



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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February 24, 1987

ATTORNEY GENERAL OPINION NO. 87- 36

The Honorable Ginger Barr
State Representative, Fifty-First District
State Capitol, Room 115-S
Topeka, Kansas 66612

Re: State Departments; Public Officers,
Employees--Civil Service--State Provided Housing,
Food Service or Other Employee Maintenance

Synopsis: Based upon the information you have provided, it is our opinion that the Housing Maintenance Guideline Agreement executed by certain Fish and Game Commission employees (prior to July, 1986) is a binding contract between the Commission and an employee of the Commission who occupies state-owned housing. Additionally, in our judgment the termination of the Commission's payment of utility services for state-owned housing occupied by those employees has reduced their salaries in contravention of applicable state regulations. Cited herein: K.S.A. 75-2961a, 75-4321, 75-4322, 75-4330; K.A.R. 1-5-20, 1-19-1, 1-19-2, 1-19-3; 1-19-4; 26 U.S.C. §19.

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Dear Representative Barr:

You request our opinion concerning the effect of a change in housing policy implemented by the Kansas Fish and Game Commission. You have provided the following background (which we must accept as containing all relevant facts pertinent to

the questions you pose) regarding adoption and implementation of the aforesaid policy:

1. On May 30, 1986, William Hanzlick, Director of the Kansas Fish and Game Commission (Commission), issued a memorandum to all of the Commission's employees who were then occupying residences provided by the Commission, advising them of a change in the Commission's housing policy. (A copy of that memorandum is attached.) In the memorandum, Mr. Hanzlick indicated that, upon his recommendation, "the Commission amended the housing policy (H-1) to stipulate that as of July 1, 1986, all employees living in state houses will pay utilities."

2. A copy of the housing policy referenced in Mr. Hanzlick's memorandum is attached. It took effect on July 1, 1986, and establishes two categories of agency residences: (1) essential; and (2) desirable. Essential residences are defined as being "those designated by the director as necessary to the operation of the agency," and desirable residences are defined as being "those not designated essential."

Pursuant to the Commission's new housing policy, all occupants of both classes of residences are to pay for utility services, with usage determined by meter, effective July 1, 1986; whereas, effective January 1, 1987, occupants of desirable residences also will be charged \$150.00 per month as rent, in addition to their payment of utility services.

3. Pursuant to his memorandum of June 10, 1986, Director Hanzlick advised the Commission's fish hatchery personnel that certain agency houses occupied by such personnel had been designated as essential housing, pursuant to the Commission's new housing policy. (A copy of that memorandum also is attached.) Accordingly, pursuant to the new housing policy, these employees were obligated to pay for utility services at the state-owned housing they occupied as of July 1, 1986.

4. Prior to the adoption of the Commission's amended housing policy, all of the persons listed in Mr. Hanzlick's memorandum of June 10, 1986, had signed a "Housing Maintenance Guidelines Agreement" (HMGA), as referenced in and required by the Commission's prior and amended housing policies. (A copy of one such HMGA is attached.)

5. Under numbered paragraph 11 of the HMGA, the Commission agreed to pay all utilities (other than telephone) for the

state-owned houses occupied by Commission employees, and such payments were made by the Commission prior to July 1, 1986, the effective date of the amended housing policy.

6. Under numbered paragraph 10 of the HMGA, it is provided that, even though employees occupying state-owned houses do not pay rent, such employees will pay specified taxes on the "rental" rate or amount, as determined by the State Division of Accounts and Reports, pursuant to K.S.A. 75-2961a and K.A.R. 1-19-9. Subparagraph a of paragraph 10 provides that the cost of the utilities paid by the Commission are included in the rental rate or amount.

7. It is the position of the personnel officer of the Commission that employees of the Commission who are affected by the new housing policy may not avail themselves of the Commission's grievance procedure to protest the change in policy or its conflict with the HMGA, because the housing policy concerns a condition of their employment.

Your questions are as follows:

"1. Is the HMGA a binding contract between the Commission and its employees who sign it, thereby precluding the Commission from unilaterally changing the terms and conditions thereof by the implementation of the Commission's amended housing policy, which became effective on July 1, 1986?"

