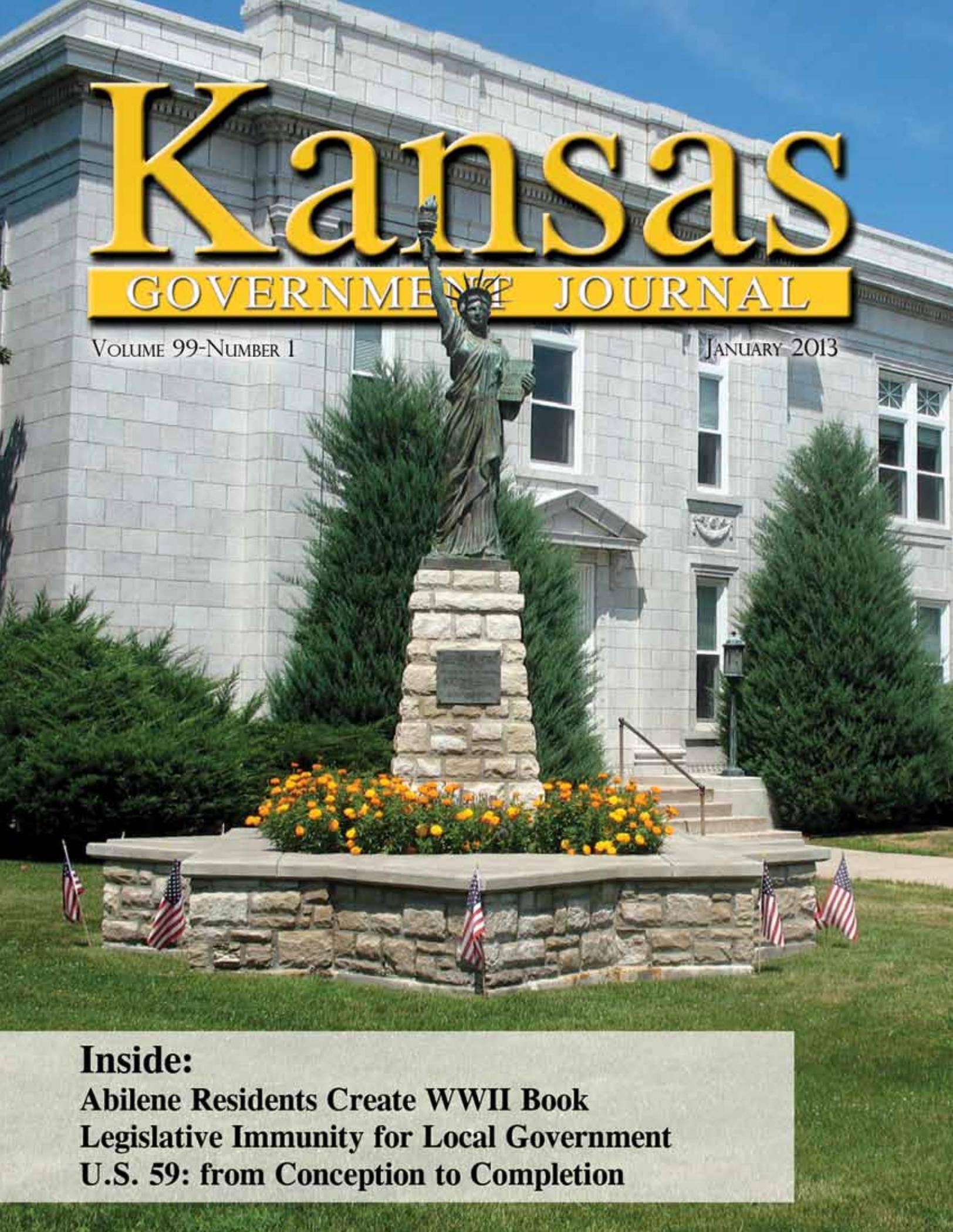


Kansas

The background of the cover is a photograph of the Kansas State Capitol building. In the foreground, the Statue of Liberty stands on a stone pedestal, surrounded by greenery and orange flowers. Several small American flags are planted around the base of the statue. The sky is clear and blue.

GOVERNMENT JOURNAL

VOLUME 99-NUMBER 1

JANUARY 2013

Inside:

Abilene Residents Create WWII Book

Legislative Immunity for Local Government

U.S. 59: from Conception to Completion

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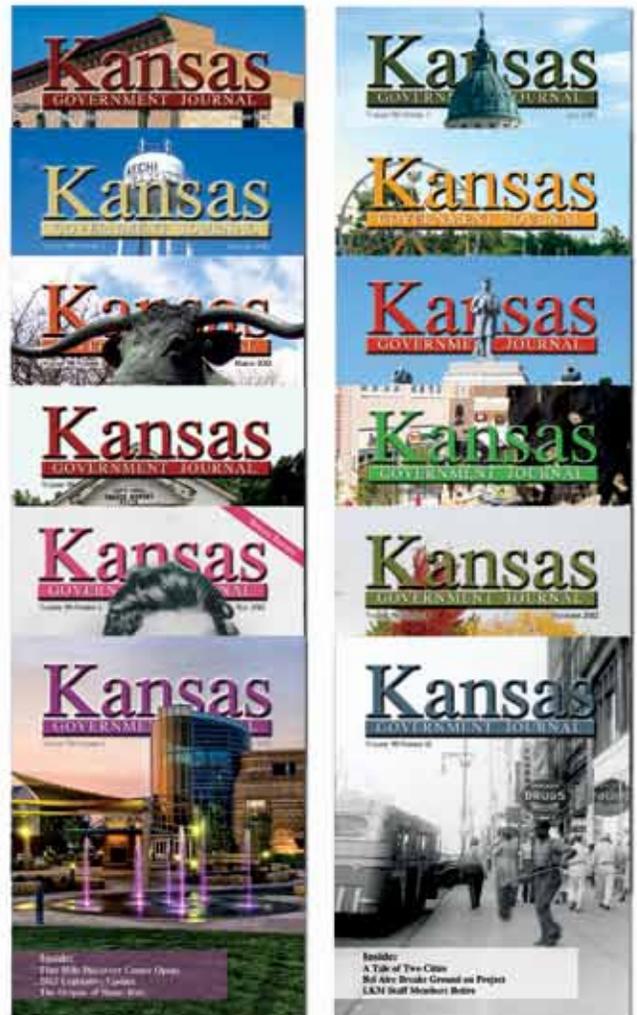
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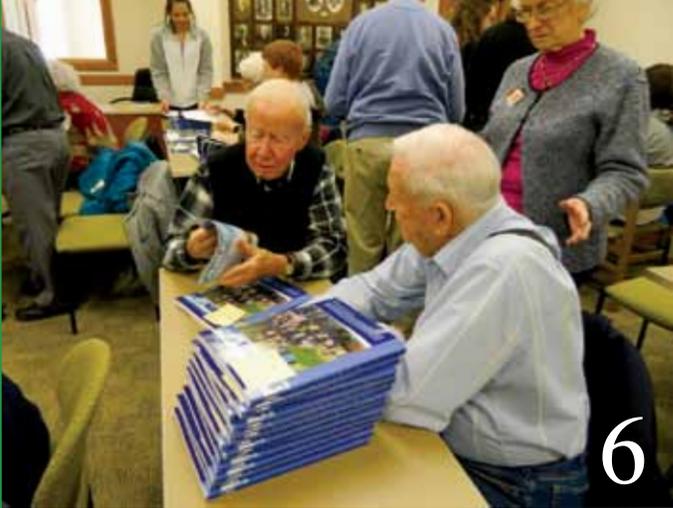
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Contents

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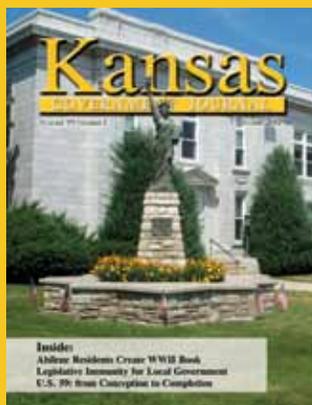


Features

- 5 Vote this April in KPERS' Board of Trustees Election
- 6 Abilene Residents Create Kansas-Focused WWII Book
- 9 King vs. Parliament: City Council Immunity from Civil and Criminal Liability Under the Speech or Debate Clause
- 16 U.S. 59: From Conception to Completion
- 21 KACM Presents Annual Awards
- 24 ACEC City and County Public Improvement Awards

Departments

- 8 Mainstreet News
- 19 Best Practices
- 20 Did You Know
- 22 State Scene
- 23 Legal Forum
- 26 Classified Advertising
- 28 Professional Services
- 30 Moler's Musings



About the Cover:
A view of Leavenworth City Hall. Leavenworth is the featured city in a new KGJ column, *Did You Know* that can be found on page 20. *Photo provided by the City of Leavenworth.*

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The mission of the League shall be to unify, strengthen, and advocate for the interests of Kansas municipalities to advance the general welfare and promote the quality of life of the people who live within our cities.

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March

- 26 - Strategic Planning Meeting, Dodge City
- 27 - Strategic Planning Meeting, Oberlin
- 28 - Strategic Planning Meeting, Concordia

April

- 4 - Strategic Planning Meeting, Kansas City
- 10 - Strategic Planning Meeting, Sedgwick
- 11 - Strategic Planning Meeting, Iola
- 12 - MLA: Municipal Finance, Ellis
- 13 - MLA: Municipal Finance, Marysville
- 27 - MLA: Municipal Finance, Louisburg

May

- 10-11 - Governing Body Institute, Topeka
- 27 - Memorial Day

Obituaries

Dennis O. Davis, 70, died December 13, 2012. Davis served on Clinton Prairie school board from 1976 to 1984, serving as President in 1980. He worked at Purdue University from 1983 to 1990 and at the University of Richmond until his retirement. He retired to Kansas in 2002 and served on the Moline City Council for four years.

Inez Lorraine Dunn, 86, died December 15, 2012, at the Hillcrest Country Estates in Papillion, Nebraska. Dunn worked as the Eskridge City Clerk for 25 years. She and her husband operated Dunn Home Supply in Eskridge from 1949 to 2007. Dunn was a member of the Eskridge Presbyterian Church and American Legion Auxillary.

Stephen Kellison, 65, died November 15, 2012, at Stormont Vail Hospital in Topeka. Kellison served two terms as an Osage City Councilmember from 1995 to 1998 and 2001 to 2004. He was President of the Osage City Fair Board, Kiwanis, and Meals on Wheels.

Eldon Sloan, 103, died December 16, 2012 at his home in Topeka. Sloan was the oldest active member of the Kansas Bar Association. He was a Police Judge for the City of Topeka from 1941 to 1944, Director of Valuation for the State of Kansas from 1957 to 1960, and a member of the Board of Regents from 1964 to 1968. He was a faithful member of Grace Episcopal Cathedral for nearly 80 years, serving on the Vestry.

Irma M. Steinmetz, 87, died November 29, 2012, at Sweet Life at Brookdale Place. Steinmetz served on the Valley Falls City Council. She was a member of St. Mary's Immaculate Conception Catholic Church in Valley Falls and the Altar Society of the church, and a member of the Women of the Moose.



Vote this April in KPERS' Board of Trustees Election

Literally thousands of current and former local government employees are a part of KPERS. And yet, there is not one local representative currently serving on the KPERS Board. We are encouraging all city and county KPERS members to vote in the April KPERS Board of Trustees Election. There are four local government individuals seeking the non-school position:

Todd Hart, City of Olathe
Deborah Kelly, City of Shawnee
Don Moler, League of Kansas Municipalities
Richard Nienstedt, City of Ottawa

The League of Kansas Municipalities (LKM) Governing Body has endorsed Don Moler, LKM Executive Director.

Voting

KPERS is making the voting process easier. To vote, login to your account at www.kpers.org. You will find candidate biographies, and you will be able to log your vote securely. The voting period will run April 1 through April 30. Look for a voting packet in your mailbox sometime in March. The packet will include candidate information and voting instructions.

Oversight Committee

A three-person oversight committee has been appointed to ensure the election is fair and transparent. The committee oversees the election process and approves the election results.

Members are:

Brad Bryant, Deputy Assistant Secretary of State
Randall Allen, Kansas Association of Counties, Executive Director
Dr. Kenneth Hurn, Seaman USD 345, Superintendent (retired)

Board Responsibilities

KPERS board members serve an important role overseeing Retirement System operations and safeguarding your assets.

- Review and adopt actuarial assumptions
- Recommend employer contribution rates
- Determine the appropriate investment asset allocation mix
- Establish investment policies and guidelines
- Hire the executive director and monitor performance
- Hire investment managers and monitor performance
- Hire and monitor the performance of various other service providers, including actuaries, consultants, advisors and custodians

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Abilene Residents Create Kansas-Focused WWII Book

by
Mike
Koss

It's difficult to properly capture the magnitude of World War II. It was the largest war in history, claimed over 70 million lives and ended with the use of the most powerful weapon ever known. And, despite these jarring events, arguably its greatest impact is the collective psychological

effect it had on those it touched. We call our fellow Americans who lived through the war our "Greatest Generation," and no doubt the adversity they overcame played a part in building their character.

