

## MINUTES OF THE HOUSE TRANSPORTATION.

The meeting was called to order by Chairperson Gary Hazylett at 1:35 p.m. on February 19, 2001 in Room 519-S of the Capitol.

All members were present except:

Committee staff present:

Bruce Kinzie, Revisor  
Hank Avila, Research  
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Representative Bob Grant  
Representative Sharon Schwartz  
Steve Sloan, Midwest Mineral  
Steve Heft, Heft & Son LLC  
Woody Moses, Kansas Ag Producers  
Bob Totten, Kansas Contractors  
Butch Spray, Venture Corporation, Garden City, Kansas  
R.J. Koreen, Andrews Asphalt  
Randy Allen, Kansas Association of Counties  
Doug Wareham, Kansas Fertilizer & Chemical Association  
Tim Ohlde, private citizen  
Todd Johnson, Kansas Livestock Association  
Ken Gudenkauf, Assistant Bureau Chief, Traffic Engineering, KDOT

Others attending:

See attached list

**HB 2369 - cities and counties, paving materials, prohibiting the sale thereof**

Chairman Hayzlett opened hearings on **HB 2369** and called on Representative Grant as the first proponent. He told the committee that while the practice of selling rock to private individuals or contractors by the county is not widespread he felt this bill was necessary to curtail such activity before it becomes a bigger problem.

(Attachment 1)

Steve Sloan, Midwest Minerals, spoke of some of the competitive advantages county governments have over his company when they engage in selling crushed stone products and redi-mixed concrete to customers in the six most southeastern counties his company serves. He continued the law, through "home rule" provisions, allows counties to enter the area of private enterprise through public facilities and funds if they can show they are fulfilling a public purpose. He said virtually anything could be deemed to serve a public purpose so therefore, any governmental agency could sell or give away any product or service in direct competition with private enterprise.

(Attachment 2)

Steve Heft, Heft & Sons, LLC, stated in their sparsely populated area of the state they depend upon a wide and diverse customer base in order to provide quality paving materials at a reasonable cost. He provided letters supporting his claim that the various counties have violated one of the basic theories of government by entering the private sector and competing with them for the sale of asphalt, rock, sand, gravel and concrete. (Attachment 3)

The Chair next called on Woody Moses, Kansas Aggregate Producers' Association, who told the committee this bill was introduced to address a growing problem in the Kansas construction materials industry, the disappearance of markets. The development of "home rule" has led to conflicting opinions about what local government can do in pursuit of the "public purpose". He concluded they support **HB 2369** which would prevent the sales of paving materials by local government. (Attachment 4)

Bob Totten, Kansas Contractors Association, said their organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest. He said the bill addresses several concerns their organization had regarding laws pertaining to governmental entities contracting for bid or doing work with their own forces. He listed several reasons why they supported **HB 2369**. (Attachment 5)

Butch Spray, Venture Corporation, said we have an economic system characterized by private or corporate ownership of the tools of production in a competitive and free market and that counties should not be allowed to sell asphalt mix, crushed stone, etc. to other governmental agencies or private annuities. He attached several articles to reinforce his arguments for a competitive market. (Attachment 6)

R.J. Koreen, Andrews Asphalt & Construction, stated his company had been concerned with the participation of a governing, political, and taxing authority in the free market of paving services and asphalt production for some time. He continued when a taxing authority imposes itself in production or in providing a service that the private sector can do, they have advantages that are not afforded companies like theirs. He asked support for **HB 2369**. (Attachment 7)

There being no other proponents Chairman Hayzlett called on Randy Allen, Kansas Association of Counties, who spoke in opposition to **HB 2369**. It was his interpretation this bill would prohibit cities and counties from selling, or otherwise providing, various materials to any other city, county, private person or private entity. He stated that among the 105 counties, the vast majority of counties do not routinely sell crushed rock, gravel or asphalt to other counties or to cities, and probably even few sell paving materials to private persons or private entities. He then listed several concerns they had with the bill. (Attachment 8)

Don Moler, League of Kansas Municipalities, presented written testimony. (Attachment 9)

Following questions from the committee, Chairman Hayzlett closed hearings on **HB 2369**.

### **HB 2277 - operation of all terrain vehicles used for agricultural purposes upon highways**

Chairman Hayzlett opened hearings on **HB 2277** and called on Doug Wareham, KFCA, to present testimony in support of this bill. He stated ATV's have been used by retail fertilizer and ag chemical operations, agronomists, crop consultants and field scouts to identify soil fertility needs, inspect for plant diseases, take samples of insect infestations and have even been used to spot-apply crop protection chemicals. It is their opinion that these vehicles have and will continue to serve as "implements of husbandry" and should not be treated any differently from other implements of husbandry. He concluded ATV's are not a recreational vehicle, but are instead precision farming equipment that should be classified as an "implement of husbandry". (Attachment 10)

Tim Ohlde, Ohlde Cattle Company, said a large percentage of his farm/ranch is located along the highway in close proximity to their headquarters. They find it necessary to drive ATV's on the "right of way" to perform daily operations in a timely and efficient manner and find their use saves \$100 a day in labor, fuel and machinery costs. (Attachment 11)

Representative Sharon Schwartz read testimony from Leo Schwartz, owner of Pork Chop Acres, Inc. in Washington, Kansas. In his testimony he states ATV's are an essential piece of equipment which they use for scouting crop fields; checking for insects, weeds, planting skips as well as pulling a sprayer to actually spot spray weed breaks in crops and fence rows. They also are used to check cattle, drive cattle to and from forage areas, check fences, haul feed as well as fencing supplies. He concluded they are used exclusively as vehicles of husbandry and asks for support of **HB 2277**. (Attachment 12)

The next proponent to speak was Todd Johnson, Kansas Livestock Association. He said with the changing agriculture farmers face today, and the way they use different tools and technology now, it is important to classify ATV's as "implements of husbandry" and allow them to legally operate on highway right-of-ways, when used for agricultural purposes. (Attachment 13)

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Following questions by the committee to the proponents of **HB 2277**, Chairman Hayzlett called on Ken Gudenkauf, Department of Transportation, who spoke in opposition to this bill. He said the major concern of the Department is for the safety of these vehicles operating incidentally on the highways. He said most implements of husbandry are large and fairly visible when operated on the highways, however, the visibility of the all-terrain vehicles creates a safety concern because of their very low profile. (Attachment 14)

Chairman Hayzlett closed hearings on **HB 2277** following questions from the committee.

Due to time restraints Jim Keating of the Safe Kids Coalition was asked to return to the committee on Tuesday, February 20<sup>th</sup> to give his report on the low rating Kansas received concerning child seat belt safety.

### **HB 2191 - license plates for Ancient Arabic Order, Nobles of the Mystic Shrine of North America**

Chairman Hayzlett opened the floor for discussion and final action on **HB 2191**. Representative Levinson made a motion to take **HB 2191** off the table, seconded by Representative Humerickhouse and the motion carried. Representative Powell made a motion to pass **HB 2191**, as amended, seconded by Representative Levinson and the motion carried.

Chairman Hayzlett adjourned the meeting at 3:20 p.m. The next meeting of the House Transportation Committee will be Tuesday, February 20<sup>th</sup> in Room 519-S.