"2. Irrespective of whether the HMGA is a binding contract between the Commission and its employees who sign it, does the implementation of the Commission's amended housing policy constitute an impermissible reduction in the compensation paid to the Commission's employees who had signed the HMGA prior to July 1, 1986?"

In regard to the first question, there are a number of factors suggesting that the HMGA is a contract. First, in the Commission's policy regarding occupancy of Commission dwellings (as amended July 1, 1986), the Commission describes the HMGA as an agreement which details "the responsibilities of the Commission and the employee with regard to state owned housing."

Second, the HMGA describes the guidelines set forth therein as "an agreement between the Commission and the employee occupying a state-owned house."

Third, the subject matter of the HMGA is a proper subject for a contract. K.S.A. 75-2961a authorizes any state agency to furnish housing for any position in the classified or unclassified services under the Kansas Civil Service System. This statute has been implemented by regulations of the Secretary of Administration (K.A.R. 1-19-1 et seq.). While this statute and the implementing regulations do not specifically authorize or require the benefits contemplated therein to be provided pursuant to contract, they clearly legitimize housing benefits being provided state employees, thereby making this a proper subject of contract.

This is further evidenced by the Public Employer-Employee Relations Act. In K.S.A. 75-4330, the legislature has provided that, with certain exceptions which are not pertinent here, the "scope of a memorandum of agreement may extend to all matters relating to conditions of employment." Thus, even though the occupancy of state-owned housing by an employee of the Commission may be regarded as a condition of employment, the legislature has declared that conditions of employment are proper subjects of contract between a state employer and its employees.

It should be noted that the term "conditions of employment," as used in K.S.A. 75-4330, is defined by subsection (t) of K.S.A. 75-4322 to include such items as salaries, wages and retirement benefits. As will be discussed subsequently, paragraphs 10 and 22 of the HMGA clearly affect the compensation of Commission employees who occupy state-owned housing.

Thus, even though the HMGA is not the product of collective bargaining between the Commission and an employee organization that includes employees of the Commission, the provisions of K.S.A. 75-4321 et seq. evidence that conditions of employment, such as those contemplated in the HMGA, are proper subjects of contract between a state agency and an employee thereof.

Also, with respect to the subject matter of the HMGA, it should be noted that it has substantial characteristics of a lease agreement. Since the housing in question is under the jurisdiction and control of the Commission, the Commission occupies the position of "landlord," and it is entirely appropriate that the Commission enter into contracts with the occupants of these dwellings regarding the terms and conditions of their occupancy.

As to other indicia of contracts present in the HMGA, it should be recognized that there is a manifestation of mutual assent. The Commission's housing policy provides that the HMGA "must be processed with the employee through an Agency Housing Committee appointed by the Director." Accordingly, the director and the chairman of the housing committee have executed the HMGA on behalf of the Commission. And, of course, it also is executed by the affected state employee.

In addition, the mutuality of obligation established by the HMGA provides sufficient consideration for the contract.

It would appear that, pursuant to the Commission's housing policy, the employees of the Commission who occupy housing on or immediately adjacent to the Commission's installations do so as a condition of their employment. It might also be argued that execution of the HMGA by the employee is a condition of employment. Even so, such facts do not, in our opinion, alter the characterization of the HMGA as a contract. The requirements that an employee must occupy housing provided by the Commission and execute the HMGA as a condition of employment are distinguishable from the substantive provisions of the HMGA itself. Even though the execution of the HMGA by an employee of the Commission might be regarded as a condition of employment, the fact remains that the HMGA establishes the mutual obligations of the parties regarding a particular dwelling.

There is no declaration within the HMGA that it is merely a policy statement of the Commission, to be modified from time to time by appropriate action of the Commission. To the contrary, it is an agreement contemplated by the Commission's housing policy. Also notably absent from the HMGA is any provision regarding the unilateral modification of the agreement by either party.