In Abilene, an intergenerational writing project has just been completed that documents the wartime experiences of this group of individuals. The project was conceived in December of 2011 when Ann Parr, a writer from Lindsborg, showed Abilene Public Library Director Judy Burgess a book she had created using the personal World War II stories of Lindsborg senior citizens. Ms. Parr described how she used Central Kansas public school students to collect the stories and assemble the book. Recognizing the potential for a similar endeavor in the hometown of the WWII Supreme Commander and President Dwight D. Eisenhower, Ms. Burgess said, “We have to do this in Abilene... I will get you an appointment with the Eisenhower Presidential Library before you leave town today.”¹

The idea gained momentum quickly in the Abilene community. After discussions with leaders from the Presidential Library and the high school, several task teams were formed using community volunteers. These teams recruited seniors, contacted teachers, planned public marketing strategies, managed funding, and chose a printing source. The cooperative effort included Ms. Burgess, Abilene USD 435 Assistant Superintendent Dr. Denise Guy, Eisenhower Presidential Library and Museum Director Karl Weissenbach, and the Jeffcoat Memorial Fund. A two-pronged mission was declared: (1) to capture and preserve Abilene community World War II experiences from people who lived them; and (2) to enhance the legacy of General Dwight D. Eisenhower.²



The Five Star Writers meet their student partners for the first time at the Abilene Public Library. Photo by Five Star Writers.

By September 2012, the project was ready to begin. Seventeen Abilene senior citizens, who had experienced WWII as veterans, homefront keepers, and factory workers, gathered weekly in Heidi Stohs’s 12th Grade English honors class to provide first-person accounts of the war. During the sessions, one student sat across from a writer who had lived through the war, discussing and documenting their writers’ wartime experiences and taking pictures of their war memorabilia. The 17 partners worked together on corrections and revisions, with each duo creating one of the book’s 17 chapters.³

Students also researched President Eisenhower’s personal diary entries to accompany the stories and inform readers of

his thoughts and whereabouts on the days corresponding to the seniors’ experiences. These “Ike Writes” pages provide contrasting viewpoints between our state’s most influential veteran and those of regular Kansas soldiers and citizens. Additionally, Ashley DeLange’s sophomore English class documented personal interactions between Ike and Abilene residents, and placed those within and between stories. Another famous WWII veteran from Kansas, former U.S. Senator Bob Dole, wrote the book’s introduction.⁴



The Five Star Writers and their student partners hosted a reception and book signing in honor of their recently published book. Photo by Bill DeArmond.

The book was formatted for publication at the end of October, published in November, and on December 10, the finished book, titled “Stories from the Heartland: World War II Remembered,” was presented to the USD 435 Board of Education. It contains 173 pages from the writers, black and white WWII photographs, comments from the writers and students, and over 300 pages from Eisenhower’s diary and personal letters. The book is now being sold at the Visitors Center of the Eisenhower Presidential Library.⁵

“Stories from the Heartland” was one of Kansas’s great artistic accomplishments in 2012. Thanks to the hard work of several generations of Abilene residents, we all can enjoy a detailed account of Kansans’ experiences during WWII and are better prepared to pass on the lessons of sacrifice and duty from those living through the war.

☀️ *Michael Koss is the Membership Services Manager for the League of Kansas Municipalities. He can be reached at mkoss@lkm.org or (785) 354-9565.*

¹<http://5starwriters.wordpress.com/2012/05/30/hello-world/#more-1>

²<http://5starwriters.wordpress.com/about/>

³<http://5starwriters.wordpress.com/>

⁴Horan, T. (2012, December 12). Abilene English students publish book on WWII stories. *Abilene Reflector-Chronicle*. Retrieved from www.abilene-rc.com/pages/full_story/push%3Farticle-Abilene%2BEnglish%2B%2Bstudents%2Bpublish%2B%2Bbook%2Bof%2BWWII%2Bstories%2520%26id%3D21095092%26instance%3Dhomefirstleft+%26cd=1&hl=en&ct=clnk&gl=us.

⁵Horan, T. (2012).



Cities Combine Marketing for Research

When it comes to attracting science jobs, Topeka, Lawrence, and Manhattan are betting that combining all of their elements will lead to a bigger reaction than going it alone.

Chambers of Commerce and governments in all three communities have decided it is in their best interest to work as a team to attract employers looking for academic infrastructure and a trained workforce, instead of each attempting to sell itself on its own.

Dawn Wright, Vice President for new business attraction with Go Topeka, said each city will benefit from commuters and people visiting for entertainment if one of the other cities attracts a new employer.

Sean Johnson, Economic Development project manager for the Lawrence Chamber of Commerce, said marketing the region helps show potential employers Kansas has trained workers and the research infrastructure to support advanced industries—addressing

the problem that the words “advanced research” and “Kansas” aren’t closely linked in most people’s minds.

“Whereas we would normally have Lawrence, Topeka, and Manhattan competing for a project, now we’re working together to get that project,” he said.

Kevin Boatright, Director of Communications for The University of Kansas’ Office of Research and Graduate Studies, said it is in the university’s interest to see a vibrant economy in Lawrence and all of eastern Kansas, but bringing in companies interested in high-tech research also has direct benefits for the university.

Partnering with companies provides academic researchers with a source of funding, Boatright said, and it also may save the businesses money to hire out parts of the research process, because universities already have the infrastructure and personnel to do that kind of work.

Kansas Aviation Museum Expands

The Kansas Aviation Museum in Wichita is planning to open an interactive learning center that features flight simulators, a weather station, and educational stations.

The new center is expected to open March 16, 2013. It is sponsored by Boeing with support from the Lattner Family Foundation and the City of Wichita.

Features will include a mock control tower with a radio connection to a Cessna 210 simulator. Visitors can use a computer-aided system

to design an air foil and test it in a virtual wind tunnel. They can also build the foil and test it in a real wind tunnel.

Over the next year, the museum plans to start a new club for children, a merit badge program, home school programs, and other activities.

For more information about the new center’s opening event, visit http://www.kansasaviationmuseum.org/kam_view.php?g=&TO&c=211.

Funds Awarded to Communities

The Kansas Department of Commerce announced that 27 Kansas communities will share a total of \$9,732,596 in federal grants through the Community Development Block Grant (CDBG) program.

The CDBG program provides federal funds to local governments for the development of viable communities by addressing their housing, public facilities, and economic development needs. To be awarded funds, local government units must meet at least one of three program objectives: benefit low and moderate-income persons, prevent or eliminate slums and blight, or resolve an urgent need where local resources are not available to do so.

CDBG funds are one of the Department’s primary tools in supporting the state’s small, predominately rural communities. The Department has distributed more than \$272 million in CDBG funding over the last decade.

For a complete description of each cities funding, visit <http://www.kansascommerce.com/civicalerts.aspx?AID=783>.

The recipients of grants are as follows:

Argonia, \$500,000	Onaga, \$400,000
Cawker City, \$384,700	Oswego, \$300,000
Colony, \$500,000	Plainville, \$400,000
Cottonwood Falls, \$500,000	Rawlins County, \$90,000
Englewood, \$172,000	Robinson, \$444,000
Harper, \$500,000	Rush Center, \$340,000
Independence, \$400,000	Stafford, \$400,000
Jewell, \$332,571	Troy, \$500,000
Lincoln County, \$164,000	Uniontown, \$500,000
Lincolnvill, \$245,275	Washington County, \$296,000
Lyons, \$400,000	Wilson, \$389,900
Mankato, \$400,000	Windom, \$260,000
Marion, \$400,000	Woodston, \$114,150
Oakley, \$400,000	

Arts Center is Finalist for Placemaking Grant

The Lawrence Arts Center has announced it’s one of 104 applicants nationwide to be named a finalist for a grant from ArtPlace, an initiative to accelerate creative placemaking.

ArtPlace received more than 1,200 applications for the grants. Finalists were chosen for their potential to transform their communities through placing art and culture at the heart of strategies to drive vibrancy and diversity. Grant recipients will be announced in May.

“ArtPlace supports communities that engage residents and visitors with art,” Arts Center Executive Director Susan Tate said in a news release. “Lawrence is already known for cultural vibrancy, and our ArtPlace funding can improve our economy, support downtown and neighborhood vitality, and make our cultural history more visible.”



King vs. Parliament:

City Council Immunity from Civil and Criminal Liability Under the Speech or Debate Clause

-by Nick Badgerow-

The principle of legislative immunity is long-established under both United States and Kansas constitutional authority. This immunity is embedded in the U.S. Constitution, and is derived from ancient principles in Anglo-American jurisprudence. The doctrine of legislative immunity, unlike other forms of official immunity, provides an extraordinary immunity from criminal prosecution and civil liability arising from a legislative act. Additionally, that same immunity also protects legislators from being subpoenaed or questioned in court about those legislative acts. This immunity from prosecution and from subpoena extends to members of a municipal governing body, as the legislative branch of government in a city. The purpose of this article is to explore the historical and constitutional bases for this immunity, as extended to members of a city council or members of a municipal governing body, and to discuss the application and limits of the doctrine in a practical setting.

II. HISTORY OF THE SPEECH OR DEBATE CLAUSE

A. English Law.

1. *Strode's Act (1512)*. From the founding of the three separate branches of government in England, there was tension between the executive branch (the King) and the legislative branch (Parliament).² Over time, a number of English kings sent members of Parliament to prison for proposing or supporting bills the kings found to be unhelpful, or for raising issues and questions embarrassing to those kings or their families.

The tension between Crown and Parliament had been brewing for centuries. Back in 1512, one legislator, Richard Strode (himself a tinner by trade), had the temerity to speak out in Parliament against conditions in the tinning industry—for which he was fined 160£ and thrown into prison for 3 weeks.³ Upon his return to the next session of Parliament, Strode introduced a bill holding as null and void any proceeding against himself or any other present or future member of Parliament for any speeches or actions in legislative session, and the bill was adopted.⁴ While initially called “Strode’s Act,” it is more officially known as the “Privilege of Parliament Act.”⁵

The Act applied not only to Strode, but to “every other of the person or persons afore specified, that nowe be of this present parliament or that of any Parliament hereafter,” and exempted them all from any accusations, charges, executions, grievances

or impositions, “for any bill spekyng[,] reasonyng or declaryng of any mater or maters concernyng the parliament.”⁶ Strode’s Act was later superseded by the Privilege of Parliament Act of 1603,⁷ which contained essentially the same provision.

2. *Sir John Eliot (1632)*. Obviously, Strode’s Act and the Privilege of Parliament Act proved ineffective to stave off royal (executive) efforts to chill debate in Parliament. For example, in 1629, during the reign of Charles I, legislator Sir John Eliot was thrown into the Tower of London (a third time) along with eight others, for speaking out against the excesses of the Crown. While there, Eliot wrote eight books on politics and ethics, continuing to speak out on the independence of Parliament and its right to criticize the King.⁸

Eliot was vocal, not only in his criticism of Charles I, but also on his insistence that Parliament be made free from royal interference.⁹ He wrote and spoke often on the need for independence, and for the deliberations of the House of Commons to be kept strictly secret.¹⁰

But, Eliot died from tuberculosis or consumption in 1632, while imprisoned in the Tower, thus ceasing to trouble King Charles any further.¹¹

3. *The Glorious Revolution (1688)*. Charles I was not King himself much longer, though, due to the Civil War which resulted from his excesses. After the execution of Charles I at the end of the Civil War in 1649, his sons, Charles and James were living in France. Eventually, the elder son Charles was invited to return to

his homeland, taking the throne as Charles II in 1660. His reign was cut short by his untimely death in 1685.¹² Charles II was then replaced by his brother, James II (also called James VII of Scotland).¹³

The rule of James II was not without its controversy—political, religious, and personal. Ostensibly because of James’ personal life and his choice of Catholicism, the “Glorious Revolution of 1688” deposed James, and replaced him with his daughter, Mary (who had been raised in the Anglican Church), and Mary’s husband, William of Orange.¹⁴

4. *The English Bill of Rights (1689)*. Though royal interference in legislative affairs was not a primary cause of the Glorious Revolution, one of that Revolution’s salutary results was the English Bill of Rights.

That document lists some 13 grievances against James II for acts which were “utterly and directly contrary to the known laws and statutes and freedom of this realm.” The Bill then declares 13 fundamental rights “for the vindicating and asserting their ancient rights and liberties.” Among those was the speech or debate clause derived from Strode’s Act:

*That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.*¹⁵

As noted centuries later by the U.S. Supreme Court, the simplicity of this language belies the significance of its history:

This formulation of 1689 was the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons

*and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators.*¹⁶

Thus, by the time of the American Revolution, the concept of the independence of Parliament from the King was well-established in the written law, if not perhaps in the actual historic practice in the relationship between the executive and legislative branches of British Government.

