, close, medium, and minimum security levels.

An important innovation in the state corrections program was implemented in June 1961, when the first honor camp was established. Since then the honor camp program has been expanded, currently operating one mobile and two permanent camps. To inmates who can qualify, the program offers an opportunity to serve time engaged in constructive work in state parks, community assistance programs, and other programs that place inmates in the presence of ordinary citizens.

The department also provides oversight and technical assistance to the Labette Correctional Conservation Camp (a "boot camp" for young adult offenders) that is owned by Labette County and operated by a private contractor, as well as a conservation camp for women that is operated by a private contractor.

**Figure 34**

**Kansas Inmate Population: Fiscal Years 1990–2000 and  
Fiscal Year 2001 to Date (through 12/31/00)**



Source: Corrections Briefing Report 2001, p. 54.

Authorities agree that if a prison is to be operated properly, the inmates must be busy. Yet products made with prison labor can be sold at prices below those of products made outside. This has caused opposition to the indiscriminate sale of such products. Prison products are sold to state and local governments, tax-supported agencies, nonprofit organizations, and churches. Several additional programs have been established with private companies to employ inmates at minimum wages. These inmates pay a nominal fee to the institution, help provide support for their families, pay legal obligations, and save money for use after their release.

The philosophy and operation of the work release program has changed. At first it was institutionally based, but the institutions tend not to be located in the best job locales. In 1975, the new position of work release administrator was established, and programs are now operated at Topeka, Wichita, and Hutchinson. Their goal is to help offenders reorient themselves to society. Participating offenders must make arrangements for employment and housing. In Topeka and Hutchinson, the centers operate within the institutions located there.

There long has been concern about the adequacy of Kansas correctional institutions. The intervention of the federal courts has wrought significant changes in the whole corrections system, especially in matters relating to population per correctional institution. However, two other considerations are important in preparing for the future of correctional facilities: sentencing standards and the use of community corrections alternatives.

## **Sentencing**

One way to reduce the number of persons entering Kansas prisons is to alter the length and nature of sentences. The legislature defines which acts are crimes, assigns the seriousness of the crime, and sets the penalties. The dollar costs and the costs to society of incarcerating the offender, recidivism rates, the development of modern electronic surveillance, earlier and more frequent use of probation and parole, and community sentencing alternatives for non-dangerous felony offenders have led to a rethinking of sentencing.

Historically, the Kansas Legislature has prescribed a range of sentences. Individual judges then set the sentence, considering all aspects of the case and the person involved. Because numerous judges sentence criminals, two inmates in a prison may have received widely different sentences for similar crimes. Concerned with these disparities, courts have tried to develop sentencing standards.

Faced with tight budgets and a court mandate to develop a "population management system," the legislature looked for sentencing advancements. In 1989, the legislature created the Kansas Sentencing Commission, charged

## Sentencing Range—Nondrug Offenses (in Months)

Category→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653, 620, 592	618, 586, 554	285, 272, 258	267, 253, 240	246, 234, 221	226, 214, 203	203, 195, 184	186, 176, 166	165, 155, 147
II	493, 467, 442	460, 438, 416	216, 205, 194	200, 190, 181	184, 174, 165	168, 160, 152	154, 146, 138	138, 131, 123	123, 117, 109
III	247, 233, 221	228, 216, 206	107, 102, 96	100, 94, 89	92, 88, 82	83, 79, 74	77, 72, 68	71, 66, 61	61, 59, 55
IV	172, 162, 154	162, 154, 144	75, 71, 68	69, 66, 62	64, 60, 57	59, 56, 52	52, 50, 47	48, 45, 42	43, 41, 38
V	136, 130, 122	128, 120, 114	60, 57, 53	55, 52, 50	51, 49, 46	47, 44, 41	43, 41, 38	38, 36, 34	34, 32, 31
VI	46, 43, 40	41, 39, 37	38, 36, 34	36, 34, 32	32, 30, 28	29, 27, 25	26, 24, 22	21, 20, 19	19, 18, 17
VII	34, 32, 30	31, 29, 27	29, 27, 25	26, 24, 22	23, 21, 19	19, 18, 17	17, 16, 15	14, 13, 12	13, 12, 11
VIII	23, 21, 19	20, 19, 18	19, 18, 17	17, 16, 15	15, 14, 13	13, 12, 11	11, 10, 9	11, 10, 9	9, 8, 7
IX	17, 16, 15	15, 14, 13	13, 12, 11	13, 12, 11	11, 10, 9	10, 9, 8	9, 8, 7	8, 7, 6	7, 6, 5
X	13, 12, 11	12, 11, 10	11, 10, 9	10, 9, 8	9, 8, 7	8, 7, 6	7, 6, 5	7, 6, 5	7, 6, 5

### LEGEND

Presumptive Probation

Border Box

Presumptive Imprisonment

### Recommended probation terms are

36 months for felonies classified in Severity Levels 1–5  
24 months for felonies classified in Severity Levels 6–10

### Postrelease terms are

*For felonies committed before 4/20/95*  
24 months for felonies classified in Severity Levels 1–6  
12 months for felonies classified in Severity Levels 7–10  
*For felonies committed on or after 4/20/95*

## Sentencing Range—Drug Offenses (in Months)

Category⇒	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	204, 194, 185	196, 186, 176	187, 178, 169	179, 170, 161	170, 162, 154	167, 158, 150	162, 154, 146	161, 150, 142	154, 146, 138
II	83, 78, 74	77, 73, 68	72, 68, 65	68, 64, 60	62, 59, 55	59, 56, 52	57, 54, 51	54, 51, 49	51, 49, 46
III	51, 49, 46	47, 44, 41	42, 40, 37	36, 34, 32	32, 30, 28	26, 24, 23	23, 22, 20	19, 18, 17	16, 15, 14
IV	42, 40, 37	36, 34, 32	32, 30, 28	26, 24, 23	22, 20, 18	18, 17, 16	16, 15, 14	14, 13, 12	12, 11, 10

### LEGEND

Presumptive Probation

Border Box

Presumptive Imprisonment

#### Recommended probation terms are

36 months for felonies classified in Severity Levels 1–3  
24 months for felonies classified in Severity Level 4

#### Postrelease supervision terms are

*For felonies committed before 4/20/95*  
24 months for felonies classified in Severity Levels 1–3  
12 months for felonies classified in Severity Level 4

*For felonies committed on or after 4/20/95*  
36 months for felonies classified in Severity Levels 1–3  
24 months for felonies classified in Severity Level 4

to reduce the disparity in sentencing of criminals, identify circumstances under which imprisonment is appropriate, and establish presumed sentences for offenders. The commission included representatives of all agencies and groups potentially affected by sentencing changes. The governor appointed one public defender, one private defense counsel, one county or district attorney, two members of the public, and a director of a community corrections program. Further membership included four legislators, the chief justice or the justice's designee, two district court judges, the attorney general or a designee, the secretary of corrections or a designee, the chairperson of the Kansas Parole Board or a designee, and a court services officer.

After study by a special committee of the legislature in 1991, the legislature endorsed most of the recommendations of the Sentencing Commission. These included the concept of a system of presumptive sentencing, but permitted judges to depart from the presumed sentence where there were "mitigating" or "aggravating" circumstances. The three figures in each of the sentencing boxes and the "border boxes" on the accompanying charts indicate the flexibility allowed the judge.

Further, the legislature accepted the concept of a "trigger mechanism" whereby sentences of inmates and new offenders could be reduced when prisons became overcrowded. The secretary of corrections is required to notify the Sentencing Commission when prisons reach 90 percent of capacity, in which case the commission is required to propose modifications of the sentencing grids (see pages 277-278). The modifications must be submitted by November 1, and they go into effect upon action by the legislature.

It should be noted that no inmates have been released early as a result of the triggering mechanism. In 1997, the sentencing provisions were amended to require the Sentencing Commission to present alternative guidelines to prevent mandatory early releases. Many judges continue to dislike the sentencing guidelines because they believe they detract from their ability to administer justice appropriately. However, the guidelines have accomplished the legislative objective of reducing the wide variations in sentencing that previously occurred.

## **Community Corrections**

A recent national movement, which has proponents in Kansas, favors community-based correctional services. Recognizing that the average length of detention is about 30 months, supporters of this movement argue that the chances of integrating a convict back into society are better if he or she is retained locally so family ties and associations are not broken or further strained.

In 1989, the legislature mandated that every county should by July 1, 1990, establish a Community Corrections Act program. As of 1992, there

were 32 community corrections programs serving all 105 counties. Some counties have their own programs, some have joint programs, and others contract with adjoining counties for this service. The target population for community corrections is offenders convicted of lower-severity property, drug, and nonperson offenses. The court determines whether an offender is assigned to regular probation, community corrections, or the conservation (boot) camps.

The state has begun funding counties under this program, which is administered and supervised by the Department of Corrections. A State Community Corrections Board was established, consisting of three members appointed by the governor and two by the chief justice. This board hears county appeals regarding decisions of the secretary that influence the local operation of the community corrections program. The board's decisions are final.

The 1989 Community Corrections Act established a presumptive sentence of community corrections for certain Class D and E felons. In this fashion, corrections is becoming a more local or regional function. Most community corrections programs follow judicial district lines, with programs being in single counties, multiple-county regions and, in one case, three judicial districts. The 2000 legislature made significant changes to the community corrections program. Because community corrections grants from the Department of Corrections are based on average daily population, it is unclear at the time of this writing how costs and head counts will be ultimately affected.

Community Corrections recognizes that it is more cost-effective, from the state's perspective, to keep persons convicted of "lesser" crimes out of the prison system. Legislators and administrators also recognize that there is a significant public relations issue involved. Citizens who have been the victim of persons sentenced to community corrections programs do not like seeing their perpetrator on the street, seemingly unpunished.

A strong appeal of community-based corrections is its lower cost per offender. Recent data indicates that in 2001 the average cost of housing prisoners in the state system was \$19,598 per year, compared with \$2,789 per year for keeping a person in an adult intensive supervision program.

## **Local Jails**

An additional duty that the Penal Reform Act assigned to the secretary of corrections was inspection of local jails. The original act gave the secretary authority to close unsatisfactory jails. But when the size and costs of the needed renovations became known, the legislature was persuaded to amend the provisions, making the findings of the secretary "advisory." The findings become final only when a majority of a three-member committee of local officials decides that they are reasonable.

In one sense, local jails could have been viewed as community-based corrections facilities—but in the past they did not have treatment programs. Viewed more as holding facilities, they were not staffed to do the work of the newly emerging community corrections facilities.

## **Detention of Juveniles**

It has long been accepted that delinquent juveniles should be treated differently than adult criminals, even though they may have performed the same act. The court format is different and is aimed at introducing a different atmosphere for the court action. In criminal cases, the formal action is the people of the State of Kansas versus the accused. In juvenile cases, the state intercedes in the interests of the child (whether neglected or abused). Similarly, the detention of juveniles was assigned until July 1, 1997, to the Department of Social and Rehabilitation Services—not the Department of Corrections.

The evolving philosophy of youth detention is suggested by the parade of names assigned to the youth facility at Topeka. The State Reform School was opened by the state in Topeka in 1881, and in 1905 the name was changed to the State Industrial School for Boys. In 1974 the name was transformed to the present one—the Youth Center at Topeka. There are somewhat comparable facilities in Atchison and Larned, and one for girls in Beloit.

In response to a substantial increase in juvenile violent crime, the legislature in 1994 created the Criminal Justice Coordinating Council. This in turn led to action by the legislature creating the Kansas Youth Authority and a separate Juvenile Justice Authority. The governor appoints a commissioner, who oversees the operation of the four youth centers.

The legislation creating this new authority reflected a somewhat stricter intent in handling juvenile offenders. Now “trials” are held, rather than “adjudications.” Persons are “sentenced,” not “disposition” made. However, “juvenile proceedings” are held, not “criminal proceedings.” No “automatic” waivers are to be made for juveniles to be tried as adults. However, upon motion of the prosecutor, juveniles ages 14, 15, 16, or 17 may be presumed to be tried as an adult. In effect, the burden in these cases has been shifted to the juvenile, to prove why he or she should not be tried as an adult.

These institutions are for children adjudicated delinquent. In terms of the law, this refers to boys under 16 and girls under 18 years of age who have committed an act which, if committed by an older person, would be a felony, or have been adjudged “miscreant” three or more times. These young people are committed to the centers by a district court, and according to law they must remain there until they are 20 years of age, unless they have been discharged sooner as having been reformed, or unless they have been paroled.

## Sentencing Guidelines: Juvenile Offenders (Effective July 1, 1999)

Offender Type	Offense Level	Length of Stay	The Aftercare Term
Violent I	Off-grid	60 mo. or until 22 1/2 years of age	6 mo. or until 23 years of age
Violent II	1-3 person felony	24 mo. or until 22 1/2 years of age	6 mo. or until 23 years of age
Serious I	4-6 person OR 1-2 drug felony	18-36 mo.	6-24 mo.
Serious II	7-10 person felony + 1 prior felony conviction	9-18 mo.	6-24 mo.
Chronic I—Chronic Felon	present non-person felony or level 3 drug felony + 2 prior felony convictions	6-18 mo.	6-12 mo.
Chronic II—Escalating Felon	present felony OR level 3 drug + 2 prior misdemeanor convictions OR level 4 drug convictions	6-18 mo.	6-12 mo.
Chronic III—Escalating Misdemeanant	present misdemeanor OR level 4 drug felony + 2 prior misdemeanor or level 4 drug convictions + 2 placement failures + exhaustion of community placements finding	3-6 mo.	3-6 mo.
Conditional Release Violator	All	3-6 mo.	2-6 mo.



To comply with federal guidelines for separate **juvenile** and **adult** detention, the state requires counties to totally separate juveniles and adults within existing county jails (no contact of any type is permitted), or make other arrangements. Five multi-county regional detention facilities provide for the secure temporary holding of children and youth pending the adjudication and disposition of their cases by the court. The detention facilities are intended to be temporary, short-term holding arrangements. Once a youth has been adjudicated as delinquent or as a "child in need of care," a determination is made as to the program or service that will best meet his or her needs.

School districts in which the juvenile detention facilities are located must provide individual education programs (IEPs) for the youth. This creates both an educational issue and a financial one for the host school district, because state per-pupil aid does not necessarily follow the youth from his/her "home" district, and it frequently is difficult to establish an effective educational program when it is unclear how long the juvenile will be at the detention center.

Some Kansas communities are developing small group homes to which the court may assign delinquent or pre-delinquent juveniles. These homes provide an alternative to the larger state-run centers for youths who have serious behavior problems and who cannot remain in their own homes. Some of these youths have been involved in delinquent behavior, and most require consistent structure and effective adult supervision. The group homes are known by various names, often identified with the local community. They are financed with federal and state matching grants through SRS; these funds are supplemented with contributions, gifts, and foundation grants. Such group homes increase the options of a district judge who seeks a suitable placement for a youthful offender.

## **Law Enforcement**

### *Looking to the Future*

With the goal of making us personally secure and secure in our property, we have turned to law enforcement as a primary way to accomplish these objectives. Few would claim that efforts have been fully successful, despite the recent drop in crime rates. Some of the problems have been presented in this chapter.

By beginning this part of the book with the law enforcement function, we have sought to emphasize the importance that society puts on this function. To be safe in our person and with our holdings is a fundamental interest to each and every one of us. There is no easy way for our many units of government and their employees to bring this about.

In our many-faceted society, some would see education (the next function to be discussed) as a way to lessen some of the barriers that exist between the wealthy and the poor.

## Chapter 15 Notes

1. *Kansas Constitution*, Article 1, Section 3.
2. *Kansas Constitution*, Article 8; and K.S.A. 48-203, 48-238.
3. U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States*, 1995, pp. 302–358.
4. For more extended descriptions of corrections policies, and issues in Kansas, see the chapter, “Corrections Policies,” by William R. Arnold in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University of Kansas Press, 1994.



## Chapter 16

# Educating Future Kansans

**P**ublic education is a widely accepted function of government, second only to the maintenance of law and order. The federal government is involved in education extensively through a variety of grant programs, but primary responsibility for public education lies with the states. Whether measured in dollars spent or persons employed, education is one of the major activities of Kansas government. Under the governor's 2000 budget plan, slightly over 46 percent of *all* state funds were expected to be spent on education. This constituted an even larger percent (65.6 percent) of the state *general* fund.

Although education is viewed as a state function, its nature and importance are such that the state performs the function primarily through local units of government established for that purpose. The state sets the framework within which local school districts operate. Education is considered so vital that these units generally are given only that one function to perform. In many instances, a school district's budget is larger than that of the city or county in which the school district is located.

The desire to decentralize schools so youngsters can walk to their schools, and the desire to allow parents to meet with teachers and to have a part in determining educational programs at the elementary and secondary levels, have been important in shaping the delivery system for educational services. As young Kansas citizens grow, most of their first experiences outside the home occur in schools. And, even though most formal education occurs outside the home, many parents desire an active involvement in the schools.

Because of the increased specialization that has characterized American society, teachers and school administrators have become professionalized, developing their role in the delivery of educational services to the citizenry. The recognition of teacher expertise has moderated the influence of individual citizens in the educational services delivery system.

The organic act of 1854 that created the Territory of Kansas made no mention of education, but the settlers—pro-slavery and free-state alike—promoted the establishment of free common schools. All three constitutions under which Kansas unsuccessfully sought to become a state provided for the creation of common school districts, although they differed in method and extent of state supervision. In 1855, the territorial legislature provided for the formation of school townships, which had three trustees and an examiner as the governing body. No central organization was established at that time. Two years later, the legislature put the board of county commissioners in charge of local school districts. Further changes in 1858 provided for the election of territorial and county school superintendents.

The Wyandotte Constitution, under which Kansas became a state, provided that “the legislature shall encourage the promotion of intellectual, moral, scientific, and agricultural improvements, by establishing a uniform system of common schools, and schools of a higher grade, embracing normal preparatory, collegiate, and university departments.”<sup>1</sup> Other sections of the constitution called for the election of state and county superintendents of public instruction and the raising and apportioning of school funds. By the act that admitted Kansas into the Union in 1861, sections 16 and 36 of each township were set aside for schools and 72 sections of land were granted for the support of a state university. The original constitution also provided that a state university should be established “at some eligible and central point, . . . for the promotion of literature, and the arts and sciences, including a Normal and an Agricultural department.”<sup>2</sup>

## **Broad Outline of the Delivery System**

Public education ideally should be viewed as a whole. Students start in kindergarten and move through the elementary and secondary schools. Each year, and each part of the student’s program, builds on and should be related to the previous year and to previously acquired knowledge and experiences. These in turn should lead to the programs and expectations for that student in the following years. Traditionally, public education stopped after graduation from high school. Public-supported universities and increasing awareness of the need for continuing education and lifelong learning have challenged this concept. In 1996, President Bill Clinton called for making two more years of public schooling a national norm.

It is through the public schools that society has its best opportunity to assist future generations in their efforts to accomplish the goals they agree

upon. This may be translated into the concept of allowing each citizen an equal opportunity to develop her or his potential to the maximum in the field of her or his choice. But most people would argue that there must be some restrictions on freedom of choice. Society can hardly consider it productive to develop at public expense an overabundance of harness makers in a world in which few such tradesmen are needed. Schools have in most instances taken on much of the role of vocational guidance counseling, and this has become an accepted part of the educational services offered.

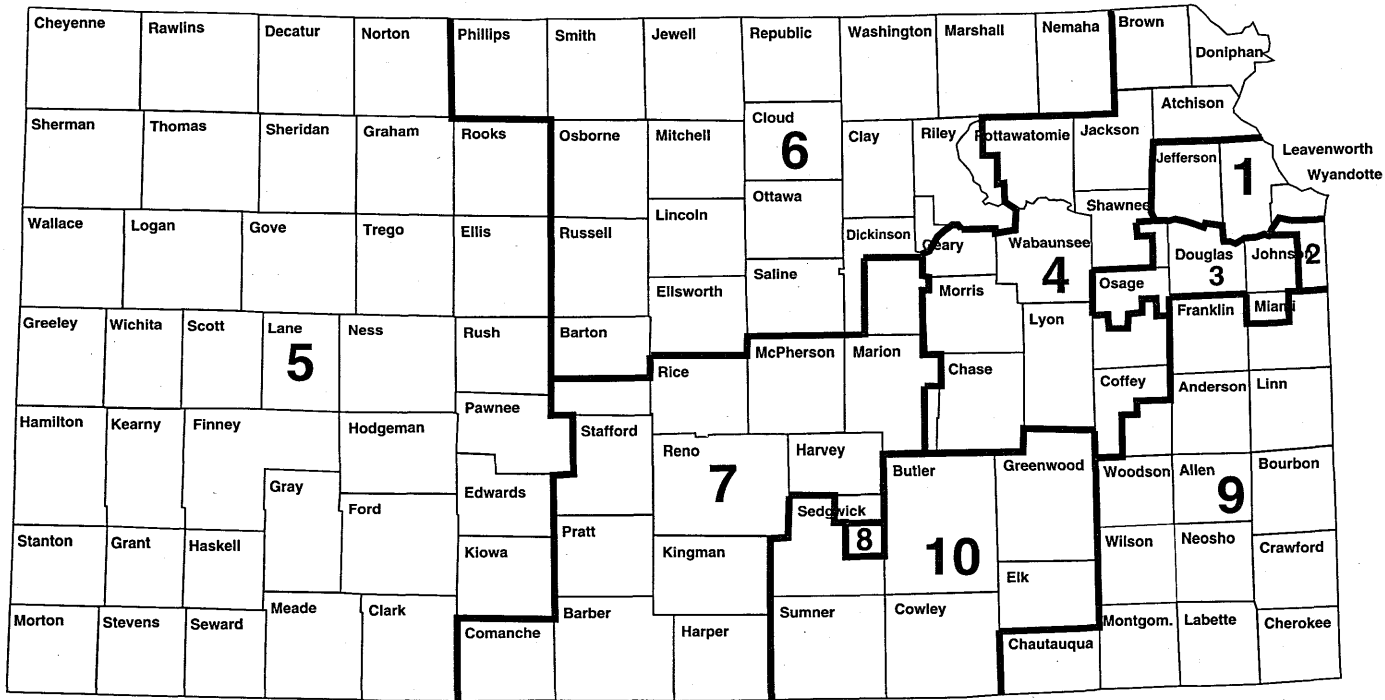
Education at the elementary and secondary level must be related to the "job world." Yet it must also prepare the students who will go on to postsecondary academic institutions such as community colleges, four-year colleges, and universities, as well as those who will attend vocational schools and technical colleges. Students move about within the system, switching from one program to another; therefore, the system must be flexible. Money spent on one part of the system is not available to be spent on other areas, so priorities must be assigned.

Despite all this, seldom is it possible to view education as a whole. Traditionally the United States system has separated elementary/secondary education from higher education; this is the broad division made in the present Kansas Constitution. Local public schools are to be maintained, developed, and operated by locally elected school boards under general supervision of the 10-member elected State Board of Education. The legislature is to provide for the Board of Regents, which controls and supervises the public institutions of post-secondary education (defined by the constitution to include universities and colleges that grant baccalaureate or postbaccalaureate degrees, and other institutions and educational interests provided by law). The State Board of Education has general supervision over all educational institutions and interests of the state, other than those given to the Board of Regents.

The educational process does not break itself neatly into this seemingly clear division. For example, high schools are heavily involved in vocational education—but there is need for such training to be available to other than secondary school students. There is now a move to divide education into elementary, secondary, and "postsecondary" categories. This last term seeks to depart from the concept that academic "higher education" is somehow better or more socially acceptable than vocational or technical training. Some studies have shown that the existing educational system produces more college-trained persons than the American economy demands. Some argue the need to depart from the rigid two-track high school system in which college-bound students are separated from those who are not college bound.

The educational system is so vast that various parts have their own special interests and frequently compete for the concern and support of taxpayers and students. How can the parts of the system cooperate to produce equal opportunities for students throughout Kansas, so a wide variety of

Figure 35  
 Kansas State Board of Education Districts, 1997

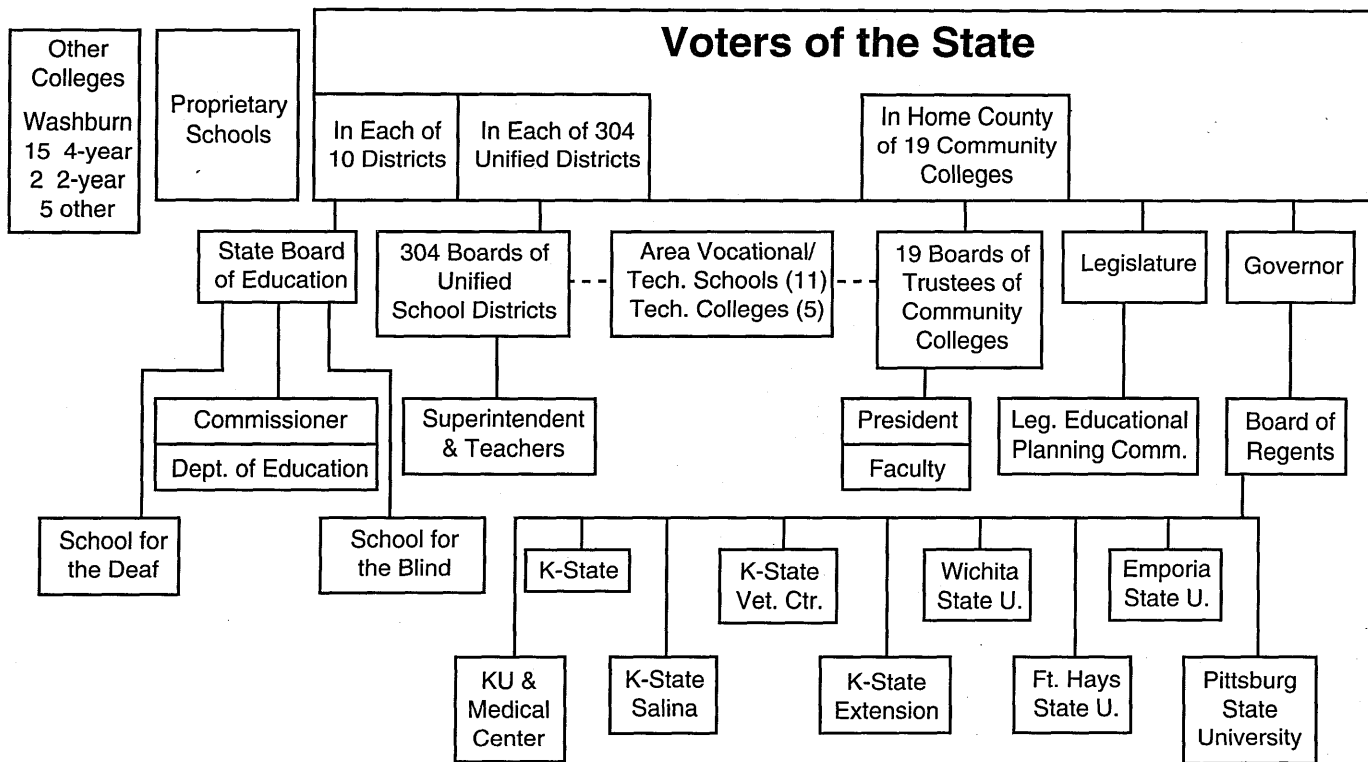


Source: Kansas Secretary of State.



Figure 36

Major Components of the Kansas Educational System



programs can be offered to allow the development of each citizen's potential?

While most educational institutions are public, American society supports a large number of private colleges and universities, as well as proprietary schools that operate as profit-making institutions. How should these private institutions be treated in the total system? For example, should private school students be awarded scholarships approximating the cost to the state if those students attended a state-supported school or a community college that the state aids through subsidies to the students who attend it?

Figure 36 identifies the major components of the Kansas educational system.

## **Local School Districts**

School districts are the key units in the elementary and secondary educational system of Kansas. Although the state plays an active role in shaping public school policy, the districts retain considerable autonomy. The state limits the taxes a school district may levy and the amounts a district may spend. The state also imposes program-related requirements with which districts must comply. Districts adopt their own budgets, and in accordance with general state laws they employ and dismiss teachers. The instructional program is determined primarily at the local level, with the stipulation that state curriculum requirements be followed.

The Kansas Legislature originally established two types of school districts: common and city. This system was adequate so long as the public schools offered only limited elementary education. These districts usually were not large enough to support high schools, which became popular toward the end of the 19th century. New types of districts were established for the purpose of supporting high schools only. Over the years, the legislature has authorized a variety of local school organizations, but Kansas now operates through unified school districts that support both elementary and secondary schools.

School districts in Kansas were organized when most people lived on farms and transportation was limited. As a result, districts followed community boundaries. But this organizational format was criticized early in the state's history. In the late 1860s, the state superintendent of public instruction expressed concern that many districts were too small to provide an adequate property tax base. Once established, however, school district boundaries settled into a rigid pattern that resisted change—despite the shifting character of the state.

Little was accomplished in the way of district reorganization, although most state superintendents encouraged either voluntary or legislative consolidation. The number of school districts, including city districts, peaked in 1896, when there were 9,284.

The story of how Kansas dramatically decreased its number of school districts to just over 300 in the late 1960s is now legend.<sup>3</sup> Some people still believe that school district reorganization has led to oversized districts and has cost additional tax dollars rather than saving them. Others think Kansas still has too many districts, particularly in light of the small size of some high schools and their restricted offerings. It seems, however, that the era of dramatic upheaval in the number of districts is over.

### *School Boards*

Unified school districts operate as governmental units, and each district (except Fort Leavenworth) has a board of seven elected members. The board has final authority in determining school policy and controlling the use of school property. The board discharges its responsibilities by appointing a superintendent, who makes recommendations to it.

Board members are elected for four-year staggered terms on a nonpartisan basis. Just as there are several forms of city government, there are multiple plans for electing school board members. They may be nominated and elected on a districtwide basis. Or six, three, or two subdistricts (or election areas) may be established, from which one, two, or three persons are elected, the seventh member of the board being elected at large.

There are three variations in how board members may be elected. Under one variation, known in the statutes as voting Plan A, in both the primary and general elections all voters in the district vote for candidates for all positions on the board. Under the most widely used variation, Plan B, in the primary election, residents vote in their subdistricts for the member or members who will represent their subdistricts, and for the one at-large member—and in the general election all residents vote for all positions on the board. In the third variation, Plan C, residents vote by subdistrict in both the primary and general elections for the member subdistrict positions and for the at-large position. In plans B and C, candidates for the member positions must reside in their member subdistricts.

The board may by resolution move to adopt another plan of election, but the question must be submitted to the voters in each district. The county clerk or county election officer is responsible for school board elections.

The goal of unification has been achieved insofar as the number of districts has been substantially reduced. School district reorganization does not in itself cause the closing of schools. From 1963 to 1982, one general condition of the school unification law was that no "attendance center" (school) would be closed without the consent of its patrons. Since 1982, school districts with enrollments above 1,600 may close buildings to "improve the school system"; boards with lower enrollments are required to adopt a closing plan, including public hearings and a possible protest referendum.

From 1859 until 1966, the office of county superintendent of public instruction was an important vehicle for coordinating the activities of local

school districts and boards. As the number of school districts diminished and more districts hired full-time superintendents who were professionally trained, the work and importance of the county office decreased. In 1966, the voters adopted a broad new constitutional amendment restructuring the entire state educational system, and the office of county superintendent of public instruction was abolished. The state commissioner of education has assumed many functions previously performed by this local official.

### *Educational Reform*

Reflecting widespread concern and uncertainty as to whether public schools are providing the kind of education Americans want for their children, a broad national movement to change the schools has developed. In 1988, President George Bush indicated that he wanted to be known as the "education president." As an element of this theme, he in 1990 sponsored a conference of all governors; they adopted six goals to be accomplished by the year 2000. This "America 2000" plan included some specific goals noted in the summary on page 295. President Bill Clinton in 1997 and President George W. Bush in 2001 continued to emphasize the importance of education and education reforms. They espoused a number of specific goals, such as that all children should be able to read by the third grade.

The stated goals could not be legislated or accomplished by any single level of government. State legislative groups and professional educators criticized President Bush's governors conference, insisting that they were more involved than the president and governors seemed to realize. Part of the difficulty of achieving action is the enormity of the obstacle of reaching consensus.

Some see a problem with families in which students are not encouraged to be more serious in their school work. Others focus on a curriculum problem in which the schools do not giving adequate attention to their own priorities, the "three R's." A longer school day or school year is offered by some as a step in the right direction. Still others see a need for better school funding. Some would like a system of vouchers enabling parents to select the exact school, public or private, that they view as best for their children. (Opponents of vouchers see them as misdirecting limited resources and tragically weakening the public schools.)

Elected officials, trained professionals, and interested citizens are needed at all levels of government to effect the desired changes. In most interims between recent legislative sessions, special committees have studied aspects of the Kansas education system. In preparation for the 2002 session, the 2001 legislature provided for a professional evaluation of school finance to determine the cost of suitable education in Kansas. A review of the breadth of topics addressed from year to year suggests many aspects and approaches to educational reform. Local school boards are substantially closer to where the action must be if reforms actually are to take place. Board members are

## **National Education Goals**

*By the year 2000:*

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, the arts, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol, and will offer a disciplined environment conducive to learning.
- The nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

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Source: Goals 2000: A Progress Report—National Education Goals.

concerned with the practical problems of building and maintaining adequate schools where students can learn in a safe and secure environment, and employing teachers and other staff members who can stimulate and instruct willing learners. School boards are called upon to rely on professional educators to handle the day-to-day operation of the schools.

The complexity of the field of education and the interaction of the various groups involved is well evidenced by the controversy over the years in Kansas surrounding the State Board of Education. The State Board of Education is in a sense located organizationally between the state legislature and the local school boards. When the Office of State Superintendent of Public Instruction was abolished, a continuing need was perceived for some state office in this important area of government activity. A choice was made to provide for a commissioner of education to serve as the chief education official of the State Board of Education. In the amendment as approved by the voters in 1966, the board was given "self-executing powers." However, it was not widely recognized that the board possessed such powers until 1973, when the Kansas Supreme Court affirmed its existence. This decision has led to conflicts between the legislature and the board, for "self-executing" has been interpreted to mean that the board controls certain of its rules and regulations, including what is taught, how it is taught, and how schools are accredited. The board depends on the legislature for its funding but is able to set most of its own policies. State aid to local school districts is determined by the legislature but administered by the board.

In 1974, 1986, and 1990, the legislature submitted proposals to the voters to modify in various ways the powers of the State Board of Education. Each time the voters rejected the proposals. In 1996, the legislative leaders again mounted a move to alter the board's powers. The governor endorsed the concept, but the 1997 legislature did not act.

Many people believe educational reform is directly related to America's position as a world economic power. A competent work force is a necessity if the United States is to compete in world markets. Thus, educational reform is urged as an aspect of economic development and of the nation's future—the most critical challenge facing society.

### *School Funding*

School financing is a perennial problem in Kansas, as it is in many other states.<sup>4</sup> A number of factors are involved. School districts vary greatly in the number of pupils served, in geographic size, and in available tax base—all of which affects their transportation costs, educational objectives, programs, and the willingness of the taxpayers in the district to support education.

Various formulas have been used for distributing state aid to school districts. From 1973–74 to 1991–92, the School District Equalization Act was in effect. This act sought to be "power equalizing": state aid was distributed so

that, within certain limits, each school district would have equal power to select its level of spending. The level of spending was *not* to be determined by the district's wealth, so poorer districts received proportionately more state aid. Each district adopted a budget for its operating expenses, within the limits authorized by law. Annually, the legislature established how much each district could increase the following year's budget by specifying a percentage over the previous year's budget per pupil. The state subsidized the district to the amount needed to fund this budget after certain deductions were made. The greater the deductions, the less state aid received.

Table 30

## Variations in Kansas School Districts: 2000–2001 School Year

	High	Median	Low
Number of students per district, FTE	45,508.7	553.3	54.0
General fund budget per pupil	\$11,718.18	\$6,214.99	\$4,075.02
Assessed valuation	\$2,515,180,571	\$21,817,720	\$1,216,002
Assesses Valuation per pupil	\$55,268	\$39,432	\$22,519
Tax rate, general fund, in mills	20.00	20.00	20.00
Total mill levies, in mills	74.13	41.03	20.00
General equalization aid per pupil	\$9,713	\$5,476	\$0
Ratio of general state aid to legal maximum general fund budget	96.79%	88.99%	0%

Source: Kansas State Board of Education.

Table 30 highlights these differences in the old funding pattern. Some districts had 300 times as much property valuation per pupil as other districts, and some spent approximately three times as much as other districts for each student. These were the extremes, but they demonstrate the nature of the problem of devising fair and equitable state aid formulas.

The ad valorem taxes levied by school districts on real and personal property historically have been the most important sources of revenue. Because of the widely different amounts and values of property within the 304 separate school districts, different assessment practices, and different educational programs, the school district general fund tax rates in 1991–92 varied from a high of 97.69 mills to 9.12 mills per dollar of assessed valuation. In the same year, the amount of state general equalization aid varied from \$3,901 per pupil in the high district to no equalization aid in a few districts.

Questions increasingly were raised as to whether this formula in fact provided equality. In years immediately preceding 1992, the legislature in-

cluded provisions in the amendments annually made to the law, to minimize changes from year to year.

Dissatisfaction over school funding culminated when approximately 40 school districts filed suit in a Shawnee County district court, challenging the constitutionality of the school aid formula. The judge met with the governor and legislative leaders, indicated his concern over the constitutionality of the law, and set a hearing date for the suit after the 1992 legislative session adjourned.

Soon after this meeting, Governor Finney appointed a committee charged with reporting to her and to the legislature; the committee recommended massive changes in the way Kansas elementary and secondary education was funded. After prolonged attempts, the legislature in 1992 adopted much of what had been proposed: The state assumed more responsibility for funding K-12 education. The basic school budget was based on each district's spending \$3,600 per pupil, with a "pupil weighting" concept in which the pupil count per district is increased to recognize higher costs associated with characteristics such as low enrollment, student transportation, vocational education, bilingual education, at-risk learners, and the operation of new school facilities.

However, following passage of the 1992 financing law, three cases were filed challenging it. These cases were consolidated in the Shawnee District Court. In its 1993 decision, the district court ruled that the uniform school district general fund mill levy was a *state* property tax, and as such was subject to the constitutional interpretation that limits such levies to two years. More significantly, the court found the weighting for schools in the low enrollment category to be unconstitutional because it perpetuated inequities caused by the previous school finance law, and the enrollment eligibility was set too high. Since that provision was not severable from the remainder of the law, the entire act was declared unconstitutional. This decision was appealed to the Kansas Supreme Court, which reversed the district court and in 1994 declared the act constitutional.

The low enrollment adjustment now applies to districts having under 1,725 students, and a new weight factor has been added for larger enrollment districts. To help fund school district general fund operating budgets, legislation requires school districts to impose a 20 mill levy on all real property for the 2001-02 and 2002-03 school years. The law exempts the first \$20,000 of appraised value of residential property from the application of this levy. Commencing in the 2001-02 year, the base level of state aid per pupil is \$3,870.

The property tax raised by the state-mandated rate remains in the district and becomes a deduction in computing the general state aid entitlement of a district based on per-pupil state aid of \$3,870. If the mandated levy raises more than the legally authorized school district general fund budget, the difference must be sent to Topeka and credited to the State School



District Finance Fund, which is used to pay general state aid to school districts. This provision currently affects only the Burlington School District, where the Wolf Creek nuclear power plant is located.

Districts wishing to spend more than is authorized by the base level \$3,870 per weighted pupil are authorized to adopt a local option budget (LOB) in an amount up to 25 percent of the general fund budget. The LOB authority is subject to various restrictions, in some cases including provisions for protest referenda. This additional spending authority is funded mainly by the local property tax and state aid. However, districts with assessed valuations per pupil above the 75th percentile receive no state aid for the LOB.

The law also provides some matching state aid to assist school districts with their bond and interest payment obligations. The matching amount is calculated under a formula that provides aid inversely to a district-assessed valuation per pupil.