Accordingly, it is our opinion that the HMGA is a binding contract between the Commission and an employee of the Commission who occupies state-owned housing. The subject matter of the HMGA is the proper subject of a contract, the parties are proper parties to a contract of this type, both parties have expressed mutual assent to the provisions of the contract and the mutuality of obligation by the parties to the HMGA provides adequate consideration. In our judgment, the HMGA has all the necessary indicia for a binding contract, and absent any provision therein, or in any statute or duly adopted regulation, permitting the unilateral modification of

the contract by the Commission, such action appears to be a breach of contract.

Thus, the Commission's implementation of its amended housing policy appears to be a breach of the existing Housing Maintenance Guidelines Agreements, since the Commission has ceased to pay for utility services at state-owned housing, as required by the HMGA, without consent of the affected employees of the Commission.

Irrespective of the contractual nature of the HMGA, however, the Commission had complied with the HMGA prior to the effective date of the amended housing policy, by paying for the specified utility services at state-owned housing occupied by the Commission's employees. By terminating these payments and requiring them to be made by these employees, the Commission has effectively reduced the compensation of these employees, to the extent of these payments.

As previously noted, paragraphs 10 and 11 of the HMGA provide for the determination of the rental value to the employee of occupying state-owned housing. Included therein is the cost of the utilities provided by the Commission. As so determined, the rental value to each employee constitutes compensation paid to such employee, which is evidenced by a consideration of various factors.

First, K.S.A. 75-2961a provides in pertinent part as follows:

"Whenever housing, food service or other employee maintenance is furnished by any state agency, the documents authorizing the same shall specify the types of employee maintenance to be provided and the dollar value thereof that is to be regarded as compensation, and the balance of value in each case shall be regarded as the expense of the state benefit from the arrangement."

Implementing the foregoing legislative requirement are the above-referenced regulations of the Secretary of Administration (K.A.R. 1-19-1 et seq.). Specifically, subsection (D) of K.A.R. 1-19-2 states:

"(D) Wage or salary for the purpose of these regulations shall include the regular cash salary plus any remuneration

provided in a medium other than cash, which shall be computed on the basis of the fair and prevailing value or cost of such items in the locality at the time of payment or as provided herein."

Consistent with that definitional provision, K.A.R. 1-19-3 recites the state policy, as follows:

"It shall be the state policy that where agency's facilities or services are available for providing housing, food service or other employee maintenance, they may be furnished to employees with adjustments to the cash wages or salaries of the position involved as provided herein.

. . . .

"Charges for the value of housing, food service or other employee maintenance which are deemed to be primarily for the benefit of the employee will be deducted from the employee's cash salary or collected in cash from the employee as provided herein.

"The value of housing, food service or other employee maintenance which are [sic] deemed to be for the benefit of the employer shall be provided without charge to the employee as provided in regulation 1-19-4(A)4 [sic] and 1-19-4(B)4 [sic]."

The regulatory provision last referenced in the above-quoted provision states:

"(4) A full deduction of the value established for housing, lot rent, utility meters or heating fuel sources which are provided by the employer as a part of the rental value shall be allowed from wages and salaries to comply with internal revenue code section 119, for income and withholding tax purposes if the occupant is required by the agency to be available at the duty location twenty-four (24)

hours per day, every day -- except for authorized time off -- to meet job requirements. In order to qualify for this reduction: (A) The lodging must be furnished on the agency premises and at the place of employment with the state agency.

"(B) The lodging must be furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required unless such lodging is furnished.

"(C) The employee is required to accept such lodging as a condition of employment in order to properly perform the job duties.

"(D) The head of each agency shall certify on the form prescribed those positions and employees on [sic] such positions who are required to live in the housing provided."

To fully understand the above-quoted provisions, reference must be made to Internal Revenue Code §119 (26 U.S.C. §119). Subsection (a) thereof provides as follows:

"(a) There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if --

"(1) in the case of meals, the meals are furnished on the business premises of the employer, or

"(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment."

The important point to be derived from IRC §119, for purposes of the issue considered here, is the fact that the value of housing provided by an employer to its employee is

regarded as gross income under the Internal Revenue Code. If such were not the case, there would be no need for IRC §119. That is, if the value of housing provided by an employer to its employee were not income, there would be no need for a section providing for its exclusion from gross income under prescribed conditions, for purposes of income taxation. Moreover, the fact that such value is exempt from income taxation, where the lodging is for the convenience of the employer and is a condition of employment, does not alter its character as income; and without the exemption provisions of IRC §119, it would be taxable income.