B. UNITED STATES CONSTITUTION.

1. *Articles of Confederation (1781)*. After the founding of this Nation, the Articles of Confederation adopted the protection of legislative speech nearly verbatim from the English Bill of Rights, by providing that:

*Freedom of speech and debate in congress shall not be impeached or questioned in any court or place out of congress....*¹⁷

2. *The Constitution (1789)*. The Framers then included a similar clause in Article I, Section 6 of the U.S. Constitution, more broadly providing that members of Congress

*shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their attendance at the Session of their Respective Houses, and in going to and from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.*¹⁸

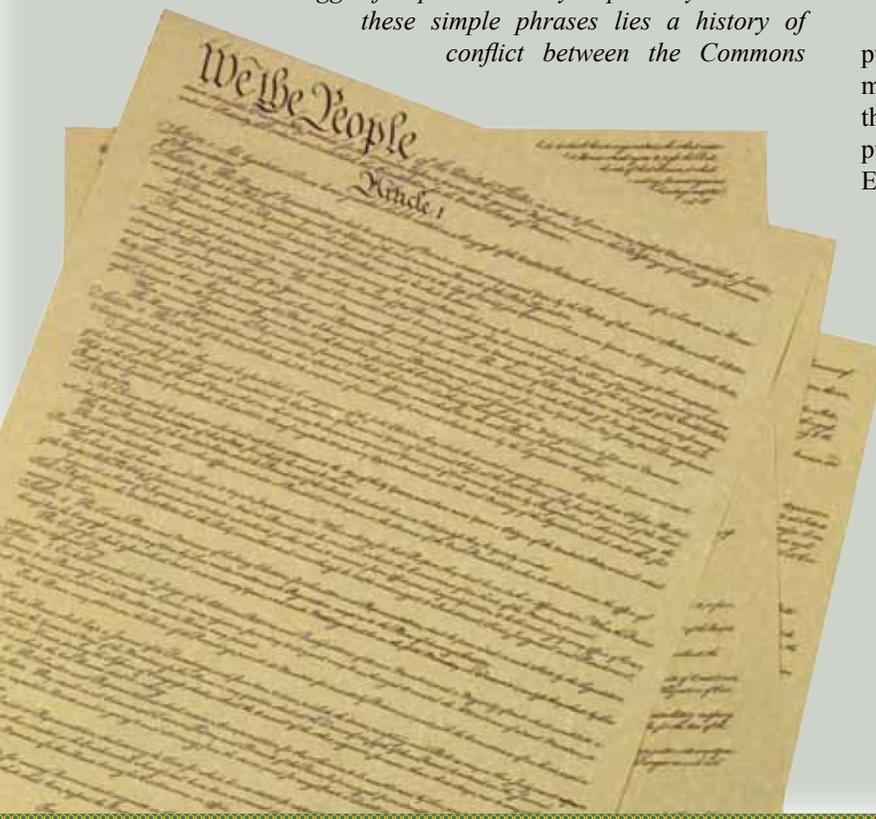
The U.S. Supreme Court has aptly summed up the essential purpose of the Speech and Debate Clause, stating that legislators must be “immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good.”¹⁹ And the source and foundation for the Clause is the English Bill of Rights.

*The Speech or Debate Clause, adopted by the Constitutional Convention without debate or opposition, finds its roots in the conflict between Parliament and the Crown culminating in the Glorious Revolution of 1688 and the English Bill of Rights of 1689.*²⁰

C. KANSAS CONSTITUTION.

Like the U.S. Constitution, the Kansas Constitution also protects legislative speech and debate. Article 2, § 22 of the Kansas Constitution provides:

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 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.*²¹

Like the U.S. Supreme Court, the Kansas Supreme Court also holds that this constitutional provision shields legislative acts or acts falling into the category of a legitimate legislative act under the Speech or Debate Clause from use in a criminal trial. The Kansas Supreme Court has reasoned

*that the purpose of the Speech or Debate Clause is to insure that legislators may perform legislative functions independently, free from outside interference or fear of such interference. To preserve legislative independence, legislators should be protected not only from the consequences of litigation's results but also from the burden of defending themselves.*²²

III. UNITED STATES SUPREME COURT PRECEDENT.

The U.S. Supreme Court has consistently applied the Speech or Debate Clause to provide legislators with absolute immunity from criminal or civil liability for the purely legislative acts they perform.²³ “Absolute” means that, unlike other types of governmental immunity, legislative immunity cannot involve the application of a balancing test such that the interests of the government are played against the interests of the public.²⁴

In *Bogan v. Scott-Harris*,²⁵ for example, the U.S. Supreme Court held that local legislators are absolutely immune from suit for their legislative activities. Local legislative acts in voting for an ordinance are “in form, quintessentially legislative,”²⁶ and are, therefore, entitled to legislative immunity.

The rationale for immunity from criminal liability stems from an even more fundamental purpose of the doctrine of legislative immunity, going all the way back to Strode’s Act and the Privilege of Parliament Act: to preserve the independence of the legislature as a coequal branch of the government, free from executive or judicial intimidation or control.²⁷

*Our cases make it clear that the legislative immunity created by the Speech or Debate Clause performs an important function in representative government. It insures that legislators are free to represent the interests of their constituents without fear that they will be later called to task in the courts for that representation.*²⁸

With the power to institute and prosecute criminal proceedings, the executive branch has a unique power to intimidate by threats of criminal prosecution members of the legislature whose political views or actions might displease the executive or judicial branches.²⁹ Thus, freedom from untrammelled application of that power is important to preserve the independence of the legislature and the separation of the branches of government.³⁰

Immunity from criminal liability for legislative acts is not designed for a legislator’s personal or private benefit, but rather to protect the integrity of the legislative process by ensuring the independence of individual legislators. As the Court stated in *Gravel v. United States*:³¹

Thus, voting by Members and committee reports are protected; and we recognize today—as the Court has recognized before, Kilbourn v. Thompson, 103 U.S., at 204; Tenney v. Brandhove, 341 U.S. 367, 377-378, 71 S.Ct. 783, 788-789, 95 L.Ed. 1019 (1951)—that a Member’s conduct at legislative committee hearings, although subject to judicial review in various circumstances, as is legislation itself, may not be made the basis for a civil or criminal judgment against a Member because that conduct is within the ‘sphere of legitimate legislative activity.’ (Emphasis added.)

A personal privilege may be asserted by a state legislator to shield evidence of legislative acts from serving as a basis for criminal liability. This privilege of nonevidentiary use arising under Federal Rule of Evidence 501 applies in both criminal and civil proceedings.³² Thus, legislators are protected against being required to testify about their legislative acts, as well as being protected against being prosecuted, criminally or civilly, for those acts.

IV. 10th CIRCUIT PRECEDENT.

The 10th Circuit U.S. Court of Appeals³³ has routinely followed the Supreme Court’s broad view of legislative immunity. In *Fry v. Board of County Commissioners*,³⁴ the 10th Circuit granted immunity to board members of a county commission with respect to a decision to vacate roadways. The Frys wanted to establish a road along section lines to link two different tracts of their land.³⁵ When the board denied the request, the Frys brought suit in state court, claiming that a 1911 commission resolution had already designated all section lines as county roads.³⁶ The state court agreed and ordered the removal of all fences that interfered with travel on the road desired by the Frys.³⁷ Allegedly prodded by landowners who were angry at the Frys, the board approved a resolution vacating about 3 1/2 miles of section-line roads in the county, including the route of the Frys’ road. The Frys then sued the county commissioners under § 1983, alleging that the board’s action was in violation of various constitutional rights.³⁸ Following *Tenney v. Brandhove*, supra, the 10th Circuit held that the board members enjoyed legislative immunity.³⁹

V. KANSAS SUPREME COURT PRECEDENT.

The Kansas Supreme Court has also been consistent in its application of the Speech or Debate Clause to local and municipal legislators. In *State ex rel. Stephan v. Kansas House of Representatives*,⁴⁰ the Kansas Attorney General brought suit against the Legislature, in part to challenge the Legislature’s adoption of a statute which would allow the adoption of regulations without approval of the Governor and to challenge the Legislature’s actions taken pursuant to that statute.⁴¹ In dismissing the suit against the Legislature, the Court reviewed, and applied, the protections afforded by the Speech or Debate Clause in the U.S. Constitution and the Kansas Constitution, as well as in the common law.

In Tenney v. Brandhove, 341 U.S. 367, 71 S.Ct. 783, 95 L.Ed. 1019 (1951), it was recognized that state legislators enjoy common-law immunity that is similar in origin and rationale to

that accorded congressmen under the federal Speech or Debate Clause. Supreme Court of Va. v. Consumers Union, 446 U.S. 719, 732, 100 S.Ct. 1967, 1974, 64 L.Ed.2d 641 (1980). The Supreme Court has also stated in dicta that the state legislative privilege is on a parity with the similar federal privilege under the Speech or Debate Clause. See United States v. Johnson, 383 U.S. 169, 86 S.Ct. 749, 15 L.Ed.2d 681 (1966); Supreme Court of Va. v. Consumers Union, 446 U.S. at 733, 100 S.Ct. at 1975.... As stated by the court in Star Distributors, Ltd. v. Marino, 613 F.2d 4, 8 (2nd Cir.1980), “[t]he shared origins and justifications of [state legislative immunity and immunity under the federal Speech or Debate Clause] would render it inappropriate for us to differentiate the scope of the two [doctrines] without good reason.” In this state the common-law immunity for state legislators is embodied in art. 2, § 22 of our state constitution and no reason presents itself for not according the state legislature the same immunity which protects our federal Congress.⁴²

The Stephan Court went on to quote another U. S. Supreme Court case:

‘[T]he “central role” of the Clause is to “prevent intimidation of legislators by the Executive and accountability before a possible hostile judiciary.” [As such,] the Clause provides protection against civil as well as criminal actions, and against actions brought by private individuals as well as those initiated by the Executive Branch.’⁴³

This legislative immunity was not established for the purpose of protecting the private or personal benefits of legislators.⁴⁴ Rather, immunity is provided to “protect the integrity of the legislative process by insuring the independence of individual legislators.” Further, legislative immunity was developed to reinforce the carefully established separation of powers doctrine.

The Speech or Debate Clause is to be read broadly to carry out these purposes.⁴⁵

Kansas law tracks, and provides protection equal to, federal immunity for legislative decisions and votes:

*The state common-law doctrine of legislative immunity and Article 2, § 22 of the Kansas Constitution provide protection to Kansas legislators equivalent to the protection provided to federal legislators under Article I, § 6 of the U.S. Constitution because they are based on the same origin and rationale.*⁴⁶

Thus, it is this constitutional and common law immunity which protects the members of a legislative body from criminal or civil prosecution for legislative acts.

VI. LEGISLATIVE IMMUNITY EXTENDS TO MEMBERS OF A CITY COUNCIL.

Legislative action by city councilmembers is protected by absolute immunity. In *Edgington v. City of Overland Park*,⁴⁷ the Kansas Court of Appeals expressly held that:

*Defendants are clothed with absolute immunity for their actions if voting to reject plaintiff’s nomination was a legislative, as opposed to an administrative, act.*⁴⁸

This principle resonates with a similar holding by the U.S. Supreme Court, that “[A]bsolute legislative immunity attaches to all actions taken in the sphere of legitimate legislative activity.”⁴⁹

In *Sable v. Myers*, *supra*, the 10th Circuit Court of Appeals described a legal and practical basis for absolute immunity.

*Legislative immunity enables officials to serve the public without fear of personal liability. Not only may the risk of liability deter an official from proper action, but the litigation itself creates a distraction and forces legislators to divert their time, energy, and attention from their legislative tasks to defend the litigation. Supreme Court of Va. [v. Consumers Union of the United States, 446 US 719] at 733, [100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980)] (brackets and internal quotation marks omitted). Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good.... As explained in Tenney, “The privilege would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial [**9] upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury’s speculation as to motives.” [Tenney v. Brandhove,] 341 US [367,] at 377 [, 71 S. Ct. 783, 95 L. Ed. 1019 (1951)].*⁵⁰

Thus, immunity is not limited to members of Congress and state legislators, but extends to local-government legislators.⁵¹

Mayors and city councilmembers are entitled to absolute legislative immunity in their individual capacities for any policy that they enacted in their legislative capacity.⁵²

VII. IMMUNITY APPLIES TO VOTES TAKEN BY CITY COUNCIL MEMBERS.

Even though the Supreme Court originally extended immunity to any actions taken by a legislature, the breadth of that interpretation has been narrowed over time. In *Kilbourn v. Thompson*—the first case brought to the Court for consideration under the Clause—the Supreme Court gave this clause its broadest interpretation, defining protected actions as “things generally done in a session of [Congress] by one of its members in relation to the business before it.”⁵³ As noted above, the immunity provided by the common law through the Speech or Debate Clause is not so broad; it now extends to legislative actions taken by a governing body, though not to “administrative” actions.

Not all actions taken at a legislative meeting by a local legislator are legislative for purposes of immunity. See Roberson v. Mullins, 29 F.3d 132, 134 (4th Cir. 1994); accord Brown v. Griesenauer, 970 F.2d 431, 437 (8th Cir. 1992) (holding that impeachment proceedings are essentially judicial or adjudicatory in nature despite legislative decision-making body and form of proceedings); Hansen [v. Bennett,] 948 F.2d [397,] 402 – 03 [(7th Cir. 1991), cert. denied, 504 U.S. 910 (1992)]

(holding that mayor was not acting in a legislative capacity when he restored order and regulated discussions at a public meeting); *Cinevision* [Corp. v. City of Burbank,] 745 F.2d [560,] at 580 [(9th Cir. 1984)] (holding that city councilperson's vote to disapprove plaintiff's proposed concerts at city amphitheater was an executive, not a legislative act); *Detz v. Hoover*, 539 F. Supp. 532, 534 (E.D. Pa. 1982) (holding that a municipality's employment decisions are "essentially administrative in nature" (emphasis omitted)). Nor does voting on an issue, in and of itself, determine that the act is legislative in nature. See *Smith v. Lomax*, 45 F.3d 402, 406 (11th Cir. 1995); *Roberson* [v. Mullins], 29 F.3d 132,] at 134 [(4th Cir. 1994)], n.3; *Cinevision*, 745 F.2d at 580. "Whether actions.... are, in law and fact, an exercise of legislative power depends not on their form but upon 'whether they contain matter which is properly to be regarded as legislative in its character and effect.'" *INS v. Chada*, 462 U.S. 919, 952 (1983) (citation omitted); accord *Roberson*, 29 F.3d at 135; *Chicago Miracle Temple Church, Inc. v. Fox*, 901 F. Supp. 1333, 1343-44 (N.D. Ill. 1995).⁵⁴

In *Kamplain v. Curry County Bd. of Commissioners*, the 10th Circuit Court of Appeals reviewed a county commission's vote to exclude a particular individual from a meeting and a vote to ban plaintiff from all future meetings.⁵⁵ The court held that decision was not legislative in nature, and thus not suitable to clothe the commissioners with immunity, "[b]ecause the circumstances of this case did not concern the enactment or promulgation of public policy."⁵⁶

If the challenged legislative decision was not "ministerial," it is immune under the Speech or Debate Clause.

