



TESTIMONY BEFORE THE KANSAS HOUSE JUDICIARY COMMITTEE
IN OPPOSITION TO HB 2461

Honorable Representative Fred Patton and Committee Members:

The City of Lenexa opposes the passage of HB 2461 which enacts the public litigation coordination act, prohibiting a public entity from contracting for legal services on a contingent fee basis absent a waiver by the Attorney General upon written application of a public entity and a determination of the Attorney General, in his sole discretion, that such waiver would serve the public interest and would not impede legal interests of the state.

HB 2461 is directly contrary to cities home rule authority which is granted by Art. 12, Sec. 5 of the Kansas Constitution. Home rule ensures cities have the power to determine local public policy and regulation. A city's determination about the need to secure legal services and the structure in which it is done is a core responsibility of the local governing body in representing its constituents.

Although Lenexa has great respect for the current Kansas Attorney General, Lenexa is concerned that as drafted, HB 2461 gives unfettered discretion to the office of Attorney General to grant the waiver in the Attorney General's sole discretion which is a prior restraint on the City's ability to perform its functions as granted by the Kansas Constitution. And further, there is no objective criteria upon which the Attorney General shall make such decision. Depending upon the office holder, there is a tremendous opportunity for abuse of power as the Bill is currently written.

Finally, Lenexa has procedural concerns with HB 2461. As written, there is no timeframe within which the Attorney General must make a decision on a waiver. The filing of a lawsuit is constrained by the statute of limitations so the failure to prescribe a time frame for ruling on an application for waiver could also have significant legal consequences. HB 2461 also requires the municipality's request for waiver to be made in writing, which will require the municipality to provide the basis upon which the municipality believes the waiver should be granted. There is no protection in the Bill for the waiver application to be exempt from the Kansas Open Records Act and therefore the legal analysis of the municipality which was likely discussed in an executive session with the municipality, will become public information, thereby prejudicing the municipality.