The underlying concept of the current law, known as the School District Finance and Quality Performance Act, is that the state shall provide equally for every child, taking into account unique pupil and school district characteristics. School funding in other states has been challenged in both federal and state courts, with varying results. With this bold financing plan, Kansas moved into a new era. Providing each child in the state an adequate or suitable educational opportunity becomes the ultimate responsibility of *state* government, not the *local* school districts. The state has assumed a major financial obligation and has substantially changed the revenue mix used to finance elementary and secondary education. In fact, the ratio of state funding to school district operating budgets has increased from about 44 percent in 1991–92 to an estimated 75 percent in 2001–02.

In discussions surrounding passage of the new funding law, legislators and others expressed concern as to whether these changes would reduce the autonomy of local school boards.

The new finance plan included a number of other educational reforms. Over a three-year period, six days were added to the school year. The state board was directed to design and adopt a system for performance accreditation of schools. Outcome goals for students, framed in measurable terms, were to be designed. The state, the districts, and each school are to evaluate performance goals jointly.

Some school districts receive aid directly from the federal government. However, most federal aid comes through the state and is earmarked for low-income and economically disadvantaged students, special education students, and school food assistance.

School districts and state policy makers alike are concerned with the fast-growing field of special education, both in dollars required and capacity to provide appropriate instruction. In the 15 years ending in 2000, local expenditures for special education increased 210 percent and state categorical aid for special education increased 225 percent. The state provides grants to

districts, according to pupil and faculty transportation costs and the number of special education teachers and paraprofessionals employed.

In 1974, the legislature mandated that local school districts have programs for all "exceptional" children by 1979. This includes both children with disabilities and those who are intellectually gifted. There have been increasing efforts to identify children with learning disabilities. The trend toward deinstitutionalization has increased the number of exceptional children local school districts are required to serve. Federal legislation, which addresses only children with disabilities, has placed greater emphasis on early identification of problems, even for preschoolers. Although it is argued that early intervention is cost-effective, larger costs are involved in the immediate future. Given current definitions, approximately 12 percent of all children have disabilities that require special education services. Additionally, approximately 4 percent of children are classified as gifted.

Federal laws and programs have adopted the concept of keeping children in the "least restrictive environment." Although special education has been developed as a teaching specialty, efforts have been made to train other teachers to work with exceptional students in their regular classes as part of the effort to "mainstream" as many students as possible. The current trend, referred to as "inclusion," attempts more strongly than in the past to provide educational services to children in the regular classroom.

Pressures for increased public school expenditures in special education seem likely to continue, as do efforts at cost containment. Many districts cooperate with other districts to fulfill their special education needs.

## **State Department of Education**

The major responsibility for supervising the public educational system now lies with the elected State Board of Education. The original Kansas Constitution established the position of state superintendent of public instruction. In 1873, the state legislature added the State Board of Education, which, until the beginning of the 20th century, was concerned primarily with certifying some of the teachers in the state. The State Department of Public Instruction had limited authority because of a widespread desire to maintain educational control at the local level.

The legislature proposed, and in 1966 the voters approved, a constitutional amendment that restructured the office of superintendent. An entirely different philosophy of administration was incorporated into this amendment. Powers and responsibilities were vested in the elected 10-member State Board of Education. Each board member is elected from a district created for this purpose, consisting of four contiguous senatorial districts.

Amid much difference of opinion, the legislature decided the State Board of Education should be elected on a partisan basis—but the controversy of board member selection and power has been reopened by the legislature's

submitting the three constitutional proposals referred to earlier (which were disapproved). The constitution assigns to the State Board of Education the "general supervision of public schools, educational institutions, and all the educational interests of the state except educational functions delegated by law to the state Board of Regents." The State Board of Education appoints the commissioner of education, who serves at the pleasure of the board.

The State Board of Education sets teacher requirements and certifies applicants who meet those requirements. It accredits state and independent colleges for the training of teachers. Preliminary work in framing the standards for certification and college accreditation is performed by the Teaching and School Administration Professional Standards Advisory Board, composed of representatives from accredited colleges and teaching and administrative areas fixed by law.

Kansas elementary schools and high schools are accredited by the State Board of Education in accordance with standards adopted by the board. Until recently, these standards covered such areas as enrollment, teacher preparation, physical plant, equipment, and curriculum. However, in 1996 the State Board of Education adopted the Quality Performance Accreditation Plan, begun as a pilot program in 1991-92. Through the mechanism of school accreditation, it focuses school by school on measures of improvement. Under this system, schools target areas of improvement on which they desire to concentrate. Additionally, the state board requires schools to focus on student improvement in the areas of mathematics, reading, and one other of the academic areas of writing, science, or social sciences. State-prescribed curriculum standards and state assessment are an integral part of the process. It was one of these standards that created the controversy concerning how evolution and the "big bang" should be taught. Schools may not substitute for these areas of concentration until the school meets the State Board of Education standards of excellence for the discipline. The accreditation status is reviewed every five years.

The board distributes state aid for school districts under legislatively designed formulas. Largely clerical, this work requires the collection and tabulation of statistics that can help local school districts understand how they compare with their peer districts and assist policy makers in evaluating the impact of established policies.

Current concepts of state education administration emphasize the leadership role of the state board, which is expected to stimulate local action for educational improvement by providing advisory and technical assistance. Consequently, the board devotes much time and effort to working with educational committees and other groups, offering advisory services, and increasing local district participation in federal programs.

The State School for the Blind and the State School for the Deaf, which serve specialized clientele, are administered by the State Board of Education. These schools are open to all Kansas residents between the ages of

five and 21 who have partial or total impairment of sight or hearing, making normal classroom instruction unsuitable. However, the trend is to rely increasingly on local school districts to provide such services to children. These schools furnish educational materials, room and board, and basic medical care to their students without charge.

Both schools provide elementary and secondary education programs with academic, vocational, and special training. The School for the Blind has a one-year postgraduate course and offers a summer school for adults whose sight is impaired. In addition, both schools conduct annual institutes for parents whose preschool children have sight or hearing impairments.

## **Vocational Education**

In 1917, the United States Congress established a federal program for vocational education by authorizing grants-in-aid to the states. In the same year, the Kansas Legislature authorized the state to participate in the federal program, designating the State Board of Education to serve as the State Board of Vocational Education. Other programs have been added to the duties of the board in recent years. In 1963, the legislature authorized creation of area vocational-technical schools to provide Kansans with both secondary and postsecondary vocational training. There are now 11 area vocational-technical schools and five technical colleges.

When the State Board of Education was established in 1966, the Division of Vocational Education became a separate administrative unit within the State Department of Education. The 1966 constitutional amendment made it clear that the board would be responsible for vocational education.

The vocational education program is governed by the "state plan." This consists of policies and standards drawn up by the State Board of Education and approved by the U.S. Department of Education. The state plan establishes policies for the department and for participating schools as well. Standards regarding enrollment, equipment, curriculum, and teacher requirements must be maintained by participating schools. A new federal requirement mandates expenditures of funds for the integration of academic and vocational education through coherent sequences of courses so that students achieve both academic and occupational competencies.

Vocational training is divided into instructional fields: agricultural; family and consumer sciences; occupational family and consumer sciences; trade and industry; technical, business, and computer technology; marketing; and health occupations. Day and evening classes for adults, as well as classes for high school students, may be organized in all fields.

Vocational education is offered under several institutional arrangements. High schools have programs as part of their regular curriculum or as special classes. Approximately 80 percent of high school students take at least one vocational education course. Eleven area vocational-technical schools

and five technical colleges serve students as well as high school graduates with their programs. The governing bodies for the 13 type 1 area schools and technical colleges are the school districts or community colleges offering such training. The three type 2 area schools and technical colleges have separate boards of control, made up of members appointed by and from the cooperating boards of education and community college boards. Five postsecondary institutions have the designation of community colleges/area vocational-technical schools.

In 1992, state assistance for secondary vocational education was altered. Now full-time-equivalent vocational education students enrolled in school districts are weighted at 1.5 under the per-pupil formula. For postsecondary students enrolled at area vocational schools and technical colleges, the policy continues under which the state pays 85 percent of postsecondary student tuition and the postsecondary student pays the remaining 15 percent. In addition, the state funds a vocational education capital improvement program for area vocational schools, technical colleges, and community colleges that are designated area vocational schools. Federal funding for secondary and postsecondary vocational education programs totals approximately \$11 million.

## **State Institutions of Higher Education**

Kansas maintains six institutions of higher learning: the University of Kansas in Lawrence with its Medical Center in Kansas City; Kansas State University in Manhattan, a land-grant college; Emporia State University; Pittsburg State University; Fort Hays State University; and Wichita State University. Legislation in 1863 and 1864 established the University of Kansas, Kansas State College of Agriculture and Applied Science (now K-State), and the State Normal School (now Emporia State). The teachers colleges at Hays and Pittsburg were organized in 1901 and 1903 respectively; in 1977 they were designated universities. Wichita State University, which had been a municipal university, was admitted into the state system in 1963.

The State Board of Administration, organized in 1913, was the first single board to govern all institutions. Previously, separate boards had controlled the University of Kansas, Kansas State University, and the state teachers colleges. In 1925, the legislature transferred control of institutions of higher learning to the Board of Regents.

The Kansas Board of Regents consists of nine members appointed by the governor with the consent of the state Senate for four-year overlapping terms. Statutory qualifications for appointees stipulate that no more than five may belong to the same political party and there must be a member from each congressional district, with the remaining members appointed at large, except that no two members may reside in the same county at the time of appointment. In addition, beginning July 1, 2002, limits are placed

on the number of members who can be representative of any one postsecondary institution. Members are authorized to appoint an executive officer and to set that person's salary. The board elects its own chairperson annually.

In 1999, legislation was enacted transferring the supervision of public community colleges, area vocational schools, and technical colleges from the State Board of Education to the Board of Regents. Unlike the public universities governed by the Board of Regents, community colleges, area vocational schools, and technical colleges retain local governing boards, but are placed under the Board of Regents for purposes of supervision and coordination. The Regents also have coordination responsibilities for the municipal university (Washburn) and for the independent colleges and universities.

As part of the reorganization, the Board of Regents was divided into three commissions—one for community colleges, area vocational schools, and technical colleges; one for public universities; and one for postsecondary education coordination. Each commission consists of three Regents, who are assigned to a commission at the time of their appointment to the board. Enactment of the 1999 legislation, known as the "Kansas Higher Education Coordination Act," also ended funding for community colleges on the basis of credit hours and the institution of funding on the basis of operating grants. Part of any increase in funding received by community colleges has to be used for property tax reduction.

The 1999 legislation made no change in the relationship between the Board of Regents and the six institutions of higher learning that it governs. The Board of Regents appoints the executive head of each institution under its governance—the chancellor of the University of Kansas and the presidents of the other state universities. Rules adopted by the board govern the organization, educational programs, and other policies and practices of each institution.

The Board of Regents adopts proposed budgets for the public universities. The largest share of revenue comes from state appropriations, but substantial amounts come from trust and endowment funds, student fees, and service charges. Kansas State University also receives part of its revenue from federal subsidies to land-grant colleges. An educational building fund derives money from a statewide statutory levy on property, providing capital for construction at these institutions. The Regents may also issue revenue bonds for constructing student union buildings and residence halls.

Each university employs deans, directors, and other officers who head the administrative divisions, academic programs, student services, specialized programs, and state services. The University of Kansas is divided into the College of Liberal Arts and Sciences, the Graduate School, and schools of Business, Education, Engineering, Architecture and Urban Design, Fine Arts, Journalism and Mass Communications, Law, Pharmacy and Allied Sci-

ences, Social Welfare, and Medicine. Specialized programs include KU Continuing Education, the State Geological Survey, the Bureau of Child Research, and the Institute for Public Policy and Business Research.

The academic program of Kansas State University is organized into the Graduate School and the schools of Agriculture, Arts and Sciences, Engineering, Architecture and Design, Human Ecology, Business Administration, Education, Technology, and Veterinary Medicine. K-State operates agricultural and engineering experiment stations throughout the state. It also has charge of the Agricultural Extension Service, which coordinates agriculture and natural resources, community development, home economics, and 4-H programs in every county.

Wichita State University is organized into seven degree-granting colleges: Fairmont College of Liberal Arts and Sciences, the College of Business, the College of Education, the College of Engineering, the College of Fine Arts, the Graduate School, and the College of Health-Related Professions. The Division of Continuing Education offers non-degree instructional programs. Although Wichita State offers some doctoral programs, its primary emphasis is on baccalaureate and master's degrees.

While the colleges at Emporia, Fort Hays, and Pittsburg originally emphasized teacher training, all have moved in recent years toward offering general liberal arts curricula. This development was reflected by having them officially designated universities in 1977.

## **Community Colleges and Washburn University**

Legislation authorizing the organization of community junior colleges was enacted in 1917. The community junior colleges offered curricula that included college, vocational, and general courses. They were closely related to the public school system because they were under the control and supervision of the school district's governing board and the school superintendent. The same persons sometimes taught in both the high school and the community junior college. The state superintendent of public instruction exercised much the same supervision over community junior colleges as over elementary schools and high schools.

In 1965, this organizational pattern changed significantly. Local boards of education ceased to have control over community junior colleges, which were required to establish their own boards of trustees and hire separate administrators. These schools no longer were considered extensions of high schools. The State Board of Education became the authority for community junior colleges. In 1999, this authority was transferred to the State Board of Regents.

Community colleges are financed primarily through property tax levies, state aid, and tuition. The board of trustees for each community college, subject to certain statutory constraints, may levy an ad valorem property

tax for capital improvements and for maintenance and operations. Beginning in 2000, community college funding from the state is on the basis of operating grants equal to a percentage of the appropriation for full-time-equivalent lower-division students at the regional Regents universities—Emporia, Fort Hays, and Pittsburg. The percentage began at 50 percent, but will increase to 65 percent in FY 2004 and thereafter.

The City of Topeka maintains Washburn University under statutory provisions authorizing municipal universities. Washburn is controlled by a nine-member board of regents who serve four-year, overlapping terms except as noted below. The mayor of Topeka appoints four of the members, the governor appoints three, the mayor is an ex officio member, and one member is a member of the Kansas Board of Regents. The Washburn regents have general control of university affairs. They appoint the president, control university property, establish tuition rates, set the tax levy for capital improvements and special liability purposes, issue bonds for construction, and delegate matters of internal administration to the president and faculty. Washburn receives state aid to assist in its operations. Since 1999, the Washburn University Board of Regents has had the authority to impose a sales tax in Shawnee County. The imposition of a sales tax requires that one member of the Board of Regents appointed by the mayor be replaced with a member appointed by the Shawnee County Commission.

## **Legislative Educational Planning Committee**

To share in the federal funds available for postsecondary education planning, Kansas formed a state planning commission for postsecondary education in 1974. Similar commissions in other states are known colloquially as “1202 Commissions,” after the section of federal law that called for their creation. Because there was no agreement as to which state agency should be designated as the 1202 agency for Kansas, and because of frustration over the previously unproductive nonlegislative commission, the governor agreed to designate the Legislative Educational Planning Committee to plan for postsecondary education in the state. Kansas was the only state with a commission composed exclusively of legislators. When federal funds were no longer available (1982), the committee’s activities continued with support from state General Fund appropriations. It is staffed by the Legislative Research Department and the Office of the Revisor of Statutes.

The 2001 legislature expanded the committee’s scope to include making recommendations concerning preschool and K–12 education in Kansas, reviewing State Department of Education implementation of legislation relating to educational matters, and considering such other matters as the Legislative Coordinating Council assigns to it.



## **State Libraries**

Kansas maintains three libraries: the State Library, the Supreme Court Library, and the State Historical Library.

The State Library, established in 1861, is a repository for the laws, court reports, legislative journals, official reports, and other publications of Kansas and other states. To provide a different type of library service, the legislature in 1899 established the State Traveling Libraries Commission.

Federal funds became available for stimulating public library activities, and in 1963 the state library service was reorganized and the State Traveling Libraries Commission abolished. In a limited sense it was replaced by the new Library Advisory Commission. The commission was originally created with the chief justice of the Kansas Supreme Court acting as ex officio chairperson. Today, the commission annually elects a chairperson and vice-chairperson. The commission advises and consults with state librarians, and may present suggestions or recommendations to the governor. The governor appoints the state librarian with the consent of the Senate.

In 1965, the legislature authorized a regional system of cooperating libraries. The state librarian and the Library Advisory Commission have encouraged the development of regional library systems, and now there are seven systems encompassing the state. Individual libraries are free to participate in the systems or to decline. The Library Advisory Commission authorizes creation of such systems, which are legally empowered to levy up to a three-quarter-mill tax on all property in the region except where a property tax already is levied for libraries. Federal funds have been an important mechanism for stimulating this regional library service movement. One of the challenges in the public library field in Kansas has been to maintain local interest, participation, and at least a measure of local control, and yet to have adequate public library facilities for all parts of the state. The state librarian continues as librarian for the state government and as a leader in promoting adequate public library service for all Kansas communities.

In addition to its service to public libraries, the State Library maintains a legislative reference library in the Statehouse. For years, law books and the statutes of other states had been kept in the Statehouse separate from other reference materials of the State Library. When the Supreme Court moved out of the Statehouse, the law section of the State Library was moved to the new Judicial Center.

## **State Historical Society**

The State Historical Society was established following action by the legislature of 1879, which designated the Kansas State Historical Society as a trustee of the state for collecting, securing, and taking custody of historical collections. The society functions both as a non-profit membership organization and as a state agency supported by legislative appropriations. The

society's offices and Kansas Museum of History are located in Topeka. The society elects its own board of directors and officers.

The State Historical Society includes a museum; a library emphasizing Kansas and regional history and genealogical materials; and divisions for pictures, archives of state papers, manuscripts, microfilm, newspapers, and the census. The society also sponsors special research projects and publications, including *Kansas Heritage*.

The State Historical Society maintains as historic sites the first territorial capitol; Adair Cabin (a John Brown site); Constitution Hall; Hollenberg Station; Cottonwood Ranch; Fort Hays; the Native American Heritage Museum; the Mine Creek Battlefield; Marais des Cygnes Massacre Park; the Old Kaw Mission; the Old Shawnee Mission; Pawnee Rock Historical Park; Pike's Pawnee Indian Village; Grinter Place; and the Goodnow House. In 1963, the State Historical Society became responsible for the management and control of historic sites. Each site has an advisory committee that counsels the secretary of the Historical Society in the administration of these properties.

## **Chapter 16 Notes**

1. This was the original wording of Article 6, Section 2, which was replaced in 1966, when a new education article was adopted.
2. Original Wyandotte Constitution, Article 6, p. 7.
3. This history is discussed on pages 223–225 in the second edition of this book.
4. For a much more detailed discussion of both the history of school aid in Kansas and the efforts for more equal education opportunity in Kansas, see Julie Bundt's chapter, "State Education Finance Policy: The Question of Equity," pp. 51–63, in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University Press of Kansas, 1994.



## Chapter 17

# Caring for Public Health and the Environment

State government participation in problems of public health materialized around the turn of the 20th century. Before then, the state's health activities were confined largely to the quarantine and isolation of persons who had contagious diseases. It was not until Louis Pasteur developed his germ theory in 1866 that state health officers gave much thought to the prevention and control of illness through environmental sanitation and epidemiology. This new emphasis on preventive medicine set the pattern for contemporary public health programs in the United States.

Federal matching grants encouraged state health activity in the early 1920s, and again with renewed vigor after World War II. In 1944, the United States Public Health Service Act established a program of federal grants to states for work in general health and control of venereal diseases and tuberculosis. Since 1946, the federal government has initiated grants-in-aid for state mental health programs, hospital survey and construction, and water pollution control.

Public health personnel had long been involved in the environmental aspects of health, but in the 1960s and 1970s there developed a strong national concern for protecting the environment. This manifested itself in programs for improved water treatment and pollution control. Strip mining and the reclamation of mined land in southeast Kansas attracted public and legislative concern. Although Kansas has fewer people, fewer auto-emission problems, and less pollution in general than many other states, Kansas responded to this national movement by restructuring the Board of Health into a cabinet-level Department of Health and Environment. In this new department, environmental activities received greater visibility and emphasis.

Many traditional public health activities suddenly received a different emphasis. Old programs were continued, but new ones—especially those involving the delivery of private health services—have garnered more attention.

The sparsity of population in some parts of the state had long made it difficult to establish and provide local public health services there, so the legislature considered restructuring the local public health organization. Although an increasing number of counties provide public health services, some do so only minimally.

Public health services are differentiated from *personal* health care services, which are performed by private providers. Public health traditionally has been concerned with the diagnosis of certain diseases or conditions; preventive medicine; medical education, particularly for mothers and children; and protection of the community from health hazards. Research and education have characterized many public health programs. When people need personal health care and are unable to pay for it, the care is most often provided through welfare or public assistance rather than public health.

This broad policy of differentiating personal and public health care has been tested in some local public health agencies, where vaccinations are performed on request or with nominal payments, certain illnesses are diagnosed, and contraceptives are available. Some local public health activities aim at screening the population for early detection of such conditions as diabetes and high blood pressure, and many result in referrals to private physicians, or to “free” clinics where health care professionals provide services to the indigent.

Widespread concern over the containment of private health care costs and the accessibility of health care to the medically uninsured or underinsured has prompted studies and efforts to find answers. The failure to unveil solutions on a national scale has in some ways shifted the burden to the states. Several advisory commissions have been established and have made recommendations.<sup>1</sup> These recommendations, for a wide variety of reasons, were not adopted. The restructuring of our health care delivery system continues to be a major public problem—seemingly without a solution that society finds acceptable. The federal welfare reform legislation, in its efforts to decouple the medical assistance program (Medicaid) from welfare, has had ramifications. These include the issue of how Kansas and other states will reach the growing numbers of low-income parents and children who continue to be eligible for Medicaid but not for “welfare” assistance.<sup>2</sup>

The containment of private health care costs and the goal of making private health care accessible to one-fourth of Kansas citizens affects state government at many levels. For example, proper prenatal care improves the likelihood that a mother on welfare will give birth to a healthy child. This is clearly cheaper for the state than the extraordinary costs arising from a premature or low birth-weight baby. As another example, laws permitting

older married couples to divide their assets may affect when and how long they would be eligible for medical payments in a nursing home.

Payments under Medicaid make up an increasing portion of the total public welfare appropriations. The legislature, partly in response to projected cuts in the MediKan program, appropriated funds to KDHE to develop primary care clinics in several localities. In general, however, state and local public health agencies have not viewed access to health care as their responsibility. As reported in one study done by public health officials, "direct involvement of local public health agencies in primary care in Kansas has been extremely limited . . ." <sup>3</sup>

The problems of cost containment and accessibility to care are complex, and there is little public consensus on how to solve them. <sup>4</sup> While they may be proper policy concerns of public health officials, they do not appear to be receiving an appropriate share of attention. Traditional public health services absorb most of the staff time and public health dollars spent in Kansas.

## **Early Development of the Kansas Board of Health**

The early history of the Kansas Board of Health was tied closely to the regulation of the practice of medicine in the state. <sup>5</sup> The Kansas Medical Society, which had been incorporated in 1859, was the leading advocate of creating a state board of health. In 1870, largely because of agitation by members of the society, the legislature passed the Medical Practice Act, designed to protect the legitimate medical profession from the malpractices of "quack" doctors.

After this act had been passed, the Kansas Medical Society supported the idea of an agency with authority to deal statewide with the problems of disease. The Medical Society believed that such an agency should be empowered to investigate and prevent the causes of disease, and to record information on births and deaths to be used for statistical research and comparison.

Although bills had been introduced earlier, it was not until 1885 that the State Board of Health was established. While the Medical Society was partially responsible, some of the impetus came from the National Board of Health, which had warned the Kansas governor about the danger of Asiatic cholera. In the act creating the State Board of Health, the county boards of commissioners were designated local health boards. The state board was charged with general supervision of Kansas health interests, construction of public sanitation systems, and collection of vital statistics and morbidity statistics. Local boards of health were required to appoint county health officers and to carry out the rules and regulations of the state board.

The early State Board of Health was handicapped by a general animosity toward its activities, and by weaknesses in the law that conferred its

authority. Hostility came from newspaper editors, certain members of the medical profession, and legislators.

After it survived repeated attacks, the position of the State Board of Health began to improve. During the early 1900s, several laws added to its powers and strengthened those assigned under the original law. In 1901, for instance, the legislature enabled the board to quarantine people beset with contagious diseases such as smallpox, cholera, scarlet fever, and diphtheria, and appropriated funds for suppressing tuberculosis. One part of the law provided for the confidential reporting of all cases of tuberculosis. In 1917, the legislature authorized the board to regulate the control of any communicable disease it declared to be dangerous to the public well-being.

The passage of a vital statistics law in 1911 was a significant advance for the State Board of Health. This law created the Division of Vital Statistics, responsible for collecting morbidity reports and studying the prevalence of reportable diseases. For several decades, city and township clerks served as local registrars of vital statistics, but with the advent of computers and automation, these activities became centralized in Topeka.

Another important area in which legislation improved the position of the State Board of Health was control of water pollution and water-borne disease. The board received many complaints concerning the pollution of water supplies, but was unable to act effectively until 1907, when the legislature passed a law to preserve the purity of the state's waters. This law empowered the board to judge the adequacy of all new water supplies and sewage systems. In addition, the board was authorized to investigate stream pollution resulting from the discharge of industrial wastes. The law was further strengthened in 1909, when the board was given jurisdiction over all water plants and sewage systems, regardless of their date of construction. As the value of a health agency with statewide powers became widely recognized, the concept was accepted by the public and the legislature. This recognition resulted in broadened powers for the State Board of Health and more responsibility for state health officials.

The Kansas State Board of Health was reconstituted by the legislature in 1951. The new board was composed of five medical doctors, one pharmacist, one dentist, one veterinarian, one hospital administrator, and one sanitary engineer. It elected a secretary, who served as executive officer for the part-time policy-forming board. This organization continued until 1974.

## **Department of Health and Environment**

While the legislature considered the restructuring of state health and environmental activities, the governor submitted to the legislature his Executive Reorganization Order Number 3, creating the cabinet-level Department of Health and Environment. The order was approved by both chambers of the legislature and became effective July 1, 1974. It restructured the



## The Mission of Public Health in Kansas

The Kansas Public Health System Study Committee defined the mission of the public health system in Kansas as *fulfilling society's interest in assuring conditions in which Kansans can achieve optimum health.*

The role of the public health system is to generate organized community effort to apply scientific and technical knowledge to prevent disease and promote health.

### Responsibilities of State Government

The state is and must be the central force in public health in Kansas. The state cannot delegate its responsibilities for leadership, policy development, and assurance.

### Responsibilities at the Local Level

No Kansas citizen should be without identifiable and realistic access to public health protection through a local component of the public health delivery system. In Kansas, wherever possible, it is desirable that these direct services should be delivered through local or regionally based units. When necessary, however, it is the responsibility of the state to provide such services directly when local or regional entities are not present or able to function adequately.

### Paying for Public Health in Kansas

It is clear that many of the specific recommendations for bringing adequacy to the public health system in Kansas cannot be implemented without additional resources. This resource enhancement need not be entirely one-sided, however. More aggressiveness and creativity in securing funding will be necessary at both the state and local levels.

### Relationships and Linkages

State and local public health agencies do not operate in a vacuum. These agencies operate in a complex environment involving the political system; various health professional groups; advocacy and special interest groups; other agencies involved with health, social services, and environmental protection; and, most importantly, clients and patients.

### Building Competence through Education and Training

It would be futile to expect to build competencies in public health unless the state invests in the orientation, training, and education of those who choose to enter one of the public health disciplines. Unless monumental and probably impractical efforts are undertaken to recruit large numbers of public health professionals and managers from out of state, Kansas should train its own.

### Organization for Health and Environment

Throughout the committee's deliberations there was the sense that public health policy should be part of an overall health and environmental policy in the state. Individuals and families in need of care often have multiple problems, both medical and social. While the state has chosen to organize in such a way as to separate public health from other related programs such as mental health, substance abuse, and Medicaid, there is a strong need to bring these bureaucracies and disciplines together toward the common goal of improving the health of Kansans.

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Source: The Kansas Public Health System Study, *Protecting and Promoting the Health of Kansans*, December 1991, pp. 11-17.

department, transferring the powers of divisions to the secretary, an unclassified employee who serves at the pleasure of the governor. The inclusion of the word "environment" in the title of the new department highlights another major thrust, and the environmental protection activities of the previous State Board of Health were given more visibility. The first secretary of the department was not a medical doctor, but someone who had worked in Kansas and in New York in the field of environmental health.

The department was organized into two major operational divisions, one for health and one for environment, each with a director. By statute, the secretary of the department has "general supervision of the health of the citizens of the state" and is charged with making "intelligent and profitable use of collected records of the causes of sickness and death among people." Based on this general grant of authority, the State Board of Health and its successor agency, the Department of Health and Environment, have expanded into an array of areas.

To facilitate the department's duties, the secretary has several administrative powers. He or she may engage committees or qualified persons to make or supervise investigations into the causes of disease and death and the effects of food and water supplies on public health. Extensive rule-making powers have been granted to the secretary by legislative acts.

Another important power is the secretary's authority to issue appropriate orders to individuals, governments, and corporations. She or he may issue orders to stop the polluting of state waters, forbid the supplying of unsafe water to the public, construct municipal and industrial sewage treatment works, and prohibit the sale of misbranded or adulterated food and drugs.

The secretary has a number of options to enforce these orders. The most common is the use of administrative orders, which, after traversing the administrative law process, may be appealed to the courts. While the law provides for criminal sanctions, these are seldom applied. The secretary may also turn to the courts for injunction to stop illegal activity.

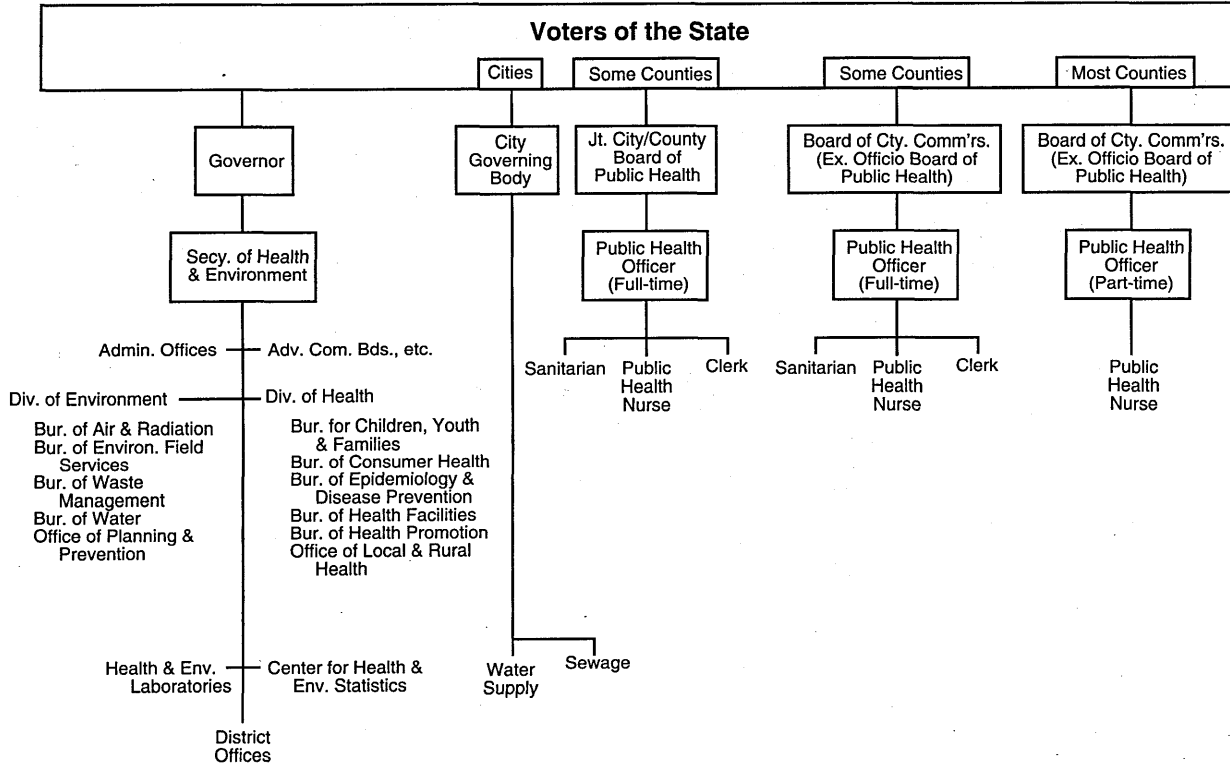
Other regulated areas of public health include the operation of hospitals and maternity and nursing homes, the sale of food and drugs, and the upkeep of private property that may affect public health.

## **Division of Health**

The Division of Health's mission is to protect Kansans from communicable diseases; ensure healthy and safe adult and child care facilities; inspect food service establishments for proper sanitation; assess environmental health risks; improve access to medical care for low-income persons, pregnant women, and children; and prevent chronic and communicable diseases.

Figure 37

Department of Health and Environment



Public health services by their nature require contact with the people being served or being informed of improved health practices. Thus, the state must interact with public agencies that have separate identities and local constituencies. In an organizational sense, these local agencies are not part of the Department of Health and Environment. Public health services such as immunization, well-baby clinics, and public health nursing usually are provided by local agencies. In Topeka there is a bureau of local and rural health services. It disburses funds according to a legislatively devised formula and seeks to improve access to primary health care services, overcoming financial, geographic, or other barriers. The department maintains offices providing technical support for the Topeka-based public health and environment programs.

The prevention and control of disease have long been functions of public health. Within the Division of Health is the Bureau of Epidemiology and Disease Control, which is concerned with decreasing death, illness, and disability from infectious and communicable diseases. The bureau's efforts include an AIDS prevention and treatment program and an immunization program that reaches a half-million children each year for vaccine-preventable diseases.

The Bureau for Children, Youth and Families correlates all health programs conducted for children. It sets standards of health services for mothers and youngsters, and promotes improved service by education, demonstration projects, well-child clinics, and community organizations. The bureau also investigates epidemics among newborn infants and administers the Federal Supplemental Food Program for Women, Infants, and Children (WIC).

Increasing attention is being given to local programs helping expectant and new mothers understand normal child development, so early attention may be given to children with developmental problems. Some of these programs are operated under the auspices of local school boards.

A major responsibility of the division is to enforce state food and drug laws prohibiting the misbranding and adulteration of food and drugs. This activity was formally assigned in 1907 to a division of food and drugs. In 1988, in recognition of the ties between public health and the environment, these activities were assigned to the Bureau of Environmental Health Services.

A major responsibility of food and drug workers is the inspection of about 16,000 food and drug establishments. This is done regularly to maintain high standards of sanitation in the production and selling of these items. About one-fourth of licensed food establishments (4,000) are inspected under contracts with local health departments, and most laboratory work for the bureau is performed in the department's own labs.

The Department of Health and Environment licenses and certifies all types of health facilities for adults, and licenses and registers child care facilities, including day care, residential care, preschool, and child placement

## Better Health for Kansas by Maurice J. Penner

This chapter examines five significant health problems for Kansas: lack of prenatal care, undetected health impairments in young children, teenage pregnancy, unhealthy adult behaviors leading to premature death and disability, and unnecessary placement in nursing homes. These problems are largely preventable and are analyzed in terms of incidence, severity, history, current policy in Kansas, and likely federal action.

### **Prenatal Care**

An infant's chance of being born healthy largely depends on adequate prenatal care. Infant mortality and low birth weight risk doubles where care is lacking . . . Low birth weight is associated with infant death, mental retardation, health impairments, and extremely high costs for hospital care. For every low birth-weight infant who dies, at least one other survives with a significant handicap. Increasing the number of mothers who receive adequate services during pregnancy would lead to better health outcomes and lower costs for hospital and institutional care.

. . . Fifteen percent did not receive adequate care.

Poverty and teenage pregnancy are frequently linked to inadequate care.

### **Child Health**

Early childhood health problems can interfere with a child's school performance.

Health impairments of children are frequently not detected . . .

### **Teenage Pregnancy**

Teenage pregnancy is both a health problem and a social problem. Not only are teens socially unprepared to assume the responsibilities of parenthood . . .

During 1983 in Kansas, 7,000 known pregnancies resulted in 5,015 births. Teenagers have a third of Kansas abortions . . .

### **High-Risk Adult Behavior**

Unhealthy behavior or lifestyles contribute to one-half of the deaths in the United States. Heart disease, cancer, stroke, and accidents account for 76 percent of U.S. deaths . . .

Other unhealthy adult behaviors include drug and alcohol abuse, poor dietary habits, lack of exercise, nonuse of seat belts, and poor stress management. A 1977 Kansas survey estimates the state has 142,000 problem drinkers . . .

### **Unnecessary Placement in Nursing Homes**

Hardly anyone wants to be confined in a nursing home, with the consequent loss of independence, privacy, and home life.

Almost 150,000 Kansans are over age 75, and this segment has been growing rapidly. Between 1960 and 1980, the size of this age group increased 47 percent compared to (an) 8.5 percent (increase) for the total state population.

Studies find 10 to 40 percent of new nursing home residents could have postponed, if not prevented (institutionalization) . . . had affordable home care been available or known about.

Poverty presents a significant obstacle to preventive health care.

agencies. Department personnel inspect all nursing homes and certify them when they meet Medicaid eligibility guidelines, but is not involved in payment made for Medicaid recipients. Most local public health agencies contract with the state department to inspect child care facilities.

## **Division of Environment**

The avowed purpose of restructuring the department in 1974 was to strengthen and spotlight the department's activities, which were aimed at protecting the environment. Over the years, the Department of Health had acquired numerous environmental health service responsibilities. When the department was reorganized, its new Division of Environment assumed these duties.

The Division of Environment's mission is to protect the environment and public health through the enforcement of statutes and regulations regarding solid and hazardous waste, environmental remediation, water and air protection, and pollution and radiation control.

The Bureau of Waste Management administers regulatory programs for solid waste and hazardous waste. Since 1970, the legislature has required each county to prepare and implement a program for solid waste management. All refuse-processing or disposal sites must obtain a permit issued by the department, and operate under the terms of the permit. The disposition of solid waste is a significant problem in many parts of the state, but much of the "waste" is potentially valuable as a source of materials or energy. One long-range goal of the program is to encourage communities and private entities to establish and develop resource recovery facilities.

Air quality control is also within the purview of the Bureau of Air and Radiation. Kansas submitted a state plan in accordance with the federal requirements of the Clean Air Act. Under federal legislation, when a state fails to enforce adequately the requirements of an approved plan, the Environmental Protection Agency is empowered to do so. Technicians in each of six district offices do most of the field inspection work. Engineers are responsible for inspecting and reviewing new sources of pollution to see that emission control standards are met. Sedgwick, Shawnee, and Wyandotte counties systematically evaluate several thousand potential sources of air pollution. Sampling stations are maintained in 39 cities outside these three populous counties.

Under federal and state right-to-know legislation, the public must be told about facilities that use and store hazardous chemicals. Such data is analyzed and made available to communities for local emergency planning. The department also has a program to protect citizens from the harmful effects of radiation. All radioactive materials and radiation equipment are licensed, registered, and inspected. The Wolf Creek Nuclear Generating Station is monitored.

The department's field staff makes on-site inspections of approximately 1,100 sources. Where emissions exceed the nationally prescribed standards, the source must achieve better control—or it may be required to cease operating. Federal law does not differentiate between natural and artificial particulate matter; therefore, Kansas may have trouble meeting federal standards during extended dry and windy periods.

The Division of Environment administers a permit program for persons who store, treat, or dispose of hazardous wastes. It also licenses and certifies firms and individual contractors who remove asbestos.

Another bureau program provides for the supervision of 1,111 public water systems. Plans, specifications, and permit applications for all new public water systems and major improvements must be reviewed and approved by the division. Samples of water are regularly collected and analyzed in the laboratory. The department conducts "schools" throughout the state to train water supply operators, and certifies those who have passed the courses. The department regulates waste water treatment systems for 751 governmental units, 370 industries, 179 commercial facilities, and 4,407 agricultural sites.

The Division of Environment is concerned with protecting surface and ground water from pollutants of any kind, from both point and nonpoint sources. Under federal and state law, all persons who discharge waste into the public waters of the United States must obtain a permit issued by the state, and it must be renewed every five years. There is a continuing process of planning for the orderly abatement of water pollution and development of priorities for awarding federal construction grants for control of water pollution. In 1999, in response to the growth of confined feeding operations in the state, the legislature passed new laws authorizing the division to write extensive regulations for the industry.