Even the authorities cited by respondent are consistent with the view that local legislators were absolutely immune for their legislative, as distinct from ministerial, duties. In the few cases in which liability did attach, the courts emphasized that the defendant officials lacked discretion, and the duties were thus ministerial. See, e. g., Morris v. The People, 3 Denio 381, 395 (N. Y. 1846) (noting that the duty was "of a ministerial character only"); *Caswell v. Allen*, 7 Johns. 63, 68 (N. Y. 1810) (holding supervisors liable because the act was "mandatory" and "[n]o discretion appear[ed] to [have been] given to the supervisors"). Respondent's heavy reliance on our decision in *Amy v. Supervisors*, 11 Wall. 136(1871), is misguided for this very reason. In that case, we held that local legislators could be

held liable for violating a court order to levy a tax sufficient to pay a judgment, but only because the court order had created a ministerial duty. Id., at 138 ("The rule is well settled, that where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct"). The treatises cited by respondent confirm that this distinction between legislative and ministerial duties was dispositive of the right to absolute immunity. See, e.g., *Cooley* 377 (stating that local legislators may be held liable only for their "ministerial" duties); *Mechem* § 647 (same).⁵⁷



Legislators' separation of powers immunity for legislative acts protected by the Speech or Debate Clause extends to criminal prosecutions, and not just to civil suits.⁵⁸ Thus, in *D'Amato v. Superior Court*, the California Court of Appeals held that a city administrator's alleged act of minimizing the real cost of a project to lower rail grades at street crossings in budget reports and communications with city council was within legislative immunity, and thus could not form a basis for criminal liability for aiding and abetting public works director's alleged offense of having a personal interest in the rail contract, even though the city administrator adopted overly optimistic projections of potential government reimbursements, absent evidence that city administrator stepped outside his customary role in the city council's budgetary process.⁵⁹

VIII. IMMUNITY EXTENDS TO PROTECTION AGAINST COMPELLED TESTIMONY.

The Speech or Debate Clause grants not only substantive immunity to a legislator from civil and criminal liability arising out of legislative acts and the motivation for those acts, but also an evidentiary privilege against use of such acts or motive.

Legislative immunity protects those “engaged in legitimate legislative activity.... not only from the consequences of litigation’s result but also from the burden of defending themselves.”⁶⁰ For example in *Kay v. City of Rancho Palos Verdes*,⁶¹ the Court found “a limited legislative privilege [exists] against supplying evidence, lest lawmakers similarly fear that they [will] be subjected to the burdens of answering subpoenas and testifying about their legislative work.”⁶² And in *2BD Assocs. Ltd. P’ship v. County Comm’rs*,⁶³ legislative immunity was held to have the two-fold effect of “protecting legislators from civil suit and [functioning] as an evidentiary and testimonial privilege.”⁶⁴

Where the Speech or Debate Clause applies, it “shields legislators from lawsuits relating to legitimate legislative activities, as well as from being compelled to testify or provide other discovery in lawsuits brought by or against third parties.”⁶⁵ In *Williams v. Johnson*,⁶⁶ a city councilmember was held to be absolutely immune from a subpoena to testify on a legislative enactment by the city council. Similarly, in a number of cases, subpoenas served on city council members and other legislators have been quashed.⁶⁷ Furthermore, because legislative immunity not only prohibits compelled testimony, but also prohibits the compelled production of documents, documents requested pursuant to a subpoena duces tecum should also be protected against a subpoena.⁶⁸



IX. CONCLUSION.

Legislators—including members of a municipal governing body—generally do not seek special privileges. Indeed, they serve tirelessly for the benefit of the citizens who elected them. But, when the legislative actions taken by a city council are called into question, the Speech or Debate Clause of the U.S. Constitution and the Kansas Constitution—together with a body of common law developed over centuries finding its roots in Strode’s Act and the Protection of Parliament Act—serve to protect city councilmembers from criminal prosecution and civil liability for legislative acts undertaken as a member of the council, as well as immunity from being subpoenaed or otherwise forced to testify about such legislative acts.

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²See *Tenney v. Brandhove*, 341 U.S. 367, 372, 71 S.Ct. 783, 95 L.Ed. 1019 (1951).

³<http://www.historyofparliamentonline.org/volume/1509-1558/member/strode-richard-i>.

⁴Id.

⁵<http://www.legislation.gov.uk/aep/Hen8/4/8/contents>. The Act is cited officially as 1512 c. 8 (Regnal. 4 Hen 8).

⁶<http://www.legislation.gov.uk/aep/Hen8/4/8/section/II>.

⁷<http://www.legislation.gov.uk/aep/Ja1/1/13/introduction>. This Act is cited as 1603 c. 13 (Regnal. 1 Ja 1).

⁸http://universalium.academic.ru/266618/Eliot,_Sir_John.

⁹http://en.wikisource.org/wiki/Speech_on_the_Petition_of_Right

¹⁰<http://www.1902encyclopedia.com/E/EL/sir-john-eliot.html>

¹¹<http://www.royal.gov.uk/historyofthemonarchy/kingsandqueensoftheunitedkingdom/thestuarts/charles1.htm>

¹²<http://www.luminarium.org/encyclopedia/charles2.htm>

¹³http://www.bbc.co.uk/history/historic_figures/james_ii.shtml

¹⁴<http://www.britroyals.com/kings.asp?id=william3>

¹⁵http://www.constitution.org/eng/eng_bor.htm

¹⁶*United States v. Johnson*, 383 U.S. 169, 178 (1966), citing C. Wittke, *The History of English Parliamentary Privilege* (Ohio State Univ. 1921); Neale, *The Commons’ Privilege of Free Speech in Parliament, in Tudor Studies* (Seton-Watson ed. 1924).

¹⁷*Articles of Confederation and Perpetual Union*, Article V (1781).

¹⁸*United States Constitution*, Article I, Section 6, clause 1 (1789).

¹⁹*Tenney v. Brandhove*, 341 U.S. 367, 377, 71 S.Ct. 783, 95 L.Ed. 1019 (1951).

²⁰*Powell v. McCormack*, 395 U.S. 486, 502 (1969).

²¹*Kansas Constitution*, Article 2, Section 22.

²²*State v. Neufeld*, 926 P.2d 1325, 1332, 260 Kan. 930 (1996), citing *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 54-55, 687 P.2d 622 (1984) (quoting *Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 731-32, 100 S.Ct. 1967, 1974-75, 64 L.Ed.2d 641 [1980]).

²³*Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503, 95 S.Ct. 1813, 1821, 44 L.Ed.2d 324 (1975).

²⁴Id.

²⁵*Bogan v. Scott-Harris*, 523 U.S. 44, 118 S.Ct. 966, 970, 140 L.Ed.2d 79 (1998),

²⁶118 S.Ct. at 973.

²⁷*Gravel v. U. S.*, 408 U.S. 606, 624, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972).

²⁸*Powell v. McCormack*, 395 U.S. 486, 503 (1969).

²⁹*Tenney v. Brandhove*, 341 U.S. 367, 372, 71 S.Ct. 783, 95 L.Ed. 1019 (1951) (state legislators); *Lake Country Estates, Inc. v. Tahoe Reg’l Planning Agency*, 440 U.S. 391, 405, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979) (regional legislators).

³⁰Id.

³¹*Gravel v. United States*, 408 U.S. 606, 616 (1972).

³²*In re Grand Jury Proceedings (Cianfrani)*, 563 F.2d 577, 580-81 (3rd Cir. 1977).

³³The Tenth Circuit includes the State of Kansas, and that Court’s precedents are applied in the federal court sitting in this State.

³⁴*Fry v. Board of County Commissioners of County of Baca*, 7 F.3d 936 (10th Cir.1993).

³⁵Id., at 938.

³⁶Id., at 938-39.

³⁷Id., at 939-40.

³⁸Id., at 937.

³⁹Id. at 942.

⁴⁰*State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 687 P.2d 622 (1984).

⁴¹*Id.*, at 46.

⁴²*Id.*, at 54.

⁴³236 Kan. at 56, 687 P.2d 622 (citing *Eastland v. United States Servicemen's Fund*, 421 US 491, 421, 95 S. Ct. 1813, 1820-21, 44 L. Ed. 2d 324 (1975)).

⁴⁴*Stephan*, 236 Kan. at 55, 687 P.2d 622 (quoting *United States v. Brewster*, 408 US 501, 92 S.Ct. at 2535 (1972)).

⁴⁵*Stephan*, 236 Kan. at 56, 687 P.2d 622 (citing *Eastland*, 421 U.S. at 501, 95 S.Ct. at 1820, and *Johnson*, 383 U.S. at 180, 86 S.Ct. at 755).

¹⁶*State v. Neufeld*, 260 Kan. 930, 939, 926 P. 2d 1325, 1332, (1996); *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 54, 687 P.2d 622 (1984).

⁴⁷*Edgington v. City of Overland Park*, 15 Kan.App.2d 721, 733, 815 P.2d 1116 (1991).

⁴⁸See also, *Lake Country Estates v. Tahoe Planning Agency*, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979); *Sable v. Myers*, 563 F.3d 1120, 1123 (10th Cir. 2009)(reversing denial of summary judgment and remanding with direction to grant summary judgment in favor of city council member defendants).

⁴⁹*Bogan v. Scott-Harris*, 523 U.S. 44, 54, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998) (internal quotation marks omitted).

⁵⁰*Sable v. Myers*, 563 F.3d at 1123 – 24.

⁵¹*Bogan*, supra, at 49, 118 S.Ct. 966; see also *Supreme Court of Va. v. Consumers Union of U.S., Inc.*, supra, 446 U.S. 719, 734, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980) (recognizing immunity for state judges acting in legislative capacity).

⁵²*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 688 F.Supp. 1522 (S.D.Fla., 1988)(City councilmen and mayor were entitled to absolute legislative immunity in their individual capacities for proposing three criminal ordinances

relating to ritual sacrifice of animals, regardless of whether ordinances were constitutional.

⁵³*Kilbourn v. Thompson*, 103 U.S. (13 Otto) 168, 204, 26 L. Ed. 377 (1880).

⁵⁴*Kamplain v. Curry County Bd. of Com'rs*, 159 F.3d 1248, 1252 (10th Cir. 1998

⁵⁵159 F.3d at 1250.

⁵⁶*Id.* at 1252.

⁵⁷*Bogan v. Scott-Harris*, 523 U.S. 44, 51-2, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998).

⁵⁸*D'Amato v. Superior Court*, 167 Cal.App.4th 861, 84 Cal.Rptr.3d 497, 08 Cal. Daily Op. Serv. 13,407, 2008 Daily Journal D.A.R. 15,983 (Cal. App. 2008).

⁵⁹*Id.*

⁶⁰*Supreme Court of Va. v. Consumers Union of the U.S.*, 446 U.S. 719, 731-32, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980).

⁶¹*Kay v. City of Rancho Palos Verdes*, 2003 WL 25294710, at *9, 2003 U.S. Dist. LEXIS 27311, at *26-27 (C.D.Cal. Oct. 10, 2003).

⁶²*Id.*

⁶³*2BD Assocs. Ltd. P'ship v. County Comm'rs*, 896 F.Supp. 528, 531 (D.Md. 1995).

⁶⁴*Id.*

⁶⁵*Alliance for Global Justice v. District of Columbia*, 437 F.Supp.2d 32, 35-36 (D.D.C. 2006).

⁶⁶*Williams v. Johnson*, 597 F.Supp.2d 107, 117 (D.D.C. 2009).

⁶⁷*In re Grand Jury Subpoena*, 626 F.Supp. 1319 (M.D. Pa. 1986)(quashing grand jury subpoenas served on legislators); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 507, 95 S.Ct. 1813, 44 L.Ed.2d 324 (1975); *MINPECO v. Conticommodity Servs.*, 844 F.2d 856, 861 (D.C. Cir. 1988).

⁶⁸*MINPECO*, 844 F.2d at 859; *Maddox v. Williams*, 855 F.Supp. 406, 412-13 (D.D.C. 1994).

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U.S.



From Conception to Completion

by Doug Carder



Kansas State Representative Blaine Finch and Ottawa Mayor Blake Jorgensen present Ramsey with a plaque in honor of his dedication to complete the U.S. 59 project. Photo by Matthew Bristow, Ottawa Herald.

The date was April 29, 1995. Gene Ramsey said he lost some good friends and Ottawa lost a good couple when Robert and Janelle Moore were killed that spring day nearly 18 years ago. It was a head-on crash on a rutted and rain-soaked U.S. 59 north of Ottawa that took their lives. Robert Moore, Ottawa’s former public works director, had warned family and friends about the dangers U.S. 59 presented, according to *Herald* archives.

“I’ve lost some friends on that highway, like the Moores,” Ramsey said as he reflected Wednesday on several fatality crashes that had occurred through the years on a roughly 19-mile stretch of what is now Old U.S. 59 between Ottawa and Lawrence.