Not only is it the stated purpose of K.A.R. 1-19-4(b)(4) to establish regulatory provisions consistent with IRC §119, such purpose is apparent from a comparison of its provisions to the requirements of IRC §119. Moreover, it appears that the Commission's housing policy (H-1) is designed to comply with the Secretary of Administration's regulations and IRC §119. For example, the Commission's housing policy identifies the dwellings to be occupied by its employees as being located on or immediately adjacent to Commission installations. It also requires that the dwellings be occupied by permanent employees and their immediate families, and it further provides, as follows:

"Commission employees occupy these dwellings as a condition of their employment to provide security to Commission installations, undertake actions in the event of emergency or other unscheduled situations, and to provide public services beyond basic job requirements."

This statement indicates that the persons occupying the Commission's dwellings do so as a condition of their employment and establishes the reasons that such occupancy is for the convenience of the Commission, within the meaning of the pertinent state regulation and IRC §119.

Finally, the Commission's housing policy also contains the following statement:

"It is the opinion of the Commission that occupants of these dwellings meet the Internal Revenue Services [sic] Code, section 119, for exemption, and it should

not be considered a part of the employees' gross income."

The foregoing statement clearly expresses the Commission's intention of complying with IRC §119. As previously noted, the value of lodging provided by an employer to its employees is gross income, but it is not subject to income taxation or withholding, by virtue of IRC §119.

The provisions of numbered paragraphs 10 and 11 of the HMGA also confirm that the value of the housing provided by the Commission to its employees (including the value of the utility services provided by the Commission) is compensation to the employees who occupy such housing. For example, such employees pay Social Security Tax (FICA) on the value of such housing. Pursuant to FICA, such tax is levied upon gross income.

In addition, such value is subject to the employees' state retirement contributions. Again, such contributions are based on the employees' gross income.

Similarly, withholding of amounts for workers' compensation insurance and unemployment compensation insurance taxes are applied to the value of the housing. Again, such taxes are applicable to an employee's gross income.

In our opinion, the foregoing considerations establish that the value of the housing provided to the Commission's employees, including the value of utility services provided by the Commission, constitutes compensation to the Commission's employees who are required to occupy such housing as a condition of their employment and as a convenience to their employer. Accordingly, the Commission's implementation of its amended housing policy, through its termination of payments of utility services, has the effect of reducing that compensation. And, irrespective of whether the Commission's implementation of the amended housing policy constitutes a breach of contract, such reductions in compensation are without lawful authority.

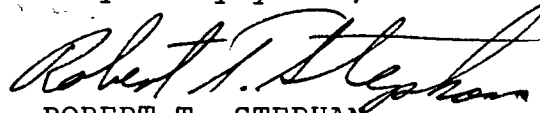
In this regard, the provisions of K.A.R. 1-5-20 are pertinent, since they provide the basis by which a state agency (appointing authority) may reduce an employee's compensation. Subsection (a) of that regulation provides, in part, as follows:

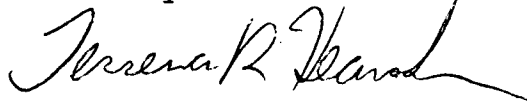
"(a) The appointing authority may reduce the salary of any employee one step (but not below the minimum of the salary range) by reason of less than satisfactory performance according to a current performance evaluation."

The pertinent attachments indicate that the Commission's housing policy was amended solely for financial considerations, and was not precipitated by unsatisfactory performance by affected employees. Thus, in our judgment, the adoption of the amended housing policy, and the termination of the Commission's payment of utility services for lodging occupied by the Commission's employees pursuant to such amended policy, have resulted in a reduction in compensation to such employees without lawful authority.