In recent years, the U.S. Environmental Protection Agency and the Kansas Legislature have differed as to which government's regulations are to be followed. The legislature has sought to regulate stream water quality standards, with opponents claiming that the legislature's actions violate EPA standards. EPA has attempted to negotiate language that will avoid having to settle the controversy in the courts. The controversy arises in part as a result of changes in agricultural practices, with large corporate farms being viewed by environmentalists as threatening the state's waters, and rural legislators attempting to preserve the economic viability of the farming communities.

In some areas of the state, the disposal of waste from oil wells is a potential hazard and is regulated by the Kansas Corporation Commission. All other industrial waste disposal through underground injection wells is the responsibility of the Department of Health and Environment.

In 2001, a leak in an underground natural gas storage facility (cavern) resulted in the migration of gas and ultimately several explosions in the city

of Hutchinson. The ensuing days and weeks demonstrated that the delineation of responsibilities between the KCC and KDHE was not effective. Subsequently, the Kansas legislature further clarified responsibilities between the two agencies. It is important to note that state agencies, the public, and legislature often are unaware of potential problems because of jurisdictional divisions until an accident occurs. This has been demonstrated several times as responsibilities have shifted between the Department of Health and Environment and the Kansas Corporation Commission.

Federal legislation has called for the state to engage in more water quality management, including nonpoint sources of pollution. This program includes elements of water and land resource management, which are the responsibilities of other state agencies. Sometimes ad hoc committees have been established with representatives from state and federal agencies and local governments. There is a coordinating committee composed of the chief engineer of the Department of Agriculture and representatives from the Division of Environment and the Kansas Water Office. The committee's aim is to improve water quality.

In further efforts to enhance environmental quality, the department staffs an office in Pittsburg concerned with the reclamation of abandoned mine lands, harkening back to the time of widespread strip mining for coal.

## **Other Health-Related Programs**

### *Health and Environmental Laboratory*

Nearly one million chemical and microbiological analyses are made each year in department laboratories as part of the public health services of the state. This includes 45,000 samples of ambient waters and public drinking waters. Physicians, law enforcement agencies, hospitals, private laboratories, and the public also provide widely diverse laboratory analyses.

### *Center for Health and Environmental Statistics*

The Office of Vital Statistics is the central repository for more than eight million vital records, processing more than 100,000 new records each year of births, deaths, marriages, and other demographic information. Other activities of the division include research and analysis of public health and environmental data.

## **Financing KDHE**

Financing of the Kansas public health program is complicated by a number of factors. The expenditures of both full- and part-time local health units are controlled by the county and are classed as county rather than state expenditures. They are not reported on a statewide basis, although some information is available from county budgets. Moreover, expenditures made



by the Kansas Department of Health and Environment come from many sources, including special funds, as shown in Table 31.

The substantial growth in federal grants has had an important effect on the operations of the Kansas department. These federal funds normally require matching of one state dollar for every two federal dollars, but in figuring matching expenditures the state may count the amounts spent by local health departments and certain funds spent by private health organizations.

## Local Health Departments

Local health departments are the points of contact with most citizens receiving public health services. Generally, these services include prevention of communicable diseases, maternal and child health services, health education, environmental sanitation, and public health laboratory services. Only the largest and most fully staffed local public health agencies are involved with sanitation and laboratories, and even they receive forms of state assistance. Traditionally the basic personnel for a full-time local public health department include a physician, a sanitarian, a public health nurse, and a clerk.

**Table 31**  
**Appropriations and Other Revenues Available**  
**to the Kansas Department of Health and Environment:**  
**Selected Years**

Fiscal Year	State		Federal Hospital Constr.	All Other Federal Grants	Revol. Funds		Total
	General Revenues	State Fees			Trusts	Gifts	
1885	\$950						\$950
1895	3,500						3,500
1905	3,067						3,067
1915	30,550	\$8,149					38,699
1925	64,974	12,668		\$418	\$3,145		81,205
1935	60,500	19,303					79,803
1945	87,134	83,025		1,216,934			1,387,093
1955	665,350	150,045	\$1,008,424	369,429	52,500		2,245,748
1965	1,168,416	528,210	1,840,023	710,160	144,253		4,391,062
1975	3,960,187	858,406	555,967	4,724,965	1,846		10,101,361
1985	14,138,638	1,315,639		20,096,753	39,151		35,590,181
1995	26,002,993	32,467,788		78,998,208			137,488,989
2000	31,582,005	24,895,239		77,061,452	14,341,903		147,880,599

Source: Unpublished data from the Kansas Department of Health and Environment and state budgets.

As already mentioned, much public-health work must be done locally. Cities and counties are authorized to perform public health functions, but minimal attention is given to these activities by the smaller, less-populous units of local government so common in Kansas.

The act creating the state Board of Health also allowed county commissioners to act *ex officio* as the county board of health. Each local board is required to elect a physician, preferably someone versed in sanitary science, to act as county health officer. The county board of health may levy a special tax on all taxable property, the proceeds from which are placed in the county's health funds. These may be used to carry out the health laws and rules of the state, pay the county health officer, and employ additional assisting personnel.

Two or more cities or counties, or a city and a county, may establish a joint board of health possessing the same powers as conferred on city or county boards of health. The participating units in a joint board may determine the tax rate for each unit, and the joint board has exclusive control over the expenditure of these funds. A joint board of health is required to file an annual report of its activities with the governing body of each participating governmental unit.

The sparsely populated parts of the state are hard-pressed to afford full-time public health services. But national and state authorities point to the disadvantages of having public health work performed by a medical practitioner on a part-time basis. Frequently, such a doctor has not been trained in public health, is busy with a private practice, and accepts the job out of a sense of duty rather than genuine interest.

Given these conditions, Kansas communities have tried to support at least a full-time public health nurse who works with a part-time medical practitioner to provide essential local public health services. In terms of numbers of counties (not numbers of people served), this is the most common pattern in the state. Nine cities and counties maintain public health services jointly, and there are two multi-county units and one two-county unit. As of 1991, only one county had no local public health unit.

Special public health problems exist in the 43 counties that contain two million acres of land around the 20 federal reservoirs and 23 state lakes in Kansas. In 1968, the legislature authorized the State Board of Health to set up sanitation zone boundaries, with local reservoir sanitation officers to enforce minimum standards for water supplies and sewage and refuse disposal. While they are administered locally, the regulations governing such areas were prepared by the state Department of Health and Environment.

## **Cooperating Agencies**

### *Examining Boards*

The regulatory activities of eight state examining boards are closely related to the work of the Department of Health and Environment. These boards, while almost completely independent of any other state agency, issue licenses for dentists, pharmacists, doctors, and other professionals engaged in public health work. The laws of Kansas have created relationships between several boards and the state Department of Health and Environment, providing more unified control of particular health problems.

As an example of joint control, both the Department of Health and Environment and the state Board of Barber Examiners have jurisdiction over barbershops and barber colleges. The department has such jurisdiction "in the interest of the public health, and to prevent the spread of contagious and infectious diseases," whereas the board is concerned with persons who practice barbering or serve as barber apprentices, and with barber schools and colleges. The state Board of Barber Examiners may prescribe sanitation rules and regulations for the operation of barbershops and schools, but such rules and regulations must be approved by the department. In addition, the law states that none of the powers granted to the state Board of Barber Examiners "shall be construed to abrogate, affect the status, force, or operation of any provision of the general laws of this state relating to public health or any lawful rule, regulation, or order promulgated thereunder."

Examining boards having special relationships with the state Department of Health and Environment include the state Board of Embalming and the Board of Registration for Cosmetologists. Examining boards that deal with public health are the Board of Healing Arts, the Board of Nursing, the State Dental Board, the State Board of Examiners in Optometry, and the Board of Pharmacy.

### *Department of Wildlife and Parks*

As the state water pollution control agency, the Department of Health and Environment is authorized to adopt regulations for protection of the soil and of surface and subsurface water from pollution detrimental to public health and plant, animal, and aquatic life. Engineers employed by KDHE investigate alleged fish kills reported by game protectors, biologists, and others employed by the Department of Wildlife and Parks. KDHE provides technical aid and assistance to the Department of Wildlife and Parks relating to water supply and sewage disposal facilities erected on land owned by the commission. Representatives of the two agencies serve on several inter-agency councils concerned with maintaining water quality and developing recreational areas.

### *Dairy Commissioner*

Regulatory power over milk sanitation has been entrusted to both the Kansas Department of Health and Environment and the dairy commissioner of the state Department of Agriculture. KDHE has general powers over the sale of adulterated or misbranded foods, and the dairy commissioner has power to prohibit the sale of unclean or unwholesome milk and the handling of milk in unsanitary places.

## **Problems of Public Health in Kansas**

Under the sometimes-assertive nudging of environmentalists, Kansans are searching for the proper balance between efforts to purify and protect the environment and concern for the economic adjustments necessary to end damaging pollution. Industrialists assert that they need time, money, and improved technology to end the pollution that has been tolerated for years. Environmentalists in some instances line up against business and manufacturing groups, while the public is confused about which side has the more reasonable position on a given issue. Some federal standards are so high that most federal installations themselves do not meet them. There will continue to be differences of opinion over how rapidly the newest pollution control devices and practices can be instituted without undermining the economy. Some pollution control activities are aimed at practices dangerous to the public health here and now, while others are necessary for the protection of future generations.

Traditional public health activities are still being performed. Many of them must be continued because they serve an ever-shifting clientele. These services should be freely available, and presented in a socially acceptable way that will be attractive to those who need them.

The line between public and private health care seems to be blurring, as exemplified by the "store-front" public health clinics springing up to serve low-income Kansans.

Planning for personal health care delivery and access will consume even greater energy from those concerned with public health. Because health care services are so personal and so important, individual Kansans are deeply interested in how the services may best be delivered. Public health and welfare agencies clearly are involved in this search.

## Chapter 17 Notes

1. Howard Leichter (ed.), *Health Policy Reform in America: Initiatives from the States*, 2nd ed. M.E. Sharpe, pub. 1997, "Health Care Reform in Kansas: A Policy Before its Time," by Ray G. Davis and Barbara E. Langner, pp. 237–254.
2. "Medicaid Under Welfare Reform," *Healthcare Trends Report*, Vol. 11, No. 2, pp. 1–2.
3. The Kansas Public Health System Study, *Protecting and Promoting the Health of Kansans*, 1992, p. 7.
4. For more information about some of the challenges confronting public health in Kansas, see Raymond G. Davis' chapter, "Public Health Policy: Perplexing Problems and Proximate Policies," pp. 64–98 in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University Press of Kansas, 1994.
5. Harriet S. Pfister, *Kansas State Board of Health* (Lawrence, Kansas: Governmental Research Center, University of Kansas, 1955), p. 15. I relied heavily on Mrs. Pfister's work while writing this section of the chapter.



## Chapter 18

# Assisting the Less Fortunate

Since the earliest days of Kansas history, there has been an awareness of society's obligation toward less privileged persons who are unable to provide adequately for their own maintenance and well-being. This responsibility has been discharged by establishing and maintaining institutions for such persons, and through public assistance grants.<sup>1</sup> The relative emphasis on these two methods of helping the needy has changed over the years, but both still continue to be used.

The Wyandotte Constitution of 1859 authorized the state to foster and support "institutions for the benefit of the insane, blind and deaf and dumb, and such other benevolent institutions as the public good may require."<sup>2</sup> In 1866, the first state mental institution was established at Osawatomie, and 13 years later a second mental facility and the Industrial School for Boys were built in Topeka. Four more institutions were authorized in the next decade, and during the following 80 years, four additional institutions were authorized.

In 1972, the constitution was amended to modernize the language used and recognize the sensitivities of the people involved. The new language authorizes support for "institutions for the benefit of mentally or physically incapacitated or handicapped persons."<sup>3</sup> All of these institutions, which are now overseen by the state Department of Social and Rehabilitation Services, are discussed later in this chapter.

1996 saw significant and wide-sweeping reforms made in the welfare system, but some history is needed to understand and appreciate their significance.

## History of Public Assistance

### 1862-1932

In this first period, "relief" was viewed as a local responsibility. The Wyandotte Constitution required counties to "provide as may be required by law, for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society."

In 1862, the Kansas Legislature assigned to the county boards of commissioners and to township and city officials the administrative responsibility for relief. Public aid chiefly took the form of maintaining county homes or "poor farms," rather than providing direct relief such as cash, food, clothing, or work projects. Institutionalization seemed to offer a simpler solution to the county officials, who were inclined to regard relief measures as unpleasant and time consuming.

Divided authority, lack of coordinated and consistent policies, and a prevalence of untrained, often indifferent officials characterized the administration of welfare. A few counties experimented with limited programs of work relief, but not until the nationwide depressions and the more localized "agricultural depression" of the late 1920s and early 1930s did work relief projects abound.

Public concern over the mounting numbers of distressed and impoverished Kansans culminated in 1931, when the governor appointed a welfare commission to study all phases of relief and to offer recommendations to the legislature. In its report to the 1933 legislature, the commission recommended the establishment of state and local welfare boards having trained staff and personnel standards. These recommendations were not adopted. In the meantime, the number of needy Kansans was increasing, and the state applied for federal funds to establish work programs.

### 1932-1937

The governor appointed the Kansas Emergency Relief Committee, which established statewide policies for the organization and administration of federal relief funds, which were used exclusively for work relief. Unemployable persons continued to be cared for by the counties in which they lived.

The state legislature in 1933 revised the old "poor law." Township trustees and city officials were replaced by "poor commissioners" in relief matters.

Under the federal Social Security Act of 1935, additional funds were made available to the states for assistance grants to certain classes of unemployable people: the needy aged, dependent children, and the needy blind—but Kansas did not qualify for such grants. The matter was so critical that a special legislative session was called in July 1936. At this session, two resolutions changing the constitution were passed and subsequently adopted by the voters. The first resolution authorized the state to participate financially



in the assistance of needy persons and to supervise and control the administration of such assistance. The second allowed the state to provide unemployment compensation and contributory old-age benefits through taxes on employers and employees.

### 1937-1974

Kansas passed the Social Welfare Act and adopted a state-supervised, county-administered plan enabling the state to participate in the federal program. The boards of county commissioners were designated county boards of social welfare, and the State Board of Social Welfare was established as the supervisory agency. A state sales tax was enacted, with part of the revenues designated to pay for the state's participation in the assistance program.

As the program was conceived, the federal government contributed to the support of needy persons who fitted into specific categories: the old, the blind, the disabled, and dependent children. The state and local units were expected to support these assistance programs beyond the level of federal contributions, and to finance the general assistance program to aid all those who were eligible for aid but who did not fit into one of the "categorical" aid programs. In general, all qualifying cases were transferred to one of the federally aided categories, thereby decreasing the costs of assistance borne by the state and local units.

During these years, the definition of needy groups changed—but the broad outlines of financing continued. State and local units supported the general assistance program, while the federal government shared in the cost of grants and the cost of administering programs other than general assistance. During this period, aid to dependent children (ADC) came to include aid to families with dependent children (AFDC) and aid to dependent children in foster care homes. Medical assistance was added to the program menu.

Changes were made in the old age assistance program, with proportionately less total assistance money spent for this group of beneficiaries. The decline in assistance for the elderly coincided with expansion of the federal social security program to include more persons and raise the level of benefits.

On the other hand, the portion of the welfare dollar spent for dependent children increased, causing concern at both state and national levels. A high percentage of cases in this category needed assistance because of the absence of one parent. Because of the fear (for which there was some evidence) that families were breaking up because it was easier to obtain help under AFDC than under general assistance, regulations were changed to provide grants to families with dependent children.

### 1974 to 1996

The state assumed responsibility for financing and administering the assistance program. In a legal liability case involving a welfare worker who was paid by a county, the court had ruled that the county welfare worker was really a state employee. While the legislature probably could have enacted new laws to avoid the legal problem, and still have had the program administered locally, it chose not to do so.

For years the state had provided whatever welfare moneys were needed by the counties so long as they were levying the required maximum ad valorem property tax to finance their share. At first only a few counties needed supplemental state grants; but by 1972, about one in five counties was receiving this type of state aid.

Some legislators may have been influenced by Congress' decision to transfer to the federal government the financing and administration of three categories of adult assistance—aid to the aged, the blind, and the disabled—leaving to the states the expanding and unpopular program of aid to the families of dependent children. Changes were made in many county welfare offices because of these shifts at the federal level. Also, the federal courts were acting to prohibit durational residence requirements as a condition of eligibility for assistance.

All of this was occurring when executive reorganization had been recommended for Kansas state government, and there was interest in moving away from administration by boards and commissions toward a cabinet system.<sup>4</sup> The same legislature that established Social and Rehabilitation Services permitted the state to take over the local administration of the welfare program. The old Board of Social Welfare regional offices were expanded and used as intermediate offices to implement the new program. Many county welfare workers were transferred to the state SRS.

### 1996 Welfare Changes

For decades there had been great dissatisfaction with the welfare program. Presidents (both Democrat and Republican) campaigned about welfare reform, but major changes came slowly. A sufficient consensus developed in Congress in 1988 to pass the Federal Family Support Act. This act was in a sense a precursor, as all states were required to offer employment preparation programs.

“More Opportunities for Skills and Training” (MOST) is targeted for food stamp recipients; “Job Opportunities and Basic Skills” (JOBS) is designed for recipients of aid to families with dependent children. In Kansas, the latter program, identified as KanWork, was operating in four counties as early as 1992, with plans for expansion. As their titles suggest, these programs call for evaluating the client's work skills, offering training in job skills and work habits, providing transportation and child care, and counsel-

ing in job application techniques. These activities are now recognized as so important that a division known as Employment Preparation Services has been established within SRS.

After much difficulty, in 1996 the new Republican majority and President Bill Clinton—who had promised in his campaign to “change welfare as we know it”—were able to agree on major changes in welfare. These were incorporated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Even as the president signed the bill, he indicated he would urge changes in the law. He saw the new law as an acceptable major step toward meaningful welfare reform.

From a national perspective, this legislation changed the welfare entitlement programs in which the national government guaranteed benefits to all citizens who meet the federal eligibility requirements. Now there are block grant programs to the states. The states were required to have a state plan, which had to meet detailed federal requirements, but they were intended to operate with considerably more discretion than under the previous arrangements. The states were given more authority and responsibility for their programs.

Block grants were made for temporary assistance for needy families, child care, and social services. Through the device of block grants, limits were set on federal responsibility for welfare. This was viewed as a way for the federal government to balance its budget by the year 2002. With limited exceptions, state plans were to include provisions for restricting welfare eligibility. No federal funds could be used to make assistance grants to parents in families that have received assistance for a lifetime limit of 60 months. Teenage parents of a minor child who is at least 12 weeks of age must participate in education activities. States must deny benefits to teenagers not living in a home or in an approved, adult-supervised setting. States must reduce or deny benefits to parents who fail to cooperate in establishing paternity or enforcing support orders. To receive benefits, the family must assign child support rights to the states.

The act is voluminous and spells out far more detail than space here permits. Basically, it represents a major redirection in welfare, setting limits on federal participation in welfare and expecting states to put welfare recipients to work.

Some viewed this whole effort as a mean-spirited attack on the most vulnerable and needy in our society. Others praised the effort as a way to help welfare recipients become economically productive members of society, with a hope of leaving the “under class.”

It should be noted that the SRS organizational structure has been changed to reflect its five basic programs: administration, integrated service delivery, child and family policy, health care policy, and capital improvements.

## **Income Maintenance and Employment Preparation Services**

### *Temporary Assistance for Families (TAF)*

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ended the older, controversial AFDC program. The title of the new legislation suggested changes in the philosophy of welfare. The “personal” responsibility and “work opportunity” were aimed at emphasizing that “welfare clients” under the old philosophy now are responsible to avail themselves of every work opportunity.

The TAF program is an employment support program funded by a federal block grant and state maintenance-of-effort funds. All participants are provided support services aimed at helping them meet their work requirements, including cash assistance, transportation assistance, child care, and allowances for special needs such as uniforms, tools, or car repairs. TAF recipients who become employed may also receive up to 12 months of transition services. The TAF program is funded in the states with federal block grants. It requires states to provide a “match” of 75 percent of their fiscal year 1994 level of aid under the AFDC program. In SFY 2000, the federal government funded the program to the extent of \$101.9 million, with a state match of \$61.9 million. In an average month, more than 30,000 persons received assistance.

Society and government are increasingly aware that the success of programs to move single parents, most often mothers, to working jobs depends upon many other factors. Jobs must be available where the mothers are located or transportation options must be in place. The parents must be trained both in job skills and work attitudes. Dependable child care must be available. The absent spouse, most often the father, should be located and expected to pay child support. To this end, Kansas and many other states are engaged in comprehensive efforts to locate “deadbeat dads” and collect back child support. Most employers are required to provide the names and other pertinent information about new hires to the Department of Human Resources (KDHR). KDHR and SRS check the employment roles for persons who owe child support and endeavor to collect the money owed. In reality, the money collected generally goes to reimburse the state for assistance already provided, though efforts are made to ensure that the payment of child support continues so that the recipient family will no longer need state assistance.

While the concept of “temporary” assistance to families (for a total lifetime assistance eligibility of five years) may seem generous, it is substantially different from the previous unlimited lifetime entitlement. There is a mitigating provision for exempting up to 20 percent of families. The goal of the program is to have all adults employed before their time limit expires. Since within the next 12 months, some families will become ineligible for

cash assistance, families, community stakeholders, and the SRS staff are mounting an “every-effort campaign” to minimize the impact of discontinuing the benefits.

### *Other Assistance*

General assistance has long been available as a state-funded program. This assistance is available to adults who cannot support themselves because of serious physical or mental disability. Most adults in this program are awaiting decisions on their applications for federal disability benefits. In SFY 2000, about 2,220 persons received assistance, requiring a total expenditure of more than \$4 million.

State assistance, often reflecting the use of federal dollars with or without a state matching requirement, include Low Income Energy Assistance, Funeral Assistance, Refugee Services, Child Care Assistance, Food Stamps, Adult Protective Services, and Employment Preparation Services. Some of these programs require substantial funding, e.g., Child Care Assistance (in 2002, more than \$55 million); Employment Preparation Services (more than \$8 million); and Low Income Energy Assistance (more than \$7 million).

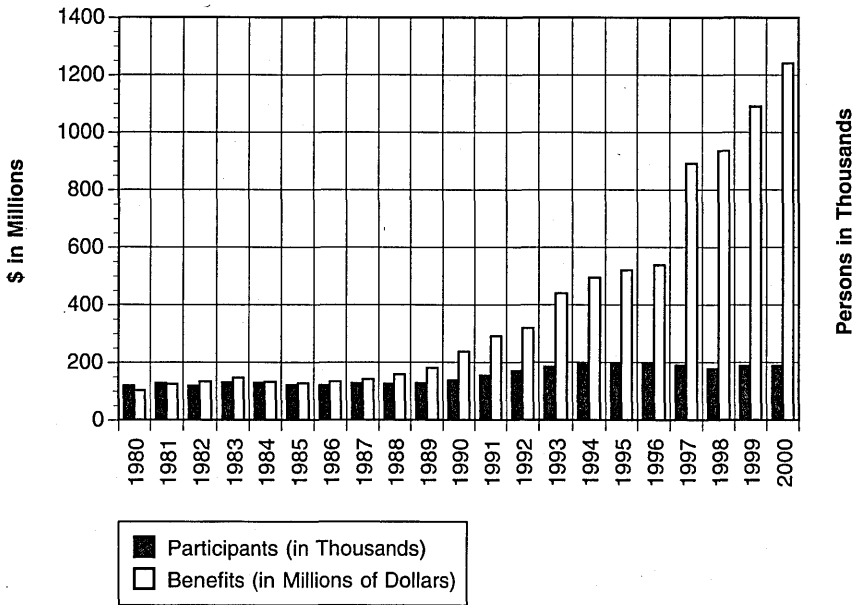
## **Adult and Medical Services**

The SRS Division of Health Care Policy purchases health care and support services for Kansans who, due to limited income, lack of health insurance coverage, severe disability, severe mental illness, or need for substance abuse treatment, have been determined to need state-funded services. The Division of Health Care Policy seeks to assist these Kansans to live successfully in their home communities.

The Medical Policy/Medicaid Program is responsible for the value-based purchasing of health care services for nearly 200,000 Kansans. A 1999 reorganization permits the Medical Policy/Medicaid Program to emphasize preventive services as the core of the state’s health care policy. The program is the third-largest purchaser of health care services in Kansas, with Medicare being the largest, followed by Blue Cross/Blue Shield. In addition, the program is the largest purchaser of children’s health care services in the state and pays for nearly one-third of all births in Kansas. Persons covered by these programs are generally less healthy than the overall population, unlikely to have a primary physician, lack health insurance, have fewer immunizations, and more likely to seek medical care in hospital emergency rooms.

As a result of the above factors, the program has shifted its purchasing strategies from reliance on fee-for-services to capitated managed care. Capitated managed care creates incentives for providing more aggressive preventive health services such as increased prenatal care and disease management for persons with chronic conditions such as asthma.

**Figure 38**  
**Kansas Medicaid Program Growth: 1980–2000**



Source: Department of SRS.

Medicaid is a federal/state matching funds program for preventive, primary, and acute health services for low-income individuals. In excess of \$630 million was spent for medial services in FY 2000 on 203,000 eligible persons, almost 60 percent of whom are children. Although children are the bulk of those served, they account for only 35 percent of all expenditures; expenditures for persons who are frail, elderly, or disabled account for the majority of health care expenditures.

Title XXI, Health Wave, provides federal/state matching funds for health insurance to children whose family income is too high to allow them to qualify for Medicaid-funded services. In SFY 2000, almost 15,000 children were covered under this program.

It should be noted that the 1996 federal welfare reform legislation did not address Medicaid. There are some efforts to “decouple” Medicaid from its traditional relationship with welfare programs, allowing persons to receive help for medical bills when they would not be eligible for welfare assistance. This is all part of the concern for universal health care insurance and for those not covered by any health insurance.

Amendments to the federal Social Security Act, especially Title XX, authorized the federal government to provide matching funds for social services for eligible persons. Until July 1997, long-term care and adult services were provided by SRS, but these activities have been transferred to the Department of Aging.

## **Child and Family Services**

In 1996, major changes were made in the way child and family services are provided. SRS remains responsible for providing child protective services and family services and for managing client services, but some of these services have been privatized. The goal of this system is to form public-private partnerships that will lead to greater community involvement and improved outcomes for the children and families—at lower costs.

The secretary of SRS now contracts with nonprofit private Kansas licensed child placement agencies for reintegration/foster/group care for children. Additionally, SRS has a contract for recruiting, investigating, and placing children in adoptive homes. Regional meetings are held with the public, the contracting agencies, and SRS officials to monitor the program.

Foster care services are provided when the court finds a child to be in need of care or to be a juvenile offender and the parents are not able to care for the child. SRS retains custody of the child and is responsible to the court for the child. The contracting agency provides custodial care for the child. In SFY 2000, Kansas had a monthly average of 4,055 such children.

A contracting agency is responsible for recruiting, evaluating, and training prospective adoptive families and for the placement of children into adoptive homes. SRS personnel monitor these operations, which in recent years averaged more than 3,000 children monthly statewide.

The department maintains a hot line for reporting cases of suspected child abuse. In recent years, the line has received more than 44,000 reports annually. Although the numbers change from year to year, about one in 10 of the reports have been confirmed as cases of child abuse.

State and federal statutes provide for adoption support payments to assist adoptive families in meeting the special needs of the children they adopt. This is provided through the adoption/alternative permanencies program. In FY 2000, 545 adoptions (98 percent) received assistance. In addition, the Kansas Legislature annually appropriates funds to assist families providing permanent guardianship for older youths who cannot go home, but for whom adoption is not a viable option due to the age of the child or other conditions.

In 1996, Kansas became the first state in the nation to privatize parts of its child welfare system. The efforts attracted national attention, as shown in the accompanying article from the nationally circulated *Christian Science*

## Kansas' Bold Experiment in Child Welfare Program to Hand Over its Caseload to Businesses Runs into Financial Problems

by **Laurent Belsie**

(staff writer of *The Christian Science Monitor*)

TOPEKA, KAN.—It was billed as the grand experiment in privatizing child welfare.

Kansas would bid out adoption, foster care, and other services to private companies. They'd be paid a lump sum for each child. It was up to them to figure out how to deal with the caseload.

But somewhere between idea and implementation, things went wrong.

... Without question, there have been significant advances. Among other things, Kansas has leveled the imbalance in services between poorly served rural areas and better-served cities, and adoptions are up 81 percent.

Yet the much-anticipated revolution in child welfare never occurred. Instead of creating a managed care system similar to a health-maintenance organization, the changes yielded only a semi-privatized system. Moreover, with one of the original private contractors now teetering on the edge of bankruptcy, the state has taken a step back from some of its boldest reforms.

### ... A Lump Sum

Kansas' managed-care plan was set up on the innovative idea that each child in the adoption system came with roughly \$13,500 in funding. The state would pay the private agency caring for the child half that amount when the child entered the system, another 25 percent when they were placed with adoptive parents, and the final 25 percent when the adoption became legal.

The goal was to provide a monetary incentive for the agency to find homes for children as soon as possible.

... But recently, burgeoning problems have overshadowed the successes. Unable to move some hard-to-adopt children into new homes, the agency that has run Kansas' adoption program, Lutheran Social Services, has piled up huge debts.

Another challenge: the new process in 1996 was so different from the old system that no one knew how much it would cost, so monetary figures were just officials' best estimates.

As the costs became clearer, the state gave out more money—foster care funding alone has jumped nearly 17 percent since the new program took effect four years ago. But the increases haven't been enough to slow Lutheran Social Services' losses.

Late last month, Lutheran Social Services of Kansas and Oklahoma told its subcontractors it had only \$7.3 million to pay off some \$9.8 million in debt. It has offered to pay its subcontractors 74 cents on the dollar.

Such a deal would be a big blow to some subcontractors, many of them local agencies providing various services for children. But if they don't accept, Lutheran Social Services could file for bankruptcy.

### Backing Off

Such funding problems have led the state to back away from its managed-care approach.

### ... New Bureaucracy

The new system has also added another layer of bureaucracy—big contractors—between the state and local care givers. That has caused delays.

... Supporters of the program, meanwhile, argue the system takes time to work out the kinks.



*Monitor.* Wide differences of opinion continue about the effectiveness and desirability of the program.

The state has juvenile detention centers at Atchison, Beloit, Larned, and Topeka. As discussed in the law enforcement chapter, these four centers have been transferred from SRS to the newly established independent Juvenile Justice Authority.

## **Vocational Rehabilitation Services**

Vocational rehabilitation (often referred to as “voc rehab”) is a joint federal-state program designed to assist people with disabilities in securing employment and achieving independent living. A state plan, which outlines the policies to be followed, has been drafted by the state Rehabilitation Services Commission of SRS and approved by the Rehabilitation Services Administration of the U.S. Department of Education.

Rehabilitation services are offered through 30 local area offices. Each client is assigned to a counselor, who determines whether the client is potentially employable. If so, the counselor arranges for necessary services, which may include medical examinations; surgical, psychiatric, and other medical and hospital services for reducing disabilities; artificial limbs or other aids; vocational and personal counseling; psychological testing; vocational training in schools, by correspondence study, or on the job; the purchase of tools or other equipment the client needs to begin a job; placement in a job commensurate with the client’s interests and abilities; and follow-up counseling to ensure satisfactory placement. Success of the rehabilitation program, which is voluntary, depends on the agency’s ability to reach the persons who need its services.

The Rehabilitation Services Division (RHSD) has three programs: Vocational Rehabilitation Services, Services for the Blind, and Disability Determination Services. The division’s mission is to help persons with disabilities become gainfully employed. Services are individualized according to each person’s disability, interests, skills, and goals. Community-based services are emphasized.

The Kansas Commission for the Deaf and Hard of Hearing offers advocacy, information and referral, sign language interpreter registration, and coordination of interpreting services.

In Kansas, the 2000 census estimated that 110,000 working-age persons have disabilities. The RHSD has sufficient resources to serve only about 10 percent of this population, but this percentage is consistent with national trends.

Services for the visually impaired and blind are also directed toward eventual employment. The program operates the Rehabilitation Center for the Blind, a comprehensive program offering independent living skills training and vocational assessment and technology services, and administers ad-

ditional home-based programs for senior citizens losing their vision. It also operates the Business Enterprise Program, which offers persons who are legally blind the opportunity to manage food services, including at the State Capitol.

The Disability Determination Service makes disability and blindness determinations for the U.S. Social Security Administration concerning eligibility for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits.

Kansas has 30 offices for counseling and rehabilitation, operating free for all clients. State and federal funds are used to pay for other services, such as medical care and vocational training, and for transportation and maintenance costs according to the client's financial needs. The federal government grants approximately 79 percent of the funds for vocational rehabilitation services. In SFY 2000, a monthly average of 7,033 persons were served and more than \$18 million spent.

## **Mental Health and Developmental Disabilities**

Although state charitable institutions came under the jurisdiction of the Board of Social Welfare in 1939, not until the board was reorganized in 1953 was a division established to manage them. When SRS was established in 1973, this division was transferred to it and a professionally trained medical doctor was appointed director. The director names the heads of the mental health institutions, with approval of the secretary of SRS. These institutions are mental hospitals at Larned and Osawatomie, the Rainbow Mental Facility in Kansas City, and a mental retardation hospital at Parsons. Institutional care is provided at these locations, but most of them also arrange for out-patient treatment and care.

While these institutions organizationally are part of SRS, each is treated as a separate agency for purposes of budget review. With the help of federal grants, the division administers the state program of assistance to local centers for the mentally retarded and to community mental health centers.

Table 32 shows the average daily population at Kansas mental health institutions for the last four decades. The administration and control of each institution is in large part the responsibility of its superintendent, but SRS provides consultation on dietetics, fire prevention, safety, sanitation, personnel, nursing, and social services. An admissions officer processes admission papers and coordinates requests for admission. The mental patient's county of residence determines the hospital to which he or she is admitted. Mentally retarded and other patients are admitted to institutions without reference to their home county.

Former ideas about the care of the mentally ill emphasized the need for isolating them, and mental institutions were referred to as asylums, rather than hospitals. As early as 1947, the Legislative Council conducted a survey,

**Table 32**  
**Average Daily Population at Kansas Mental Institutions:**  
**Selected Years**

	<u>Fiscal Years</u>					
	1953	1963	1973	1983	1993	2000
Larned State Hosp.	1,691	1,047	708	347	500	282
Osawatomie State Hosp.	1,577	1,016	466	376	243	167
Rainbow Mental Health	—	—	—	46	44	30
Topeka State Hosp.	1,437	1,023	408	385	271	Closed
Winfield State Hosp. & Training Center <sup>*</sup>	1,362	1,124	817	490	331	Closed
Parsons State Hosp. & Training Center	640	599	435	281	258	189
Kansas Neurological Inst. <sup>**</sup>	0	342	458	390	308	189.6
Norton <sup>***</sup>	409	119	322	152	—	—
Youth Center, Atchison <sup>***</sup>	0	51	—	82	88	Transf.
Youth Center, Topeka	146	209	139	178	212	Transf.
Youth Center, Beloit	67	89	76	71	88	Transf.

<sup>\*</sup>Closed in 1997.

<sup>\*\*</sup>Opened for patients in January 1960.

<sup>\*\*\*</sup>Mission and name of institution changed over the reporting period. In 1977, it began to be administered as part of the Youth Center, and later transferred to the Juvenile Justice Authority.

Source: Department of Social and Rehabilitation Services data and state budget.

the results indicating that mental hospitals were crowded with many older patients who could not respond to treatment and therefore were not being treated. These persons needed custodial care, not special mental health care. The presence of these older patients meant that many younger persons who could profit from treatment were denied admittance.

In support of the emerging emphasis on treatment, the state hospitals employ psychologists, psychotherapists, psychiatric social workers, and other specialists. The psychiatric social workers develop the case histories of new patients to assist in their proper classification and diagnosis. These same case histories are used when it becomes possible to release the patient. Local welfare workers increasingly are called on to assist in the institutional program of the state department. Patients are being admitted for shorter stays and then are treated as out-patients, so the average daily populations of the three mental hospitals do not present a complete picture of their operation.

Most important in the last several decades has been the development of community mental health centers serving all 105 counties. Figure 39 shows the areas in which centers have been organized.

There is a wide variation in the organizational patterns of the centers and their level of services. The centers are supported by ad valorem property taxes levied by the county, fees charged to patients, and state and federal grants. Since 1974 the state has given financial support to the local centers, as well as providing local groups with advice about organizing and maintaining such mental health centers. Some federal funds were available to construct comprehensive community mental health centers. To qualify as "comprehensive," a center must offer in-patient and out-patient services, partial hospitalization, community education and consultation, and emergency care. Kansas currently has 27 licensed comprehensive centers and three affiliates.

The philosophy behind community mental health centers reflects a sharp break with archaic ideas of separating the mentally ill from society. Rather, the program of local centers is built on the theory that by keeping people in a familiar environment and assisting them, many who would otherwise need hospitalization may be able to avoid it. These centers also can help those who have been hospitalized when they return to their home communities. The expectation is that the centers will reduce the load on mental hospitals, which therefore will be able to treat the severe cases more effectively.

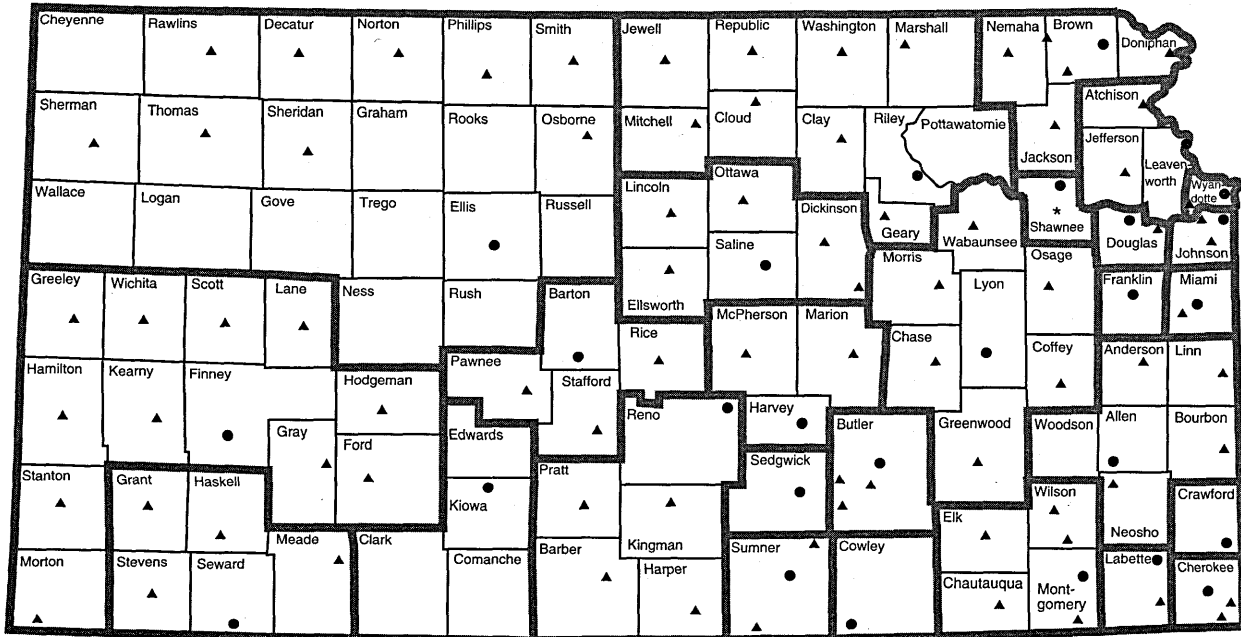
In addition to caring for their patients, the three state mental hospitals operate out-patient facilities and seek to treat people in the earliest stages of their illness, when the chances for recovery are better. More than 80,000 persons use the services of these community centers each year.