Even before the Moore’s fatal wreck, Ramsey said, he already had started talking about the need to improve the safety of the busy highway in his leadership role with the Ottawa Area Chamber of Commerce and then as new member of the Ottawa City Commission in 1994.

“The highway was narrow and dangerous,” Ramsey said. “Near the Baldwin City junction, the road was so narrow you couldn’t hardly pull off to the side.”

It was in that first year on the city commission that Ramsey said his vision for a safer route from Ottawa to Lawrence drove him to move the discussion from the local arena to Topeka. Ramsey began lobbying legislators to widen U.S. 59 to four lanes, between Lawrence and Ottawa, as part of the Kansas Department of Transportation’s 10-year comprehensive transportation plan.

Ramsey’s dream became a reality October 17, 2012—18 years after his lobbying efforts began—when the Kansas Department

of Transportation (KDOT) officially opened the 11.1-mile stretch of U.S. 59 from the Franklin/Douglas county line to south of Lawrence. The \$220-million project began in 1998 with planning and design. Construction began in 2007. The nearly eight-mile portion of the road in Franklin County was completed in 2010.

“I was starting to wonder if I was going to live long enough to see it finished,” a smiling Ramsey, 83, said.

The project, from vision to completion, nearly mirrored Ramsey’s consecutive 19-year stint on the City Commission. Ramsey, who did not seek re-election in this April electoral contest, will step down from the Commission when he wraps his latest four-year term this spring.

During a January 25, 2013, Chamber coffee at City Hall, representatives of the City of Ottawa, Franklin County Development Council, and the Ottawa Area Chamber of Commerce presented Ramsey with a plaque—emblazoned with a U.S. 59 sign—that read: “For your vision and leadership on the U.S. Highway 59 project, from conception to completion, 1994-2012.”

“Gene was very instrumental in getting the [U.S.] 59 project put into the comprehensive plan,” Bill Feuerborn, a former Democratic state Representative from Garnett, said.

Feuerborn, an advocate for the project and longtime friend of Ramsey’s, represented portions of Franklin County when the lobbying effort started in the mid-1990s. Later, he would represent the southern portion of Ottawa when legislative districts were redrawn in 2000. Feuerborn began serving his first legislative term in 1994, the same year Ramsey joined the City Commission.

“I don’t think people realize how many hours of time Gene put into this project,” Feuerborn said. “If I had a dollar for every [U.S. 59] meeting Gene attended, I would be a wealthy man.”

State Representative Blaine Finch, R-Ottawa, credited Ramsey with being the first Ottawan to push the highway project.

“Gene was the linchpin for the project,” Finch, also an advocate for the new roadway, said. “He was the first guy in the community who stood up and made that a priority. Since 1994, he has been a constant advocate for the project.”

Safety Concerns

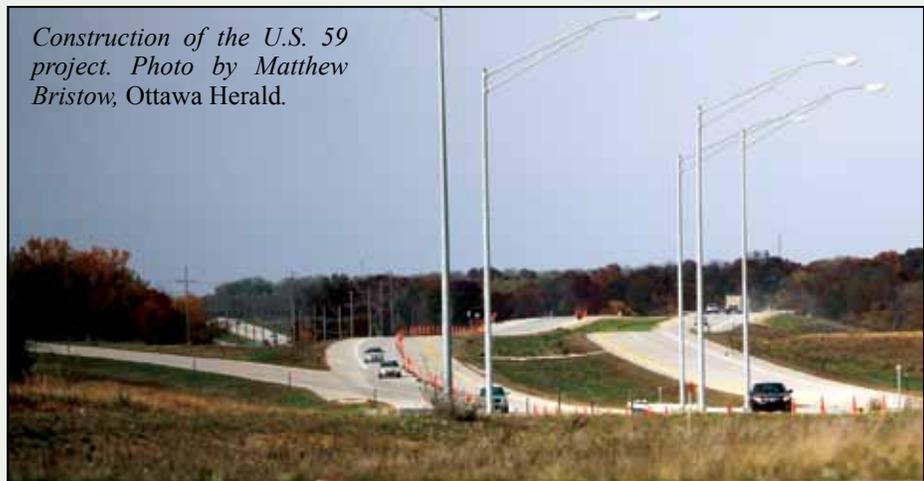
U.S. 59 was built as a two-lane highway in the 1920s to serve a rural population and to connect the towns of Ottawa and Lawrence, according to *Herald’s* archives. Today, more than 10,000 vehicles travel that stretch of road every day, according to state transportation officials.

From 1995 to 1999, U.S. 59 averaged a wreck every 4.9 days, an injury every 9.5 days, and a death every 5.4 months, according to a report from the Kansas Department of Transportation. Those figures were 25% higher than the number of wrecks on similar roadways throughout the state, the report said.

The numbers didn’t improve with the move into the new century. State officials reported in 2002 that “the highway’s accident rate is 25% higher than those on similar highways elsewhere in Kansas.”

“For years, U.S. 59 was considered by many to be one of the most deficient in the state, and this new road will provide a smooth ride and greater peace of mind for commuters and their families,” Mike King, Kansas Transportation Secretary, said at the U.S. 59 project’s dedication in late September as he stood in the middle of the new highway’s northbound lanes.

At one time, Old U.S. 59, with its narrow lanes, tight curves and rolling hills, was considered one of the most dangerous highways in Kansas, Jerry Younger, Kansas state transportation engineer, said at the dedication, echoing King’s remarks.



Construction of the U.S. 59 project. Photo by Matthew Bristow, Ottawa Herald.

The new four-lane, divided freeway is expected to cut the rate of fatal wrecks by 80%, as well as decrease the injury-wreck rate by as much as 60%, state transportation officials estimate.

“My wife [Kelly] commutes on that highway every day going to Topeka, and it makes me rest a lot easier knowing she is driving on that highway versus the Old 59,” Blake Jorgensen, Ottawa mayor, said Wednesday.

Chosen Route

In 1997, KDOT began environmental studies and conceptual designs to evaluate the need for improvements to U.S. 59, which eventually led to a proposal that consisted of an entirely new four-lane expressway from Lawrence to a connection to I-35 northeast of Ottawa.

Ramsey credited Finch with helping push the project through.

“Blaine was very active in pushing for the new highway,” Ramsey said. “He deserves a lot of credit, too.”

Finch served on the Ottawa City Commission from 1997 to 2001. During the same period, Finch said he also was serving an internship for former state Representative Ralph Tanner, R-Baldwin City.

“The discussions [about the comprehensive transportation plan] were heating up in the late 1990s, and I was fortunate enough to be serving as an intern with Representative Ralph Tanner,” Finch said. “I was able to keep tabs on the [U.S. 59] proposal, and make sure we were in the right places and talking with the right people. But, Gene really was the driving force behind this project.”

Feuerborn agreed with Finch’s assessment of Ramsey’s value to the project.

“The Transportation Secretary was Dean Carlson at that time, and he told me he was impressed with Gene and how much information he could provide him,” Feuerborn said.

Feuerborn said Deb Miller, Transportation Secretary under Kansas Governor Kathleen Sebelius, also was an advocate for the U.S. 59 project. Feuerborn, who lobbied for the project, said it was not only beneficial for Ottawa and Lawrence, but also Franklin County, Douglas County, and the State.

“Franklin County lobbied harder for the project than Douglas County, which always surprised me a little,” Feuerborn recalled.

He credited Ramsey for part of the reason Franklin County took a front seat on the project.

Richard Nienstedt, Ottawa City Manager, who has been involved in numerous highway projects in other communities and counties during his career, said he knows from personal experience dealing with these comprehensive transportation plans that it takes a local advocate like Ramsey to bring such projects to the front of a long list of highway improvement proposals across the state.

“I know Gene’s efforts were instrumental in getting this approved,” Nienstedt said. “I worked on projects for highways 81 and 69, and they were successful because someone like Gene was tenacious about pushing the project forward and looked for every opportunity to sell the project.”

Feuerborn and Finch said Ramsey also was concerned about land owners who would see their land and, in some cases, fields now divided by the highway expansion.

“Gene was sensitive to people with land along the route, and he tried to minimize damage for those land owners on route after it was approved,” Finch said.

Ramsey said that was one of the most difficult parts of the project for him.

“I know it divided some people’s property, and I truly did feel very bad about that,” Ramsey said.

But in the end, Ramsey said for him, something had to be done to improve the safety of the route for the thousands of motorists who travel the highway each day.



John Coen, Ottawa Area Chamber of Commerce president and chief executive officer, said he knows about the difficulty of deciding where best to put the highway.

“I lived through that, because a lot of my neighbors were affected by the project, and I understood their concerns,” Coen, rural Ottawa, said. “I think, for the most part, we’re past that now. The highway was a real safety concern.”

Economic Boost

With the new U.S. 59 route diverting traffic away from downtown Ottawa, Coen said it will be incumbent upon Ottawa to give motorists on U.S. 59 and I-35 reasons to shop, eat, and do business in Ottawa.

“I have heard some [Chamber] members voice concerns about [the highway’s relocation],” Coen said. “It is going to be incumbent upon us [Ottawa] to give people reasons at every opportunity to get off the highway and come into the community. I think the highway provides the opportunity for economic growth.”

Jorgensen and Finch said the expanded highway puts Ottawa at one of the connecting points in the I-70, I-35 and U.S. 59 triangle, making it ideally suited for growth — especially with the addition of the BNSF intermodal facility nearby at Edgerton and Gardner.

“The highway provides a connecting road between I-35 and I-70 points, and studies have shown that points on the end of those connector roads see economic growth,” Finch, former interim director of the Franklin County Development Council, said. “This enhancement makes us look even more attractive to economic growth coming our way.”

Ramsey said while safety was the primary concern, he added the road should promote economic growth in the Ottawa area. Ramsey said the end result has been worth the effort. The five-time Ottawa Mayor said he was surprised by the U.S. 59 project award.

“This is definitely one of the highlights of my career,” Ramsey said. “I cannot begin to express how truly grateful I am.”

Finch said Ramsey was “very deserving” of the recognition.

“Gene had to wait 18 years to see his vision become a reality,” Finch said. “I drive that road almost every day, and I’m glad the project is done. I know people appreciate the hard work and dedication Gene put into this project to get it done.”

 *Doug Carder is a Senior Writer for the Ottawa Herald. This article was reprinted with permission from the February 1, 2013, Ottawa Herald newspaper.*



2013 CURRICULUM IS NOW AVAILABLE ONLINE

The League of Kansas Municipalities (LKM) is proud to present its 2013 Municipal Leadership Academy (MLA), a continuing education program designed for both elected and appointed city officials. We invite you to join us for valuable learning, discussion, and networking opportunities. Visit <http://www.lkm.org/training/mla/schedule.php> for a complete schedule of topics and locations.



HOT TOPICS

From time to time, LKM will be hosting “Hot Topics” webinars based on timely issues of interest to cities. These Hot Topics will be hour long webinars, moderated by an LKM staff member. Advance notice of Hot Topics will be sent out via League News Alerts, and will include log-in information, when timely topics present themselves. Each Hot Topic will qualify a participant to earn one elective credit hour toward the MLA program.



Creating the Modern Public Library

If you would have asked a group of people in 1960 to define the role of public libraries, they may have come up with something like “a civic building that houses books and magazines.” But if you asked that same question today, you would probably get a much different answer. Books and magazines have been partially replaced by computers, smartphones, and tablets, and most libraries have worked hard to accommodate these new mediums. Many libraries offer free Wi-Fi and mini-computer labs, which has allowed them to benefit from the 350% increase in information consumption since 1980.¹ This increased demand for information, and their ability to supply it, has caused libraries all over the country to break visitation records, and created a new role for them within their communities.²

One new function of libraries has been replacing bookstores. Because 1,500 bookstores have closed since 1997, people who want to skim physical books before buying them have fewer options than before. If they continue to close, libraries, with their large book selections, generous lending periods, and abundant seating, are well-situated to monopolize the book showrooming market. Their initial success in this market has inspired public libraries to attempt other services otherwise unavailable in their communities. It’s now common to see libraries that are also video rental outlets, internet cafés, town halls, concert venues, youth activity centers, history museums, art galleries, coffee shops, and even post offices.³

Several Kansas communities have been at the forefront of remaking their library into a public gathering place. An example is the Independence Public Library (IPL), which in 2012 was named the Best Small Library in America. Just three years prior to winning the award, Independence faced the prospect of closing its library’s doors. IPL staff decided to start a marketing initiative that included marching in city festivals and three months of radio advertising. They now disseminate weekly newsletters, have library accounts on Facebook, Twitter, Flickr, and Tumblr, and their own iPhone app. These outreach efforts have helped transform the IPL into an integral part of the Independence community. Today the library screens movies, is raising \$25,000 to feed local children living in poverty, and partners with businesses and non-profits to conduct workshops and host cultural exhibits.⁴

Another Kansas library that’s received national acclaim is Kinsley Public Library, which won two awards from the Public Library Association in 2012. The library, with only 2.1 FTE staff, has built a website that highlights community resources and showcases the history of the region. By using technology to connect residents to essential services and their community’s past, Kinsley Public Library is proof that even the smallest library can achieve excellence through hard work and innovation.⁵

Beyond national awards, Kansas can also brag about having the nation’s best librarian. Thanks to her efforts to provide affordable eBooks to library patrons, Jo Budler, the Kansas State Librarian, was named *Library Journal’s* 2013 Librarian of the Year. In 2010, when Ms. Budler tried to renew the Kansas State Library contract with the eBook provider for the “Big Six” publishing houses, she discovered that the new contract would cost an additional 700% in administrative expenses. This increase resulted from the Big Six’s refusal to sell eBooks to libraries. Instead, they use licensing agreements that make it expensive for libraries to

lend eBooks to patrons. Budler balked at the new contract offer, instead making agreements with several smaller vendors to supply eBooks to Kansas libraries. She started a social media campaign calling attention to unfair lending practices by the Big Six, and spearheaded a partnership with the California Library Network to allow increased access to self-published eBooks and works by local authors. Ms. Budler has become a national leader on this issue, and her efforts have helped make eBooks accessible in most Kansas libraries.⁶

Ms. Budler isn’t the only weapon public libraries have in their fight against big publishers. Partially because self-publishing has exploded over recent decades, there are now more books created each year than can be reviewed (there were over 235,000 books and eBooks self-published in 2012 compared to 11,000 books published in 1950). According to a writer for *Forbes* magazine, the shortage of self-published book reviews creates a huge opportunity for libraries. Authors are willing to pay good money for neutral reviews because that’s one of the only ways to market their books’ quality. Librarians already informally review books for the purpose of recommending them to patrons, and one of the jobs of libraries is discovering new authors. If libraries coordinated their reviews, they could potentially generate huge revenue simply by using existing skills to fulfill existing duties. As public bodies, they would be some of the most trusted reviewers, and the coordination itself would only require a website with a list of the reviewed titles. As libraries built a reputation separating the wheat from the chaff, big publishers would feel pressure to provide them with their own eBook titles. They would gain leverage against their most powerful enemies, all while helping fund operations.⁷

Selling book reviews is just one of many opportunities public libraries will have as they continue to evolve. Fortunately for Kansans, many of our 350 libraries have been at the forefront of shaping their new role in modern society. Their ability to adapt and thrive should be a source of a pride and optimism to all public servants in our state.

