



To: House Local Government Committee

From: Eric B. Smith, Legal Counsel

Date: February 19, 2015

RE: Testimony in support of HB 2246

Thank you for allowing the League of Kansas Municipalities to provide testimony in support of HB 2246. This is a bill that the League introduced based on the requests of several of our members after the Kansas Supreme Court decided *Whaley v. Sharp*, No. 107,776 (2014 WL 7331586) on December 24, 2014.

The Kansas Tort Claims Act (KTCA) requires that any person bringing a claim against a municipality must first provide a written notice of claim. This notice provides a municipality with up to 120 days to investigate the claim before any litigation can start. Since 1995, when the Kansas Court of Appeals ruled in *King v. Pimentel*, 20 Kan. App. 2d 579, 890 P.2d 1217, it has been the rule of law that the notice requirement also applied to any suits brought against municipal employees for acts done within the scope of employment. The King ruling was based on the courts finding that, under the KTCA, a municipality is liable for any torts of its employees and that the municipality has a duty to defend and indemnify their employee. Municipalities have been able to rely on this court ruling until the Whaley decision was handed down.

In the Whaley decision, the Supreme Court found that the King decision was incorrect and the court directly overruled the King decision. By the court taking this action there is no longer any requirement to provide notice to a municipality before suit is filed against an employee, even though the municipality will have a duty to defend and indemnify the employee.

The intent of HB 2246 is to provide a clear statutory requirement that notice must be given to a municipality before an action can be filed against an employee, for injuries alleged to have been committed by the employee in the course and scope of employment. The notice requirement allows a municipality the opportunity to investigate the matter and prepare to defend and indemnify the employee.

The League of Kansas Municipalities respectfully requests that the Committee pass out HB 2246 favorably for passage.