The Community Support and Services Division manages a system of community-based services for more than 11,500 persons with developmental or physical disabilities. Service options include personal attendant, employment, assistive technology, and independent living counseling. Services to persons with developmental disabilities are provided through partnerships with community developmental disability organizations (CDDOs), community service providers (CSPs), and Centers for Independent Living. CDDOs are either private not-for-profit agencies recognized by the local counties and SRS, or are local county agencies. CSPs affiliate with CDDOs to provide direct supports and services. Many CDDOs operate group homes and sheltered workshops, and provide support for family members caring for persons with developmental disabilities.

Increasing efforts are being made to treat those with mental retardation and developmental disabilities in their homes or in community-based agencies rather than in state institutions. After several years of planning, state institutions at Topeka (Topeka State Hospital) and at Winfield (Winfield State Hospital and Training Center) were closed. SRS administers two com-

Figure 39

Kansas Community Mental Health Centers: 2001



- Main centers
- ▲ Satellite centers

Source: Association of Community Mental Health Centers of Kansas.

munity-based programs, each serving different levels and types of disabilities. Funding of local centers varies, but typically includes revenues from a local property tax, patient fees, federal and state grants, and in some cases United Fund contributions.

Additional programs serve the homeless and families with children having serious emotional disturbances. SRS also is responsible for helping society deal with sexual predators. The Sexual Predator Treatment Program is adding elements to the treatment protocols for persons who will be returning to their home communities, including vocational training, medical and psychiatric services, and substance abuse group treatment.

## **Alcohol and Drug Abuse Services**

The Department of Social and Rehabilitation Services unit on Alcohol and Drug Abuse Services is recognized by federal and state officials as the single state agency for such services in Kansas. The breadth of related programs is suggested by the fact that 29 other state agencies receive funds to reduce substance abuse. The goal of programs is captured in the motto, "Toward a Drug-Free Kansas."

SRS reports that the use and abuse of alcohol, tobacco, and other drugs in Kansas costs an estimated \$1.3 billion annually. Costs include expenditures for substance abuse prevention and treatment; health care for alcohol, tobacco, and other drug-related illnesses, as well as infants exposed to these substances in utero; foster care; and welfare expenditures for families adversely affected by addiction and the criminal activities that frequently are necessary to "support" the habits. The substance abuse treatment programs served approximately 13,000 persons in FY 2000.

The 1972 Kansas Legislature established the State Alcohol Program, recognizing the major social and financial costs of alcohol-related accidents, deaths, hospitalizations, crime, divorce, and family violence. SRS licenses public and private facilities that provide rehabilitation services for alcohol and drug addicts and certifies more than 800 substance abuse counselors. SRS supports the Kansas Family Partnership program, which assists families in raising drug-free, successful youths.

SRS funds five independent regional alcohol and drug assessment centers that serve economically disadvantaged persons. Persons with higher incomes are charged for the services.

An increasing number of Kansans are reporting gambling addictions as the number of casinos increases. The number of persons in this category and the direct and indirect costs to the state are likely to become statistically significant in the next few years.

## **Services for the Aging**

Until July 1977, the Division of Social Services of SRS provided a number of services for the aged. That year, the governor presented an executive reorganization order that would have created a new Division of Aging. But in response to the urging of representatives from local councils on aging, the legislature disapproved the order. Instead, a new department with a cabinet-level secretary was established to take over the previous services and expand services to older citizens.

This new Department on Aging operates with a secretary and a 15-member advisory council. Eleven area agencies receive assistance from the state regarding social services and nutrition programs. The council administers federal programs under Title III of the Older Americans Act. These programs aim to allow persons over 60, and their spouses, to live in their own homes as long as they can.

In 1996, the legislature transferred the responsibility for long-term care from SRS to the Department of Aging. This is a large and costly program; the department now has about four times as many employees as in the past, and its expenditures have increased 15-fold.

In response to the growing number of older people and their diverse needs, the Older Americans Act of 1965 requires a range of programs, services, and opportunities for older Americans, especially those at risk of losing their independence. Federal funding is allocated to each state's agency on aging, based on the number of older persons in the state to support in-home and community-based services.

The major components of the long-term care program are preadmission screening and referral for nursing home placements, home and community-based services to allow the elderly to stay in their homes, and assistance in arranging for nursing care.

## **Concerns for the Future**

Are the 1996 welfare reforms going to work for the nation? For Kansas?<sup>5</sup> No one knows, but many speculate. The dissatisfaction with the previous system was so overwhelming that bold steps have been taken to change it.

Probably the greatest underlying consideration in the equation is the national (and regional) economy. Is the economy going to continue to grow in a stable fashion? Will jobs be there for those being forced off welfare when the 60 months of eligibility are up? For the program to succeed, jobs must be where the people are, or we must get the people to the jobs.

Will Kansas and the other states be able to find the dollars to administer the TAF program with greater autonomy, in a more cost-efficient way than previously? Will federal block grants continue at a high enough level

that all states—with their varying economies—will be able to provide an adequate safety net for those needing assistance?

Considering the mobility of Americans, state enforcement of the 60-month eligibility rule could be problematic. State records will have to be exchanged and perhaps a national roster maintained. Substantial progress has been made in collecting child support from fathers, but this has taken years to develop.

Medicaid has yet to be attacked at the federal level. With growth in the number of aging citizens and increasing numbers of persons lacking health insurance, the dimensions of this problem are large. SRS in Kansas is moving to managed health care for people who are Medicaid-eligible.

Creation of the new Juvenile Justice Authority reflects dissatisfaction with the way SRS was handling the detention of the increasing number of juvenile offenders. The legislature saw a need to keep juvenile offenders out of the traditional correction system. Will this new independent authority be better able to confine and rehabilitate this important group of offenders?

How successful will the SRS program for privatizing child and family care activities be? Difficulties are anticipated even in devising ways of measuring its operations. There will always be individual cases of failure, but they must not distort the need to evaluate the overall effectiveness of the new system. It must be compared to the older system, in which state social workers *managed* rather than merely *monitored* adoptions and child protective services.

The move to “deinstitutionalize” patients continues in mental health, mental retardation, and developmental disabilities. However, places must be available in Kansas communities to care for these persons before the state facilities can be closed. The communities must be educated and ready to accept these clients. This movement has similarities to the effort to “mainstream” special education children. How far and how fast can this movement go?

The transfer of the several programs for the aging from SRS to the Department of Aging reflects the desire of aging residents to see these assistance programs as different from “welfare.” Will the focus of these activities be different when they have a new organizational home? Will they be expanded and more acceptable to the citizenry as a whole?

For those who see the federal welfare reforms as an example of federal devolution of authority to the states, there will be much to study in the next few years.



## Chapter 18 Notes

1. Some of the earlier history of these efforts is described in Barbara Gardner, *State-Local Relations in Kansas: The State Department of Social Welfare* (Lawrence, Kansas: Governmental Research Center, University of Kansas, 1955).
2. *Kansas Constitution*, 1859 version, Article 7, Section 1.
3. *Ibid.*, Section 1 (1972 amendment).
4. For broad discussion of the role of a long-term administrator of the department, see Robert Harder, "The Care and Nurturing of a Bureaucracy: An Executive Perspective," in *Politics and Government in Kansas* (Topeka, Kansas: KU Capitol Center, 1989), pp. 197–216.
5. The chapter on "Public Welfare Policy" by Ann Weick and Dorothy C. Miller, pp. 124–152 in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University of Kansas Press, 1994, contains a more detailed discussion of the Kansas programs and some of the policy questions involved.



## Chapter 19

# The Farmers' Part of State Government

**D**espite its industrial growth, Kansas still is widely regarded as an agricultural state. Farmers and farm interests are well represented in the Kansas Legislature, and farmers have an agency in the executive branch devoted solely to their interests. This agency, the State Department of Agriculture, performs a wide range of promotional and regulatory functions.

### History of the Department

In the late part of the 19th century, private agricultural societies were founded in many states to stimulate interest in the improvement of agriculture.<sup>1</sup> These societies were sponsored primarily by business people rather than farmers, because business people saw—earlier than farmers themselves did—how important agriculture was to the whole of national life. These societies sought to educate farmers in the latest scientific discoveries and agricultural techniques, in hopes of improving efficiency and quality of produce.

Such an organization was formed in Kansas in 1857, and met twice before ceasing to function in 1860. Two years later the group was reestablished as the Kansas State Agricultural Society, and incorporated by the Kansas Legislature as a nonprofit operation. Membership was open to any citizen of the state upon payment of an annual membership fee of \$1. As it turned out, members were primarily legislators, public officials, military officers, and business and professional people in the vicinity of Topeka, where the society met. Very few farmers were represented in the society's early days.

The Kansas State Agricultural Society held state fairs and annual meetings, and published statistical information about Kansas agriculture.

As the society expanded its activities, the problem developed of obtaining adequate financial support. The desirability of receiving state appropriations led to a movement to give the society governmental status. This was accomplished in 1872, when the legislature provided that the executive committee of the society should be known as the Kansas State Board of Agriculture. Board members were to be elected by delegates from county fair societies, and the board was to have offices in the state capitol. An appropriation of \$35,000 was made to help pay awards at the state fair. Expenses of board members and the salary of the executive secretary were expected to be financed by membership dues and fair receipts. In effect, the board remained a private organization having power to determine its own programs and policies—but it had few “governmental” duties.

The two main activities of the board in its infancy were the promotion of immigration to Kansas and the education of farmers in the improvement of agricultural techniques. Soon the collection and interpretation of agricultural statistics became major board concerns, leading to a need for greater funding. The legislature had made an initial appropriation to help finance the state fair. After that, receipts from the fair and from membership dues were expected to cover the cost of operating the board. This was not the case, however; the board went into debt. Therefore, in 1874 the legislature initiated its policy of making annual appropriations to the board, giving the board a new basis to claim status as a governmental agency.

Soon after the turn of the century, the need for certain agricultural regulatory services arose. For example, commercial fertilizers were being placed on the market, and some regulation was needed to protect farmers and the public from the sale of undesirable or fraudulent fertilizers. In 1903, the legislature authorized the board to inspect commercial fertilizers. The same type of regulation was needed to inspect feed, livestock remedies, and other commodities farmers used.

Some people, including the secretary of the State Board of Agriculture, questioned the desirability of assigning regulatory duties to the board because it had neither the laboratories nor the staff necessary for analyzing products. Because the state experiment station did have these facilities, the legislature in 1907 transferred regulatory duties to the station.

The National Association of Commissioners of Agriculture, in its fourth annual meeting in 1919, showed concern about the duplication of work between state departments of agriculture, experiment stations, and agricultural colleges. The association proposed a plan to eliminate duplication by having the colleges handle educational extension and the departments of agriculture handle regulatory functions. The plan was received favorably nationwide, and in 1923, several regulatory functions were transferred from Kan-

sas State University to the State Board of Agriculture. After that, the board's regulatory functions mushroomed.

The State Board of Agriculture consisted of two members from each of six districts into which the state is divided. They were elected for three-year terms, and to provide continuity, four members were elected each year. The election took place at annual meetings in Topeka on the second Wednesday in January. Members of the board met at that time with delegates from the following state and local agricultural associations: each county or district agricultural fair, each state fair or statewide fair, each county farmers' institute, each county farmers' union having a paid membership of at least 200 people, each county grange and farm bureau having a paid membership of at least 200 people, each statewide livestock association, and each statewide association for the promotion of a crop or crops. Each of these groups sent one delegate, and each delegate was entitled to one vote.

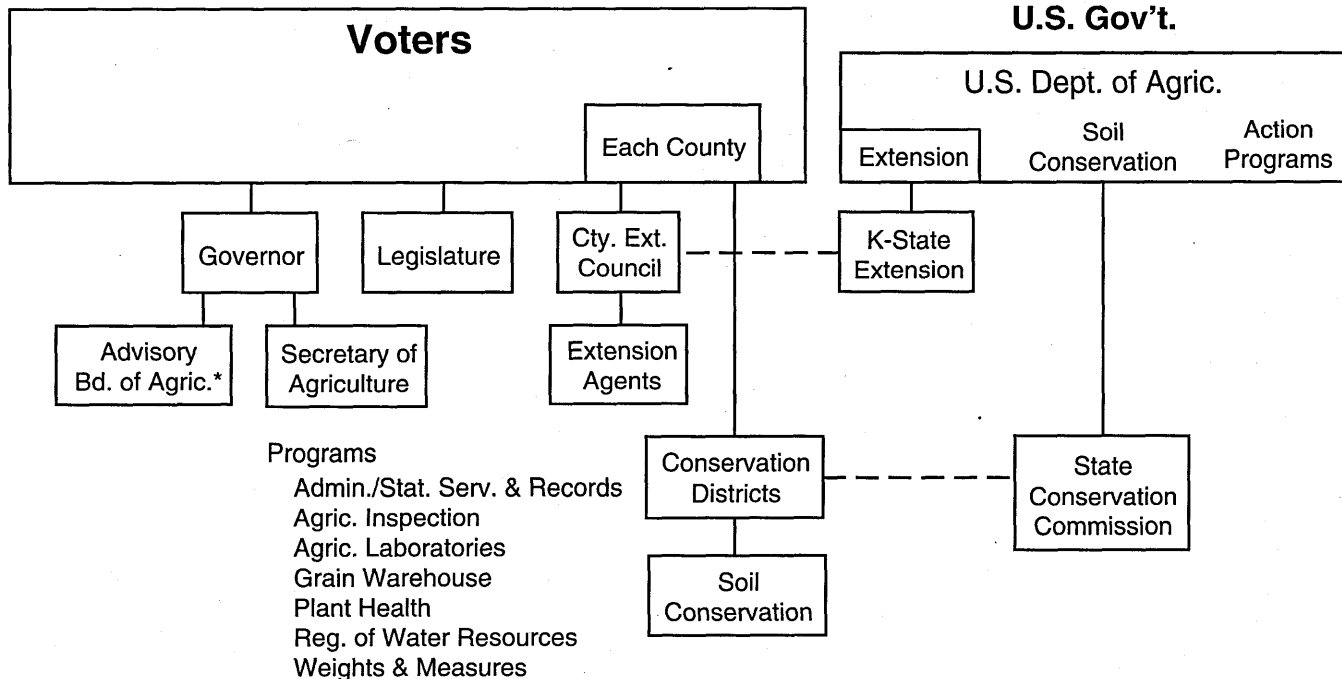
Annual Board of Agriculture meetings were open to the public and usually were well attended. Programs included speeches, films, panel discussions, and get-acquainted dinners. Staff members of Kansas State University frequently participated on the program. The educational aspects of the annual meetings tended to overshadow the election of board members. After they had been selected, the board elected from its own members a president, a vice president, and a treasurer for one-year terms. The secretary was appointed chief administrative officer for two years.

In 1971, the Commission on Executive Reorganization recommended creation of a department of agriculture and natural resources, but no immediate action was taken. In the interim before the 1976 session, a legislative committee studied the desirability of such a reorganization. It recommended to the 1976 legislature the creation of separate departments of natural resources and agriculture. This proposed bill called for five divisions within the department of agriculture, but when the legislature convened in 1976, limited attention was given to the bill. In 1986, the governor presented an executive reorganization to the legislature, making agriculture a cabinet-level department—but that proposal was rejected.

In 1992, Common Cause of Kansas and the Kansas Natural Resource Council filed a lawsuit in U.S. District Court challenging the constitutionality of the board's structure. The judge subsequently issued a summary judgment that the current method in which members of the board and the secretary were chosen was unconstitutional under the equal protection clause of the 14th Amendment to the U.S. Constitution. The board, with the assistance of the attorney general, decided to appeal the decision to the District Court of Appeals in Denver, but the decision was affirmed.

The legislature restructured the department in 1995. The governor now appoints a nine-member Board of Agriculture. One member must come from each of the state's four congressional districts, and no more than five may be of the same political party. The board members serve four-year stag-

Figure 40  
Agriculture



\*Governor appoints a nine-member bipartisan board, which nominates three persons for secretary of agriculture. The governor may reject nominees and ask for more.

gered terms, advising the Secretary of Agriculture (whom the governor appoints). The board nominates three persons to be secretary, but the governor may reject nominees. The board then submits other names.

## **Functions of the Department of Agriculture<sup>2</sup>**

### *Collecting and Interpreting Agricultural Statistics*

The collection, interpretation, and distribution of agricultural statistics, such as data on crop and livestock production, was one of the first services undertaken by the Board of Agriculture. Pressure for this service came largely from farmers desiring reliable information to help them plan production. Agricultural reporting services benefit the processors and distributors of agricultural products, manufacturers of farm machinery and other durable goods, lending agencies, consumers, and the United States Department of Agriculture in setting its production goals and price supports.

Since 1924, the board and the USDA have jointly maintained a Statistical Division, which acts as the agricultural fact-finding agency of the state. Under this arrangement, a federal/state statistician is in charge of the Statistical Division of the State Board of Agriculture. Some employees of the division are under U.S. civil service, and others are under state civil service. Despite these special circumstances, both the Statistical Division and the Board of Agriculture seem to consider the division a part of the state department. The expenses of the division are shared by the USDA and the state. Rural mail carriers are also used for distributing unaddressed questionnaire cards to farmers along their routes. County extension agents perform a valuable service by submitting weekly crop reports and supplying other special agricultural information.

Data collected from these sources, including appraisers, is compiled and analyzed in the state office and distributed via daily newspapers, radio news releases, farm and trade publications, and reports from the Statistical Division direct to the public and the Federal Crop Reporting Board in Washington (where the data is analyzed for national significance).

For many years, the department conducted an annual census, which the Kansas Legislature used for apportionment and distribution of state aid. But the census was criticized as being inaccurate and unreliable because counties differed in the way they conducted the census and in their standards for accuracy. In 1978, the legislature discontinued the census. This made necessary a special census for reapportioning the Kansas House in 1989.

### *Inspection of Agricultural Products and Products Used on the Farm*

*Dairy Products.* Because of its importance as a health food and its special susceptibility to contamination and adulteration, the production of milk has long been a concern of state government. At times in the state's his-

tory, there was some competition between the State Board of Health and the State Board of Agriculture as to which agency should appropriately protect the state's milk supply.

This conflict of jurisdiction was taken to the Kansas Supreme Court, which held that the Dairy Division had superior jurisdiction. However, the court conceded that the Board of Health (predecessor to the Department of Health and Environment) had jurisdiction over the adulteration or misbranding of dairy products. In recent years, the two agencies have cooperated in an inspection program.

The Department of Agriculture supervises the production, transportation, manufacture, and distribution of milk and dairy products. The board licenses and inspects dairy manufacturing plants and all places where milk and dairy products are handled. Ideally, the department supervises the milk supply "from the cow to the consumer."

Licensing fees are deposited with the state treasurer in a special fee fund and appropriated to finance dairy inspections. Dairy producers have generally agreed to pay for the inspection program through these fees, because they realize that the higher quality of dairy products and the improved operating conditions resulting from state inspections are to the industry's advantage.

*Meat and Poultry.* The board had for years inspected the places where animals were slaughtered for human consumption. But in 1969, the legislature, under threat of more detailed federal inspection, passed a law providing for the ante- and postmortem inspection of such animals. Since slaughtering operations may be performed legally only when inspected, the secretary may close down an operation by withdrawing the inspectors. Exceptions are made for the slaughtering of animals raised by the owner for personal or family use. All public slaughterhouses must be registered, and fees are charged for the inspection performed in connection with these operations.

*Products Used on Farms.* The board enforces the laws regulating the sale of commercial fertilizers, livestock remedies, commercial feeds, and agricultural seeds. The object of these laws is to protect users by ensuring that the products meet the state requirements for truthful labeling. These laws are enforced largely through requirements for state registration and inspection.

Commercial fertilizers, pesticides, and livestock remedies must be registered with the board annually before the product may be offered for sale. Before registering, the board is to inspect labels submitted by the applicants to determine that they are correct, and analyzes product samples. In practice this pre-registration analysis is not done, however, because it is felt



that such samples would not be as representative as those purchased on the market after registration.

Samples of fertilizers, feeds, livestock remedies, and agricultural chemicals are collected and sent to the laboratory for analysis. The inspectors take samples of products from all firms and recheck them as necessary.

When field inspectors find incorrectly labeled products, the board may initiate criminal proceedings and stop the sale of the product pending court action. However, before criminal proceedings are initiated, the board secretary holds a hearing. If the secretary determines that there has been a violation, the registration may be canceled and the facts reported to the appropriate county attorney for prosecution.

With respect to livestock remedies and other products, there is substantial cooperation between the state and federal governments. Many products are sold nationally and registered with the U.S. Department of Agriculture. Most industries seem willing to be regulated, and in fact largely pay for the regulation. The industries benefit by having inferior products eliminated from the market.

### *Weights and Measures*

Since 1868, Kansas has had a weights and measures law that provides for the testing of scales used in commerce. For much of the time until 1947, major responsibility for inspecting weights and measures rested with the county clerks, who were subject to supervision by the chancellor of the University of Kansas. For a number of reasons, enforcement of the law was sporadic and frequently lax. In 1947, a new weights and measures law was passed, creating a Division of Weights and Measures within the Board of Agriculture. This division now also inspects and certifies scanning devices.

The Kansas weights and measures law makes it illegal to sell, expose, or offer for sale or use any weighing or measuring device that is inaccurate, or to sell any commodity represented at an incorrect weight or measure. The law establishes and defines official standards for measures of length and surfaces, weight, dry measure, liquid measure, and electrical measure. The Weights and Measures Division acts as an impartial third party to see that equity prevails in all commercial transactions involving weight or measurement.

The U.S. Constitution authorizes Congress to fix standards of weights and measures that are applicable throughout the United States; the standards were furnished to Kansas in 1869. These "primary reference standards" are maintained in the Board of Agriculture laboratory and used to test standards in the field. Every 10 years, the standards are sent to Washington, D.C., for calibration by the U.S. Bureau of Standards. There the Kansas standards are tested and sealed to an accuracy of 1/350,000th or better by comparison with standards maintained in Washington. These standards

are copies of the international ones, which are preserved at Sevres, France, by the International Bureau of Weights and Measures.

The state sealer and deputies inspect the scales used in Kansas. There are programs directed at inspecting large-capacity scales; small-capacity scales, including retail motor fuel pumps; and liquefied petroleum gas meters. Scales found to be relatively accurate are appropriately tagged after inspection. Those above or below the tolerance limit are marked with a condemnation tag and cannot be used legally. Only the state sealer or deputy, or a state-registered scale-service employee, may remove a condemnation tag. The importance of this program is suggested by the fact that when testing began, 38.5 percent of scales were condemned. Now fewer than 10 percent are condemned.

As prepackaged foods have become more common, the prepackaged testing program has become indispensable. In early tests, more than 40 percent of packages were found to be underweight, and slightly fewer than 20 percent had the correct weight. Currently, more than 70 percent have the correct weight. In this program, the packer is notified if packages are consistently under- or overweight.

The Department of Agriculture has the task of enforcing a new safety law concerning containers for anhydrous ammonia. Other state agencies do some testing of weighing and measuring devices. Food and drug inspectors of the State Board of Health check scales used in making prescriptions. The Grain Inspection Department and the Mine Inspection Division of the Labor Department test scales in their regular inspections.

### *Plant Health*

In an agricultural state such as Kansas, the control of weeds is essential. The weed law makes it the duty of every property owner to eradicate and control the spread of weeds declared "noxious" by the legislature. (There are 10 such plants, and county commissioners are authorized to assist in eradicating others.) In eliminating noxious weeds, property owners must use the methods officially adopted by the department. The law also authorizes the board to promulgate rules and regulations to effectuate the law, and authorizes the secretary of agriculture to enforce these rules and regulations, as well as the law itself.

The weed law directs county commissioners to employ a competent person as county weed supervisor. In addition, the governing body of any incorporated city or any group of counties or cities may employ a city or district weed supervisor.

The State Department of Agriculture has general supervision of the program. The increased use of chemicals in farming has led to expanded interest in pesticides and their safe application. The department is responsible for the administration of the current Kansas Pesticide Law. Approximately

1,300 pesticide businesses are licensed and 7,700 pesticide products registered.

The department employs entomologists who every year inspect all plant nurseries in the state and, on the basis of their findings, certify plants to be free from disease and insects and thus eligible for shipment in interstate commerce. The division employs an apiarist, who inspects honeybees and regulates their shipment into the state.

### *Operating Agricultural Laboratories*

To support its regulatory operations, the department maintains and operates laboratories. It provides analyses of meat and poultry products, dairy products, fertilizers, agricultural chemicals, livestock remedies, seeds, and pesticide residues.

### *Promoting Agricultural Products*

For many years, the Board of Agriculture was charged with promoting the development and marketing of agricultural products. But in 1996, the legislature transferred these functions to the Department of Commerce and Housing. In that department, the Agriculture Products Division is responsible for developing advantageous marketing, promotion, and distribution of Kansas agricultural products into domestic and international markets.

For years there were separate commissions to promote the use and sale of corn, sorghum, and soybeans.<sup>3</sup> In 2000, the legislature provided that these duties would be performed by private commissions, which are no longer provided for in the budget.

## **Regulation of the State's Water Resources**

The Division of Water Resources of the State Department of Agriculture administers the law that controls the construction of levees, dams, channel improvements, and other structures on or near Kansas streams. Plans for the construction of such improvements by units of local government or by individual property owners must be submitted to the chief engineer of the division for approval. Kansas is recognized as having a relatively scarce supply of water and having adopted the doctrine of "prior appropriation," which is common in western states.

This doctrine permits the state to regulate and allot the state's water supply, establishing a hierarchy of uses. Domestic use of water for household purposes, watering of livestock, and irrigation of gardens and lawns is not affected by the Water Appropriation Law. Next to domestic use, preference is given to municipal, irrigation, industrial, recreational, and water power uses. All appropriations of water are subject to the principle of "beneficial use" as specified by the Water Appropriation Law.

Responsibility falls on the chief engineer to approve permits for water appropriation. The majority of permit applications come from individual irrigators, although a few come from irrigation companies and districts. Although individuals are not required to secure a permit to dig a well or appropriate water, it is to their advantage to do so to protect their rights if the supply becomes limited and other persons with established rights compete for the supply.

Although the Division of Water Resources has broad powers to regulate and allocate water supplies, it lacks the power to enforce the regulations and allotments until these matters have been defined by court decree.

The division works with the Kansas Water Office to monitor the minimum water flow in 23 streams at 33 gauging stations. Appropriate reports are issued and meetings held to inform the public. Additionally, the division administers the Rural Water District Act, which encourages the formation of rural water districts.

## **Financing the Department of Agriculture**

The department is financed by regular appropriations from the state General Fund and from revenues derived from the board's several fee funds. Most regulatory functions performed by the department involve the collection of fees for licensing, registration, and inspection. These fees are deposited in special fee funds in the state treasury. Provided the legislature appropriates them, they become available to the board. In SFY 2002, appropriations from the General Fund are expected to amount to about 50 percent of total expenditures; fee funds and federal grants will supply the remainder. Federal funds are received in connection with the marketing program, meat and poultry inspection, dam inspections, and environmental protection. A few employees of the board are paid either jointly by the federal and state governments or entirely by the federal government.

## **Related Activities**

### *Board of State Fair Managers*

Orchestrating a state fair was one of the original activities of the Board of Agriculture and its predecessor, the State Agricultural Society. Today an effort is made to separate the state fair from other activities of the board. While it is a separate legal entity, the Board of State Fair Managers consists of the members of the Board of Agriculture, its secretary, and members appointed by the Kansas Chamber of Commerce and Industry, the Travel Industry Association, and the Kansas Technology Enterprise Corporation. The fair managers have a secretary, staff, and permanent administrative office in Hutchinson, site of the fairgrounds. The original fairgrounds, ceded to the state by Reno County, were enlarged in 1951 by the purchase of addi-

tional land. Biennial reports of fair activities are submitted to the legislature separately from Department of Agriculture reports. The state fair is financed by receipts from the fair and by legislative appropriations.

### *Kansas Animal Health Department*

In many parts of the state, raising livestock and ranching are important aspects of agriculture. While there were various antecedent organizations, the Kansas Animal Health Department and the livestock commissioner are now charged with enforcing the livestock laws. Six members of the Animal Health Board are appointed by the governor for three-year staggered terms, the governor making these appointments from lists submitted by the Kansas Livestock Association. Members are to be appointed to represent major livestock species or phases of the industry. The president of the Kansas Livestock Association is an ex officio member of the board. The board, which is part time and advisory, assists the livestock commissioner in determining policies and plans. The commissioner is appointed by and serves at the pleasure of the board.

The commissioner is responsible for enforcing laws to protect domestic animals from disease. He or she may inspect and quarantine animals suspected of having contagious diseases, and may condemn certain diseased animals for slaughter. The commissioner also administers the community sales law, which regulates sales of livestock at auctions and exchanges. Dealers are bonded and registered, and all livestock sold through such sales must be inspected by an authorized veterinarian. The commissioner licenses persons who dispose of dead animals, and promulgates rules for the feeding of garbage to hogs. To protect the owners of livestock, ranchers file individual brands with the commissioner, who provides for brand inspection at cattle markets in the state.

In 1988, pets or "companion animals" were included among the list of animals the department regulates. Approximately two-thirds (70 percent) of the department's budget for 2002 is expected to come from licensing and inspection fees.

### *Agricultural Extension*

Agricultural extension is one of the biggest adult education programs in the state, its aim being to improve agriculture and farm life. The groundwork was laid for future extension services when in 1863 the legislature accepted a federal land and money grant—a gift from the Bluemont Central College Association for the founding of the Kansas State College of Agriculture and Applied Science. Early faculty members of the college were asked to lecture on agricultural topics throughout the state and to take part in the popular farmers' institutes, short schools held at various locales.

Shortly after 1900, attention turned from farmers' institutes to a new way of spreading information and ideas to farmers. This plan called for taking new concepts directly to the farmer through county agricultural agents—practical, itinerant teachers who traveled from farm to farm. Leavenworth County began to employ an agent in 1912, and now all counties in the state have at least one. The Extension Service within the U.S. Department of Agriculture was established in 1914, and arrangements were made for the federal government to pay a portion of the county agents' salaries.

As early as 1905, there were traces of the beginning of the program at Kansas State University, and in 1912, extension was made a division of that institution. The legislature in 1915 authorized the levying of a property tax to raise money for extension activities.

It was recognized that local farm organization assistance would be necessary if full advantage was to be made of the work of county agents. The title "farm bureau" came to refer to all associations cooperating in extension work, and soon farm bureau work became synonymous with extension. In 1920, a federation of local farm bureaus was organized under the name "Kansas Farm Bureau." The statewide organization became interested in legislation, taxation, transportation, marketing, insurance, and commercial activities other than extension. The Kansas Farm Bureau grew to have many members and to join the American Federation of Farm Bureaus. Thus, on county, state, and national levels, the farm bureaus expanded far beyond extension, although in Kansas and some other states the county farm bureaus continued to be the agencies that county extension agents were expected to use to reach all Kansas farmers.

Various difficulties arose over having farm bureaus act both as private organizations and as agencies to stimulate interest in improving agriculture and farm life. People who were not members of the Kansas Farm Bureau objected to having the county agents called upon to handle membership drives, collect dues, sell insurance, and handle other activities that pertained specifically to the organization. This resulted in the Kansas Legislature's providing in 1951 for the distinct separation of county farm bureaus and agricultural extension work.

One county extension council member is elected in each of the program areas (agriculture, family and consumer services, 4H, and economic development) in each of the three county commissioner districts. They serve two-year staggered terms and are eligible to be elected for an additional term. This council of 24 meets with and advises the agents.

All elected representatives form the Extension Council, which determines general extension policy and annually selects a chairperson, a vice chairperson, a secretary, a treasurer, and five other members of the Executive Board. The board prepares the extension budget in cooperation with the county commissioners and the director of extension at K-State. The property tax

levy limit varies from 1.5 to 2.5 mills, depending on the valuation of property in the county.

Extension work was conceived of as a means of disseminating information and new techniques for improving agriculture. Throughout the 20th century, extension work has broadened and expanded. Early extension work was directed toward male farmers, but farm women soon asked for services pertaining to their activities. To materials on planting and harvesting crops and raising improved livestock were added instructions on sewing, cooking, preserving food, and homemaking. Because this new emphasis required staff specialists in these other subjects, home economics agents were hired.

A third expansion of the program has led to the employment of club agents to work with young people living on farms. More recently, in recognition of the extent to which farms are business enterprises, several farm management associations have been formed in the state. These associations employ special agricultural extension agents who are specialists on farm management.

All counties have extension agents. Most have agricultural agents and home economists, and about one-third have club agents. There are fewer farm management and economic initiative specialists; they ordinarily serve areas larger than counties.

The director of extension at K-State is appointed by the university's president with approval of the secretary of the U.S. Department of Agriculture. The director proposes to the USDA programs for extension activities; when approved, these become the basis for federal grants. The Extension Division at K-State employs specialists on many aspects of agriculture. Staff assistance is available to the county agents, both for special programs and for technical questions. The state is divided into districts, which have district agents who visit and work directly with the county agents.

Local agents are selected by the Executive Board of the County Extension Council from among the people nominated by the state extension office. They must be graduates of accredited colleges. Persons who desire such employment apply with the State Extension division.

## Chapter 19 Notes

1. For an account of the history and development of the board, see E.O. Stene, *Kansas State Board of Agriculture*. This study, published as No. 5 of the Governmental Research Series of University of Kansas Publications (1948), was used extensively in preparing the historical section of the chapter.
2. The separate Kansas Wheat Commission does much the same for wheat.
3. From time to time the organizational structure of the department has been changed, and functions and programs have been reassigned internally.



## Chapter 20

# Conservation of Natural Resources

**W**hen eastern seaboard residents began heading west to settle, they saw such abundance that it never occurred to them to worry about conservation. As natural resources have begun to be depleted, however, their descendants have become concerned about the availability of these resources for the future.

There clearly are differing views about what constitutes the wise use of resources, and how important it is to save them. The diverse nature of Kansas' resources contributes to the fact that the state has several agencies devoted to conservation. Thus far these agencies have not been consolidated or transformed into a cabinet-level department, despite the recommendations of the 1971 Executive Reorganization Commission and a 1975 interim legislative committee. The diversity of conservation operations, and concern over funding, have contributed to this result. Moreover, it is difficult to guarantee that a reorganization would result in financial savings.

Conservation means different things to different people. To the manufacturer it may mean assuring a consistent supply of raw materials. To the sportsman it probably means keeping the streams stocked with fish and the land stocked with wildlife. To the farmer it means protecting, restoring, and improving the soil for future crops. Conservation of natural resources, therefore, may appropriately be studied on the basis of the resource being preserved.

## Soil

With its strong agricultural base, Kansas became interested in soil conservation early in its statehood. In 1913, the legislature enacted statutes to deal with the effects of wind erosion. With the advent of the federal Soil Conservation Act of 1935, federal funds became available to aid in soil conservation. Two years later, the state legislature passed statutes enabling the establishment of county soil conservation districts capable of carrying out local programs of conservation.

Under the requirements of the federal Soil Conservation Act, the Soil Conservation Service of the U.S. Department of Agriculture was directed to assign conservation technicians to any soil conservation district organized under the laws of a state or states. "Memorandums of understanding" are signed between local conservation districts and the USDA. All soil conservation districts in Kansas have been organized following county boundaries, although state statutes do not require this; a district has now been established in every county. The county soil conservation districts are established under the laws of Kansas and are not dependent on or responsible to the USDA. Because of the districts' expanding role in all areas of natural resource conservation, the Kansas Legislature in 1972 removed the word "soil" from their title. The districts are now known as "conservation districts."

The governing body of each conservation district consists of five supervisors, who must own five acres or more of land within the district, be qualified electors, and reside within the district. The supervisors are elected at the district's annual meeting, held during January or February, and serve staggered three-year terms without compensation.

The Kansas Legislature has given district boards broad responsibilities for the conservation of natural resources in the state. They may receive funds from any source and use them to promote conservation in their districts. To provide moneys for the operation of their conservation district, county commissioners are authorized to pay the district up to \$10,000 from the county general fund. The board of county commissioners also may levy an annual tax against taxable tangible property within the district, not to exceed two mills or \$55,000, whichever is less. The conservation districts themselves do not levy taxes, but they may offer conservation materials and supplies to land occupiers within the district. To provide financial assistance for conservation district operations, the state matches the first \$10,000 awarded from the county commission. Each district has either a part- or full-time secretary or district manager.

The conservation districts are responsible for administering the state-funded Water Resources Cost-Share land treatment program, developing a Local Non-Point Source Pollution Management Plan, implementing Non-Point Source Pollution Project Work Plans, and developing and implementing a Riparian and Wetland Protection Program. The Natural Resources Conser-

vation Service (NRCS) provides technical assistance for these programs, as outlined in the memorandum of understanding signed by the service and the conservation district.

Most conservation districts retain a conservationist who is an employee of the U.S. Department of Agriculture. The conservationists are paid by the federal government and are hired under federal civil service, but their duties are to assist farmers and ranchers in planning, applying, and maintaining soil and water conservation practices. These technicians will prepare upon request a comprehensive conservation plan for any farm, including land use, conservation management practices, and permanent conservation practices. Surveying, contouring, and engineering layout for permanent conservation practices are provided free of charge to any farmer. The NRCS is responsible for performing all layout work for conservation practices eligible for the "incentive payments" made by the U.S. Department of Agriculture.

The USDA encourages farmers to carry out certain soil conservation practices by defraying part of the expenses incurred in making the improvements. The conservation practices approved for payment are those recommended by a committee of Kansas agricultural experts. They include such measures as application of lime and phosphate to promote the growth of soil-conserving crops; planting of green cover crops; and construction of terraces, reservoirs, and dams. The complete list of approved projects is published in the state handbook of the Farm Service Agency.

Farmers wishing to participate in the program must receive approval from the technician for the desired practice. Then they apply to the NRCS county committee, composed of farmers elected by the farmers within the county. If the practice is an accepted one and if the application is approved, the farmer is usually allowed 50 to 70 percent of the out-of-pocket cost as assistance in applying a recommended practice—but this varies from a maximum of nearly 80 percent to a near-token payment, depending on the nature of the practice. State and county committees may set state and county maximum per-farm payments to spread available funds as far as possible. The work must be performed satisfactorily and promptly for the farmer to obtain payment, which usually is made annually.

As of October 1, 2000, basic farm conservation plans have been developed for more than 96 percent of the state's highly erodible cropland. Conservation systems had been applied on most of these acres.

To facilitate the work of county conservation districts, Kansas has a State Conservation Commission (SCC) consisting of nine members—five elected, two appointed, and two who serve *ex officio*. The elected members are chosen for two-year terms by the supervisors of the districts in each of the five areas into which Kansas has been divided. The federal secretary of agriculture normally appoints the state conservationist of the USDA Soil Conservation Service, and the Kansas State Department of Agriculture normally ap-

points the chief engineer of the Division of Water Resources. The ex officio members of the commission are the director of the Cooperative Extension Service and the director of the Agricultural Experiment Station, or their designees.

The State Conservation Commission assists conservation district supervisors, coordinates the programs of the districts, and enlists the cooperation and assistance of federal and state agencies in the work of the districts. It cooperates with and assists watershed districts and other special-purpose districts to conserve, develop, and improve water resources.

The NRCS establishes policy and administers the operation of nine natural resource programs<sup>1</sup> and the agency operations program. Eight of the natural resource programs are part of the Kansas Water Plan and eligible for funding from the Water Plan special revenue fund. One natural resource program and the agency Administration Operations Program normally are funded from the State General Fund.

The State Conservation Commission cooperates with and gives assistance to watershed districts. The governor designates the chairperson of the NRCS as chairperson of the Kansas Watershed Review Committee. This committee makes recommendations to the NRCS concerning the application of watershed districts for federal assistance under the federal Water Protection and Flood Prevention Act (PL 566). The Watershed Review Committee is composed of members of the State Conservation Commission, the director of the Kansas Water Office, the secretary of the Department of Wildlife and Parks, the secretary of the Department of Health and Environment, and the executive director of the State Conservation Commission.

In a more general way, both the extension service and the agricultural experiment stations contribute to soil conservation work. The county extension agent's activity with respect to soil conservation normally is of an advisory nature, while the soil conservationists assist in planning and executing conservation practices for a specific farm or locality. The state agricultural experiment stations are engaged in research on conservation as well as other aspects of agriculture.