 *Michael Koss is the Membership Services Manager for the League of Kansas Municipalities. He can be reached at mkoss@lkm.org or (785) 354-9565.*

¹Bohn, R., and Short, J. *How Much Information?* (2009). Report on American Consumers. Global Information Industry Center University of California, San Diego.

²Becker, S., Crandall, M., Fisher, K., Kinney, B., Landry, L., and Rocha, A.. (2010). *Opportunity for All: How the American Public Benefits from Internet Access at U.S. Libraries.* Institute of Museum and Library Services. Washington, D.C.

³Vinjamuri, D. (2013, January 16). *Why Public Libraries Matter: And How They Can Do More.* [Forbes.com](http://www.forbes.com/sites/davidvinjamuri/2013/01/16/why-public-libraries-matter-and-how-they-can-do-more/). Retrieved January 31, 2013 from <http://www.forbes.com/sites/davidvinjamuri/2013/01/16/why-public-libraries-matter-and-how-they-can-do-more/>.

⁴Berry III, J. (2013, Jan. 31). *Best Small Library in America 2012: The Independence Public Library, KS.* Retrieved January 31, 2012 from <http://lj.libraryjournal.com/2012/01/managing-libraries/best-small-library-in-america-2012-the-independence-public-library-ks/>.

⁵*Kinsley Library Wins Two Awards for Excellence in Public Libraries.* Kinsley Public Library. Retrieved Jan. 31, 2013 from <http://www.kinsleylibrary.info/PLA%20announces%20.pdf>.

⁶Berry III, J. (2013, Jan. 7). Jo Budler: LJ’s 2013 Librarian of the Year. *Library Journal*. Retrieved January 31, 2012 from <http://lj.libraryjournal.com/2013/01/people/joanne-jo-budler-2013-librarian-of-the-year/>.

⁷Vinjamuri, D. (2013, January 16).

DID YOU KNOW?

by Kimberly Winn



Did you know that the City of Leavenworth was the first city in Kansas? A total of 15 cities were incorporated prior to Kansas' statehood on January 29, 1861. Today, there are 626 incorporated cities in Kansas with more than 82% of Kansans living in an incorporated city.



In 1827, Fort Leavenworth, the oldest active military post west of the Mississippi, was established. The area around the Fort began to develop in order to support the needs of the Army. Indeed, the area quickly became a jumping off point for the military and frontier settlers alike. The manufacturing and furniture industries flourished, the population grew, and the City of Leavenworth was founded.



The Kansas-Nebraska Act of 1854 declared Leavenworth to be the temporary seat of government for the newly created Territory of Kansas. Andrew H. Reeder, the first Governor of the Territory of Kansas was dispatched to Leavenworth to begin the work of setting up the government for the newly created Territory. He conducted a census, held elections, and divided the area into districts.



 *Editor's Note: This new column is designed to highlight the unique history of Kansas and fun "factoids" about Kansas communities. If you have a story that you think should be shared in this column, email LKM Deputy Director Kimberly Winn at kwinn@lkm.org. Photos provided by the City of Leavenworth and the Kansas State Historical Society.*

PRESENTS ANNUAL AWARDS

The Kansas Association of City/County Managers (KACM) annual conference took place in Dodge City December 5-7, 2012. One of the highlights at the conference is the annual Awards Luncheon, where several recipients were honored for various awards.

Buford M. Watson, Jr. Award - Dennis M. Hays, City Administrator for KCK/Wyandotte County was honored with the Buford M. Watson, Jr. Award. This Award is given each year to a local government manager who has displayed the attributes of the late Buford M. Watson, Jr. (former City Manager of Lawrence, KS) which includes serving as a role model in dealing with constituents, valuing customer satisfaction, and encouraging new members of the profession. Hays has worked in local government for over 35 years and has successfully led his community through a number of changes.

In 1997, Hays led his local government and community through one of the greatest changes for any city in our region and arguably, the United States. Starting with a vote of the citizens, the City of Kansas City, Kansas and the County of Wyandotte were consolidated into one government during a six-month transition period. During this same time, Hays was also leading his team through the start of a challenging and controversial economic development opportunity—NASCAR and the development of the Kansas Speedway were announced as the future for Kansas City, Kansas. In 2012, the Federal Bureau of Labor Statistics ranked Wyandotte County 19th in the nation for job growth between March 2011-2012. Under Hays' leadership, the administration has been able to improve services while still reducing the workforce by 20%. The economic growth under Hays' leadership has resulted in more than \$1 billion in economic development projects over the past 5 years and the creation of thousands of new jobs.

Innovation Award - The City of El Dorado received the Innovation Award for the construction of a new spray park. This Award was established for KACM members who have developed new and innovative programs or services for their local citizens.



Atchison City Manager and KACM Vice President Trey Cocking presented the Innovation Award to El Dorado City Manager Herb Llewellyn. Photo by Kate Cooley.

In 2007, the City hired a contractor to construct a spray park on the west side of El Dorado in one of their largest city parks. During the planning process to construct the new spray park, the City knew there were issues that needed to be addressed. Financed through excess sales tax funds that were earmarked for community enhancement projects, the new spray park was a hit. Then, in 2012 the City requested the use excess sales tax funds for a similar project to be constructed on the north side of the City. Two issues presented themselves with this project. First, sales tax collections were down in the City, reducing the available funds. Second, the current spray park although a great asset, was just not large enough to serve the needs of the users. The City knew they needed something much larger than the seven feature spray park constructed in 2007. El Dorado City Manager Herb Llewellyn stepped in with his leadership and innovative ideas to create a better solution—why can't city employees build the new spray park? So, with the help of the Engineering, Public Works, Public Utilities, and Parks Departments, the City was able to construct a spray park three times as large as the one constructed in 2007.

Career Achievement Award - Two managers were honored for the KACM Career Achievement Award—Peabody City Manager Mac Manning and Colby City Manager Carolyn Armstrong. The Career Achievement Award was established in 2000 and is intended to recognize professional local government managers and administrators who are retiring from the profession.



Atchison City Manager and KACM Vice President Trey Cocking presented the Buford Watson Jr. Award for Excellence in city management to Wyandotte County/KCK City Administrator, Dennis Hays. Photo by Kate Cooley.



Renewed Energy Tax Credit to Increase Construction

Wind energy in Kansas could be in store for another round of development after a federal tax credit was renewed for one year.

Kansas saw the most wind farm construction of any state last year, *The Wichita Eagle* reported. But by early fall, projects stalled and workers were laid off because the industry was expecting the tax credit to expire on January 1.

Industry experts now say conditions are ripe for another burst of construction after Congress approved a tax credit for the production of wind, solar, and other renewable energy. The cost was \$12.2 billion.

New wind energy products are being discussed in central and western Kansas.

Under the recently approved law, developers must start construction during 2013. That is different than last year when developers were required to have projects operational by December 31 to get the tax credit.

The deadline created a rush, with the 470-megawatt Flat Ridge 2 wind farm becoming operational just a few weeks ago, a little more

than a year after it was announced in October 2011. The project 40 miles southwest of Wichita sprawls across 66,000 acres.

Although clarification is being sought about what it means to “start” construction, industry experts say it almost certainly means the bulk of construction can be done in 2014.

Lenexa-based TradeWinds Energy has said it will build Buffalo Dunes, a 200-plus megawatt wind farm, on 42,000 acres of land in Finney, Grant, and Haskell counties. It has a buyer for the power.

BP Wind Energy has said it is planning an expansion of its Flat Ridge complex, with the 130-megawatt Flat Ridge 3 wind farm. It also is planning the 150-megawatt Ninnescah Wind Farm, about 20 miles northwest of the Flat Ridge complex and marketing the projects to power buyers.

Ford County, home of Dodge City, may see two new wind farms start in 2013, said Mark Shriwise, the County’s Planning Director.

One of those projects, Western Plains wind farm, will come in somewhere between 200 and 400 megawatts, said Matt Riley, CEO of developer Infinity Wind Power of Santa Barbara, California.

Kansas Recognized for Health Care Efforts

Kansas officials and stakeholders have been recognized by the federal government as national leaders for their efforts to enhance the safety and quality of health care by embracing the use of health information technology.

While a number of industries have fully accepted electronic records as their norm for operations, the complexity of information and previous lack of any standards hampered the medical field’s adoption of information exchange.

The Office of the National Coordinator for Health Information Technology is specifically recognizing the efforts in Kansas for:

- Being recognized as one of the top 10 states in the nation to have the largest increases in Directed and Query-Based exchange.
- Achieving Office of the National Coordinator for Health Information Technology’s second milestone for Directed and Query-Based exchange.

Directed exchange is used by providers to easily and securely send patient information-such as laboratory orders and results,

patient referrals, or discharge summaries-directly to another health care professional. This information is sent over the internet in an encrypted, secure, and reliable way amongst health care professionals who already know and trust each other, and is commonly compared to sending a secured email. This form of information exchange enables coordinated care, benefitting both providers and patients.

Query-based exchange is used by providers to search and discover accessible clinical sources on a patient. This type of exchange is often used when delivering unplanned care. For example:

- Emergency room physicians who can utilize query-based exchange to access patient information-such as medications, recent radiology images, and problem lists-might adjust treatment plans to avoid adverse medication reactions or duplicative testing.
- If a pregnant patient goes to the hospital, query-based exchange can assist a provider in obtaining her pregnancy care record, allowing them to make safer decisions about the care of the patient and her unborn baby.

Funds Awarded to Help Kansas Families

Ten non-profits and public housing authorities will share approximately \$1.2 million in Tenant Based Rental Assistance (TBRA) to help Kansas families obtain safe, affordable housing of their choice. Funded through the federal HOME Investment Partnerships Program (HOME), and administered by Kansas Housing Resources Corporation (KHRC), TBRA helps income-eligible households afford rental subsidies, utility deposits, and security deposits.

Awarded annually, TBRA grants are based on a community’s housing needs, the number of households estimated to be served, and the organization’s experience in administering TBRA funding.

Public housing authorities and non-profit organizations may apply for grants of up to \$300,000.

HOME TBRA differs from other types of HOME rental housing activities in two key ways:

- TBRA programs utilize HOME funds to help individual households rather than subsidize new affordable rental housing development.
- TBRA assistance varies based on the size and income of the household, and local rent standards.

“The awards announced today will help struggling families move out of homelessness and into self-sufficiency,” said Christine Reimler, HOME Division Director. “This assistance will help residents find stable and safe housing, and move closer to actual or potential jobs,” said Reimler.

For a complete list of TBRA award recipients, visit <http://www.kshousingcorp.org/Data/Sites/1/khrc/submenus/tbra/2013tbraawardrelease020613.pdf>.



Hiring: Is it lawful to ask job applicants for their passwords to social media sites?

Hiring a new employee can be a difficult and uncertain process. Even seasoned interviewers will agree that behavioral interview questions and background checks do not always identify bad applicants. Sometimes, despite an employer's best efforts, a new employee turns out to be a bad fit. Unfortunately, the high cost of training a new employee, along with decreasing budgets, puts added pressure on an employer to hire the right applicant from the start. In the hope to learn as much information as possible about a job candidate, several employers have started asking job applicants for their passwords to social media sites, such as Facebook, Twitter, and LinkedIn. Such requests, however, run a high risk of violating federal or state law.

The Stored Communications Act

The Stored Communications Act (SCA) makes it unlawful to "intentionally access without authorization a facility through which an electronic communication service is provided[.]"¹ In other words, it is unlawful for employers to access a job candidate's private social media site without authorization. But what if a job candidate gives you his/her password so you can log-on to the site? Accessing a job applicant's social media site in this manner has not been addressed by the courts. Nevertheless, cases like *Pietrylo v. Hillstone Restaurant Group*, 2009 WL 3128420 (D.N.J.), indicate a jury may find the practice unlawful under the SCA.