## **Water**

In his 2001 address to the legislature, Governor Bill Graves proposed that Kansas stop depleting the state's underground water supply by the year 2020. That proposal brought forth opposition and criticism. Some critics even claimed that this would mean essentially abandoning a large portion of the state because western Kansas residents are so dependent on the underground water supply.

Conserving water is closely related to conserving soil. From an agricultural point of view, conservation of water resources has come to mean soil conservation, watershed management, and irrigation. Important as these as-

pects are, there are other considerations in any broad program of water resource conservation.

Perhaps flood control is the most obvious. Floods on the Kansas, Marais des Cygnes, Arkansas, and other large rivers often have left trails of destruction through the towns that line their banks and over the surrounding countryside. Major catastrophes like the great flood of the Kansas River in July 1951, and the flood in 1965 along the Arkansas, resulted in substantial destruction and caused renewed demands for domestic and industrial water uses.

Unfortunately, the purposes for which Kansas water resources are used cannot always be harmonized. For example, some people interested in water for agriculture may oppose large dams that will flood the rich bottom lands in the river valley just behind them. Others may strongly favor huge dams as sources of irrigation. In the cities, however, railroads and industries generally are located along level river plains and are in special danger when the floods come. This clash of interests was well-illustrated in the controversial U.S. Army Corps of Engineers' Tuttle Creek Dam project near Manhattan, intended to prevent further flood loss in the industrial areas of Kansas City.

The problem of harmonizing the approaches to water resource development is complicated by the wide array of agencies at the national, state, and local levels that are devoting their efforts to one or more of these approaches.

The complexity of the relationships between the natural boundaries of major river basins that cross political boundaries has led to interstate rivalry and conflict. The control of water resources from a single major river such as the Missouri and its tributaries involves several states. Conflict between Kansas and Colorado over the Arkansas River has resulted in U.S. Supreme Court cases on three occasions, and there may be a case with Nebraska concerning the Republican River.

Another aspect of water resource conservation is the prevention of pollution. This primarily involves taking care of animal and industrial wastes in such a fashion that Kansas streams and lakes are made wholesome for recreation and are safe sources of domestic water. The state's Department of Health and Environment has required many cities and other government units to modify their practices with regard to waste disposal.

In the 2001 legislature, much attention was given to the classification of streams and waterflow channels (creeks, gullies, and stream beds that are dry most of the year). This was very important for the farmers owning and using their own land. Cattle grazing on such land could and would pollute bigger streams. Environmentalists favored classification that would protect streams. Farmers preferred a different classification that recognized the intermittency of water and the lack of public access to waters on private property. The issue was further complicated by standards promulgated by the federal Environmental Protection Agency. Environmentalists see this as a

matter of public health, including having safe river water for swimming and other recreation.

The 1999 Kansas Legislature directed the Kansas Water Authority, through the Kansas Water Office, to study the effects of sedimentation on the public water supply in the state's 12 federal reservoirs in eastern Kansas.

Legislators were concerned that sedimentation would diminish the amount of available storage space and jeopardize the future availability of water. Results of the study showed that the reservoirs were silting in, but no faster than was predicted at the time of their construction.

The most controversial parts of this same legislation proved to be the competing needs for water and the assessment of the resources of the Ogallala Aquifer. This aquifer is part of the High Plains Aquifer, which underlies western Kansas, and parts of seven other High Plains states and is the source of much of the water used in western Kansas.

One outcome of the assessment was a detailed resource guide, "An Atlas of the High Plains Aquifer," prepared by staff members of the Kansas Geological Survey and the Kansas Water Office and approved by the Kansas Water Authority. Scientists projected that parts of the Ogallala, given past water decline trends, could lack sufficient water to support irrigation and other large-volume pumping within 25 years.

Taking this as a call to action, the Kansas Water Office and the Kansas Department of Agriculture in 2000 developed a proposal for management of the aquifer. The proposal, which came to be known as the "two-pool concept," was to serve as a starting point for discussion.

The goal of the two-pool idea is to be prepared if the aquifer is unable to support all the water demands placed upon it. The proposal is not a plan to stop irrigation, but rather to raise awareness and extend the usable life of the aquifer.

The two-pool idea attempts to balance continued economic development (primarily irrigation) of the aquifer (usable pool) and save some water in a second pool (conservation pool) for future generations. Protection will be through sustainable yield management when the usable pool is exhausted.

This pool, renewed each year, should sustain communities—provided annual use remains less than the recharge rate minus stream outflows.

To continue to extend the life of the usable pool and to sustain the conservation pool will take involvement and follow-through from groundwater management districts and the farmer-irrigators they represent.

As the two-pool concept was gearing up, the work of Governor Bill Graves' Vision 21st Century Task Force on Water was drawing to a close. The most-remembered message, "zero depletion (of groundwater) by 2020," was one that never was intended by the task force. The task force called for Kansas to make a commitment to enforce policies regarding sustainable use of ground and surface water. It stopped short of setting a deadline.

The reaction from most western Kansans who depended on the Ogallala was instantaneous and angry. Zero depletion (matching groundwater withdrawal with groundwater recharge) would break the financial back of western Kansas, many believe.

It was in an emotional and economically depressed agricultural climate (more than half of farm income came from federal government payments) that the two-pool concept was introduced. Under direction of the Water Authority, staff from the Water Office and the Department of Agriculture presented the concept at more than 50 meetings. Given the potential social and economic impact, it received a critical review by concerned yet respectful audiences.

In an effort to conserve groundwater resources while accommodating irrigators' desire for more flexible application of their water rights, the 2001 Kansas Legislature enacted several key measures: "water banking," a "safe deposit box," and penalties. "Water banking" allows irrigators, at their option, to use as much or as little of their five-year historic water use minus a 10 percent conservation factor. A "safe deposit box" allows irrigators to "deposit" the difference between the current year's annual water use and the gallons assigned by the water right. A 10 percent conservation factor is applied annually to all water placed into the account.

### *Drainage and Irrigation Districts*

As water issues have become more complex, a variety of local agencies have been created to take on the problems. Legislation near the turn of the 20th century authorized the establishment of drainage and irrigation districts whereby residents of local areas could organize to prevent floods and establish irrigation systems. The constitutional provision that until 1958 prevented the state from engaging in "internal improvements" in water control did not apply to local agencies, and thus made them the logical agencies to carry on these improvements. State action in the field was confined to general supervision rather than direct participation. The constitutional amendment approved by the voters in 1958 makes it possible for the state to be "a party to flood control works and works for the conservation or development of water resources."<sup>2</sup>

Four irrigation districts operate in the state. Although an 1891 law authorized such districts, all four current districts were created under procedures established in 1941. The chief engineer of the Division of Water Resources of the State Department of Agriculture is authorized to organize irrigation districts, when petitioned to do so, under whatever restrictions or conditions the engineer imposes. Districts are corporate bodies governed by a board of directors. They are authorized to enter into agreements with appropriate federal agencies; in the four Kansas districts in question, the agency is the U.S. Bureau of Reclamation.

Several laws authorize the creation of drainage districts. One allows boards of county commissioners to incorporate drainage districts within their county when petitioned by at least 40 percent of the taxpayers residing in the proposed district. Three other laws envision districts that include more than one county and are incorporated under certain circumstances by the governor or the district court. No complete information is maintained on the state level about the creation and operation of drainage districts. In most instances, they act as local sponsors for federally supported local protection works. The chief engineer of the Water Resources Division approves all project plans requiring permits and inspects the more important projects while they are under construction.

### *Watershed Districts*

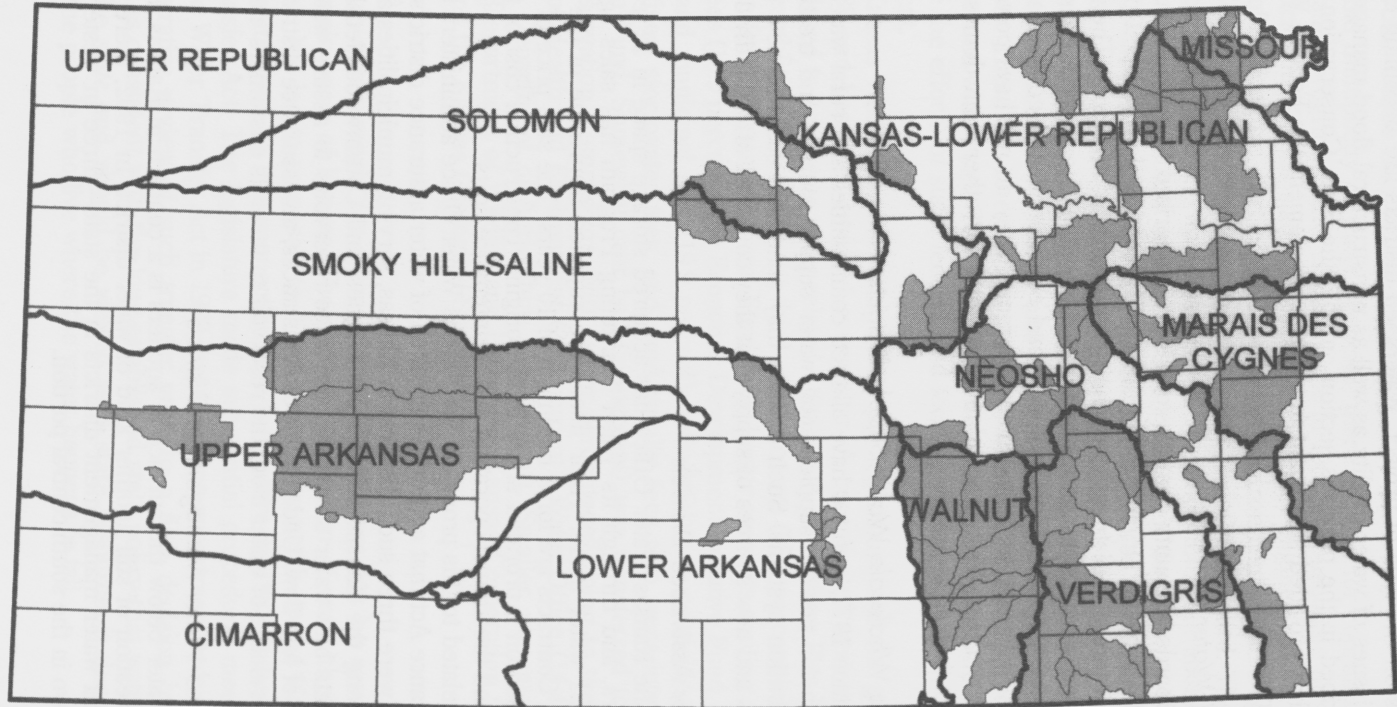
When interest was high after the flood of 1951, the Kansas Legislature passed a new watershed district law creating districts that would conform to natural watersheds. This law authorizes 20 percent of the landowners who own 25 percent of the acreage in a proposed watershed district to petition the secretary of state and the chief engineer of the Water Resources Division to organize a district. The chief engineer investigates the need for the proposed district and either approves or disapproves the petition. Such watershed districts have broad powers to manage their affairs, although approval of their plans by the chief engineer is necessary for coordination. Watershed districts are authorized to cooperate with other local, state, and federal government agencies, such as the Department of Transportation, the Department of Health and Environment, boards of county commissioners, city governments, the Natural Resources Conservation Service, the Bureau of Reclamation, the Corps of Engineers, and other states, in the planning and division of cost payments on a project.

The watershed law did not supersede, but merely supplemented, existing laws. A watershed district may include land in existing drainage or irrigation districts. Although the Division of Water Resources in the State Department of Agriculture is the designated coordinating agent, the intent of the law is to permit local control over financing and planning at all stages. As of 1992, 87 groups had filed to form watershed districts, but only 60 to 70 were reported to be active. Most of these districts have been organized across county lines.

Watershed districts become agencies for controlling the flow of surface water. The close relationship between water flow improvements and soil conservation is shown by the fact that the State Conservation Commission functions as the Watershed Review Committee for federal fund applications. Most watershed districts are created to sponsor federal projects under the Federal Watershed Protection and Flood Prevention Act. Some districts have sponsored construction, others have priority for detailed planning funds, and still others await planning support. The extent of federal participation de-



Figure 41  
Kansas Watershed Districts



Source: Kansas Geological Survey.

depends on the type of project. Watershed districts are becoming concerned with issues of water quality as well as nonstructural flood management. As described in the previous section on soil, the State Conservation Commission has provided significant funding to supplement the Federal Watershed Program.

### *Rural Water Districts*

Boards of county commissioners are authorized to establish rural water supply districts. Organized by the county commissioners upon petition of landowners, the districts have their own boards of directors. They are legal corporations with the power to sue and be sued. They may exercise powers of eminent domain, own property and equipment, and cooperate with the federal government in specified programs. They do not have power to levy property taxes. The appropriation of water for other than domestic use is subject to state approval.

### *Public Wholesale Water Supply Districts*

Since 1977, statutes have allowed communities and rural water districts to join for new or supplemental water supply sources and treatment and distribution systems. Such entities may share the costs of new treatment plants and new sources of supply that they could not afford individually.

### *Water Assurance Districts*

The Kansas Water Office has acquired storage space in 12 federal reservoirs, and through its Water Marketing Program has sales agreements with 21 water users. Their needs are supplied from nine of the 12 reservoirs. Contracts are for a minimum of 10 years. The sale price of the water is based on a prorated share of the original construction cost of the reservoir and the annual operating and maintenance costs.

Related to this program, the Kansas Water Office administers the Water Assurance Act that authorizes creation of water assurance districts. In 2001, there were three such districts in Kansas, serving municipalities and industry along the Kansas, Marais des Cygnes, and Cottonwood-Neosho rivers. Districts buy water storage in the large reservoirs to assure water during times of low flow. Under such circumstances, an assurance district may request release of water from the reservoir to meet its customers' needs.

### *Ground Water Management Districts*

Water below the surface in aquifers is a concern in Kansas, leading to the creation of still another kind of water district. In 1992, there were five ground water management districts in the state—three in western Kansas and two in the south-central portion.

### *Kansas Water Office and Water Authority*

With the multiplicity of water agencies, there is need for coordinating and integrating programs. Efforts were made in 1981 to consolidate parts of three agencies in Kansas state government: the chief engineer of the Department of Agriculture, part of the Division of Environment of the Department of Health and Environment, and the Water Resources Board. The reorganization plan, however, was disapproved. A compromise bill abolished the Water Resources Board and authorized creation of the Kansas Water Office and Water Authority. This is a 22-member bipartisan group; the governor appoints 11 members to ensure at least one representative of each major type of water user. Two gubernatorial appointees represent the public, and the president of the Senate and speaker of the House each appoint one member. There are 10 ex officio members who head the state agencies most concerned with water. The Water Authority was given responsibility to coordinate the efforts of state, federal, and local agencies engaged in water management.

The Kansas Water Plan was adopted by the legislature and the governor in 1985 and has been updated every year. A complicated system has been developed to fund state water-related activities. A state Water Plan Fund has been established. Just over one-third of its moneys (35.5 percent in SFY 2002) came from the state General Fund, with lesser amounts coming from fertilizer fees (16.9 percent), the Economic Development Initiative Fund (11.4 percent), and municipal fees (19.9 percent). Industrial fees, pesticide fees, pollution fines, stockwater fees, and sand royalty fees also went into the Water Plan Fund. Somewhat over half (55 percent) was transferred to the State Conservation Commission, with lesser percentages going to the Department of Health and Environment (22.3 percent), Water Office (14.4 percent), and Department of Agriculture (5.6 percent). Smaller amounts will go to the Department of Wildlife and Parks, the Kansas Corporation Commission, and the Kansas Geological Survey.

### *The Future*

A future water supply for extensive use by industry can be assumed only in certain parts of Kansas. The uneven distribution of water throughout the state has led to proposals to divert water from north-central Kansas to the Wichita area. In this connection, the legislature in 1983 passed the Water Transfer Act. The legislature made substantial procedural modifications to the Water Transfer Act in 1993, but it retains an extraordinary level of administrative review of such transfer prior to a final decision by the state. This is consistent with the long-established state policy that water belongs to the *state* and should be viewed as a state resource; it does not belong to the people who live where the water happens to fall.

Water is critical to industrial development, agriculture, and quality of life. Competition between water users promises to become even more intense as the Kansas population increases and life-styles change. Water and its availability may prove to be the single most critical resource in determining the state's future.

## **Wildlife and Parks**

As early as 1861, the state sought to conserve its wildlife by prohibiting the hunting of deer and wild turkey during certain times of the year. In 1905, a general program of wildlife conservation was undertaken in Kansas by the state fish and game warden. Hunting licenses were required, the fees going into a special conservation fund. Later, fish hatcheries were constructed at Pratt, strict hunting seasons were established for the protection of wildlife, and county fish and game wardens were appointed to enforce the game laws.

For various reasons, the state fish and game warden was placed under supervision of the Board of Regents and later under the Board of Administration. However, in 1927 the Forestry, Fish and Game Commission was established, and the state fish and game warden was made responsible to it. In 1978, the commission was renamed the Fish and Game Commission, a title more descriptive of its activities.

Kansas' wildlife conservation program became even more extensive with the creation in 1987 of the Kansas Department of Wildlife and Parks. It is charged with undertaking development of parks and lakes to provide a system of refuges, preserves, and breeding places for wildlife. State parks were constructed and counties were authorized to establish parks.

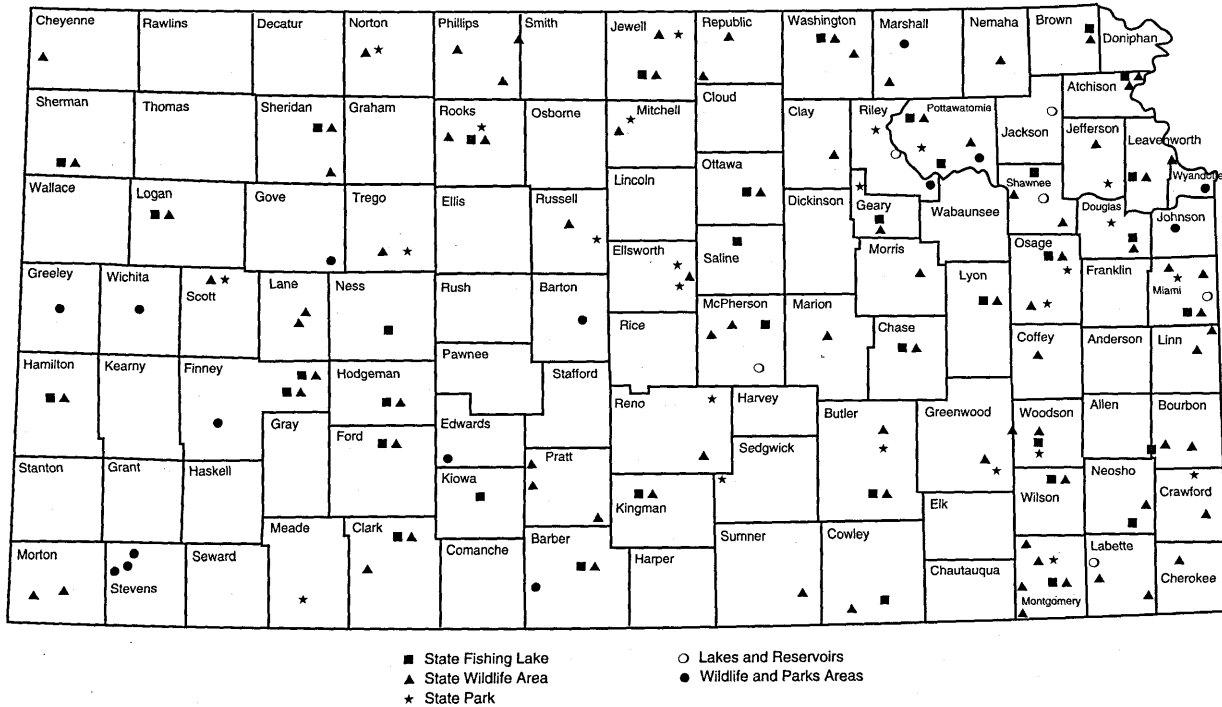
The department seeks to provide Kansas wildlife sports enthusiasts with the greatest quantity and highest quality of hunting possible, while conserving the broad stock of wildlife. They accomplish this through wildlife research and investigation, propagation, and management. The department has an agreement with the U.S. Army Corps of Engineers and the Bureau of Reclamation for the department to manage 205,668 acres of water and land. Further, the agency has arranged for private land to be opened for public hunting under the U.S. Department of Agriculture Cropland Adjustment program.

The department maintains a fish hatchery and rearing ponds to increase fishing opportunities, and operates 67 major installations at state lakes or parks. To enforce the fish and game laws, the state is divided into six supervisory regions with many game protectors.

The department works with the federal government and with other states to expand Kansas' conservation efforts. For instance, agreements have been reached with Oklahoma to exchange animals and services in order to bring deer back into Kansas. A similar agreement has been reached with Minne-

Figure 42

Kansas State Parks and Other Recreational Areas: 2001



Source: Kansas Department of Wildlife and Parks.

sota, in which Kansas sends small channel catfish to Minnesota in return for walleyed pike eggs. In such ways, the states can further their programs and enlarge their stock of wildlife. The federal government cooperates through the Pittman-Robertson Act and the Dingell-Johnson Act by granting up to 75 percent of the costs of building approved conservation sites for the propagation and protection of both fish and game.

The department registers boats and enforces safety laws and regulations with regard to boating on Kansas lakes. The commission has enforced the laws and conducted safety programs to encourage voluntary compliance. As boating has increased in popularity, this has become a more active program.

In a related program, the legislature in 1955 established the State Park and Resources Authority, which developed facilities for camping, picnicking, boating, and swimming. During this period, it was felt that these uses were incompatible with efforts to promote fishing and hunting. The authority was given exclusive control over state parks and authorized to charge admission fees.

In 1987, the Park and Resources Authority and the Fish and Game Commission were consolidated. As of 2001, there were 24 state parks; 37 state fishing lakes; and 31 wildlife areas, game preserves, and other properties. The department operates facilities in 79 of the state's 105 counties. About one-tenth of the department's expenditures come from the state General Fund; most operating expenses come from the sale of licenses, boating and park permits, and federal funds. It was expected in 2002 that the department would spend approximately \$43 million.

## **Oil and Natural Gas**

While much of the early activity concerning the conservation of oil and gas in Kansas revolved around production limits to maintain prices, the importation of cheap energy has made such activities ineffective. Kansas' production has little effect on the global price of energy.

Today the conservation efforts of the Kansas Corporation Commission (KCC) are more concerned with protecting the environment. The oil and gas section has three mandates: prevent waste, protect correlative rights, and protect underground water. The KCC regulates the production of oil and natural gas from drilling to final well plugging.

## **State Geological Survey**

The Kansas Geological Survey (KGS) is a research and service organization operated by the University of Kansas. The survey's mission is to undertake research in geologic resources and hazards, and to prepare reports on those subjects. In more than 100 years of operation, the survey has produced more than 800 reports and maps on the state's geology, ground wa-

ter, oil and natural gas, coal, metallic minerals, and other resources. The survey is made up of approximately 50 research scientists, 25 support staff, and 65 student employees. Its annual state-appropriated budget is \$6.1 million; in SFY 2002 it generated more than \$2.1 million in outside grants and contracts as well. The survey is headquartered at the University of Kansas in Lawrence, with a branch office in Wichita. It is composed of four research sections—petroleum research, geohydrology, geologic investigations, and mathematical geology—and a number of research-support sections, including exploration services.

Within Kansas, KGS is probably best known for its work in petroleum and water. But it also undertakes other applied research, such as geologic mapping and studies of the application of mathematical and statistical techniques to geologic problems. KGS provides a host of geologic-related services, such as archiving and loaning rock samples collected from oil and gas wells, and providing books, maps, and data to the public. Disseminating research results and other information about earth-science issues in Kansas and studies of environmental issues have become increasingly important priorities for the organization.

## **Energy Conservation**

For a time, Kansas had a separate Energy Office, but in 1983, the office was abolished and its duties transferred to the Kansas Corporation Commission. Federal grants are administered under the program, which in 1992 received no General Fund appropriations. The staff is responsible for the State Energy Conservation Plan and provides on-site individual energy counseling.

## **Human Resources**

The term “natural resource conservation” usually conjures thoughts of soil, water, and wildlife. Increasingly, however, attention has been focused on the conservation of *human* resources. This was evidenced in 1975, when the reconstituted Department of Labor was named the Department of Human Resources—although other state departments are also involved in this major government function.

Legislation requiring safety precautions and safe working conditions, and restricting the employment of women and children, are designed to conserve human life and potential. Efforts to assist workers in overcoming unemployment and in matching the skills of the worker with the needs of the employer are all parts of the government’s efforts in this connection. Vocational rehabilitation, aid to families with dependent children, work-incentive programs, and programs to help the visually handicapped and the deaf further illustrate Kansas’ desire to conserve its human resources. In a broader

perspective, one can view education and vocational guidance and counseling as having similar long-run social objectives.

In 1962, the Kansas Citizen's Council on Aging was established at the annual conference on aging. This private, nonprofit corporation worked with the Department of Social and Rehabilitation Services and was concerned about the elderly—a group particularly important in Kansas, which has an unusually high percentage of residents older than 65. Efforts were made to involve older persons in community activities and to encourage them to continue making meaningful contributions to the life of the community. These programs have been transferred to the Department on Aging.

The ramifications of efforts to conserve human life and usefulness are too extensive to be covered in this section; they are discussed in the chapters on labor, social welfare, and education. Increasingly, the protection of human life has come to be recognized as an important part of conservation.



## Chapter 20 Notes

1. The programs are: Aid to Conservation Districts, Watershed Dam Construction, Watershed Planning Assistance, Water Resources Cost-Share, Multipurpose Small Lakes, Benefit Area, Riparian and Wetlands Protection, Non-Point Source Pollution Control, and Water Rights Purchase.
2. *Kansas Constitution*, Article II, Section 9.
3. For a history of the Interstate Oil Compact Commission, see "A Summary of the Background, Organization, Purposes, and Functions of the Interstate Compact to Conserve Oil and Gas," a report distributed by the Interstate Oil Compact Commission, January 1947.



## Chapter 21

# Transporting People and Products

**E**arly roads in Kansas were built by the federal government as military roads to connect the frontier forts in the Kansas Territory. In the 19th century, the construction and maintenance of roads was almost exclusively a function of local government. The Kansas Constitution expressly prohibited the state from "being a party to carrying out any works of internal improvement."<sup>1</sup> When the automobile came into common use in the 20th century, it was evident that a coordinated system of highways would be necessary. In 1928, the Kansas Constitution was amended to permit the state to build highways, thus making possible the state highway system of today.

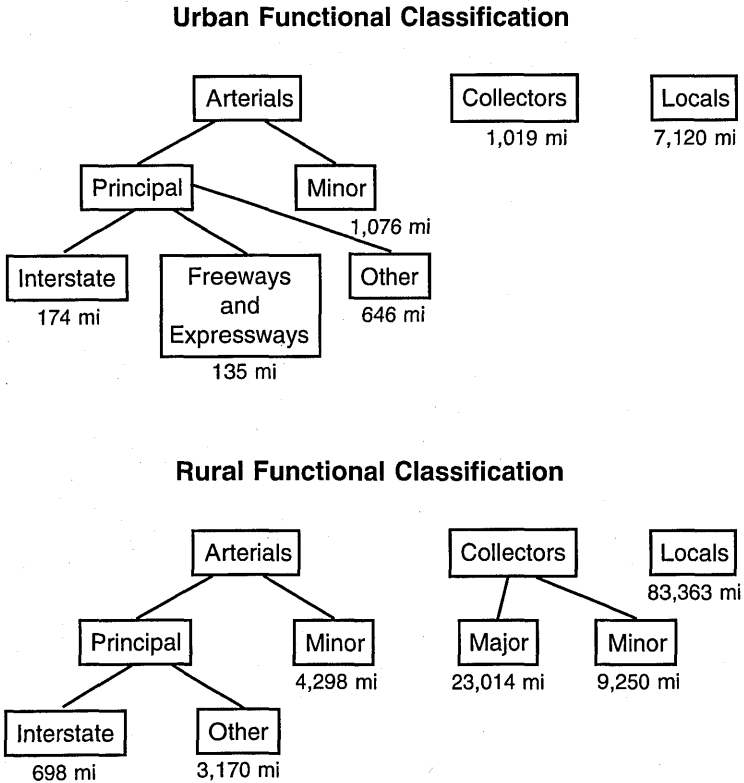
With its agricultural base and urban centers, Kansas needs a closely woven pattern of connecting routes to link its diverse localities. Fortunately, the surface of the state—with its great open plains, without mountains and other geographic barriers—lends itself to the building of such routes.

Kansas has slightly less than 134,000 miles of public roads, placing it fourth among the states in total mileage, yet Kansas ranks 13th among the states in size. Within the state there are 2.3 million motor vehicles, which share these highways with a considerable amount of tourist and interstate commercial traffic. The building and maintenance of highways ranks as a major function of state government. In recent years, highways have been the object of approximately 10 percent of the total expenditures of Kansas government.

## Road Classifications and Systems

The broadly functional system of classifying roads as designed by the U.S. Department of Transportation is shown in Figure 43, which divides Kansas' 134,000 miles of roads into their appropriate classes.

**Figure 43**  
**Functional Classification of Kansas Roads: 1999**



Source: *Kansas Department of Transportation, 2000 Selected Statistics*, p. 20.

A different pattern emerges when roads and their connecting links are classified by the jurisdiction responsible for them. While the state highway system constitutes less than 8 percent of the total miles, state highways carry more than 50 percent of the traffic.

**Table 33**  
**Kansas Public Road Miles and Travel by Jurisdiction: 1999**

System	Miles	Percent	Daily Vehicle Miles Traveled	Percent of Total Travel
State Highway System	9,565	7.1	26,466,150	34.0
City Connecting Links	820	0.6	14,307,936	18.4
County/Township	109,591	81.8	12,449,512	16.0
Municipal	13,512	10.1	20,502,758	26.3
Turnpike	238	0.2	3,970,688	5.1
State Park Roads	236	0.2	172,226	0.2
<i>Total</i>	133,962	100.0	77,869,270	100.0

Source: *Kansas Department of Transportation, 2000 Selected Statistics*, p. 18. Because of rounding, the totals may not be precisely accurate.

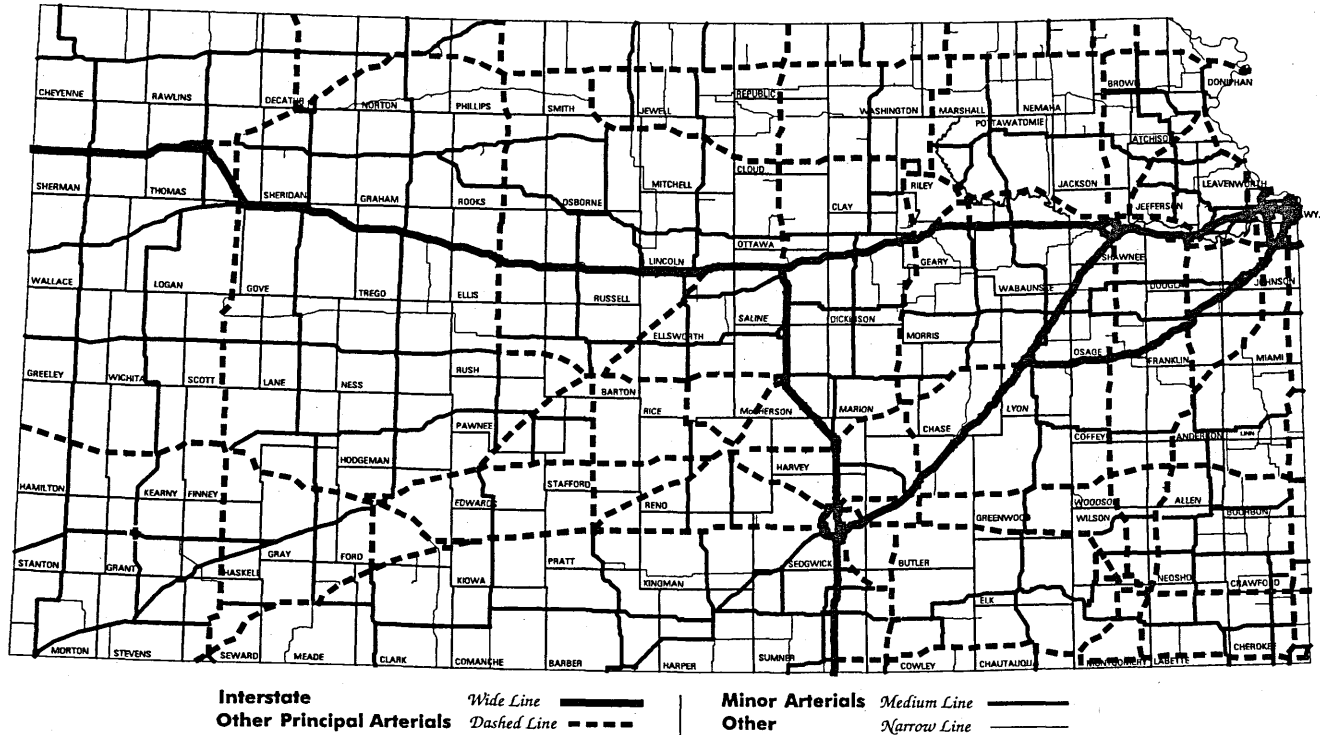
### *The State System*

The state government is responsible for the state highway system. Kansas statutes originally provided that this system not exceed 10,000 miles, that the mileage of state highways within each county not be less than the sum of the east-west and north-south diameters of the county, and that highways be designed to provide connecting routes between county seats and major market centers.<sup>2</sup> City streets could be designated as connecting links to the state highway system.

As of 1992, Kansas had been allocated 870 miles of the 42,000-plus miles authorized by Congress for the interstate system. In Kansas this consists of a major highway from Kansas City through Topeka and westward toward Denver, Colorado; a major highway from Kansas City south; and a route north from Wichita to I-70. The interstate system is considered so important that the national government paid 90 percent of the cost of its construction. The Kansas Turnpike has been designated part of the interstate system.

All state highways, except the Kansas Turnpike, are under the jurisdiction of the Kansas Department of Transportation (KDOT), established by the legislature in 1975. It is headed by the secretary of transportation, who is appointed by and serves at the pleasure of the governor. This marked a

Figure 44  
 Kansas State Highway System: 2001



Source: Kansas Department of Transportation, 2001.

change from the previous organization, in which the central authority was a six-member Highway Commission. A commissioner had been appointed from each of the six districts into which the state was divided for highway purposes. Some administrative matters and policies customarily were worked out between the highway commissioner and the district engineer for the appropriate district. The new organization was expected to give the governor more direct authority over the highway program of the state and to form one state program rather than six district programs.

The Department of Transportation was restructured with a 12-member advisory group, two members being appointed from each of the six highway districts. The commission may, by a two-thirds vote, disapprove any determinations made by the secretary as to the location of a highway, and any authorization for highway construction or reconstruction. Some who opposed the new department felt this provision was necessary to ensure that some of the less-populated portions of the state got a fair share of highway improvements. The commission may also review the status of highways and propose and recommend to the secretary plans for highway improvements.

Aside from these two major changes, the Department of Transportation is essentially a renamed Highway Department. The few employees of the aviation section of the Department of Economic Development were transferred to the new department. This suggests one of the philosophical arguments given for the change of name: the new department is multi-modal in the sense that it is concerned with *all* forms of transportation. The department has reported that for the next 10 or 20 years, highways, autos, trucks, and buses are expected to be the primary modes of transportation in Kansas—yet it is planning for the use of transportation modes such as rail, water, and air. The department is likely to become even more involved in the administration of federal assistance programs for urban mass transit.

KDOT operates under supervision of the state transportation engineer, and has divisions devoted to transportation engineering and design, transportation planning and development, operations, and administration. The construction and maintenance of state highways and materials is under general supervision of the Division of Operations. This responsibility is delegated to the engineer in each of the six highway districts. Each district has assistant district engineers for construction, for maintenance, and for materials.

Maintenance operations are conducted within defined geographic areas called maintenance areas. There are 26 area offices in the state. Each maintenance area has its own headquarters and shops, and is overseen by an area supervisor. The areas are further divided for maintenance purposes into subareas, each responsible for about 30 miles of state road. Construction projects are supervised by area engineers as the number and location of the projects demand.

### *Kansas Turnpike Authority*

The Kansas Turnpike is a 236-mile toll road from Kansas City, Kansas, in the northeast corner of the state, to the Oklahoma border south of Wichita. It was constructed during 1955 and 1956 as a toll facility, providing a modern highway through Kansas for the benefit of all motorists without increasing the tax burden of Kansas' residents.

The turnpike was built and open to traffic before the Interstate System was created in 1956. Since the turnpike was already operating, federal planners decided not to build a parallel interstate route or to reimburse the Kansas Turnpike Authority for the existing toll road. Instead, planners designated sections of the toll road as part of the interstate system, saving billions of tax dollars by not building duplicate highways. The turnpike does not receive any financial reimbursement for the interstate segments, including the cost of signs along the roadway.

The Kansas Turnpike Authority consists of a five-member board of directors. The board elects one of its members as chair. The governor of Kansas appoints two members, who serve four-year terms. Two members serve by reason of their legislative position. One is the chair of the Kansas Senate Transportation Committee and the other is a member of the House Transportation Committee, appointed by the speaker of the House. The fifth member is the secretary of the Kansas Department of Transportation. The latter three are members of the authority for the duration of their state terms.

The board selects a president/CEO charged with managing day-to-day turnpike operations. The organization consists of an administrative staff in the Wichita and Topeka offices and field staffs in charge of maintenance, turnpike patrol, and toll collection. There are nine maintenance districts, located at Bonner Springs, Lawrence, Topeka, Admire, Emporia, Cassoday, El Dorado, Wichita, and Wellington. Toll collection employees staff the 20 interchanges along the roadway. The board contracts with the state highway patrol for its services for patrolling the turnpike.

There are six service areas, located near the cities of Belle Plaine, Towanda, Matfield Green, Emporia, Topeka, and Lawrence. The turnpike does not receive any sales or motor fuel tax revenue generated through sales at the service areas.

### *Local Road Systems*

*Non-County Unit System.* This is the older of the two ways by which counties classify and operate their roads. Under this system, as provided by statute, the county engineer and county commissioners designate the major county highways as secondary or minor collector roads. Other rural roads are designated as township roads. These roads comprise the largest block of Kansas' 83,997 "rural miles." Township roads fall within the jurisdiction of township officials. The township trustee usually supervises road work,



although she or he may seek technical help from the county engineer. Most townships have a part-time equipment operator as their sole employee, with the primary duties of keeping the township roads graded and drained.

County highways fall under the jurisdiction of the county commissioners, who appoint a county engineer subject to KDOT approval. Under state law, a county engineer must be a licensed engineer, but commissioners may appoint the county engineer or a road supervisor to supervise county highway crews.

*County-Unit System.* The adoption of the county-unit highway system may be initiated either by the county commissioners or by the voters.<sup>3</sup> The first authorization of the county-unit system was made by the 1917 legislature,<sup>4</sup> and by 1930 the county-unit plan had been adopted by 20 counties. In 2000, 69 counties operated under the county-unit highway system, in which construction and maintenance of roads becomes a county function. The county commission classifies its roads as 1) secondary roads or highways, 2) county minor collector roads or highways, or 3) local service roads. Roads are constructed and maintained according to classification, which is done with consideration of their use and importance, determining the priority of projects for improvements and the level of maintenance for the various parts of the county road system.

*City Streets.* There are approximately 12,500 miles of city streets in Kansas. The type and sophistication of the administration organization within cities varies with their size. Very small third-class cities usually have a part-time equipment operator, whose duties are about the same as those of the operator employed by the township. In other small cities, these duties may be assigned to another employee, such as the marshal or water plant supervisor. Larger cities usually employ a city engineer or street supervisor, who is responsible for the work of the city street crews. The largest cities, such as Kansas City and Wichita, have staff that perform many of the engineering and maintenance functions performed by the state Department of Transportation.

The construction and reconstruction of city streets serving as connecting links of the state highway system usually is administered by KDOT under an agreement signed between the department and the city for each proposed project. The cost of any right-of-way needed for the connecting link may be shared by the state and city. The share of each will vary, usually depending on the size and financial resources of the city; sometimes it also depends on the eagerness of the two levels of government to get the project under way.

In third-class cities with fewer than 500 people, the Department of Transportation may have exclusive responsibility for state highway links, while

larger cities practice joint state-city responsibility for construction and maintenance.

## **Financing Roads**

### *Taxes on Motor Fuels*

The state assesses a tax on the fuels used by all motor vehicles on state highways. The principal tax in this group for FY 2001 is the 20 cents-per-gallon tax on gasoline and gasohol, but there also are taxes of 22 cents per gallon on special fuel (diesel) and 19 cents per gallon on liquefied petroleum.

The Kansas Legislature uses formulas to distribute the revenues collected from these taxes. Amounts are set aside to refund the taxes paid by non-highway users, and \$2.5 million goes to the Kansas Qualified Agricultural Ethyl Alcohol Producers Incentive Fund. The remainder is divided, 59.55 percent going to the State Highway Fund. In FY 2001, this resulted in almost \$217 million for the State Highway Fund. The remainder of the motor fuel tax collection, 40.45 percent, goes to a Special City and County Highway Fund for use by local units of government. Fifty-seven percent of this fund goes to the counties under a complicated formula. In the 92 least populous counties, the money stays in the county for use on county roads, with the requirement that in noncounty-unit counties, the townships will receive some funds. The 13 most populous counties must share these funds with their cities, according to a statutory formula. The remainder of the Special City and County Highway Fund, 43 percent, goes to the cities on the basis of population and must be used only on streets.

### *Motor Vehicle Registration and License Fees*

Registration and license fees constitute a second major source of highway funds at the state level. The license and registration fees for motor vehicles are based on each vehicle's weight, so owners of large trucks pay considerably more than owners of small passenger cars. Receipts from these fees totaled about \$137 million in FY 2001.

### *Federal Aid*

The Transportation Equity Act for the 21st Century (TEA-21) was enacted in 1998, replacing the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). TEA-21 authorized highway, highway safety, transit, and other surface transportation programs for the next six years. TEA-21 built upon the initiatives established in ISTEA, with added initiatives to meet the challenges of improving safety as traffic continues to increase at record levels, protecting and enhancing communities and the natural environment with transportation systems, and providing efficient and flexible transportation to enhance economic growth. In general, the state receives an appor-

tionment and then presents projects to the Federal Highway Administration. While most federal aid goes toward projects in the state highway system, counties are given allotments for presenting projects on federal aid-eligible roads.

Table 34 illustrates amounts and variations in federal aid contracts for the state highway system during recent years.

**Table 34**  
**State Highway System Construction Summary**  
**(in Thousands of Dollars)**

<b>Fiscal Year</b>	<b>Federal Aid Funds (\$1,000)</b>	<b>State Highway Funds (\$1,000)</b>	<b>Local Funds (\$1,000)</b>	<b>Total Funds (\$1,000)</b>
1990	106,408	143,609	7,599	257,616
1991	84,131	149,978	32,952	267,061
1992	125,683	180,189	13,452	319,324
1993	111,048	166,995	14,452	292,495
1994	114,330	233,570	20,457	368,357
1995	137,158	320,972	18,921	477,051
1996	94,136	507,436	25,528	627,100
1997	141,677	363,578	9,900	515,155
1998	146,599	219,510	18,376	384,485
1999	155,446	246,549	45,790	447,785
2000	204,256	240,674	7,024	451,954
2001	209,807	533,537	19,263	762,607
<i>Total</i>	1,630,679	3,306,597	233,714	5,170,990

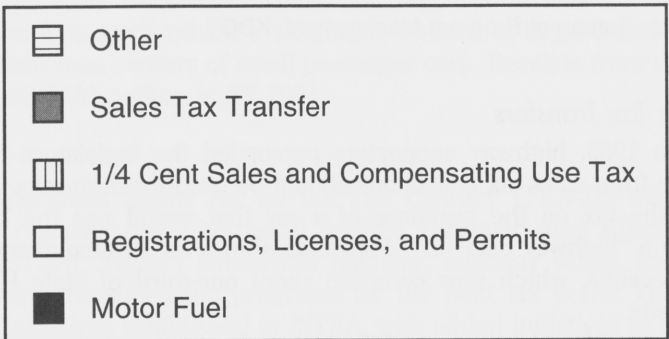
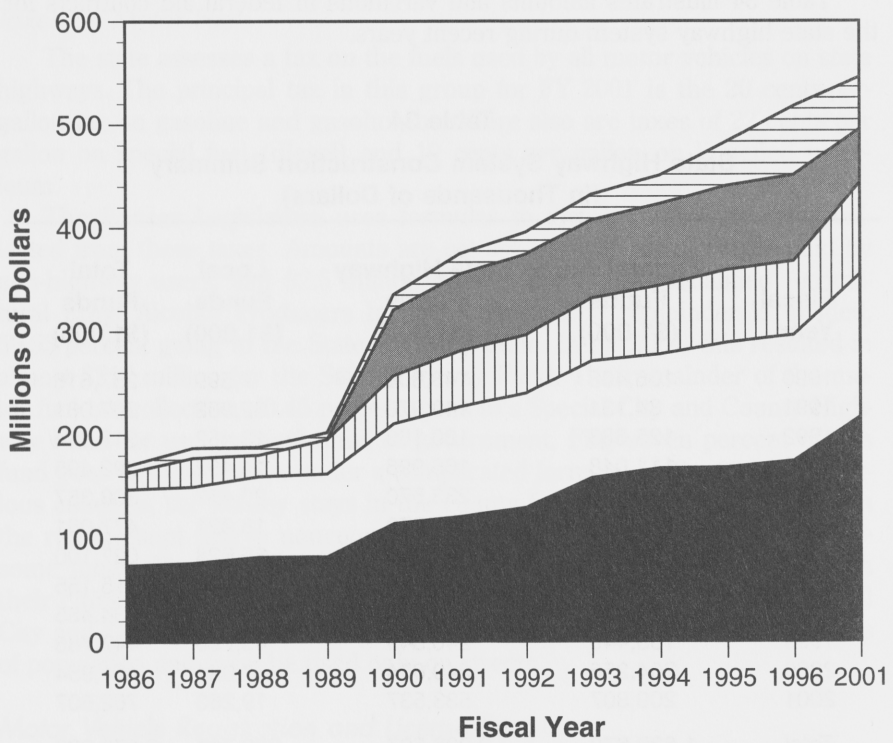
Source: Bureau of Program Management, KDOT.

### *Sales Tax Transfers*

In 1983, highway supporters persuaded the legislature that some receipts from sales tax collections should be used for highways. It was argued that the tax on the purchase of a car that would use the highways was really a "highway user tax." Figure 45 shows the dramatic increase in sales tax receipts, which now compose about one-third of State Highway Fund deposits.

A transfer of a portion of the state sales tax receipts was instituted with a phased increase. In 1989, during debate on the Comprehensive Highway Program, the amount of the transfer was increased and the state sales tax rate was increased by a quarter cent, with the increase deposited directly to

**Figure 45**  
**Major State Revenue Sources for the**  
**State Highway Fund: 1986–1996, 2001**



Source: Kansas Department of Transportation Budget Documents.

the State Highway Fund. In 1999, the legislature increased the amount of the sales tax transfer as part of the funding for the Comprehensive Transportation Program.

### *Tolls*

Turnpike Authority funds come primarily from tolls collected from turnpike users, supplemented by rent paid by vendors of services provided on the turnpike, such as fuel and food operators. The Turnpike Authority sets the amount of the toll. Revenues are used to pay for turnpike maintenance and operation, and to pay off the bonds sold to finance construction and maintenance. The bonds do not represent an obligation of state government. No state or federal tax dollars were received for the construction of the Kansas Turnpike or are received for its operation.

### *Local Highway Revenues*

Cities, counties, and townships levy property taxes that can be used on roads and streets. Most residential streets are built through special assessments on the property benefited, and maintenance is performed by the city. The state shares motor fuel tax receipts with local units through the Special City and County Highway Fund.

Cities having streets designated as state highway connecting links may receive an annual payment of \$3,000 per lane-mile. In return, the cities agree to maintain the portion of state highway that lies within city limits.

## **The Comprehensive Transportation Program, 1999-2009**

Assorted programs have been designed to reawaken interest and funding for new and better roads. In 1969, nine corridors were established, and the Highway Department (now the Department of Transportation) was to give priority to building roads in the corridors, which totaled approximately 1,300 miles. In 1989, the legislature responded to calls for better roads by approving the Comprehensive Highway Program (CHP) for SFY 1990-1997. The CHP consisted of highway project costs totaling \$3.9 billion.

The Interim Plan was designed to serve as KDOT's program until a new multi-year program was enacted by the legislature. The Interim Plan was in place for SFY 1998 and 1999. Due to limited funding, the focus was on preservation of the current highway system and did not allow for new or enhanced projects.

The Comprehensive Transportation Program (CTP) began July 1, 1999, and will serve KDOT through FY 2009. The CTP guarantees that at least \$3 million will be spent in each of the state's 105 counties for highway construction improvements. The completion of CTP projects is contingent on

funding being provided as outlined in the enacting legislation. The major components of the CTP are:

- substantial maintenance: preserve the highway system's "as built" condition as long as possible;
- major modification: improve the service, comfort, capacity, condition, or safety of the existing system;
- priority bridge program: replace or rehabilitate substandard bridges;
- system enhancement: additions to the system of highways or substantially improve safety, relieve congestion, improve access, or enhance economic development.

## **Highways and the Future**

It is difficult to overstate the importance of highways to American society and its way of life.<sup>5</sup> Highways serve as arteries of commerce, facilitating movement and the exchange of ideas. The private automobile has wrought incredible mobility and has in fact become a way of living. For some, it has become a way to express individuality. This increased dependence on the private automobile has left citizens vulnerable to the effects of fuel shortages and increased prices. Some predict that the American life style will eventually have to adjust to diminishing fuel supplies. This in turn will impact the revenues from motor fuel taxes that go to the State Highway Fund. The mechanisms used to finance road construction and maintenance in the past may not suffice in the future. Population and economic shifts may also generate the need for different highway programs and new financing.

Surveys of highway needs reveal that sections of the state vie for highway dollars. Numerous highway needs assessments have all indicated more needs than available resources. It is clear that it is not possible to fund every meritorious project. It is KDOT's responsibility to assess and prioritize improvement projects based on the needs of the entire state highway system.

What should be the priority in funding projects? What parts of the system are most in need of construction or reconstruction? In the final analysis, the need for one project must be weighed against the need for another project elsewhere in the state. To what extent should revenues be used on the highways with heaviest traffic?

In the late 1970s, legislative leaders directed KDOT to develop a system to prioritize construction on the state highway system. The system and its formulas were to be well-documented and clearly defined. To the extent possible, quantitative and verifiable factors were to be used to determine relative priorities. A system meeting these requirements was developed for KDOT by an outside consultant. This system has been used by KDOT since 1983 to program major construction improvements in the state highway sys-

tem. The system itself has undergone numerous evaluations, and minor adjustments have been made over time, but the basic form and factors have remained nearly the same since its development 20 years ago.

It probably is easier to reach a consensus on the nature of general highway needs than on how to finance them. Because highways constitute a capital improvement whose benefits extend into the future, a case can be made for issuing bonds and requiring those who will benefit to share in the costs of construction. Some people believe that the principle of users paying for highways is reasonable, and they see toll roads as the answer. A further element of the financing question is *which* users should pay. Efforts to allocate the costs of highway construction and maintenance according to the costs occasioned by particular users have not generated agreement as to the fair share to be paid by each group. Moreover, there probably are some costs of highways that even nonusers should shoulder.

Current funding arrangements, with much construction being paid in part with federal funds, have added other complications to the already knotty business of prioritizing projects. The requirement for public hearings at various stages in the planning process has extended the time frame for completion of most projects, and there have been many efforts to shorten it. The entire process typically involves more than five years for simple projects and 10 or more years for complex ones. Some delays have been occasioned by requirements for environmental impact studies.

With more people, more and heavier vehicles, and the strain of time, the problems of highway construction and maintenance will need to be revisited. An increasing percentage of revenues is likely to be required for maintenance. It seems clear that more revenues will be required. And with the move for "devolving" government from Washington, D.C., a larger percent of highway dollars may well have to come from state funds.

## Chapter 21 Notes

1. *Kansas Constitution*, Article 11, Section 9.
2. *K.S.A.*, 68-406.
3. *K.S.A.*, 68-516.
4. *Session Laws*, 1917, Chapter 264, Section 25 (*K.S.A.*, 68-516).
5. See the chapter, "Transportation Policies, with an Emphasis on Highways," by Dimitrious S. Dendrinios, pp. 99–121 in *Public Policy and the Two States of Kansas*, edited by H. George Frederickson, University Press of Kansas, 1994.



## Chapter 22

# Protecting Kansas Workers

Although in the minds of many, Kansas is thought of as a “farm state,” the percent of the population engaged in the non-farm sector of our economy has increased substantially and is likely to continue to grow. Paralleling this dramatic development has been an increase in the percentage of Kansans in other occupations. In the 1970s and 1980s, the numbers employed in service professions more than doubled, accounting in 2001 for about one-third of those employed in the private, non-farm sector. The retail trade sector was another significant growth area.

The programs designed to further the interests of working men and women are operated by state agencies, which, in turn, are often enforcing federally mandated regulations. Local units of government are not much involved, except to follow the laws as employers. The state agencies have local offices or field agents who perform the functions locally. Some of these programs are sufficiently demanding financially that employers would be at a competitive disadvantage if the programs were not in effect nationwide. This was part of the rationale for designing unemployment compensation as a “national” program.

### **Industrial Safety**

The first industrial safety laws in Kansas were directed at coal mining. As early as 1875, mine owners were required to provide escape shafts. Eight years later, the legislature enacted more detailed regulations for mine safety and established the Office of Mine Inspector to examine mines for compli-

ance. In 1975, the responsibility for mine inspection passed to the U.S. Bureau of Mines.

Industrial safety laws related to manufacturing establishments apply to all factories, mills, workshops, and mercantile facilities in the state. Safety regulations have been established for the operation of vats, gears, belts, and shafts for well holes; handrails on stairways; and fire escapes. In addition, factory inspectors investigate systems of sewage; the location and condition of toilets and washrooms; and lighting, ventilation, and heating systems in places of employment. There is a separate state program, supported by fees, requiring the inspection of the 17,400 boilers in the state. When unsatisfactory conditions are discovered, the Department of Human Resources<sup>1</sup> issues and enforces orders for their correction and elimination. During SFY 2002, there are expected to be about 3,400 inspections in private industry and in governmental units in Kansas.

Congress in 1970 passed the Occupational Safety and Health Act (OSHA). Now Kansas' industrial safety program is funded 90 percent by the U.S. Department of Labor and 10 percent from the State General Fund.

### *Industrial Accidents*

If safety precautions fail and a worker is accidentally injured, the worker faces the dual problem of being unable to work while coping with extra medical expenses. Kansas workers are assured in almost every case that the state has provided some measure of redress for injuries by means of the Workmen's Compensation Law. This has not always been the case, for when Kansas became a state in 1861, employers could escape responsibility for an accident if they could show that the injured employee had contributed to the accident by negligence or that another employee had been responsible; or they could argue that the worker assumed the risks of an occupation when accepting employment.

In the 1870s, the railroads were almost entirely deprived of using these common-law defenses, and in 1911, the legislature completely seized them from most other employers by enacting the Workmen's Compensation Law. Claims arising under this law were at first handled by the regular court system, but since 1927, such claims have been arbitrated by an administrative agency. Initially the Commission of Labor and Industry administered the law, but in 1939, this function was transferred to the workmen's compensation commissioner, and in 1976, it became a part of the new Department of Human Resources as the Division of Workers Compensation.

For years Kansas workers compensation laws applied only to specifically defined hazardous employment with one or more employees, and to other defined employment with three or more employees. Coverage has been made mandatory for all workers except those in agriculture and those employed by employers with an annual payroll of less than \$20,000. Coverage was mandated for state and local government workers. Under the law, each

employer is required either to carry a workers compensation insurance policy from an authorized company or to become a self-insurer. The former procedure is more common, for very few businesses or cities are large enough to take the risk of self-insurance.

When a worker in an organization covered by the law is accidentally injured in the line of work, she or he reports the accident to the employer, who must report it to the Division of Workers Compensation. The injured employee receives medical treatment from a physician selected by the employer. The insurance company pays the physician's fees according to a schedule established by law. The workers compensation commissioner notifies the employee of her or his rights under the act—rights that include temporary disability payments as well as awards for permanent disability. The maximum award varies with the seriousness of the disability, and is set by statute in the amounts shown in Table 35.

Payments are made to the injured worker by the insurance company, or by the employer (if the employer is self-insured). When the employee and the employer or insurance carrier cannot agree, either side may appeal for a hearing before an administrative law judge (ALJ). The decision of the ALJ may be appealed to a special review board, and that board's decisions may be appealed to the Kansas Court of Appeals. In the year ending June 30, 2002, 91,000 accident reports are expected to be filed.

In 1945, Kansas established a Second-Injury Fund in the state treasury. This has since been designated the Workers Compensation Fund. It was created as an inducement for employers to hire persons who are disabled or have suffered a work-related injury. If such a person is injured, he or she is compensated just as those who are injured for the first time, but the insurance company may bring a claim against the fund to relieve the insurance company of full liability. This fund is administered by the state insurance commissioner rather than by the workers compensation commissioner.

Although workers compensation has long been viewed as a state function, in 1970, OSHA created the National Commission on Workmen's Compensation Laws to study state programs. The commission issued its report in 1972, recommending improvements in state workers compensation programs and noting wide variations between states in their program coverage and benefit levels. Some national leaders and legislators called for substantial improvements in state programs or for a federal take-over of the programs. The effect of the report was to encourage states to reexamine their programs, resulting in significant changes in the Kansas laws in 1974. Coverage was extended, benefits were increased, and many important terms were redefined. Even with these changes, Kansas still does not fully meet many of the recommended standards set by the national commission.

The 1993 session saw the successful passage of a workers compensation reform bill. The bill addressed 40 topics, including fraud, several steps

**Table 35**  
**Maximum Benefits, Kansas Workers Compensation Law**  
**(Effective July 1, 2000)**

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Medical and hospital allowances . . . . .	<i>No Limit</i>
Death: spouse and wholly dependent children . .	\$250,000
Death: heirs (no dependents) . . . . .	25,000
Burial allowance . . . . .	5,000
Permanent total disability . . . . .	125,000
Temporary total disability . . . . .	100,000
Partial disability . . . . .	100,000
Maximum weekly benefits (7-1-00 to 6-30-01) . .	401

	<b>Maximum weeks that may be paid</b>	<b>Compensation at \$401 per week</b>
Shoulder . . . . .	225	\$90,225
Arm . . . . .	210	84,210
Forearm . . . . .	200	80,200
Hand . . . . .	150	60,150
Leg . . . . .	200	80,200
Lower leg . . . . .	190	76,190
Foot . . . . .	125	50,125
Eye . . . . .	120	48,120
Hearing, both ears . . . . .	110	44,110
Hearing, one ear . . . . .	30	12,030
Thumb . . . . .	60	24,060
Finger 1st (index) . . . . .	37	14,837
Finger 2nd (middle) . . . . .	30	12,030
Finger 3rd (ring) . . . . .	20	8,020
Finger 4th (little) . . . . .	15	6,015
Great toe . . . . .	30	12,030
Great toe, end joint . . . . .	15	6,015
Each other toe . . . . .	10	4,010
Each other toe, end joint only . .	5	2,005

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Allowance of 10 percent and not more than 15 weeks for healing period following an amputation.

Source: Department of Human Resources.

to improve the state's management and regulatory functions, and limits on attorney fees.

### *Conditions of Work*

As Kansas became more industrialized, women and children moved from the homes into shops and factories. Some employers showed so little concern for their welfare that the legislature had to take matters into its own hands. Before 1905, there existed only piecemeal legislation to regulate child labor. A more comprehensive child labor law was enacted that year, and stricter provisions were added in 1909 and 1917. However, as more employment has been ruled to be involved in interstate commerce and thus is covered under federal legislation, the state has discontinued some previous inspections concerning employment of children.

Conditions of work for women were given legislative attention as early as 1901, when employers were required to furnish seats for all women and girls employed as clerks. In 1915, the Industrial Welfare Commission was established to ensure the well-being of both women and minors.

The commission was abolished in 1921, when its duties were transferred to the Labor Department and subsequently to the Department of Human Resources. Early orders attempted to establish minimum wages, but the Kansas Supreme Court declared that these orders were contrary to the 14th Amendment of the U.S. Constitution after the U.S. Supreme Court held similar laws in other states to be unconstitutional.<sup>2</sup> The U.S. Supreme Court has since reversed itself: such laws now are constitutional, and both the federal government and Kansas have established minimum wages and overtime regulations.

The federal Fair Labor Standards Act applies to employees in interstate commerce. In 1977, the Kansas Legislature enacted a general minimum wage law (\$2.65) for most *intrastate* workers (agricultural workers, domestics, and certain others were excluded). Despite increases in the federal minimum wage and several proposals to raise the low rate, the low rate remains in effect. It applies only to a few employees. The most important part of the law may be the requirement that time-and-a-half be paid after a person has worked 46 hours during a week.

### **Unemployment Insurance**

Periodic "booms" and "busts" have been characteristic of the American economy. In good times, workers usually had steady employment, and in bad times they experienced unemployment. The evils of unemployment became particularly extreme during the Great Depression of the early 1930s. To overcome this treacherous cycle, Congress in 1935 established a joint federal-state employment security program. After the adoption of an enabling constitutional amendment in 1936, the Kansas Legislature also formulated

an employment security program. In its declaration of policy, the legislature stated that periodic unemployment was a menace to the welfare of the people and that the state would attempt to counteract this economic hazard through the compulsory accumulation of funds to benefit persons who were unemployed. Under the program, an employment security fund is maintained in the state treasury. Employers pay contributions to the fund, and from it unemployed workers receive benefits. A separate account is kept for each of more than 70,000 employers and for each of the 1.4 million workers.

In general, all employers of one or more workers are required to contribute to the fund. In 1976, coverage was extended to include state and local government employees, most domestic workers, and some farm laborers. It is now estimated that about 95 percent of all employees are covered. The employer's contribution to the federal fund is 0.8 percent of the first \$7,000 of wages paid. The rate of contributions to the state fund depends on the amount of unemployment benefits paid to former employees (and thus charged against the employer's account) and the employer's total annual payroll. These rates vary from .01 percent to as high as 7.4 percent.

To receive benefits, an unemployed worker must file a claim and register for work with a state employment office. The worker also must have worked in the preceding year. Payments are deferred to any worker who is participating in a strike, has been discharged for misconduct connected with work, or has failed to accept an offer for suitable work. Unemployment benefits may run as long as 26 weeks. For new claims filed for the period July 1, 2000–June 30, 2001, the maximum weekly benefit amount was \$320 and the minimum weekly benefit amount was \$80.

During the state fiscal year ending June 30, 2000, an estimated average of 1,292,000 workers were covered by the Kansas Employment Security Law. For fiscal year 2000, an average of 13,391 unemployed persons were compensated each week with an average payment of \$241.94. In fiscal year 2000, more than 107,000 initial claims were filed. Nearly \$168 million in regular benefits were paid from the fund that year, and the end-of-year balance of the trust fund was more than \$480 million.

## **Employment Service**

The state maintains a free public employment service, with 23 job service centers to help workers locate jobs and assist employers in finding suitable employees. Prospective workers register at an office in their locality, receive an occupational classification, and are referred to employers who have job openings for which the workers are qualified. Workers may receive vocational counseling if they are having difficulty locating a job because of restricted opportunities in their regular line of work.

Under contract with the federal government, the service administers two unemployment compensation programs for federal employees. In SFY

Table 36

## Individual Placements in Kansas by Industrial Division: SFY 2000

Industrial Division	Total	Percent
All Divisions	17,118	100.0
Agriculture, Forestry, Fisheries	515	3.0
Mining	96	0.6
Construction	1,077	6.3
Manufacturing	7,937	46.4
Transportation and Utilities	515	3.0
Wholesale and Retail Trade	1,643	9.6
Finance, Insurance, Real Estate	95	0.5
Services	3,120	18.2
Public Administration	826	4.8
Government	1,294	7.6

Source: Unpublished data, Kansas Department of Human Resources.

2000, the service placed 17,118 employees in the industries shown in Table 36.

Particular efforts are made during the Kansas wheat harvest, when there is a sudden demand for additional farm workers. Special attention is given to directing migrant workers and others to areas where they are most needed.

Local employment offices handle applications for unemployment compensation. These offices are familiar with the local employment situation, and can determine whether there are appropriate job opportunities and whether an otherwise qualified application for unemployment compensation should be approved.

## Labor Unions

To protect their interests with regard to wages and working conditions, workers have sought to organize into labor unions. The first union in Kansas appears to have been the Leavenworth Typographical Union, organized in 1859. Since then organized labor has grown in strength, until there now are more than 465 local unions in Kansas, with a total membership of more than 90,000.

Although labor organizations in many places have struggled to obtain the right to bargain collectively, this right has never been questioned in Kansas. The right of workers in certain industries to strike was limited by the industrial court law of 1920, which later was declared unconstitutional.

The legislature in 1943 enacted a comprehensive labor relations law, under which workers are permitted to organize and bargain collectively with employers on hours, rates of pay, working conditions, and grievances. Every labor organization is required to file its constitution and by-laws with the secretary of state and to report certain information about the union annually. An employer is forbidden to interfere with employees in their efforts to organize and bargain, or to interfere in the administration of any labor organization. Workers are restricted from picketing beyond the area of the dispute, picketing in a nonpeaceful manner, and coercing other employees in the enjoyment of their legal rights. Penalties have been mandated for violation of the act.

Changes were made in the act in 1955.<sup>3</sup> Employers were not to deduct union dues without individual authorization, and were not to spy upon employees or their representatives (or hire spies to do so). The closed shop (a work unit closed to all but union members) was forbidden. The secretary of human resources was allowed to issue rules and regulations for conducting and canvassing union elections, selecting collective bargaining units, and approving union agreements and strike votes. The secretary was specifically authorized to appoint mediators in labor disputes. The 1955 legislature also passed a "right-to-work" bill seeking to prohibit union-shop and closed-shop agreements. Much to the consternation of many rural legislators, the governor vetoed this bill. The matter became an election issue and was submitted to voters as a constitutional amendment in 1958. Because the amendment passed, union shops (work units in which all employees must be members of the union) now are outlawed.

Labor-management disputes have seldom caused great difficulty to the economy of Kansas; the secretary often works informally to settle such disputes.

The Public Employee Relations Board, which administers the Public Employee Relations Act as it applies to state and local governments, was established in 1971 and later attached to the department. The Department of Human Resources oversees and provides staff support for the Kansas Commission on Disability Concerns, established in 1949 as the Governor's Committee on the Employment of the Physically Handicapped; the Kansas Advisory Committee on Hispanic Affairs, established in 1974 as the Kansas Advisory Committee on Mexican Affairs; and the Kansas Advisory Commission on African American Affairs, established in 1997.

Through its Apprenticeship Council, the department promotes voluntary apprenticeship training in an effort to provide an adequately skilled work force. The council is composed of four members representing labor and four representing management. The council encourages the establishment of voluntary apprenticeship agreements and joint apprenticeship committees, which draw up apprenticeship standards in particular trades. In 2000, there are expected to be 226 active apprenticeship programs with approxi-



mately 1,222 active participants. A total of nearly 950 Kansas employers participate in the apprenticeship program.

## **Fair Employment Practices and Civil Rights**

In 1949, after a concentrated effort for the passage of a fair employment practices act, the Kansas Legislature established a temporary commission to study and report on acts of employment discrimination in the state. This temporary commission in March 1951 reported to the governor that discrimination did exist in employment, and was practiced by employers and labor unions alike.<sup>4</sup>

A bill to create a permanent anti-discrimination committee was allowed to die in committee in 1951, but a much-amended compromise measure was passed two years later. A five-member Kansas Anti-Discrimination Commission was established and funded to employ a small staff.

Since this humble beginning, there have been numerous expansions of authority and coverage of acts prohibited, with accompanying name changes. The Kansas Act Against Discrimination has been deemed equivalent to Title VII of the U.S. Civil Rights Act of 1964 and Title VIII of the U.S. Civil Rights Act of 1968.

Federal legislation requires federal agencies to turn over cases to state anti-discrimination agencies. The state has a contract with the federal government to investigate cases filed with the U.S. Equal Employment Opportunity Commission, and the state receives funds allowing it to employ more field investigators.

As its most recent name suggests, the Kansas Human Rights Commission is concerned with discrimination in housing and accommodations as well as in employment and the work place. The Human Rights Commission has two members representing labor, two representing industry, one from the real estate sector, a practicing attorney, and one at-large member; the commission appoints a director. With a staff of almost 40 people, the commission typically investigates more than 1,100 complaints yearly. The commission tries to resolve complaints within 60 days of filing. Public hearings may follow normal investigation and resolution procedures.

## Chapter 22 Notes

1. For a short history of the department, see pp. 514 and following in the third edition of this book.
2. The specific case in the Kansas Supreme Court was *Topeka Laundry Co. v. Court of Industrial Relations*, 119 Kan. 12 (1925). The Kansas Supreme Court was following the case of *Adkins v. Children's Hospital*, 261 U.S. 525 (1923), which was reversed by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).
3. Portions of the 1943 act had been held unconstitutional in the U.S. Circuit Courts of Appeals in *Stapleton v. Mitchell*, 60 F. Supp. 51. These sections were omitted or amended in the 1955 laws.
4. Kansas Commission Against Discrimination in Employment, *Report of Survey Findings in the Existence of Employment Discrimination Against Citizens Because of Race, Religion, Color, or National Origin* (Topeka, Kansas: 1951), p. 2.

## Chapter 23

# Regulating Business and the Professions

Special considerations that apply to certain segments of the business community have occasioned regulatory treatment by Kansas state government. The essential but monopolistic nature of the services offered by public utilities, for example, has prompted passage of specific state laws and formation of agencies to regulate the utilities. To help citizens protect their savings and insure against certain life catastrophes, laws have been passed to regulate banks, savings and loans, and insurance companies. The sale of alcohol and intoxicating beverages has posed so many problems that the state has passed and tightened its regulatory laws. Considerations of public health and sanitation have led to the regulation of restaurants and hotels.

The regulation of businesses and professions is predominantly a state activity. Local governments may issue licenses in certain instances, but regulation above and beyond the typical restraints imposed by criminal statutes is primarily a state prerogative.

One of the most general forms of state regulation grows out of the state's power to grant charters of incorporation. Businesses have found it desirable to use the corporate form in conducting their affairs. Except for those desiring to engage in a limited number of restricted businesses, any group wishing to incorporate must file an application with the secretary of state. Corporations that are organized in other states and conduct business within Kansas must make somewhat similar applications. Both in-state and out-of-state corporations are required to file annual reports of their finances with the secretary of state. Incorporation is also required of private businesses;

cooperative societies; cooperative marketing associations; and religious, charitable, and other nonprofit organizations.

Businesses—whether conducted individually, in partnership, or in corporate form—are subject to the normal exercise of state police powers. Normally the legislature establishes a special regulatory board or commission to carry out the regulatory policies it establishes for each segment of the business community. Such agencies perform executive, quasi-legislative, and quasi-judicial functions, with the goal of protecting the public interest as well as the interest of special groups involved.

The Commission on Executive Reorganization in 1971 recommended consolidation of these agencies into a single cabinet-level department. Although given legislative attention in 1974 and 1975, the proposal for a department has little support.

Thus, no single regulatory department exists today; the responsibility for regulating businesses and professions is divided among many state agencies.

## **Public Utilities**

The Kansas Corporation Commission (KCC), the chief state agency for regulating public utilities, developed through a series of administrative reorganizations. Its predecessors included two public service commissions, two public utility commissions, two boards of railroad commissioners, the Court of Industrial Relations, and one body with the singular title "Court of Visitations."<sup>1</sup> The function of the Kansas Corporation Commission is to supervise all public utilities and common carriers doing business within the state and to regulate other matters of public interest.

The commission has three members, who are appointed by the governor with the advice and consent of the Senate. No more than two members may belong to the same political party. Appointments are for terms of four years and the members elect one of their number as chairperson. No one owning stock or property of any utility or common carrier is eligible for appointment.

According to the statutes, all provisions pertaining to the powers of the KCC are to be liberally construed and are expressly granted and conferred upon the commissioners. This policy stems from a recognition of the difficulty of controlling such complex business enterprises. The commission sets the rules and regulations the utilities must follow. Although a routine case may be heard by a single commissioner, the signature of at least two is required to initiate an order. The informal hearings are conducted like court procedures, but have more discussion.

The KCC is financed largely through fees and assessments levied on those engaged in the activity being regulated. For privately owned public utilities, this means an assessment on gross revenues. Motor carriers are

charged for registering their equipment. Security brokers and agents likewise pay registration fees, and there are charges for inspecting new issues of securities. Revenues of the commission's various sections are related to their cost of operation, although the Securities Division and the Motor Carrier Division generally have revenues greater than their operating costs.

A public utility is defined as "every corporation, company, individual, association of persons, . . . that now or hereafter may own, control, operate, or manage, except for private use, any equipment, plant . . . for the transmission of telephone messages, or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipe lines . . . except lines less than fifteen miles in length . . . or for the operation of any trolley lines, street, electrical, or motor railway doing business in any county in the state, also all dining car companies, and all companies for the production, transmission, delivery, or furnishing of heat, light, water, or power."<sup>2</sup> Municipally owned utilities are specifically excluded from regulation by the commission.

In 2001, the commission regulated 825 utilities. Every public utility is required to furnish reasonably efficient and sufficient service, and to establish just and reasonable rates and rules for service. Unjust, discriminatory, or unduly preferential regulations and rates are declared to be unlawful and void. All public utilities must file with the KCC copies of all schedules, rates, and regulations pertaining to any and all services they render. The commission, either on its own initiative or following a complaint, may investigate any utility. If the commission decides after full hearing and investigation that the submitted rules or rates are unjust, it may substitute rates and regulations it considers to be reasonable.

After receiving a written complaint made by any corporation, society, municipality, or taxpayer against a public utility, the commission is required by statute to investigate—with or without notifying the utility. After the investigation, the commission may order a hearing. Having held a formal, public hearing, preceded by notice to the interested parties, the commission may order whatever changes in rates, regulations, and service it feels are proper.

Various provisions limit the KCC's power to order or deny rates, regulations, services, or changes. Any party dissatisfied with a decision may apply for a rehearing. If the hearing is denied or adversely decided, the utility may appeal to the district court. Any public utility desiring to alter its rules, rates, or services must file a petition with the commission, receive approval for the change, publish notice of the change, and wait 30 days before applying the change.

In addition to the investigative processes and the system of hearings, the commission requires annual, regular, and special reports from all public utilities. The issuance of securities and the declaration of dividends must receive prior approval from the commission, and illegal or speculative deal-

ings are forbidden. Before a utility may transact business within the state, it must receive a certificate of public convenience and necessity.

Municipalities may grant franchises to public utilities under terms and conditions not inconsistent with the state utilities statutes. If a municipality grants a franchise, its residents may complain to the commission on the grounds that such action is unreasonable, detrimental to the best interests of the city, or against public policy. The commission holds a hearing on the charges; if the complaint is upheld, the commission recommends changes in the ordinance or contract. If the governing body of the municipality does not act, the commission may begin proceedings against the city governing body in district court.

To further protect utility users, the legislature in 1989 established a separate five-member Citizen's Utility Ratepayer Board independent from the KCC. The board employs two full-time attorneys as consumer counselors. In SFY 2000, it intervened in 33 rate cases involving utilities regulated by the KCC.

## **Carriers**

The regulation of common carriers and motor carriers is complicated by the interstate operation of most railroads and many motor carriers. All rates and rate changes must be filed with the Kansas Corporation Commission and approved before they become effective. If the commission finds the rates unreasonable, it may ask the carrier to reduce them; the commission may appeal to the U.S. Interstate Commerce Commission if the carrier refuses to do so.

Motor carriers are classified and subject to regulation by the commission in three groups. "Public motor carriers" offer their services to anyone who employs them. "Contract motor carriers" transport for hire, but are not classified as public motor carriers. "Private motor carriers" are farm vehicles, hearses, and other vehicles that transport the owner's products or commodities. School buses, private motor carriers operating within a 25-mile radius of their home city, and carriers used when no commercial service is available are exempt from regulation.

Contract carriers are not as closely regulated as public carriers, but some regulation has been found necessary. Both public and contract carriers must obtain KCC approval before they may operate. If contract carriers compete with public carriers, the commission fixes minimum rates and charges for the contract carriers. Before any carrier may operate in Kansas, including those operating in interstate commerce, the carrier must supply certain information to the commission, including proof that they hold liability insurance. Public carriers must obtain prior approval from the commission to discontinue service.

In 2000, there were 31,316 motor carriers with authority to operate in Kansas. This required maintaining files and control ledgers on more than 176,500 trucks, not including vehicles registered to out-of-state carriers.

## **The Sale of Securities**

In 1911, Kansas passed the famous "blue sky" law to prevent the sale of fraudulent securities. The Kansas Corporation Commission was responsible for controlling the issuance and sale of securities in the public interest until 1982, when the Office of Security Commissioner was established. To control securities, the legislature established three categories: "exempt" securities, securities that may be registered by notification, and securities requiring approval before registration.

In the exempt class are securities issued by the federal government, the states, or other political subdivisions, including local units of government having the powers of taxation or assessment. Other securities in this class include those representing an interest, or obligation of, a national bank or federal agency; and securities of private companies that are specifically regulated by state or federal agencies, such as railroad, insurance, banking, or savings and loan companies.

The second category includes securities issued by companies in operation for at least five years that meet requirements as to net earnings, dividends, and stock; and those secured by first mortgages on agricultural land or improved city property, subject to restriction as to the amount of money to be secured. Such securities are entitled to registration by the commissioner upon notification.

The company, corporation, or trust that has qualified under the provisions of the statutes must submit to the commissioner a statement of the income and financial standing of the issuer; the amount, price, and sales commission of the securities to be issued; a copy of the security and the circular to be used in offering the security for sale; and information concerning the business, its incorporation, and its location.

The third category includes all securities not falling within the first two classes. To sell securities in the third category, a business must submit a detailed statement to the commissioner and must receive approval prior to sale. The statement includes all facts required under the simple notification procedure plus more detailed information on the income and assets of the company; the character, value, and details of the plan for marketing the securities; and "any additional information that the commissioner may deem necessary," all of which must be verified by oath. The commissioner examines the proposed security issue and may make detailed investigations or audits, including the appointment of appraisers to study the property of the applicant.

In addition to the registration of securities, the commissioner regulates all brokers and agents who sell securities in Kansas. All brokers and agents, including those who sell in the exempt class, must register with the commission. A broker applying for registration must file with the commission a form listing business affiliations and general plan of business. The broker must be bonded for at least \$5,000. This application for registration may be refused, or may be revoked after notice and hearing. The registration application of an agent must be accompanied by the signature of someone authorized to sell securities. This application may be denied. It also may be revoked, after a hearing, for misrepresentation, conviction of fraud, or other factors bearing on the broker's reliability.

The commissioner has power to inspect and investigate any phase of securities regulation. Likewise, the commissioner has control of securities advertising and general supervision of the accounting methods of the firms registered, as well as the right to seek injunctions against any company or individual to prevent fraud or other abuse.

## Insurance

Kansas adopted its first insurance laws in 1871. The original statutes were amended in following years, and in 1925 the legislature appointed a special commission to recommend changes in the insurance laws. The commission formulated a code that was adopted by the legislature in 1927, containing many of the old statutory sections, combining others, and introducing some new provisions. Additions to the code have been made since 1927, but the general outlines of the regulative system are essentially the same as those of the original code. All types of insurance come under the supervision of the Department of Insurance.