In *Pietrylo*, two restaurant employees began a private, password-protected chat room on MySpace for their co-workers to complain about the restaurant's management.² Restaurant managers learned of the chat room and asked an employee for her password. The employee gave the managers her password and the managers logged-in to the chat room on several occasions.³ In the end, the two employees who started the private chat room were terminated for their actions.⁴

The terminated employees sued the restaurant alleging, among other things, that the restaurant managers violated the SCA because they did not have authorization to access the private chat-room. During the trial, the employee that provided the managers with her password testified that she felt she had to give them her password or she would get in trouble. A jury found in favor of the Plaintiffs and awarded them back pay and punitive damages under the SCA.⁵

The Defendant filed a motion for judgment as a matter of law, or in the alternative, a motion for a new trial, arguing that the managers had the authority to access the chat-room, because an employee provided them with her password. The Court denied the Defendant's motions, holding that the jury could reasonably infer from the employee's testimony that her authorization was coerced.⁶

While *Pietrylo* may not directly apply to job candidates, there is a good argument that job candidates, who desperately need a job in this economy, may feel coerced and provide a potential employer with their password to ensure they receive a job offer. Thus, employers

may violate the SCA if they ask job candidates for their passwords to social media sites and they access those sites.

Equal Employment Laws

Moreover, even if the password request does not violate the SCA, an employer runs a high risk of violating federal or state equal employment laws. It is unlawful to discriminate against a job candidate because of the candidate's race, color, religion, sex, national origin, age, disability, or genetic information. Logging on to job candidate's private social media site often provides access to such information. What if the job candidate has announced on Facebook that she is pregnant, but did not inform you? Or maybe the job candidate posts something about his mom's cancer treatments. As an employer, did you just learn about protected genetic information? The possibilities are endless. And while you may choose not to hire the candidate for legitimate reasons, the potential for litigation is there once you have observed such things on social media sites.

State Legislation

As of January 1, 2013, six states, California; Illinois; Michigan; New Jersey; Maryland; and Delaware, have made it unlawful to ask job applicants for their passwords to social media sites.⁷ Current legislation to make the practice unlawful in Kansas is pending. On January 18, 2013, SB 53 was introduced in the Kansas Senate. On January 24, 2013, HB 2092 was introduced in the House. Both bills would make it unlawful for an employer to ask a job applicant for his/her password to a social media site. No action has been taken on the bills, but it is something LKM is watching.

Even if these bills do not pass the Kansas Legislature, LKM recommends that cities do not ask job applicants for their passwords to social media sites. The potential for litigation outweighs any benefit a city might receive from viewing a site.

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¹18 U.S.C. § 2701(a)(1)

²White, Leslie. *Keep it Legal: Social Media and the Stored Communications Act*. Social Fish. 5 August. 2010. Web. 4 February. 2013. Available from <<http://www.socialfish.org/2010/08/stored-communications-act.html>>

³Pietrylo at 3.

⁴White, Leslie. <<http://www.socialfish.org/2010/08/stored-communications-act.html>>

⁵Pietrylo at 1-3.

⁶Id. at 1-3.

⁷Kerr, Dara. *Six States Outlaw Employer Snooping on Facebook*. CNET News. 2 January. 2013. Web. 4 February. 2013. Available from <http://news.cnet.com/8301-1023_3-57561743-93/six-states-outlaw-employer-snooping-on-facebook/>

by Amy Dubach

Congratulations to the 2012 winners of the American Council of Engineering Companies of Kansas (ACEC of Kansas) City and County Public Improvement Awards. The Public Improvement Awards competition is unique in that it recognizes engineering projects for their benefit to the citizens of a community and not for engineering design. This is the 51st year ACEC of Kansas has presented both the City and County Public Improvement Awards.

City Public Improvement award winners are selected from four different population categories (Under 5,000; 5,000-19,999; 20,000-49,999; and Above 50,000). City representatives as well as engineering firm representatives were presented with awards at the December 6, 2012 Awards Luncheon of the Kansas Association of City/County Managers Annual Conference in Dodge City.

Winning City Projects

In the Under 5,000 population category, the City of Goodland won for the Water Treatment Plant & Water Line Improvements project.

In the years leading up to the commencement of the water system project, it had become apparent to City staff and officials that groundwater nitrate levels had begun to threaten the City's water supply.

The City of Goodland selected EBH & Associates to provide a solution to the nitrate levels. The initial planning included ideas of blending high and low nitrate wells and centralized blending. However, shortly after the start of the actual design, several dependably low-nitrate wells took large jumps in their levels. At this point, the ratio of low-nitrate to high-nitrate production became suspect as to whether blending was the correct long-term solution. Therefore, the decision was made to move forward to design and construct a complete water treatment facility.

The treatment plant employed many energy saving features, including: heavy insulation, energy efficient pumps, variable frequency drives, and infrared heat. Included in the work was a control system upgrade which allows the operator to control and monitor the entire plant and water system from the treatment plant office, or wirelessly through a controls laptop and in the future, any handheld device. The treatment plant is also designed to be easily expanded in the future based on water demand and nitrate, as well as any other water quality contaminate level increases.

The water system upgrades for Goodland were extensive, but necessary, and this demonstrates the City's dedication to ensuring its citizens are provided with an adequate supply of quality potable water.

In the 5,000-19,999 population category, the City of Mulvane won for the Design-Build Project for the Mulvane Phase I Wastewater Treatment Plant Expansion.

In 2010, the Kansas State Racing and Gaming Commission awarded a license to Peninsula Gaming for the construction and operation of a 1,850-machine casino, 24-acre event and equestrian center, and 300-room hotel in Mulvane, Kansas. The license stipulated a Grand Opening of February, 2012. A Utility Agreement was included in the license application specifying utilities would be provided by the City of Mulvane and infrastructure improvements

would be reimbursed by Peninsula Gaming. Construction of the casino was initiated with an understanding that the existing wastewater treatment system had adequate capacity to support the development. However, an assessment of representative casino wastewater in early 2011 indicated high strength pollutants could exceed the design pollutant loading of the wastewater treatment plant. In June 2011 Mulvane retained Burns & McDonnell/CAS LLC to design and construct wastewater improvements under a fast-track design-build contract.

The project has benefited both the citizens of Mulvane and the Kansas Star Casino. The wastewater improvements allowed the City to provide wastewater utility service the Kansas Star Casino, which aided in the decision to locate the casino within Mulvane's city limits. Casino revenue, as a result of its location, is divided between the Kansas State Gaming Commission, the Casino Operator, the County, and the City of Mulvane. As a direct result of the development, the citizens of Mulvane have had their property taxes reduced by 10% and utilities reduced by 5%.

The Kansas Star Casino also has benefited from the wastewater improvements. Centralized wastewater treatment is less expensive relative to on-site treatment and the wastewater permitting process was accelerated because the treatment plant had an existing NPDES Permit. In addition, the use of fast-track, design/build approach allowed the Casino to open four months early, capturing unanticipated holiday revenue.

In the 20,000-49,999 population category, the City of Dodge City won for the Water Reclamation Facility with Beneficial Reuse.

With a flourishing population and thriving industrial and commercial base, it was evident the City of Dodge City needed to expand its wastewater system. The Dodge City Water Reclamation



Steve Bachenberg of BHC Rhodes presented the winning City Public Improvement Awards to representatives from the cities of Overland Park, Goodland, Mulvane, and Dodge City. Photo by Kate Cooley.

Facility maximized the City's infrastructure investment by meeting that need.

The new wastewater treatment facility has a capacity of 1.25 million gallons per day (MGD), which can easily be doubled to 2.50 MGD when development necessitates additional treatment capacity. The facility's buildings were planned and sized in a manner that easily accommodates additional equipment. The scope of work for the facility also included a 4.3 million-gallon (MG) beneficial reuse pond, along with the pumps needed to reuse the effluent for irrigation on city-owned land.

The new Water Reclamation Facility benefits the Dodge City community in many ways including the following:

- The Water Reclamation Facility provides needed infrastructure for future growth and economic development;
- The extra capacity required for growth was achieved in a small footprint. 20 acres were used for the new facility as opposed to the 192 acres required for lagoons at the south plant;
- Most importantly, the City's beneficial reuse goals were fully realized, and its wastewater infrastructure goals were achieved.

Because the beneficial reuse process conserves water, more potable water is available for citizens and businesses.

In the Above 50,000 population category, the City of Overland Park won for the 127th Street (Metcalf to Nall) project.

127th Street between Metcalf Avenue and Nall Avenue was identified by the City of Overland Park as a corridor that required improvements to safely accommodate existing and future traffic needs in the growing area. 127th Street was designated on the Overland Park Master Plan as a thoroughfare and conformed to the standard one-mile spacing recommended for thoroughfare-level streets, based on local and national planning experience. Thoroughfares provide mobility and are designed to carry large volumes of traffic across the community. Accordingly, they are constructed with at least four through-traffic lanes.

The old, narrow two-lane road was replaced with a new four-lane thoroughfare which provides better traffic flow between Metcalf and Nall. Pedestrian facilities, including a five-foot wide sidewalk and eight-foot wide asphalt bike path, were added to both sides of the street.

Additional aesthetic features were included in the project. Decorative street lights were utilized that had never been used on a city project before. The project also included winding sidewalks, a raised median, storm sewers, sidewalks, curbs and gutters, and additional landscaping in the median and along the outside of the road. The City's Tomahawk Creek Trail follows along the west bank of Tomahawk Creek running under the 127th Street bridges. Trail connections to the roadway pedestrian facilities were identified through coordination with the City Parks Department and examination of the City's Greenway Linkage Plan.



Winning County Projects

County Public Improvement award winners are selected from two different population categories (Under 10,000, and Over 10,000). County representatives as well as engineering firm representatives were presented with awards at the November 14, 2012, Kansas Association of Counties Annual Luncheon in Topeka.

In the Under 10,000 population category, Kiowa County won for the Kiowa County Commons project.

The Kiowa County Commons is a one-of-a-kind cultural, educational, and communications center holding not only the past in the Historical Museum, but also the present and future in its Library, Media Center, and Kansas State Research and Extension offices. As partners in the Commons, each entity has the potential to work together to offer interactive discovery through books and movies, educational resources, historical artifacts, and television/radio capabilities.

The Kiowa County Commons project benefits the citizens of the County in many ways. Besides the sustainable design features that provide energy efficiency and cost savings, it is a one-of-a-kind cultural, educational, and communications center holding not only the past in the Historical Museum, but also the present and future in its Library, the Media Center, and Kansas State Research and Extension offices—benefiting the young and young-at-heart in Kiowa County and the region.

In the Over 10,000 population category, Leavenworth County won for the County Road 5 Over Stranger Creek – ST-15/ST-33 Bridge Replacements project.

Leavenworth County encompasses two very distinct landscapes; the urban environment surrounding their cities and the rural setting that constitutes nearly two-thirds of the county. With no single roadway continuously traversing the county in either the north-south or east-west direction, traveling from one point to another inside the county often involves multiple routes. Residents understand the map work of roads and can effectively weave their way across the county, however, visiting and commercial traffic relies much more on the few arterial collectors scattered across Leavenworth County's roadway network. For this reason alone, County Road 5 (CR5), a north-south artery in the central portion of the county, serves a vital role for the entire county.

The two largest population centers in Leavenworth County are the combined cities of Leavenworth/Lansing and the City of Tonganoxie. CR5 is a paved arterial collector that directly connects these two hubs. Besides providing quick access between the two cities, CR5 is also intersected by a dozen or so non-continuous east-west routes. These routes span out across the county, providing access throughout the heart of Leavenworth county. Thus maintaining this route, ensuring its safety, and improving its functionality are essential for residents across the county. The significance of CR5, now and in the future, is demonstrated by Leavenworth County's comprehensive plan to upgrade the entire route to a scenic parkway.

Due to the access CR5 provides throughout Leavenworth County, as well as the greater Kansas City area via K-7 and 24/40, it is logical that traffic volumes are relatively high. In fact, the average annual daily traffic along this route ranges from 2,000-3,000 vehicles. This makes CR5 one of the most travelled routes in the country.

 *Amy Dubach is the Membership Manager for the American Council of Engineering Companies of Kansas. She can be reached at amy@acecks.org.*



Classified Advertising

Budget Manager

The City of Topeka is seeking qualified candidates for a Budget Manager.

This position is responsible for the overall administration, development and management of the City's operating and capital improvement budgets and provides financial and management analyses, objectives and policies. Conducts oversight and prepares reports which summarize and forecast the City's financial activity and financial position in areas of revenue, expenses, and fund balances based on past, present and expected operations. Directs preparation of budgets, reviews budget proposals, and prepares necessary supporting documentation and justification. This position receives administrative direction from the City Manager or his/her designee. Entry salary range: \$75,341 - \$94,782, DOQ.

Minimum qualifications: Graduation from an accredited four year college or university with a Bachelor's degree in accounting or public administration, MPA and/or CPA preferred. Must have at least five (5) years of experience in municipal budgeting. Prefer experience with Balance Scorecard budgeting.

A City of Topeka employment application is required. A full position description, along with application information, can be accessed at www.topeka.org/employment.