The office of the insurance commissioner is an elective post, filled every four years at the general election. The commissioner must be an elector who is well versed in insurance and has no interest in an insurance company except as a policy holder. If the office is vacated, the governor is authorized to fill it.

The duties of commissioner include "the administration of all laws relating to insurance, insurance companies, and fraternal benefit societies doing business in the state, and all other duties which are or may be imposed upon him by law."<sup>3</sup> For accomplishing these broad ends, the legislature gave the commissioner "general supervision, control, and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity, or suretyship in this state" and stipulated that he or she "shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto."<sup>4</sup> The statutory powers of the commissioner are



broad and strong, and the state courts have consistently been reluctant to interfere in the application of those powers.<sup>5</sup>

The provisions of the insurance code are extensive, their overall effect being close scrutiny over the practices and policies of insurance companies. To engage in the insurance business, a company—either domestic or out-of-state—must receive a certificate of authority from the commissioner by filing its charter, by-laws, forms of contract, and statement of financial position. The commissioner scrutinizes the company through its own investigators, recognized investigative agencies, or (in the case of out-of-state companies) the facilities of another state's commissioner.

If the commissioner is satisfied with a company's integrity and financial condition, he or she issues a certificate of authority valid until the following May, when all such certificates expire annually and must be renewed. Granting a certificate has been held by the courts to be a discretionary act, not subject to a writ of mandamus.

Supervision of certified companies by the commissioner includes passing approval on their plans of operation and prescribing their methods of bookkeeping and accounting. The investment of capital, surplus reserves, and other funds is likewise closely regulated, and the valuation of securities, real estate, and goods is prescribed. In recent years, the legislature has passed legislation mandating that all licensed insurers in the state cover specific costs. For example, in 1988 it mandated the cost of mammograms and pap smears, and in 2001 it mandated that coverage be extended to certain mental illnesses.

Perhaps the commissioner's greatest power is rate approval. Each company, individually or through a rate-filing firm, submits its rates to the commissioner, who then approves or disapproves them. Hearings are allowed if the proposed rate is disapproved. Approved rates are based on statewide and national loss experience as filed with a private rating organization, and a "judgment factor" computed to allow for expected economic trends. Fire insurance rates vary according to the city's class assigned by the Insurance Services Office, which categorizes cities according to their fire protection services. Rates for buildings are further determined by their type of structure and construction materials. Rates for automobile casualty insurance vary from county to county, based upon number of vehicles registered and local loss experience.

As of April 2001, 674 life insurance companies and accident and health organizations, and 941 fire and casualty insurance companies or exchanges, had been admitted to do business in Kansas. Insurance companies operating within the state fall into two groups: those incorporated in Kansas and those organized in other states. The commissioner always has had authority over in-state companies. Out-of-state companies, which are much more numerous, normally are certified for operation in Kansas by meeting operational requirements in their home states and passing an investigation by the

commissioner's office. The insurance code specifies certain minimums of surpluses and reserves, which they also must maintain. The commissioner is required to probe the soundness of the policies of each certified company at least once every five years. An investigation made by other recognized authorities sometimes is acceptable.

Several ties exist between the Office of the Commissioner of Insurance and the Office of the Fire Marshal. To defray the expenses of the office, the fire marshal makes an annual levy on the gross receipts of all fire insurance companies operating in Kansas, and the commissioner of insurance collects this tax. In addition, the two offices work together when an insurance company appeals a claim on the grounds of arson. In such cases, the commissioner of insurance may give permission to defer payment while the fire marshal investigates the causes of the fire.

There has been a recent explosion of interest in health insurance and related concerns, prompted by the growth of coverage and the increasing cost of health care insurance. For example, the obstacle of medical doctors being able to afford malpractice insurance led to creation of the Health Care Stabilization Fund and the requirement that certain health-care providers participate as a condition for obtaining licenses. State regulation of self-funded health benefits has been preempted by the Employment Retirement Income Security Act (ERISA).

## **Banking**

The state bank commissioner is appointed by the governor, subject to Senate confirmation. He serves at the pleasure of the governor. The commissioner is responsible for ensuring the financial integrity of state-chartered banks by examining all state banks, trust departments, and trust companies every 18 months. Organizational or operational weaknesses are identified by the reports and on-site inspections, and are monitored by the Banking Department. Reporting requirements were changed in 1995. Now banks are only required to report to the commissioner on request. Much of the previously required information is readily available from the Federal Deposit Insurance Corporation. Trust companies and trust departments must make annual filings of their fiduciary assets.

The State Banking Board consists of six members who represent banks and three representatives of the public. The board receives incorporation applications from entities wishing to conduct banking and trust business within the state. After receiving an application, the board directs a searching examination into the incorporator's financial status and character, the need for such a business in the community, and other relevant considerations. If the board approves incorporation, the matter is turned over to the commissioner, who ascertains whether the incorporators have paid the required capital sums, surpluses, and undivided profits to the corporation. The

commissioner then issues a certificate of authority so the corporation may begin banking or trust operations. The expense of the board's investigation is borne by the bank or trust company. The banking board or the commissioner reviews branch applications, relocation applications, and applications for name changes.

Perhaps the board's most sweeping power is its capacity to remove any officer or director of a bank or trust company whom it finds to be guilty of "dishonest, reckless, or incompetent" conduct. The involved parties may appeal to the district court for a review of the board's action.

To promote sound banking and protect the public, the commissioner is authorized to revoke the charter of any bank or trust company. With concurrence of the attorney general, the commissioner may institute court proceedings to have a receiver appointed if any bank officer refuses to submit books, records, and instruments of the bank for examination; refuses to be examined under oath concerning the affairs of the bank or trust company; or interferes in any way with an examination. Any bank or trust company failing to comply with a lawful order of the commissioner within 90 days forfeits its right to do business. Most bankers comply closely with the provisions of the code and cooperate with both the board and the commissioner.

Through these defined channels of authority, the State Banking Board and the commissioner exercise control over all state banks and trust companies. Kansas banking regulations are quite similar to those of most other states, because most state banking regulations stem from federal legislation. The chief differences lie in the amount of capitalization and undivided profits required of a bank to incorporate and maintain its license. Despite the fact that the Banking Board and the commissioner have no direct control over national banks, these banks generally follow state laws and regulations in the area of consumer protection. However, national banks follow federal law in the areas of power, structure, and operations, and these differ from state law in many ways.

Savings and loan associations perform many of the same functions and services as banks but had their own regulatory board, which operated much like the banking board and commissioner. In 1992, Governor Joan Finney proposed to consolidate these two operations, but the legislature objected to the plan and it did not go into effect. The following year, the legislature abolished the Savings and Loan Department and assigned its duties to the state bank board. There are now no state-chartered savings and loan associations. There are federally chartered associations regulated by the federal government.

At the end of SFY 2000, Kansas had 269 state banks, of which 52 had active trust departments, which were regulated by the board and the Office of the State Bank Commissioner.

The Kansas Mortgage Business Act was enacted by the Kansas Legislature in 1996. This act requires any person or entity that engages in a mortgage business in Kansas to register with the commissioner. "Mortgage business" concerns making or arranging first or second mortgage loans for consumers on residential real estate. Some entities are exempt from registration, including banks, savings and loans, credit unions, and lenders who hold a supervised lender license. As of March 2001, the Office of the State Bank Commissioner had 338 mortgage business registrants.

The state has been regulating the making of consumer loans since 1955. In 1999, the legislature transferred the duties of the consumer credit commissioner to the state bank commissioner. There is now a deputy commissioner for consumer and mortgage lending, whose office is responsible for enforcing the Kansas Uniform Consumer Credit Code.

All persons who engage in the business of making loans who are not in a supervised institution (banks, trust companies, savings and loan associations, credit unions, and pawnbrokers) are required to obtain a license from the commissioner. Licenses may be suspended or revoked by the commissioner, and appeals of the commissioner's decisions may be taken to the district court.

Certain practices are required of licensees, who must furnish copies of their contracts with the borrower. The borrower may be required to obtain insurance. Charges other than interest are prohibited, as is the splitting of fees and false or misleading advertising. No maximum interest rates are set for "open end" consumer loans, but there are limits set on closed end loans not secured by land.

In 1973, the legislature enacted the Kansas Uniform Consumer Credit Code, modeled after a draft recommended by the National Conference of Commissioners on Uniform State Laws. As enacted in Kansas, the law had the goal of placing all aspects of consumer credit in the statute books under a single entry. It should be noted that these provisions apply to small loans for which there tends to be less collateral and the lender assumes more risk. Usury laws apply to other loans.

## **Credit Unions**

In 1968, the legislature created the Credit Union Council as a seven-member board responsible for appointing a credit union administrator and supervising the establishment and operation of credit unions. (Previously, the bank commissioner had this exclusive responsibility.)

The administrator issues certificates of authority to credit unions, who must make semi-annual reports to the administrator. An examination of the financial standing of each credit union is made at least every 18 months and additional examinations may be ordered. Maximum interest rates that credit unions may charge, procedures for voluntary and involuntary disso-

lution, and similar operational matters are covered by statute. As of 2001, there were 110 credit unions in Kansas.

## **Licensing and Regulating of Professions**

Any consideration of professional licensing must deal in part with the question of what a profession is. Occupational groups are organizing and developing codes of professional ethics. One way of gaining social status is to practice a "profession," as distinguished from a "craft" or a "trade." Societal pressures toward professionalism have resulted in increased requests for licensing and a growing number of licensing boards. As a working definition, "professional licensing" will refer to the regulation of vocations or professions whose practitioners desire control to maintain standards for entrance into and operation of their calling.

### *The Growth of Licensing Boards*

The first licensing board in Kansas was created in 1885, and since that time the number of such boards has increased steadily. In 1900, there were only two boards. In 1910, there were seven. There were 13 by 1920, 15 by 1930, 17 by 1940, and 21 by 1950. In 1957, the number was consolidated to 20. In 1992, 15 boards were identified in the state budget, but many more professions were recognized and licensed, as shown in Table 37. Many professional groups, such as those in the medical arena, are controlled through one board. In some instances, the groups are closely related to government agencies with which they are associated, and they are budgeted with those agencies (for example, lawyers with the Kansas Supreme Court and adult care home administrators with the Department of Health and Environment). Whether a profession is budgeted separately or with an agency, fees are charged and administered separate from state general funds, and the separate funds may be expanded only after appropriation by the legislature.

### *Examining and Licensing Procedures*

The professional licensing boards control the use of specified titles such as "certified public accountant," "licensed municipal accountant," and "certified shorthand reporter." Anyone may practice as an accountant, an expert accountant, or a public accountant, but people may not represent themselves as certified public accountants or as licensed municipal accountants unless they actually hold these designations.

The examining and licensing process is the usual means of professional control, with examination eligibility qualifications varying from board to board. When these qualifications are stringent, relatively few fail the exam. In other cases, the exam itself weeds out most unqualified practitioners.

In most cases, the examination is a requirement over and above other qualifications. Statutes usually require that exams be offered annually or

**Table 37**  
**Licensing Boards and Date Established**

Board	Year Established
<b>Kansas Dental Board</b>	1885
<b>Kansas State Board of Pharmacy</b>	1885
<b>State Board of Healing Arts</b> (Replaced earlier independent Medical, Osteopathic, and Chiropractic boards)	1957
State Board of Law Examiners (transferred under Kansas Constitution to Kansas Supreme Court)	1903
<b>State Board of Barber Examiners</b>	1903
<b>State Board of Mortuary Arts</b> (replaced State Board of Embalming [1907])	1985
<b>State Board of Veterinary Examiners</b>	1907
<b>Kansas State Board of Examiners in Optometry</b>	1909
<b>Kansas State Board of Examination and Registration of Nurses</b>	1913
<b>Board of Accountancy</b> (Certified Public Accountants)	1915
Mining Examining Board (abolished in 1976)	1917
<b>Kansas State Board of Registration for Cosmetologists</b>	1927
Kansas State Board of Podiatry Examiners (consolidated with Healing Arts Board in 1975)	1927
State Board of Engineering Examiners (consolidated to form Board of Technical Professionals in 1976)	1931
State Municipal Accounting Board (associated with Department of Administration)	1935
State Board of Examiners of Court Reporters (transferred under Kansas Constitution to Kansas Supreme Court)	1941
<b>Abstractors' Board of Examiners</b>	1941
<b>Kansas Real Estate Commission</b>	1947
State Registration and Examining Board for Architects (consolidated to form Board of Technical Professionals in 1976)	1949
Physical Therapists (Healing Arts Board)	1963
State Board of Examiners of Psychologists (merged to form Behavioral Sciences Regulatory Board in 1980)	1967
<b>State Board of Examiners in Fitting and Dispensing of Hearing Aids</b>	1968
State Board for the Registration and Examination of Landscape Architects (consolidated to form Board of Technical Professions in 1976)	1968
Physical Therapists' Assistants	1973
Board of Social Work Examiners (consolidated with Behavioral Science Regulatory Board)	1974
Board of Adult Care Home Administrators (Department of Health and Environment)	1975
<b>State Board of Technical Professions</b> (merged engineers, architects, and landscape architects, includes land surveying)	1976
Physical Assistants (Healing Arts)	1975
<b>Behavioral Science Regulatory Board</b> (consolidation of psychologists and social workers)	1980
Respiratory Therapists (Healing Arts)	1986
Occupational Therapists (Healing Arts)	1986
<b>Real Estate Appraisal Board</b> (Real Estate Commission)	1990
Professional Counselors (Behavioral Science Regulatory Board)	1991
Master's-Level Psychologists (Behavioral Science Regulatory Board)	1991
Marriage Therapists (Behavioral Science Regulatory Board)	1991
Family Therapists (Behavioral Science Regulatory Board)	1991

Boards in bold type received independent budgets in 2002.

Source: K.S.A.

semi-annually, but the boards may administer other exams if the number of applicants warrants. The number admitted to examination varies.

All boards collect examination fees that are not refunded if the applicant fails the exam. In most cases, the exams are prepared either by the board or by board officers. Certified public accountants and nurses have a standardized exam prepared and graded on a nationwide basis. This enhances reciprocal relations, and often ensures a more comprehensive exam.

Most boards have reciprocity arrangements with boards in other states, whereby licenses granted elsewhere are recognized in Kansas. In these cases, some type of reciprocity is at least legally provided. In the case of barbering and embalming, out-of-state licensees still must take an examination, but they are released from the apprenticeship requirement by virtue of having practiced elsewhere. Without examination and at their own discretion, most other boards may admit persons who have been licensed in other states.

Each board exercises a certain amount of control over professional practices, and this control extends far beyond membership in the profession. Annual registration is the most common technique for effecting this control. Penalties for illegal practice are connected with control over entrance into the profession.

Having a license revoked is different from being penalizing for illegal practice. Revocation ensures continuing control over professional practice, but seems to be more important as a threat than as a reality. In some cases a board operates for years without revoking any licenses, and the number revoked annually by any board is seldom more than two or three.

There are substantial variations in the statutes defining grounds for revocation. Many statutes are vague, sprinkled with such phrases as "unprofessional conduct," "unethical conduct," "gross immorality," "dishonorable conduct," "willful negligence," "incompetence," "ignorance," or other terms difficult to define. In other cases, the grounds may be listed in exhaustive detail. The most common reason for revocation is fraud or deceit in obtaining a license.

### *Problems in Professional Licensing*

The loose organizational framework of licensing boards in state government is manifest. Some problems arise from the changing of officers (and offices) of the boards and maintenance of records. The current diffuse operation of these boards, and their methods of financing, frequently make it appear that the licensing boards are private groups rather than state agencies regulating professions in the public interest. To meet these objections, some states have formed central agencies to handle the mechanics of licensing, with professional groups retaining rule-making authority. Such a proposal was made in Kansas in a 1975 bill for a division of professional licensing in a department of regulatory agencies, but the proposal failed.

Some people have become concerned over an increase in the number of licensed occupations, with the result of closing off substantial occupational areas from those wishing to enter them. While most people accept as necessary the restrictions ensuring that applicants be able to perform in their field, some licensing boards are alleged to have established requirements primarily to limit the number of practitioners in a given field.

Realistically, however, licensing boards serve purposes that are widely accepted. The challenge to state government is to see that licensing boards become instruments to promote the general welfare instead of instruments to perpetuate control by special groups.



## Chapter 23 Notes

1. For a history and discussion of the Kansas Corporation Commission, from the first Railroad Commission in 1883 to the Corporation Commission in 1945, see E.O. Stene, *Railroad Commission to Corporation Commission* (Lawrence, Kansas: Bureau of Government Research, University of Kansas, 1945).
2. K.S.A., 66-104.
3. K.S.A., 40-102.
4. K.S.A., 40-104.
5. Chief Justice John Dawson summed up the State Supreme Court's position when he stated: "The statutory powers conferred on the commissioner of insurance are necessarily broad and comprehensive. It is a well-known historical fact that in bygone years the people of this state suffered many evils at the hands of unsound and ill-managed companies; and the pertinent legislation dealing with that evil has been a progressive and continuous expansion of the state's supervisory authority over insurance companies which eventually culminated in the enactment of the insurance code of 1927." *National Mutual Casualty Co. v. Hobbs*, 149 Kan. 633.



## Chapter 24

# Stimulating Economic Development

**K**ansas and other states are interested in “economic development”—an increasingly popular term that has many aspects and meanings. To some, it means more jobs in a local community. It can include promoting sales to increase the demand for Kansas products as well as promoting Kansas as a place for businesses to locate. For others, it means having a tax structure and incentives to attract businesses to the state. Some argue that to attract business, an educated work force is needed. Therefore, education can claim support as a way to spur economic development. For the tourism industry, persuading travelers to spend an extra night in Kansas can be viewed as economic development.

### **Historical Background of Economic Development**

The emphasis and thrusts of programs have changed, but economic development activities have a long history in Kansas. In the winter of 1934, facing the stark nationwide depression, Governor Alf M. Landon—acting on a suggestion from the federal Public Works Administration—invited a group of representative citizens to serve as the Kansas State Planning Board.<sup>1</sup> The PWA desired state and regional planning boards throughout the nation to combat the immediate effects of the economic quagmire and to provide a long-range development plan. Although Kansas was among the first states to participate, the governor’s action was not followed by legislation making the board a permanent agency.

By 1939, the worst of the Great Depression was over, and those who viewed planning as merely an emergency measure saw little need for the

board to continue. Some projects of the State Planning Board were assumed by the Legislative Council, which was in a sense a planning committee for the legislature. In 1939, the legislature established the Industrial Development Commission, which was to perform some of the same kinds of work as a state planning board. For a time, both the State Planning Board and the Industrial Development Commission continued to exist and to issue joint reports. By 1941, however, the Planning Board had disbanded, its staff and files absorbed by the Industrial Development Commission.

The Kansas Industrial Development Commission was inaugurated to foster and promote the industrial development of the state. It sponsored activities supporting both existing and new state industries, secured new and enlarged markets for Kansas agricultural and industrial products, and encouraged tourist and recreational traffic in the state.

In 1961, the legislature created the Governor's Economic Development Commission, charged with making recommendations regarding the creation of a department of commerce and investigating the economy of the state (and methods for improving it). The commission sponsored special studies on aspects of the economy and made recommendations that became the basis for legislation in 1963. Later it was renamed the Kansas Economic Development Commission and restructured to act as coordinating and directing body for the new Department of Economic Development, which became the official state economic development agency. Specifically, it coordinated and sponsored scientific and industrial research to further Kansas economic growth. It maintained an information bank on industrial opportunities in the state, including the advantages of particular locations.

## **Current Economic Development Activities**

In the early 1980s, Kansans began to realize that the state's economy was not as recession-proof as many had thought. The four mainstays of the economy—agriculture, oil and gas, aviation, and durable goods—were not recovering from the recent economic slowdown. Revenues were not keeping pace with rising expectations or with the cost of providing the services legislators wanted to provide.

In 1985, the legislature made a modest appropriation for a study of the Kansas economy, matched with contributions from the business community. Even before the study was formally completed an interim report<sup>2</sup> was made to the 1986 legislators, after which economic development and related activities became an area of intense focus. Approximately 10 economic development bills were introduced and quickly passed by the legislature.

Kansas, Inc., was created as a public-private economic planning group, with the governor designated as co-chairperson of a 15-member board of directors that includes the secretary of Commerce and Housing, the commanding general of the Kansas Cavalry (a semi-public group of economic

## **Kansas, Inc.**

### **Mission**

The mission of Kansas, Inc. is to conduct strategic planning for the Kansas economy; formulate economic development policy; evaluate the state's tax, regulatory, and expenditure policies; evaluate and report on the effectiveness of state economic development programs; advise the Department of Commerce and Housing and the Kansas Technology Enterprise Corporation regarding economic development initiatives; provide coordination among state and private organizations or bodies involved in economic development activities; and work with business, education, and communities to support economic development initiatives.

### **Operations**

Kansas, Inc. was created by the 1986 Legislature to provide analysis, coordination, and direction to the state's economic development activities. The board consists of 17 members serving four-year terms. Eight of the members are appointed by statute, including the Governor, Secretary of Commerce and Housing, Commanding General of the Kansas Cavalry, an appointee of the Board of Regents, and Speaker of the House, President of the Senate, and the majority and minority House and Senate leaders. The remaining members, appointed by the Governor and confirmed by the Senate, represent various areas in the private sector of the Kansas economy.

The operating expenditures of Kansas, Inc. are financed entirely with state funds. Additionally, the state funds special studies and projects that it requests or mandates. The agency solicits funds from sources to finance its special research and educational programs. These funds are managed by the Kansas Economic Development Institute (KEDI), an independent not-for-profit 501(c)(3) foundation.

### **Goals and Objectives**

The agency pursues the following goals:

Monitor and update Kansas economic development strategies and initiatives.

Serve as an advisory resource to the Governor, members of the Legislature, and the general public.

Monitor state economic activity and recommend policy options to maintain Kansas economic growth at a level equal or superior to the region's growth.

Establish and promote a working partnership between the public and private sectors.

### **Statutory History**

The duties and responsibilities for Kansas, Inc. are defined in KSA 74-8001 et seq.

# Kansas Technology Enterprise Corporation

## Mission

The mission of the Kansas Technology Enterprise Corporation (KTEC) is to create and grow Kansas enterprises through technological innovations.

## Operations

KTEC, created by the 1986 Legislature, is defined by statute as a public instrumentality whose authority and powers are considered to be an essential governmental function. The corporation is governed by a 20-member Board of Directors, including both public and private sector representation.

KTEC assists in the creation and growth of technology-based companies in Kansas through research, investment, and business assistance initiatives. Research financing at the universities includes the Experimental Program to Stimulate Competitive Research (EPSCoR) and the Centers of Excellence, which are engaged in basic and applied research and technology transfer. The program encourages partnerships with industry and multi-university collaborations. Each center focuses on a Kansas strategic technology, which include: aviation, biotechnology, information, telecommunications and computing, manufacturing, and advanced materials.

Research support to companies for prototype development and large federal awards is offered through the Applied Research Matching Fund and Innovation Research Programs. KTEC participates in financial investment activities through the Ad Astra and commercialization funds. Business assistance is offered to start-up companies through Innovation and Commercialization Corporations (ICCs) and to existing manufacturers through the Mid-America Manufacturing Technology Center (MAMTC). The ICCs provide services such as business, sales and market planning, strategic development, market research, business systems development, finance property management, and negotiations. The ICCs are financially supported and governed by partnerships consisting of KTEC, the local university, local government, and industry.

## Goals and Objectives

The goals of KTEC are to:

- Stimulate the creation and commercialization of new technologies.

- Improve the competitive research and development capacity of Kansas universities and corporations.

- Assist client companies statewide in creating and retaining new and improved high-wage, high-skilled job opportunities.

- Assist Kansas manufacturers and industries in becoming more competitive in the global economy.

- Complete a comprehensive financial network that will increase investment in technology-based businesses.

## Statutory History

KTEC's duties and responsibilities are prescribed in KSA 74-8101, and its purpose is defined in KSA 74-8102. Specific programs for carrying out the agency's purposes are defined in KSA 74-8103 et seq.

leaders who agreed to be spokespersons for the state), one appointee of the Board of Regents, and the majority and minority leaders of the House and Senate. Seven directors are chosen from the private sector to represent various brackets of the economy. The aim was to continue private business participation while involving the highest-level government officials in monitoring, encouraging, and stimulating state economic development. Significantly, one-third of the agency's expenditures are to come from private sources.

The Kansas Technology Enterprise Corporation was created as a public instrumentality to foster innovations in existing and developing businesses and to create and expand Kansas enterprises in widely diversified sectors of the economy. Its goals are to promote Kansas high-technology programs, facilitate collaborative research between universities and industries, and assist existing and prospective Kansas enterprises.

A for-profit entity, Kansas Venture Capital, Inc., was established with funds from the state and the private sector. The goal was to make it easier for small Kansas enterprises to obtain capital to start up and expand operations. Another bill provided state income tax credits for investments in venture capital funds.

The Department of Economic Development was renamed the Department of Commerce and Housing, assigned some new missions, and reorganized. The Office of Minority Business and the Small Business Division were merged into a Division of Business Development, responsible for promoting and encouraging the growth, diversification, and retention of business in the state. Recruiting new businesses and marketing the state continued to be a responsibility of the department. A Trade Development Division was created, charged with fostering a Kansas business awareness of potential international markets. This represented an expansion of earlier efforts such as trade missions in which the governor traveled abroad to "sell" Kansas.

Other activities of the department include programs to increase tourism and travel, implement and administer housing programs, and preserve and enhance the livability of Kansas communities. In 1996, the legislature created a new Agricultural Products Development Division. The goal of the division is to develop and implement projects for the most advantageous marketing, promotion, and distribution of Kansas agricultural products in both domestic and foreign markets.

Three constitutional amendments were submitted to and approved by voters in August 1986: local governments were allowed to provide property tax abatements for new and expanding manufacturing establishments; the property tax on inventories was eliminated; and the prohibition of state participation in internal improvements was repealed.

While not directly a part of the economic development package, two other constitutional amendments were submitted and approved by voters. Each was associated with economic development. The liquor-by-the-drink amendment was presented as necessary to make Kansas more attractive to

tourists and convention participants, and to show Kansans as modern and progressive. Voters also approved a state lottery and pari-mutuel gambling on dog and horse races. Although opponents viewed these provisions as a superficial effort to create a new image for the state, others were appeased by the fact that some lottery proceeds were earmarked for economic development.

Subsequently, Governor Joan Finney sought unsuccessfully to place lottery revenues in the General Fund. Several of the governor's vetoes on economic development appropriations were overridden by the legislature in 1991. Small businesses were affected and some even devastated by the implementation of the reappraisal program in which commercial property was assessed at 30 percent of value. Some businesses substantially benefited when inventories were excluded from the property tax, but for many small businesses, reappraisal provoked hardships. Economic development continues to be a recognized important function of Kansas government, although it currently is not receiving the attention it captured in 1986.

## **Planning State Government**

At least as early as 1967, a consultant under a federally funded project recommended that the state engage in a type of planning quite different from the usual economic development. The consultant argued that an institution the size of Kansas government needs more than single-year budgets to implement plans and programs. The lacking element was coordination not only from year to year but from department to department.

The report recommended that comprehensive planning for state government be assigned to the Department of Administration or to a separate division in the Office of the Governor. The concept was that planning should occur in close association with budgeting, and should be directly responsible to someone who is elected.

In 1974, the legislature provided for the establishment of the Division of Planning and Research within the Department of Administration. There had been previous efforts in the Office of the Governor to focus on long-term planning, in particular for agency-level planning to be coordinated and interrelated to facilitate some common goals. These developments came at a time when some states were articulating and adopting policies aimed at restricting or limiting growth.

An early publication of the new Division of Planning and Research was "Kansas 2000," a growth policy study predicting what Kansas would be like in the year 2000. The forecasts were made on the assumption that no effort, or limited effort, would be made to intervene with the forces molding the future. Such soothsaying naturally invited speculation as to how some of the predicted disasters and declines could be avoided.



The study pointed to a number of causes for alarm, such as the lowering of the water table in western Kansas and the intensified concentration of population in the eastern urban centers. Some legislators challenged the population projections as being too low, and succeeded in passing a resolution that directed the secretary of administration to use higher estimates of population growth.

The division was designated *the* state planning agency for receiving federal funds. One stated rationale for the new division was to establish an agency that could help other state agencies learn about and apply for federal funds. A working relationship was established between this new division and the Community Development and Planning Division of the Kansas Department of Economic Development. The latter division continued to be responsible for a broad-based program of community development known as "Pride."

One fundamental and difficult question is how to relate planning to the program administrators who are responsible for operations. Substantial short-range planning, much intermediate planning, and some long-term planning must continue within the operating agencies. There is an additional need for comprehensive planning. Those who are engaged in operations tend to be caught up in day-to-day problems, and frequently lack time to reflect on the future. On the other hand, if planning is done by personnel too far removed from the operational unit, it may be unrealistic and unobtainable.

An associated question is how planning should relate to annual budgeting. Agency budgets may best be viewed as year-long programs of governmental activities. In a sense, they should be single-year installments of grander, far-reaching plans for governmental services. Thus, planning and budgeting must work together, and both must be able to serve the governor and other state policy makers effectively.

In 1980, state planning activities were transferred to the Division of the Budget. (For several years previously, there had been no director of the planning division.)

## **Local Activities in Planning and Economic Development**

In its chapters on city and county government, this book has mentioned the involvement of local government units in planning and zoning. At the local level, much of the planning effort has centered on control of land uses. With the encouragement of federal funds, however, many cities and counties have undertaken comprehensive planning projects and programs of community development—a broad term that includes development of small towns as well as metropolises.

Many cities have promoted their own economic development. The state Department of Commerce on some occasions functions as an intermediary

to unite local officials and citizens with private businesses searching for new sites in which to expand.

Cities are authorized to levy ad valorem property taxes for industrial development funds, which can be used for this kind of development. Also of considerable importance has been the authority to issue municipal industrial revenue bonds, through which cities have acquired land, erected buildings, and rented facilities at attractive terms. Industries are thus encouraged to expand.

## **Planning and the Future**

This chapter has recounted the evolution and difficulties of state planning. To a limited extent, planning has now been accepted as a proper function of state government. Clearly this is an evolving process, which must be expected to change from governor to governor.

On the national scene there have been numerous efforts to stimulate state planning, particularly for land use. In part these efforts have been related to an increasing public awareness of environmental degradation. Some states have designated certain areas as "critical," establishing state controls on how these locales may be developed. Other states have established agencies with authority to control land use outside cities and towns, where zoning is the primary land use tool. One argument frequently made for use/value assessment was that it would allow better use of the land in fringe areas surrounding cities.

Kansas legislative committees have studied some of these developments, but no such laws have been enacted in this state. Just like the governor, the legislature must learn to relate single-year programs of action in the budget to long-run programs, goals, and objectives. The legislature must equip itself to shape the future of Kansas by concretely participating in the planning process as well as abstractly encouraging the economy to develop.

## **Chapter 24 Notes**

1. More details of this history are provided in the third edition of this book.
2. The final report was officially titled, "Kansas Economic Development Study: Findings, Strategy, and Recommendations." Although others were involved in its preparation, it frequently is referred to as the (Tony) Redwood-(Charles) Krider report.



## Chapter 25

# Reflections on Kansas State Government

All governments must adapt and readjust to changes that occur in the political, economic, and social milieu in which they operate.<sup>1</sup> The preceding pages have described some of the major modifications that have altered the government of Kansas.

To what extent has Kansas government *responded* to these changes? To what extent has it been the *agent* of change? Doubtless there has been some of both.

One of the most outstanding characteristics of Kansas government is that it is not a simple, tidy organization with lines of authority leading clearly to one seat of power. The government speaks in many voices and responds to many influences. This is appropriate in a complex, multifaceted society. More than one hundred state agencies and almost four thousand units of local government participate in this enterprise. Groups organize around special causes and approach government when they think the timing is opportune. They may seek to oppose a city zoning proposal, improve conditions in a county nursing home, or lobby for a statewide system of community-based corrections.

An almost infinite number of such concerns elicit popular activism. Although only some of them will be incorporated in the platform of a political party or become issues in a political campaign, the goal of this book is to help readers understand where to approach the system in sanctioning the changes they desire.

Many important contacts are with local units of government and local organizations, which become networks for individuals or small groups to register their sentiments, suggestions, and complaints. The networks receive

the stimuli, and the system allows individuals to associate with others who are similarly attuned and to influence the system in vigorous ways.

Government responds to and stimulates change in a shifting pattern of actions and reactions. Some students of political science believe that the system is inclined only to react. Others claim that the supporters of change have an overwhelming burden, given the difficulty of pursuing legislative action. But the transitions and adjustments discussed in this book furnish substantial evidence that Kansas government has been receptive to change—and that constant efforts are being made to keep it responsive.

## **Constitutional Change**

In recent decades, one of the most critical changes in Kansas government was the method by which the constitution itself could be altered. The key was popular adoption of the concept that one entire article of the constitution could be considered as a single subject (and thus voted on by the legislature and by the voters as a single proposition), despite the fact that the article might pertain to multiple topics.

The new legislative capability to submit ten constitutional amendments to the voters in a period of less than four months (August through November in elections years) makes it possible to effect substantial changes in the basic document quickly and easily.

Formation of a citizens commission that may draw up a new constitution, presented in such fashion that the legislature may choose which amendments to submit to the voters, is an interesting mutation of the process of revision through a constitutional commission. Despite the objections of the minority justices on the Kansas Supreme Court, the legislature set this precedent by using a committee on constitutional revision to accomplish changes that in a different era would have been reserved for a constitutional convention—and the changes were realized in a quicker and less costly fashion. Because the legislators are expected to be enthusiastic about this method of revision, the minority justices may be correct in their assessment that a constitutional convention will never again be needed in Kansas.

When the new amendment procedure became effective, legislative leaders were ready to recommend a series of changes by submitting new legislative, judicial, and executive articles.

## **The Legislature**

If one adds the new legislative reapportionment provision to the numerous mechanical and inconspicuous changes made in the legislative article, the total effect is a restructured and rejuvenated legislature. The legislature has responded to the one-person, one-vote mandate by developing a system that already has been used several times to reapportion the Kansas legislature. Although the results were challenged and many citizens disgruntled,

the legislature thereby demonstrated its ability to come to grips with this difficult and divisive issue. The legislature has not been so successful in redistricting the state for U.S. House seats.

Kansas lawmakers were justifiably proud of receiving national recognition in 1976 as the most-improved legislature in the nation. They have substantially expanded the competence of the legislature, particularly through the involvement of more members of the legislature in interim work. They are aided by a fiscal staff to assist in reviewing the governor's budget recommendations, and a legislative post auditor responsible to the Post Audit Committee and to the legislators themselves. Even more visible has been renovation of the House and Senate chambers, and improvement in the office space assigned to legislators. Conspicuous efforts have been made to improve the legislative image.

With an increased number of conservatives among the Republicans in both chambers, agreement on legislative priorities has become more difficult. Deep differences on social issues and taxing and spending were manifested in the 1997 legislative session.

## The Executive

Perhaps the most important single change in the executive article was one to increase the governor's term to four years. And although executive reorganization orders have been implemented sparingly, governors have made meaningful use of this new constitutional authority.

The legislature has joined the governor's effort to restructure most of the state's administrative organization. The governor's position in state government has clearly been strengthened with the current format of eleven cabinet-level secretaries who are directly responsible to the governor.

## The Judiciary

The wide-sweeping changes in the organization of the courts during the 1970s were followed by substantially increased court loads. The court system has become a *state* system financed by state appropriations, the state judiciary pleading frequently with the legislature for more funds.

The importance of the courts in Kansas government has been well illustrated. The threat of a court-mandated reappraisal of real property in the state was a major force resulting in the 1988 reappraisal (and the many related problems that have resulted). A district court judge was a major force in persuading—some would say forcing—the legislature to distribute state aid more equitably among pupils in the state school system. And the new constitutional provisions required the legislature in 1992 to reapportion the Kansas House and Senate, with the courts having responsibility for seeing that the new apportionment was equitable.

## **Forces Creating a Fragmented Government**

At one time, observers of state government remarked on the weakness of the governor as state administrative leader. State government was best described as a collection of broadly related autonomous or semi-autonomous agencies. An earlier edition of this book noted the trend in Kansas toward increasingly centralized control over state agencies; this edition has reported an acceleration of this trend. But many forces still promote fragmented government.

One force is the separation of powers between the branches, and another is the unwieldy number of local units of government. Officials in each branch and unit tend to view the officials in other branches or units with suspicion. No special interest group is willing to leave the field to the others. And for city and county officials, home rule provides an important source of power and authority.

Despite impressive constitutional and statutory changes, education and significant parts of law enforcement exist as state functions not under direct control of the governor. Licensing boards continue, but have only tenuous ties to the rest of state government. Slightly more than one-half of the total dollars received and spent by Kansas government do not go through the General Fund; rather, they are divided among a thousand or so special funds and accounts. The legislature could legally divert many of these funds, but it is not likely to do so in the near future.

## **Responsive State Government**

The 1980s was a time of major effort to improve the image of the state. Economic development found a revived and receptive legislative audience eager to modernize the financial climate of the state. Despite the state's conservative background, Kansas voters liberalized the gambling and liquor laws, believing these changes would bolster the economy. Those interested in education and improved highways joined with the economic development forces. Kansas manifested its new image by electing its first female governor.

The 1990s has been a time for readjusting state services. Welfare reform has come. Kansas and the other states have been given more authority in welfare programs. Many of the new programs have deadlines, and the clock has started to run. Will private agencies be able to respond to the needs of those who use up their sixty months of eligibility for cash assistance?

Kansas is experimenting with privatizing some government services in the social service field. There are indications that the state may contract with one of the many corporations that will run prisons for the state. Will this idea be applied to other state activities?



Education continues to be an area of strong interest, with increasing attention on special education and education directly related to the needs of the work force. The focus is on enhancing and renovating highways, rather than building new ones.

An appropriate goal for Kansas government in this decade is to readjust so government will be more fully responsive to the needs and desires of its citizens. New and better solutions must be found. The recruitment and staffing of state government with competent, public-spirited officers and employees is a necessity. Vigorous political leadership in both the legislature and the governorship is a worthy objective, more likely to be achieved as Kansas moves toward becoming a true two-party state. These are some of the avenues to an improved, responsive, and responsible state government. Certainly the changes during recent years reflect a substantial effort to commence this readjustment.

## Chapter 25 Note

1. For a somewhat different approach to challenges before Kansas government, both state and local, see the concluding chapter, "Kansas Public Policy and the Future," by H. George Frederickson in his edited book, *Public Policy and the Two States of Kansas*, University of Kansas Press, 1994. The book calls attention to increasing divisions in society in Kansas—the rural and the urban, the young and the old, and poor and the non-poor.

## Appendix

# Constitution of the State of Kansas

### ORDINANCE

WHEREAS, The government of the United States is the proprietor of a large portion of the lands included in the limits of the state of Kansas as defined by this constitution; and,

WHEREAS, The state of Kansas will possess the right to tax said lands for purposes of government, and for other purposes; Now, therefore,

Be it ordained by the people of Kansas:

That the right of the state of Kansas to tax such lands is relinquished forever, and the state of Kansas will not interfere with the title of the United States to such lands, nor with any regulation of congress in relation thereto, nor tax nonresidents higher than residents: Provided always, That the following conditions be agreed to by congress:

**§ 1: School sections.** Sections numbered sixteen and thirty-six in each township in the state, including Indian reservations and trust lands, shall be granted to the state for the exclusive use of common schools; and when either of said sections, or any part thereof, has been disposed of, other lands of equal value, as nearly contiguous thereto as possible, shall be substituted therefor.

**§ 2: University lands.** That seventy-two sections of land shall be granted to the state for the erection and maintenance of a state university.

**§ 3: Lands for public buildings.** That thirty-six sections shall be granted to the state for the erection of public buildings.

**§ 4: Lands for benevolent institutions.** That seventy-two sections shall be granted to the state for the erection and maintenance of charitable and benevolent institutions.

**§ 5: Salt springs and mines.** That all salt springs, not exceeding twelve in number, with six sections of land adjacent to each, together with all mines, with the lands necessary for the full use, shall be granted to the state for works of public improvement.

**§ 6: Proceeds to schools.** That five percentum of the proceeds of the public lands in Kansas, disposed of after the admission of the state into the union, shall be paid to the state for a fund, the income of which shall be used for the support of common schools.

**§ 7: School lands.** That the five hundred thousand acres of land to which the state is entitled under the act of congress entitled "An act to appropriate the proceeds of the sales of public lands and grant pre-emption rights," approved September 4th, 1841, shall be granted to the state for the support of common schools.

**§ 8: Selection of lands.** That the lands hereinbefore mentioned shall be selected in such manner as may be prescribed by law; such selections to be subject to the approval of the commissioner of the general land office of the United States.

## PREAMBLE

We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this constitution of the state of Kansas, with the following boundaries, to wit: Beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence running west on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of north latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning.

## **STATE OF KANSAS**

### **KANSAS BILL OF RIGHTS**

§ 1. **Equal rights.** All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

§ 2. **Political power; privileges.** All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

§ 3. **Right of peaceable assembly; petition.** The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.

§ 4. **Bear arms; armies.** The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

§ 5. **Trial by jury.** The right of trial by jury shall be inviolate.

§ 6. **Slavery prohibited.** There shall be no slavery in this state; and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted.

§ 7. **Religious liberty.** The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any elections, nor shall any person be incompetent to testify on account of religious belief.

§ 8. **Habeas corpus.** The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

§ 9. **Bail.** All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

§ 10. **Trial; defense of accused.** In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of the witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense.

**§ 11. Liberty of press and speech; libel.** The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

**§ 12. No forfeiture of estate for crimes.** No conviction within the state shall work a forfeiture of estate.

**§ 13. Treason.** Treason shall consist only in levying war against the state, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the overt act, or confession in open court.

**§ 14. Soldiers' quarters.** No soldier shall, in time of peace, be quartered in any house without the consent of the occupant, nor in time of war, except as prescribed by law.

**§ 15. Search and seizure.** The right of the people to be secure in their persons and property against unreasonable searches and seizures shall be inviolate; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons or property to be seized.

**§ 16. Imprisonment for debt.** No person shall be imprisoned for debt, except in cases of fraud.

**§ 17. Property rights of citizens and aliens.** No distinction shall ever be made between citizens of the state of Kansas and the citizens of other states and territories of the United States in reference to the purchase, enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment or descent of property may be regulated by law.

**§ 18. Justice without delay.** All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.

**§ 19. Emoluments or privileges prohibited.** No hereditary emoluments, honors, or privileges shall ever be granted or conferred by the state.

**§ 20. Powers retained by people.** This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.

## **Article 1**

### **EXECUTIVE**

**§ 1: Executive officers; selection; terms.** The constitutional officers of the executive department shall be the governor, lieutenant governor, secretary of state, and attorney general, who shall have such qualifications as are provided by law. Such officers shall be chosen by the electors of this state at the time of voting for members of the legislature in the year 1974 and every four years thereafter, and such officers elected in 1974 and thereafter shall have terms of four years which shall begin on the second Monday of January next after their election, and until their successors are elected and qualified. In the year 1974 and thereafter, at all elections of governor and lieutenant governor the candidates for such offices shall be nominated and elected jointly in such manner as is prescribed by law so that a single vote shall be cast for a candidate for governor and a candidate for lieutenant governor running together, and if such candidates are nominated by petition or convention each petition signature and each convention vote shall be made for a candidate for governor and a candidate for lieutenant governor running together. No person may be elected to more than two successive terms as governor nor to more than two successive terms as lieutenant governor.

**§ 3: Executive power of governor.** The supreme executive power of this state shall be vested in a governor, who shall be responsible for the enforcement of the laws of this state.

**§ 4: Reports to governor.** The governor may require information in writing from the officers of the executive department, upon any subject relating to their respective duties. The officers of the executive department, and of all public state institutions, shall, at least ten days preceding each regular session of the legislature, severally report to the governor, who shall transmit such reports to the legislature.

**§ 5: Governor's duties for legislature; messages; special sessions; adjournment.** The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house. At every session of the legislature the governor shall communicate in writing information in reference to the condition of the state, and recommend such measures as he deems expedient. In case of disagreement between the two houses in respect of the time of adjournment, the governor may adjourn the legislature to such time as he deems proper, not beyond its next regular session.

**§ 6: Reorganization of state agencies of executive branch.**

- (a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders, each bearing an identifying number, and transmit the same to the legislature within the first thirty calendar days of any regular session. Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

- (b) The governor shall transmit each executive reorganization order to both houses of the legislature on the same day, and each such order shall be accompanied by a governor's message which shall specify with respect to each abolition of a function included in the order the statutory authority for the exercise of the function. Every executive reorganization order shall provide for the transfer or other disposition of the records, property and personnel affected by the order. Every executive reorganization order shall provide for all necessary transfers of unexpended balances of appropriations of agencies affected by such order, and such changes in responsibility for and handling of special funds as may be necessary to accomplish the purpose of such order. Transferred balances of appropriations may be used only for the purposes for which the appropriation was originally made.
- (c) Each executive reorganization order transmitted to the legislature as provided in this section shall take effect and have the force of general law on the July 1 following its transmittal to the legislature, unless within sixty calendar days and before the adjournment of the legislative session either the senate or the house of representatives adopts by a majority vote of the members elected thereto a resolution disapproving such executive reorganization order. Under the provisions of an executive reorganization order a portion of the order may be effective at a time later than the date on which the order is otherwise effective.
- (d) An executive reorganization order which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any executive reorganization order which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.

**§ 7: Pardons.** The pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law.

**§ 9: State seal and commissions.** There shall be a seal of the state, which shall be kept by the governor, and used by him officially, and which shall be the great seal of Kansas. All commissions shall be issued in the name of the state of Kansas; and shall be signed by the governor, countersigned by the secretary of state, and sealed with the great seal.

**§ 11: Vacancies in executive offices.** When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the disability of the governor, the lieutenant governor shall assume the powers and duties of governor until the disability is removed. The legislature shall provide by law for the succession to the office of governor should the offices of governor and lieutenant governor be vacant, and for the assumption of the powers and duties of governor during the disability of the governor, should the office of lieutenant governor be vacant or the lieutenant governor be disabled. When the office of secretary of state or attorney general is vacant, the governor shall fill the vacancy by appointment for the remainder of the term. If the secretary of state or attorney general is disabled, the governor shall name a person to assume the powers and duties of the office until the disability is removed. The procedure for determining disability and the removal thereof shall be provided by law.

**§ 12: Lieutenant governor.** The lieutenant governor shall assist the governor and have such other powers and duties as are prescribed by law.



**§ 13: Compensation of officers.** The officers mentioned in this article shall at stated times receive for their services a such compensation as is established by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Any person exercising the powers and duties of an office mentioned in this article shall receive the compensation established by law for that office.

## **Article 2**

### **LEGISLATIVE**

**§ 1: Legislative power.** The legislative power of this state shall be vested in a house of representatives and senate.

**§ 2: Senators and representatives.** The number of representatives and senators shall be regulated by law, but shall not exceed one hundred twenty-five representatives and forty senators. Representatives and senators shall be elected from single-member districts prescribed by law. Representatives shall be elected for two year terms. Senators shall be elected for four year terms. The terms of representatives and senators shall commence on the second Monday of January of the year following election.

**§ 3: Compensation of members of legislature.** The members of the legislature shall receive such compensation as may be provided by law or such compensation as is determined according to law.

**§ 4: Qualifications of members.** During the time that any person is a candidate for nomination or election to the legislature and during the term of each legislator, such candidate or legislator shall be and remain a qualified elect or who resides in his or her district.

**§ 5: Eligibility and disqualification of members.** No member of congress and no civil officer or employee of the United States or of any department, agency, or instrumentality thereof shall be eligible to be a member of the legislature. Any member of the legislature who accepts any appointment or election contrary to the foregoing shall be disqualified as a member of the legislature.

**§ 8: Organization and sessions.** The legislature shall meet in regular session annually commencing on the second Monday in January, and all sessions shall be held at the state capital. The duration of regular sessions held in even-numbered years shall not exceed ninety calendar days. Such sessions may be extended beyond ninety calendar days by an affirmative vote of two-thirds of the members elected to each house. Bills and concurrent resolutions under consideration by the legislature upon adjournment of a regular session held in an odd-numbered year may be considered at the next succeeding regular session held in an even-numbered year, as if there had been no such adjournment.

The legislature shall be organized concurrently with the terms of representatives except that the senate shall remain organized during the terms of senators. The president of the senate shall preside over the senate, and the speaker of the house

of representatives shall preside over the house of representatives. A majority of the members then elected (or appointed) and qualified of the house of representatives or the senate shall constitute a quorum of that house. Neither house, without the consent of the other, shall adjourn for more than two days, Sundays excepted. Each house shall elect its presiding officer and determine the rules of its proceedings, except that the two houses may adopt joint rules on certain matters and provide for the manner of change thereof. Each house shall provide for the expulsion or censure of members in appropriate cases. Each house shall be the judge of elections, returns and qualifications of its own members.

**§ 9: Vacancies in legislature.** All vacancies occurring in either house shall be filled as provided by law.

**§ 10: Journals.** Each house shall publish a journal of its proceedings. The affirmative and negative votes upon the final passage of every bill and every concurrent resolution for amendment of this constitution or ratification of an amendment to the Constitution of the United States shall be entered in the journal. Any member of either house may make written protest against any act or resolution, and the same shall be entered in the journal without delay or alteration.

**§ 12: Origination by either house.** Bills and concurrent resolutions may originate in either house, but may be amended or rejected by the other.

**§ 13: Majority for passage of bills.** A majority of the members then elected (or appointed) and qualified of each house, voting in the affirmative, shall be necessary to pass any bill. Two-thirds (2/3) of the members then elected (or appointed) and qualified in each house, voting in the affirmative, shall be necessary to ratify any amendment to the Constitution of the United States or to make any application for congress to call a convention for proposing amendments to the Constitution of the United States.

**§ 14: Approval of bills; vetoes.**

- (a) Within ten days after passage, every bill shall be signed by the presiding officers and presented to the governor. If the governor approves a bill, he shall sign it. If the governor does not approve a bill, the governor shall veto it by returning the bill, with a veto message of the objections, to the house of origin of the bill. Whenever a veto message is so received, the message shall be entered in the journal and in not more than thirty calendar days (excluding the day received), the house of origin shall reconsider the bill. If two-thirds of the members then elected (or appointed) and qualified shall vote to pass the bill, it shall be sent, with the veto message, to the other house, which shall in not more than thirty calendar days (excluding the day received) also reconsider the bill, and if approved by two-thirds of the members then elected (or appointed) and qualified, it shall become a law, notwithstanding the governor's veto.

If any bill shall not be returned within ten calendar days (excluding the day presented) after it shall have been presented to the governor, it shall become a law in like manner as if it had been signed by the governor.

- (b) If any bill presented to the governor contains several items of appropriation of money, one or more of such items may be disapproved by the governor while the other portion of the bill is approved by the governor. In case the governor does so disapprove, a veto message of the governor stating the item or items disapproved, and the reasons therefor, shall be appended to the bill at the time it is signed, and the bill shall be returned with the veto message to the house of origin of the bill. Whenever a veto message is so received, the message shall be entered in the journal and, in not more than thirty calendar days, the house of origin shall reconsider the items of the bill which have been disapproved. If two-thirds of the members then elected (or appointed) and qualified shall vote to approve any item disapproved by the governor, the bill, with the veto message, shall be sent to the other house, which shall in not more than thirty calendar days also reconsider each such item so approved by the house of origin, and if approved by two-thirds of all the members then elected (or appointed) and qualified, any such item shall take effect and become a part of the bill.

**§ 15: Requirements before bill passed.** No bill shall be passed on the day that it is introduced, unless in case of emergency declared by two-thirds of the members present in the house where a bill is pending.

**§ 16: Subject and title of bills; amendment or revival of statutes.** No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title. No law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed. The provisions of this section shall be liberally construed to effectuate the acts of the legislature.

**§ 17: Uniform operation of laws of a general nature.** All laws of a general nature shall have a uniform operation throughout the state: Provided, The legislature may designate areas in counties that have become urban in character as "urban areas" and enact special laws giving to any one or more of such counties or urban areas such powers of local government and consolidation of local government as the legislature may deem proper.

**§ 18: Election or appointment of officers; filling vacancies.** The legislature may provide for the election or appointment of all officers and the filling of all vacancies not otherwise provided for in this constitution.

**§ 19: Publication of acts.** No act shall take effect until the enacting bill is published as provided by law.

**§ 20: Enacting clause of bills; laws enacted only by bill.** The enacting clause of all bills shall be "Be it enacted by the Legislature of the State of Kansas:". No law shall be enacted except by bill.

**§ 21: Delegation of powers of local legislation and administration.** The legislature may confer powers of local legislation and administration upon political subdivisions.

**§ 22: Legislative immunity.** For any speech, written document or debate in either house, the members shall not be questioned elsewhere. No member of the legislature shall be subject to arrest—except for treason, felony or breach of the peace—in going to, or returning from, the place of meeting, or during the continuance of the session; neither shall he be subject to the service of any civil process during the session, nor for fifteen days previous to its commencement.

**§ 24: Appropriations.** No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law.

**§ 27: Impeachment.** The house of representatives shall have the sole power to impeach. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the senators then elected (or appointed) and qualified.

**§ 28: Officers impeachable; grounds; punishment.** The governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

**§ 30: Delegation of powers to interstate bodies.** The legislature may confer legislative powers upon interstate bodies, comprised of officers of this state or its political subdivisions acting in conjunction with officers of other jurisdictions, relating to the functions thereof. Any such delegation, and any agreement made thereunder shall be subject to limitation, change or termination by the legislature, unless contained in a compact approved by the congress.

## Article 3 JUDICIAL

**§ 1: Judicial power; seals; rules.** The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

**§ 2: Supreme court.** The supreme court shall consist of not less than seven justices who shall be selected as provided by this article. All cases shall be heard with not fewer than four justices sitting and the concurrence of a majority of the justices sitting and of not fewer than four justices shall be necessary for a decision. The term of office of the justices shall be six years except as hereinafter provided. The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in age of these shall be chief justice. A justice may decline or resign from the office of chief justice without resigning from the court. Upon such declination or resignation, the justice who is next senior in continuous term of service shall become chief justice. During incapacity of a chief justice, the duties, powers and emoluments of the office shall devolve upon the justice who is next senior in continuous service.

**§ 3: Jurisdiction and terms.** The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

**§ 4: Reporter; clerk.** There shall be appointed, by the justices of the supreme court, a reporter and clerk of said court, who shall hold their offices two years, and whose duties shall be prescribed by law.

**§ 5: Selection of justices of the supreme court.**

- (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.
- (b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.
- (c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

“Shall \_\_\_\_\_  
(Here insert name of justice.)

\_\_\_\_\_

(Here insert the title of the court.)

be retained in office?”

If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he

shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

- (d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided.
- (e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.
- (f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.
- (g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.

## § 6: District courts.

- (a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.
- (b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.
- (c) The legislature shall provide for clerks of the district courts.
- (d) Provision may be made by law for judges pro tem of the district court.

- (e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.
- (f) The supreme court may assign a district judge to serve temporarily on the supreme court.

**§ 7: Qualifications of justices and judges.** Justices of the supreme court and judges of the district courts shall be at least thirty years of age and shall be duly authorized by the supreme court of Kansas to practice law in the courts of this state and shall possess such other qualifications as may be prescribed by law.

**§ 8: Prohibition of political activity by justices and certain judges.** No justice of the supreme court who is appointed or retained under the procedure of section 5 of this article, nor any judge of the district court holding office under a non-partisan method authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.

**§ 12: Extension of terms until successor qualified.** All judicial officers shall hold their offices until their successors shall have qualified.

**§ 13: Compensation of justices and judges; certain limitation.** The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office.

**§ 15: Removal of justices and judges.** Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court nominating commission that such justice is so incapacitated as to be unable to perform adequately his duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.

**§ 16: Savings clause.** Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or resubmission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 6 hereof, and all such justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature.

## Article 4 ELECTIONS

**§ 1: Mode of voting.** All elections by the people shall be by ballot or voting device, or both, as the legislature shall by law provide.

**§ 2: General elections.** General elections shall be held biennially on the Tuesday succeeding the first Monday in November in even-numbered years. Not less than three county commissioners shall be elected in each organized county in the state, as provided by law.

**§ 3: Recall of elected officials.** All elected public officials in the state, except judicial officers, shall be subject to recall by voters of the state or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by law.

## Article 5 SUFFRAGE

**§ 1: Qualifications of electors.** Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector. Laws of this state relating to voting for presidential electors and candidates for the office of president and vice-president of the United States shall comply with the laws of the United States relating thereto. A citizen of the United States, who is otherwise qualified to vote in Kansas for presidential electors and candidates for the offices of president and vice-president of the United States may vote for such officers either in person or by absentee ballot notwithstanding the fact that such person may have become a non-resident of this state if his or her removal from this state occurs during a period in accordance with federal law next preceding such election. A person who is otherwise a qualified elector may vote in the voting area of his or her former residence either in person or by absentee ballot notwithstanding the fact that such person may have become a nonresident of such voting area during a period prescribed by law next preceding the election at which he or she seeks to vote, if his new residence is in another voting area in the state of Kansas.

**§ 2: Disqualification to vote.** The legislature may, by law, exclude persons from voting because of mental illness or commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.

**§ 4: Proof of right to vote.** The legislature shall provide by law for proper proofs of the right of suffrage.

**§ 7: Privileges of electors.** Electors, during their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest in all cases except felony or breach of the peace.



## Article 6

# EDUCATION

**§ 1: Schools and related institutions and activities.** The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

**§ 2: State board of education and state board of regents.**

- (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.
- (b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.
- (c) Any municipal university shall be operated, supervised and controlled as provided by law.

**§ 3: Members of state board of education and state board of regents.**

- (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.
- (b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.
- (c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

**§ 4: Commissioner of education.** The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

**§ 5: Local public schools.** Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

**§ 6: Finance.**

- (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.
- (b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.
- (c) No religious sect or sects shall control any part of the public educational funds.

**§ 7: Savings clause.**

- (a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.
- (b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.
- (c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and income, to the support of the public schools supervised by the state board of education.

## **Article 7**

### **PUBLIC INSTITUTIONS AND WELFARE**

**§ 1: Benevolent institutions.** Institutions for the benefit of mentally or physically incapacitated or handicapped persons, and such other benevolent institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be prescribed by law.

**§ 4: Aged and infirm persons; financial aid; state participation.** The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid and supervise and control the administration thereof.

**§ 5: Unemployment compensation; old-age benefits; taxation.** The state may provide by law for unemployment compensation and contributory old-age benefits and may tax employers and employees therefor; and the restrictions and limitations of section 24 of article 2, and section 1 of article 11 of the constitution shall not be construed to limit the authority conferred by this amendment. No direct ad valorem tax shall be laid on real or personal property for such purposes.

**§ 6: Tax levy for certain institutions.** The legislature may levy a permanent tax for the creation of a building fund for institutions caring for those who are mentally ill, retarded, visually handicapped, with a handicapping hearing loss, tubercular or for children who are dependent, neglected or delinquent and in need of residential institutional care or treatment and for institutions primarily designed to provide vocational rehabilitation for handicapped persons, and the legislature shall apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Nothing herein contained shall prevent such further appropriation by the legislature as may be deemed necessary from time to time for the needs of said charitable and benevolent institutions. Nothing in this amendment shall repeal any statute of this state enacted prior to this amendment, and any levy, apportionment or appropriation made under authority of this section before its amendment, and any statute making the same, shall remain in full force and effect until amended or repealed by the legislature.

## **Article 8**

### **MILITIA**

**§ 1: Composition; exemption.** The militia shall be composed of all able-bodied male citizens between the ages of twenty-one and forty-five years, except such as are exempted by the laws of the United States or of this state; but all citizens of any religious denomination whatever who from scruples of conscience may be adverse to bearing arms shall be exempted therefrom, upon such conditions as may be prescribed by law.

**§ 2: Organization.** The legislature shall provide for organizing, equipping and disciplining the militia in such manner as it shall deem expedient, not incompatible with the laws of the United States.

**§ 3: Officers.** Officers of the militia shall be elected or appointed, and commissioned in such manner as may be provided by law.

**§ 4: Commander in chief.** The governor shall be commander in chief, and shall have power to call out the militia to execute the laws, to suppress insurrection, and to repel invasion.

## **Article 9**

### **COUNTY AND TOWNSHIP ORGANIZATION**

**§ 1: Counties.** The legislature shall provide for organizing new counties, locating county seats, and changing county lines; but no county seat shall be changed without the consent of a majority of the electors of the county; nor any county organized, nor the lines of any county changed so as to include an area of less than four hundred and thirty-two square miles.

**§ 2: County and township officers.** The legislature shall provide for such county and township officers as may be necessary.

**§ 5: Removal of officers.** All county and township officers may be removed from office, in such manner and for such cause, as shall be prescribed by law.

## **Article 10**

### **APPORTIONMENT OF THE LEGISLATURE**

**§ 1: Reapportionment of senatorial and representative districts.**

- (a) At its regular session in 1989, the legislature shall by law reapportion the state representative districts, the state senatorial districts or both the state representative and senatorial districts upon the basis of the latest census of the inhabitants of the state taken by authority of chapter 61 of the 1987 Session Laws of Kansas. At its regular session in 1992, and at its regular session every tenth year thereafter, the legislature shall by law reapportion the state senatorial districts and representative districts on the basis of the population of the state as established by the most recent census of population taken and published by the United States bureau of the census. Senatorial and representative districts shall be reapportioned upon the basis of the population of the state adjusted:

- (1) To exclude nonresident military personnel stationed within the state and nonresident students attending colleges and universities within the state; and
  - (2) to include military personnel stationed within the state who are residents of the state and students attending colleges and universities within the state who are residents of the state in the district of their permanent residence. Bills reapportioning legislative districts shall be published in the Kansas register immediately upon final passage and shall be effective for the next following election of legislators and thereafter until again reapportioned.
- (b) Within 15 days after the publication of an act reapportioning the legislative districts within the time specified in (a), the attorney general shall petition the supreme court of the state to determine the validity thereof. The supreme court, within 30 days from the filing of the petition, shall enter its judgment. Should the supreme court determine that the reapportionment statute is invalid, the legislature shall enact a statute of reapportionment conforming to the judgment of the supreme court within 15 days.
  - (c) Upon enactment of a reapportionment to conform with a judgment under (b), the attorney general shall apply to the supreme court of the state to determine the validity thereof. The supreme court, within 10 days from the filing of such application, shall enter its judgment. Should the supreme court determine that the reapportionment statute is invalid, the legislature shall again enact a statute reapportioning the legislative districts in compliance with the direction of and conforming to the mandate of the supreme court within 15 days after entry thereof.
  - (d) Whenever a petition or application is filed under this section, the supreme court, in accordance with its rules, shall permit interested persons to present their views.
  - (e) A judgment of the supreme court of the state determining a reapportionment to be valid shall be final until the legislative districts are again reapportioned in accordance herewith.

## **Article 11**

### **FINANCE AND TAXATION**

**§ 1: System of taxation; classification; exemption.** (a) The provisions of this subsection shall govern the assessment and taxation of property on and after January 1, 1993, and each year thereafter. Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation. The legislature may provide for the classification and the taxation uniformly as to class of recreational vehicles, as defined by the legislature, or may exempt such class from property taxation and

impose taxes upon another basis in lieu thereof. The provisions of this subsection shall not be applicable to the taxation of motor vehicles, except as otherwise hereinafter specifically provided, mineral products, money, mortgages, notes and other evidence of debt and grain. Property shall be classified into the following classes for the purpose of assessment and assessed at the percentage of value prescribed therefor:

Class 1 shall consist of real property. Real property shall be further classified into seven subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Real property used for residential purposes including multi-family residential real property and real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located: 11 1/2%
- (2) Land devoted to agricultural use which shall be valued upon the basis of its agricultural income or agricultural productivity pursuant to section 12 of article 11 of the constitution: 30%
- (3) Vacant lots: 12%
- (4) Real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code, and which is included in this subclass by law: 12%
- (5) Public utility real property, except railroad real property which shall be assessed at the average rate that all other commercial and industrial property is assessed: 33%
- (6) Real property used for commercial and industrial purposes and buildings and other improvements located upon land devoted to agricultural use: 25%
- (7) All other urban and rural real property not otherwise specifically subclassified: 30%

Class 2 shall consist of tangible personal property. Such tangible personal property shall be further classified into six subclasses, shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Mobile homes used for residential purposes: 11 1/2%
- (2) Mineral leasehold interests except oil leasehold interests the average daily production from which is five barrels or less, and natural gas leasehold interests the average daily production from which is 100 mcf or less, which shall be assessed at 25%: 30%

- (3) Public utility tangible personal property including inventories thereof, except railroad personal property including inventories thereof, which shall be assessed at the average rate all other commercial and industrial property is assessed: 33%
  - (4) All categories of motor vehicles not defined and specifically valued and taxed pursuant to law enacted prior to January 1, 1985: 30%
  - (5) Commercial and industrial machinery and equipment which, if its economic life is seven years or more, shall be valued at its retail cost when new less seven-year straight-line depreciation, or which, if its economic life is less than seven years, shall be valued at its retail cost when new less straight-line depreciation over its economic life, except that, the value so obtained for such property, notwithstanding its economic life and as long as such property is being used, shall not be less than 20% of the retail cost when new of such property: 25%
  - (6) All other tangible personal property not otherwise specifically classified: 30%
- (b) All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, farm machinery and equipment, merchants' and manufacturers' inventories, other than public utility inventories included in subclass (3) of class 2, livestock, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation.

**§ 2: Taxation of incomes.** The state shall have power to levy and collect taxes on incomes from whatever source derived, which taxes may be graduated and progressive.

**§ 4: Revenue for current expenses.** The legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years.

**§ 5: Object of tax.** No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied.

**§ 6: State debts; annual tax; proceeds.** For the purpose of defraying extraordinary expenses and making public improvements, the state may contract public debts; but such debts shall never, in the aggregate, exceed one million dollars, except as hereinafter provided. Every such debt shall be authorized by law for some purpose specified therein, and the vote of a majority of all the members elected to each house, to be taken by the yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal thereof, when it shall become due; and shall specifically appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished, until the interest and principal of such debt shall have been wholly paid.

**§ 7: Election on indebtedness.** No debt shall be contracted by the state except as herein provided, unless the proposed law for creating such debt shall first be submitted to a direct vote of the electors of the state at some general election; and if such proposed law shall be ratified by a majority of all the votes cast at such general election, then it shall be the duty of the legislature next after such election to enact such law and create such debt, subject to all the provisions and restrictions provided in the preceding section of this article.

**§ 8: Borrowing money by state.** The state may borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised, shall be applied exclusively to the object for which the loan was authorized, or to the repayment of the debt thereby created.

**§ 9: Internal improvements; state highway system; flood control; conservation or development of water resources.** The state shall never be a party in carrying on any work of internal improvement except that: (1) It may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor general obligation bonds issued by the state for such highways; (2) it may be a party to flood control works and works for the conservation or development of water resources; (3) it may, for the purpose of stimulating economic development and private sector job creation in all areas of the state, participate in the development of a capital formation system and have a limited role in such system through investment of state funds authorized in accordance with law; (4) it may be a party to any work of internal improvement, whenever any work of internal improvement not authorized by (1), (2) or (3) is once authorized by a separate bill passed by the affirmative vote of not less than two-thirds of all members then elected (or appointed) and qualified to each house, but no general property tax shall ever be laid nor general obligation bonds be issued by the state therefor; and (5) it may expend funds received from the federal government for any public purpose in accordance with the federal law authorizing the same.

**§ 10: Special taxes for highway purposes.** The state shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels.

**§ 11: Taxation of incomes; adoption of federal laws by reference.** In enacting any law under section 2 of this article 11, the legislature may at any regular, budget or special session define income by reference to or otherwise adopt by reference all or any part of the laws of the United States as they then exist, and, prospectively, as they may thereafter be amended or enacted, with such exceptions, additions or modifications as the legislature may determine then or thereafter at any such legislative sessions.

**§ 12: Assessment and taxation of land devoted to agricultural use.** Land devoted to agricultural use may be defined by law and valued for ad valorem tax purposes upon the basis of its agricultural income or agricultural productivity, actual or potential, and when so valued such land shall be assessed at the same percent of value and taxed at the same rate as real property subject to the provisions of section 1 of this article. The legislature may, if land devoted to agricultural use changes from such use, provide for the recoupment of a part or all of the difference between the amount of the ad valorem taxes levied upon such land during a part or all of the period in which it was valued in accordance with the provisions of this section and the amount of ad valorem taxes which would have been levied upon such land dur-



ing such period had it not been in agricultural use and had it been valued, assessed and taxed in accordance with section 1 of this article.

**§ 13: Exemption of property for economic development purposes; procedure; limitations.**

- (a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of: (1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created.
- (b) Any ad valorem tax exemption granted pursuant to subsection (a) shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires.
- (c) The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.
- (d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of property from ad valorem taxation found to have a public purpose and promote the general welfare.

## **Article 12**

# **CORPORATIONS**

**§ 1: Corporate powers.** The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

**§ 2: Liability of stockholders.** Dues from corporations shall be secured by the individual liability of the stockholders to the amount of stock owned by each stockholder, and such other means as shall be provided by law; but such individual liability shall not apply to railroad corporations nor corporations for religious or charitable purposes.

**§ 4: Rights of way; eminent domain.** No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.

**§ 5: Cities' powers of home rule.**

- (a) The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: Provided, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.
- (b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness. All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as here in provided for in subsection (c).

(c)

- (1) Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.
- (2) A charter ordinance is an ordinance which exempts a city from the whole or any part of any enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject. Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city.
- (3) No charter ordinance shall take effect until sixty days after its final publication. If within sixty days of its final publication a petition signed by a number of electors of the city equal to not less than ten percent of the number of electors who voted at the last preceding regular city election shall be filed in the office of the clerk of such city demanding that such ordinance be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon. An election, if called, shall be called within thirty days and held within ninety days after the filing of the petition. The governing body shall pass an ordinance calling the election and fixing the date, which ordinance shall be published once each week for three consecutive weeks in the official city newspaper or, if there be none, in a newspaper of general circulation in the city, and the election shall be conducted as elections for officers and by the officers handling such elections. The proposition shall be: "Shall charter ordinance No. \_\_\_\_\_, entitled (title of ordinance) take effect?" The governing body may submit any charter ordinance to a referendum without petition by the same publication of the charter ordinance and the same publication of the ordinance calling the election as for ordinances upon petition and such charter ordinance shall then become effective when approved by a majority of the electors voting thereon. Each charter ordinance becoming effective shall be recorded by the clerk in a book maintained for that purpose with a statement of the manner of adoption and a certified copy shall be filed with the secretary of state, who shall keep an index of the same.
- (4) Each charter ordinance enacted shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities.

(d) 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.

(e) This amendment shall be effective on and after July 1, 1961.

**§ 6: Definition of corporations; suits.** The term corporations, as used in this article, shall include all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships; and all corporations may sue and be sued in their corporate name.

## **Article 13 BANKS**

**§ 1: Banking laws.** No bank shall be established otherwise than under a general banking law, nor be operated otherwise than by a duly organized corporation.

**§ 2: State not to be stockholder.** The state shall not be a stockholder in any banking institution.

## **Article 14 CONSTITUTIONAL AMENDMENT AND REVISION**

**§ 1: Proposals by legislature; approval by electors.** Propositions for the amendment of this constitution may be made by concurrent resolution originating in either house of the legislature, and if two-thirds of all the members elected (or appointed) and qualified of each house shall approve such resolution, the secretary of state shall cause such resolution to be published in the manner provided by law. At the next election for representatives or a special election called by concurrent resolution of the legislature for the purpose of submitting constitutional propositions, such proposition to amend the constitution shall be submitted, both by title and by the amendment as a whole, to the electors for their approval or rejection. The title by which a proposition is submitted shall be specified in the concurrent resolution making the proposition and shall be a brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition. If a majority of the electors voting on any such amendment shall vote for the amendment, the same shall become a part of the constitution. When more than one amendment shall be submitted at the same election, such amendments shall be so submitted as to enable the electors to vote on each amendment separately. One amendment of the constitution may revise any entire article, except the article on general provisions, and in revising any article, the article may be renumbered and all or parts of other articles may be amended, or amended and transferred to the

article being revised. Not more than five amendments shall be submitted at the same election.

**§ 2: Constitutional conventions; approval by electors.** The legislature, by the affirmative vote of two-thirds of all the members elected to each house, may submit the question "Shall there be a convention to amend or revise the constitution of the state of Kansas?" or the question "Shall there be a convention limited to revision of article(s) \_\_\_\_\_ of the constitution of the state of Kansas?", to the electors at the next election for representatives, and the concurrent resolution providing for such question shall specify in such blank appropriate words and figures to identify the article or articles to be considered by the convention. If a majority of all electors voting on the question shall vote in the affirmative, delegates to such convention shall be elected at the next election for representatives thereafter, unless the legislature shall have provided by law for the election of such delegates at a special election. The electors of each representative district as organized at the time of such election of delegates shall elect as many delegates to the convention as there are representatives from such district. Such delegates shall have the same qualifications as provided by the constitution for members of the legislature and members of the legislature and candidates for membership in the legislature shall be eligible for election as delegates to the convention. The delegates so elected shall convene at the state capital on the first Tuesday in May next following such election or at an earlier date if provided by law.

The convention shall have power to choose its own officers, appoint and remove its employees and fix their compensation, determine its rules, judge the qualifications of its members, and carry on the business of the convention in an orderly manner. Each delegate shall receive such compensation as provided by law. A vacancy in the office of any delegate shall be filled as provided by law.

The convention shall have power to amend or revise all or that part of the constitution indicated by the question voted upon to call the convention, subject to ratification by the electors. No proposed constitution, or amendment or revision of an existing constitution, shall be submitted by the convention to the electors unless it has been available to the delegates in final form at least three days on which the convention is in session, prior to final passage, and receives the assent of a majority of all the delegates. The yeas and nays upon final passage of any proposal, and upon any question upon request of one-tenth of the delegates present, shall be entered in the journal of the convention.

Proposals of the convention shall be submitted to the electors at the first general or special statewide election occurring not less than two months after final action thereon by the convention, and shall take effect in accordance with the provisions thereof in such form and with such notice as is directed by the convention upon receiving the approval of a majority of the qualified electors voting thereon.

## Article 15

### MISCELLANEOUS

**§ 1: Selection of officers.** All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law.

**§ 2: Tenure of office; merit system in civil service.** The tenure of any office not herein provided for may be declared by law; when not so declared, such office shall be held during the pleasure of the authority making appointment, but the legislature shall not create any office the tenure of which shall be longer than four years, except that appointments under a merit system in civil service shall not be subject to such limitation. The legislature may make provisions for a merit system under which appointments and promotions in the civil service of this state and all civil divisions thereof, shall be made according to merit and fitness, to be determined, so far as practicable, by examination, which, so far as practicable, shall be competitive.

**§ 3: Lotteries.** Lotteries and the sale of lottery tickets are forever prohibited.

**§ 3a: Regulation, licensing and taxation of "bingo" games authorized.** Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas the legislature may regulate, license and tax the operation or conduct of games of bingo and instant bingo, as defined by law, by bona fide nonprofit religious, charitable, fraternal, educational and veterans organizations.

**§ 3b: Regulation, licensing and taxation of horse and dog racing and parimutuel wagering thereon.** Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may permit, regulate, license and tax, at a rate not less than 3% nor more than 6% of all money wagered, the operation or conduct, by bona fide nonprofit organizations, of horse and dog racing and parimutuel wagering thereon in any county in which: (a) A majority of the qualified electors of the county voting thereon approve this proposed amendment; or (b) the qualified electors of the county approve a proposition, by a majority vote of those voting thereon at an election held within the county, to permit such racing and wagering within the boundaries of the county. No off-track betting shall be permitted in connection with horse and dog racing permitted pursuant to this section.

**§ 3c: State-owned and operated lottery.** Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may provide for a state-owned and operated lottery, except that such state-owned lottery shall not be operated after June 30, 1990, unless authorized to be operated after such date by a concurrent resolution approved by a majority of all of the members elected (or appointed) and qualified of each house and adopted in the 1990 regular session of the legislature. The state shall whenever possible provide the public information on the odds of winning a prize or prizes in a lottery game.

**§ 5: Financial statements; publication.** An accurate and detailed statement of the receipts and expenditures of the public moneys, and the several amounts paid, to whom, and on what account, shall be published, as prescribed by law.

**§ 6: Rights of women.** The legislature shall provide for the protection of the rights of women, in acquiring and possessing property, real, personal and mixed, separate and apart from the husband; and shall also provide for their equal rights in the possession of their children.

**§ 7: Salaries reduced for neglect of duty.** The legislature may reduce the salaries of officers, who shall neglect the performance of any legal duty.

**§ 8: Location of state capital.** The temporary seat of government is hereby located at the city of Topeka, county of Shawnee. The first legislature under this constitution shall provide by law for submitting the question of the permanent location of the capital to a popular vote, and a majority of all the votes cast at some general election shall be necessary for such location.

**§ 9: Homestead exemption.** A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon: Provided, That provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife: And provided further, That the legislature by an appropriate act or acts, clearly framed to avoid abuses, may provide that when it is shown the husband or wife while occupying a homestead is adjudged to be insane, the duly appointed guardian of the insane spouse may be authorized to join with the sane spouse in executing a mortgage upon the homestead, renewing or refinancing an encumbrance thereon which is likely to cause its loss, or in executing a lease thereon authorizing the lessee to explore and produce therefrom oil, gas, coal, lead, zinc, or other minerals.

**§ 10: Intoxicating liquors.**

- (a) The legislature may provide for the prohibition of intoxicating liquors in certain areas.
- (b) The legislature may regulate, license and tax the manufacture and sale of intoxicating liquors, and may regulate the possession and transportation of intoxicating liquors.
- (c) The sale of intoxicating liquor by the individual drink in public places is prohibited, except that the legislature may permit, regulate, license and tax the sale of intoxicating liquor by the drink in public places in a county where the qualified electors of the county approve, by a majority vote of those voting on this proposition, to adopt this proposition, but such sales shall be limited to: (1) Public places where gross receipts from sales of food for consumption on the premises constitute not less than 30% of the gross receipts from all sales of food and beverages on such premises; or

(2) public places for which a temporary permit has been issued as authorized by law.

At any subsequent general election, the legislature may provide by law for the submission of propositions to qualified electors of counties for: (1) The prohibition of sales of intoxicating liquor by the drink in public places within the county; (2) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; or (3) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county which derive not less than 30% of their gross receipts from the sale of food for consumption on the premises. Temporary permits for the sale of intoxicating liquor may be issued in any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is approved pursuant to this section, but no temporary permit shall be issued for the sale of intoxicating liquor by the drink within any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is prohibited.

**§ 12: Membership or nonmembership in labor organizations.** No person shall be denied the opportunity to obtain or retain employment because of membership or nonmembership in any labor organization, nor shall the state or any subdivision thereof, or any individual, corporation, or any kind of association enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of membership or nonmembership in any labor organization.

**§ 13: Continuity of state and local governmental operations.** Notwithstanding any general or special provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including, but not limited to, the financing thereof. In the exercise of the powers hereby conferred the legislature shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislature so to do would be impracticable or would admit of undue delay.

**§ 14: Oaths of state officers.** All state officers before entering upon their respective duties shall take and subscribe an oath or affirmation to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of their respective offices.

**§ 15: Victims' rights.**

- (a) Victims of crime, as defined by law, shall be entitled to certain basic rights, including the right to be informed of and to be present at public hearings, as defined by law, of the criminal justice process, and to be heard at sentencing or at any other time deemed appropriate by the court, to the



extent that these rights do not interfere with the constitutional or statutory rights of the accused.

- (b) Nothing in this section shall be construed as creating a cause of action for money damages against the state, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The legislature may provide for other remedies to ensure adequate enforcement of this section.
- (c) Nothing in this section shall be construed to authorize a court to set aside or to void a finding of guilty or not guilty or an acceptance of a plea of guilty or to set aside any sentence imposed or any other final disposition in any criminal case.



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