City Administrator

The City of York, Nebraska (pop. 7766) is accepting applications for the position of City Administrator. York has a Mayor/City Council form of government with eight council members and 72 employees. City Administrator is an appointed position and responsible to the Mayor and City Council for coordinating, overseeing and managing the operations of all city departments. Ideal candidate would possess an emphasis on professional team leadership, progressive attitude, effective communication, public relations, participatory leadership style, strong organizational skills, good communication skills and have experience in strategic planning, management, budgeting and employee relations. Qualified candidates should possess a Bachelor's Degree with major coursework in Public Administration, Business Administration, Economics, Finance or related fields, and a minimum of two years of responsible job-related experience in a professional management position. Salary

DOQ. Benefits include but are not limited to health, dental, life insurance, employee pension, vacation, sick leave, and holidays. EOE. Submit applications to League of Nebraska Municipalities, 1335 L Street, Lincoln, NE 68508.

City Administrator

Mission, an entrepreneurial community pursuing high impact and sustainable redevelopment initiatives seeks a strong chief administrative officer to manage and lead an organization with a \$13M budget, 70 FT & 100 PT employees. The position reports to and is appointed by the Mayor, with consent of the Council; length-of-terms are 4-years for both the Mayor and 8 member City Council. Located in the heart of Johnson County with easy access to all regional amenities and employment centers in the KC region, Mission is blessed with award winning schools, engaged neighborhoods, outstanding community recreation and park facilities, and a strong commercial sector. The City seeks a strong communicator and team builder to lead redevelopment projects and other City priorities. Economic development and municipal finance experience is imperative. MPA+5 yrs. minimum experience as CA, ACA, or equivalent is required. Salary DOQ/E; (EOE) Questions to Art Davis (816) 898-1962. Confidential resume, cover letter, salary history + 8 work related references by email to ArtDavis@ArtDavisGroupLLC.com by 3/22/13.

City Attorney

The City of Topeka is seeking qualified candidates for the City Attorney.

As a member of the executive management team, the City Attorney is responsible for management of the Legal Department, including Prosecution and Litigation. The City Attorney has overall responsibility for personnel management, departmental budgeting, long and short term planning and oversight of daily operations of the department. Duties include preparation and presentation of information and advice relating to city government operations to City Administration and the City Council. This is a Department Director position and the incumbent serves at the pleasure of the City Manager. Entry salary range: \$79,148 - \$99,560, DOQ.

Minimum qualifications: Juris Doctorate, license to practice law in the State of Kansas, five years of professional law practice with supervisory experience. The successful candidate will possess a thorough knowledge of municipal, state and federal laws, and court and administrative procedures. Experience in advising a governmental body is preferred. Must be a resident of Topeka or relocate upon completion of the probationary period.

Interested candidates should submit a cover letter and resume with the City of Topeka employment application.

A City of Topeka employment application is required. A full position description, along with application information, can be accessed at www.topeka.org/employment.

City Clerk

The City of Mount Hope, Kansas is seeking qualified applicants for the position of City Clerk. This is an administrative position with oversight responsibilities for the daily operation of the city.

Under the direction of the Mayor and City Council, the City Clerk is responsible for payroll, accounts payables, accounts receivables, minutes of the City Council, personnel records, purchasing, records retention, financial accounting, budget preparation and monitoring of financial condition, as well as zoning administration. As a city officer, the City Clerk is the official custodian of municipal documents and is responsible for various city records. In addition, this position is responsible for, and maintains control of all municipal, fiscal and legal records. This employee will have a substantial amount of public contact regarding the furnishing of information concerning city ordinances and policies.

Applicant must possess excellent communication skills and strong interpersonal skills and have the ability to communicate with council, staff, and residents in order to manage planning and operation of day to day activities to ensure efficient, effective delivery of city services. The successful applicant will adapt well to change, have a positive attitude, be proactive, self-directed, self-motivated and detail oriented.

Computer skills are a necessity with proficiency in Microsoft Office and training and/or experience with accounting software. An Associates degree and/or work experience

in public administration, accounting, or business administration is preferred, but not required. Applicants who are engaged in or have completed the Municipal Clerks Certification Institute are encouraged to apply. It is expected this employee can acquire the necessary skills and certifications to perform the job reasonably well within one year of employment.

Successful applicant must reside within the Greeley Township, or move to this location within six months after initial appointment.

Applications must be received before Thursday, March 20, 2013.

Submit cover letter, resume and 3 references to Mayor Terry Somers, 112 W Main, Mount Hope, KS 67108, or e-mail to terry.somers@mounthopecity.com.

City Manager

A charming, vibrant and stable community, Eudora (pop. 6,200) seeks an exceptional, passionate and visionary leader to manage a city located just east of Lawrence, Kansas, only 20 minutes from the KC metro area. City Manager reports to 5 member Commission, part of newly established Commission-Manager form - effective April 2013; Commission members are elected to 4-year, at-large staggered terms; the Mayor is selected from among Commissioners annually. Eudora is a full service city that is responsible for electrical, water and wastewater utilities, employs 43 full-time employees, and has an annual combined funds budget of \$14 million. The ideal candidate is a team player with outstanding communication skills and strong experience in economic development, utility management, and municipal finance. MPA+ 3 to 5 years of progressively responsible experience as a city manager, assistant, or equivalent is required. Salary DOQ/E; (EOE) Questions to Art Davis (816) 898-1962. Confidential resume, cover letter, salary history + 8 work related references by email to ArtDavis@ArtDavisGroupLLC.com by 3/26/13.

Community Development Director

Gunnison County, Colorado (pop. 15,000) \$84,779 - \$105,329

For complete job description and to apply online, visit Prothman at <http://www.prothman.com/> and click on "Current Searches." For questions, call 206-368-0050.

First review of applications: April 14, 2013 (open until filled).

County Road Foreman

Rush County Commissioners are seeking an individual experienced in all phases of

road maintenance and road construction to head a department as County Road Foreman. This position is a supervisory position in which more than ten years of public works planning, designing, maintenance, supervisory experience, budgeting, good public relation skills and repair experience is preferred, and at least five years of previous management experience is required. This position supervises the Road & Bridge Department.

A high school diploma or GED is required as is a valid Kansas CDL driver's license. Successful applicant must be able to pass a physical, background investigation, drug screening and meet the physical requirements of the job.

Salary range from \$40,000.00-\$55,000.00 depending on qualifications, with excellent benefits. Application or cover letter with resume may be sent to the Rush County Clerk Office, 715 Elm St., PO Box 220, LaCrosse, KS 67548 or emailed to RH_County_Clerk@wan.kdor.state.ks.us. Phone (785) 222-2731. Applications and resumes will be accepted until position is filled.

Rush County is an equal opportunity employer.

Finance Director

The City of Russell, Kansas is seeking a Finance Director. Located along Interstate 70, Russell is a city of the second class and is the county seat with a population of 4,280. The Finance Director also serves as the City Clerk. Requirements include a Bachelor's Degree in accounting or equivalent, additional education in public management and/or Certified Public Accountants certificate desired. Knowledge of Kansas Municipal statutory accounting and budgeting principles, investment management, INCODE municipal software and supervisory experience are preferred. Some travel is necessary. Experience in forecasting financial activity and financial positions in areas of revenue, expenses and fund balances based on past, present and expected operations. This position receives administrative direction from the City Manager. Salary range: \$40,300 to \$66,300, DOQ plus excellent benefits package. Send completed application, resume and three work related references to Jon Quinday, City Manager, 133 W. 8th St., P.O. Box 112, Russell, KS 67665-0112. Applications available at www.russellcity.org ADA/EOE

Reno County Director of Solid Waste

Responsible for the administration, management and coordination of solid waste disposal operations and solid waste

management programs. The individual in this position is expected to effectively manage the department with limited direct oversight. This position reports directly to the County Administrator.

Requires: Thorough knowledge of mathematics, surveying, engineering and construction methods. Knowledge of occupational hazards and safety precautions of the workplace knowledge of KDHE rules and regulations as they relate to landfill operations desired.

Education/Experience: Bachelor of Science Degree in Environment Science or in engineering with a major in civil or environment engineering and minimum 3 years Landfill Management experience is desired. Minimum 5 years of supervisory and/or management experience.

Must reside in Reno County within 8 months of employment. Salary: \$53,528-72,434 D.O.Q.-Excellent Benefits

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Riley County Health Department Administrator

As the local health officer, the Administrator leads the Health Department in carrying out its mission to promote and protect the health of Riley County-Manhattan residents. The duties of the local health officer are authorized by state law (K.S.A. 65-202) as well as local resolution and ordinances. The Administrator plans and establishes Health Department programs and services, reviews all agency activities, works cooperatively with staff from various local and state agencies, ensures compliance with public health statutes and regulations, and performs complex professional and administrative work. A Master's degree in public health, public administration, or a related field from an accredited college or university is required. Equivalent combination of experience, education and training which provides the required knowledge, skills, and abilities will be accepted. Five (5) years' progressively more responsible experience in administration of public health programs and policy. Two (2) years' experience in government fiscal operations. Residency within Riley County is preferred. Hiring pay range is \$3503.20 - \$3838.40 bi-weekly. Applications are required and can be accessed at www.rileycountyks.gov or at Riley County Clerk's Office, 110 Courthouse Plaza, Manhattan, KS 66502. Pre-employment drug testing is required with conditional offer of employment. Riley County is an Equal Opportunity Employer.



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Decisions, Decisions



I have been on the horns of a dilemma for some time now, and I continue to pontificate over what the best course of action should be. The decision, of course, focuses on the replacement of my aging motor vehicle.

For those of who know me, you are probably aware for many, many years I have driven used Lincoln Town Cars as they provide all sorts of good advantages for road travel which I seem to do quite a bit of both in my professional and personal life. I have actually been driving old Lincolns since I was a kid as my father was a Lincoln man, and had a series of them over a span of 40 years. He always swore by them because they were big, comfortable road cars that would get you from point A to point B, over a period of hours on the Interstates or other highways. Then, when you arrived at your destination without mishap, which you would inevitably do in these vehicles, you wouldn't feel that you had been beaten up by a harsh or uncomfortable ride.

He and I always sang the praises of the old Lincoln Town Cars, and the Continentals before them, because you could put a huge amount of stuff in the trunk. There were always seat belts for six people, with three in the front and three in the rear. Now I will say that sitting on the middle seat of either the front or the back was not the most comfortable riding position ever invented, but if you needed to haul six people someplace in relative comfort and safety, a Lincoln Town Car was hard to beat.

So where am I going with this you may ask? The simple fact of the matter is that the old Lincoln I am driving today is getting a little bit long in the tooth. I suspect it will be my last Lincoln, as Lincoln, in its move to make the brand more exciting and youthful, dropped the manufacture of the Lincoln Town Car in 2011. Unfortunately, the new Lincoln's seem to me largely ordinary, boring automobiles which don't excite any part of my car nut nature.

While I have been a Lincoln owner and driver for many years, I just cannot light a fire that makes me interested in any of the current offerings from the Lincoln Motor Company, or whatever they started calling it late last year. As a result, I have started looking at other kinds of used cars to purchase.

As an aside, I never buy new cars as I think they cost too much, and I adhere to my father's philosophy which went something like: "the minute you drive a new car off the showroom floor it becomes a used car, worth thousands of dollars less than you paid for it, so what is the point?" So, this has left me on the horns of a dilemma, and to this point I still have not made up my mind exactly what kind of a used vehicle should replace my old Lincoln, which finally leads us to the point of this column.

Decision making can be a somewhat complex process. I can tell you without any fear of contradiction that my wife Judy is a decision maker who acts with unparalleled speed when making decisions both large and small. She cannot stand to dither, a word

I think she would approve of here, on making a decision, even if it is an important one. As a result, I often drive her crazy with my need to examine certain decisions from every point of view, and then review them again. Most of the time, I agree with her. Decision making, when delayed indefinitely, merely becomes a rut from which you may or may not escape. A decision delayed an unnecessarily long period of time, in and of itself, becomes a decision not to do anything. On the other hand, decisions which are made too quickly often lead to the law of unintended consequences, and in the case of buying motor vehicles or practically anything else of value, buyer's remorse.

You know what I am talking about. One makes a decision quickly without much thought, and 10 minutes after you have done the deal in the back of your mind you are thinking maybe this wasn't such a great idea after all. So decisions delayed an inordinate amount of time are as problematic as decisions which are rushed without fully considering the possible ramifications and outcomes. But it seems that some decisions just lend themselves to this sort of issue.

I know for a fact that I make dozens of decisions daily while managing the day-to-day operations of the League of Kansas Municipalities. Most of these decisions take only a few seconds, or a few minutes, depending on what is being discussed and decided. But, every so often, there is an issue that comes up that has great impact on the future of the operation, and those you must take your time with and consider them as much as possible. That said, you cannot allow your decision making to become embedded in non-decisions. Again, not making a decision is making a decision, only cloaked in the aura of being deliberate and thoughtful. My wife would say on things like the car conundrum that I am now facing that I just won't make a decision. I prefer to think that I am studying all of the possible options, and merely seeking a new automotive direction.

(Judy's reply: "Whatever.")

But what this decision about my new/used car amounts to is changing a lifelong pattern, and thereby entering into heretofore uncharted territory. That type of decision is almost inevitably the most difficult. This is the case not just in personal decisions, but in organizational ones as well. When you are looking at making significant changes to the way one does business, or the way things have been done for years if not generations, you often have a decision that will require considerable study, thought, and attention. The key to remember is that once you have done the requisite homework, and considered all of the available options, that you must make your decision and move on. The ability to make a decision, enter into uncharted territories with the faith of your decisions and convictions, is an important leadership characteristic. I would hope for all of you that your decision making could be done in this fashion so that we can all move forward, and seize those opportunities that are available to us.

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