Thus, if the HMGA constitutes a contract between the Commission and each of its employees who occupied state-owned housing prior to the effective date of the Commission's amended housing policy, the implementation of the new housing policy constitutes a breach of those contracts. But, in any event, it is our opinion that the termination of the Commission's payments of utility services for state-owned housing occupied by Commission employees has reduced the salaries of those employees in contravention of applicable state regulations.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General

Kansas Fish & Game

HEADQUARTERS
BOX 54A, RT. 2, PRATT, KS 67124



(316) 672 5911

May 30, 1986

TO: All Employees in Agency Housing

FROM: Director Hanzlick *BH*

RE: Agency Housing

As you obviously have read by now, we are making a serious effort to reduce all possible expenditures within the agency so that we can correct our fiscal situation. As you read in my first memo, we've instituted a number of cost-saving measures, and I indicated at that time there would be other issues brought before the Commission for policy decisions. One such issue was discussed, and I made recommendations to the Commission, concerning agency housing.

Upon my recommendation, the Commission amended the housing policy (H-1) to stipulate that as of July 1, 1986, all employees living in state houses will pay utilities. Additionally, all personnel living in what we consider "desireable" housing will begin paying \$150 a month rent starting January 1, 1987 (list attached). When turn-over is experienced in employees living in agency housing, a determination will be made as to whether the house will remain or be removed from the premises. The employee hired to fill the vacant position will, if the house is removed, have to make his own housing arrangements. It was the concensus of the Commission that, if "desireable" housing is to be available, these facilities will have to pay for themselves--that is the purpose for instituting these housing policy changes.

There will be more specific guidelines relating to this, but I wanted you all to know as quickly as the decision was made so you could make your own personal plans accordingly. I am one of the agency housing occupants and don't look forward to paying utilities and rent, but we must all do what we can to alleviate the present fiscal situation we find ourselves in.

jlr

Att.

The following is a list of personnel residing in agency housing as of 6-30-86.

ADMINISTRATION:

James Gump, Rt. 2, Box 57, Pratt, KS 67124

I & E:

None

LAW ENFORCEMENT:

Paul Miller, Rt. 6, Manhattan, KS 66502

GAME:

Don Davis, Rt. 4, Norton, KS 67654
Karl Karrow, Rt. 2, Box 130, Pleasanton, KS 66075
Gary Reid, Rt. 1, Lecompton, KS 66050
Dalton Newberry, Rt. 1, St. Paul, KS 66771
Cliff Peterson, Rt. 1, Canton, KS 67428
Steve Schmidt, Rt. 2, Ellis, KS 67637
Phillip Dickerson, Rt. 2, Independence, KS 67301
Byron Walker, Penalosa, KS 67121
John Silovsky, Rt. 1, St. Paul, KS 66771
James Ross, Rt. 3, Box 188, Columbus, KS 66725
Stan Wood, Rt. 3, Box 301, Great Bend, KS 67530

FISHERIES:

- * Kyle Austin, Pratt Hatchery, Pratt, KS 67124
- * Thomas Dorzab, Rt. 3, Box 304, Junction City, KS 66441
- * Charles Helms, Meade Hatchery, Meade, KS 67864 (Paying rent)
- * Harold Jagerson, Rt. 3, Box 304, Junction City, KS 66441
- * Mark Kumberg, Rt. 2, Box 56, Pratt, KS 67124
- * Joe Lillie, Nye Route, Meade, KS 67864
- * Chris Mammoliti, Rt. 2, Box 58, Pratt, KS 67124
- * Stephen Mense, Farlington Hatchery, Farlington, KS 66734
- * Dan Mosier, Farlington Hatchery, Farlington, KS 66734
- * Randy Nelson, Farlington Hatchery, Farlington, KS 66734
- * Don Patton, Rt. 2, Box 61, Pratt, KS 67124
- * Scott Stuewe, Rt. 3, Box 304, Junction City, KS 66441
- Larry Lentz, Rt. 1, Tonganoxie, KS 66086
- Fred Lovelady, Rt. 1, Box 123, Toronto, KS 66777
- Larry Mull, Rt. 5, Box 169, Manhattan, KS 66502
- Bill Vering, RR2, Minneapolis, KS 67467 (Paying Rent)
- Roger Wolfe, Rt. 4, Parsons, KS 67357
- Jim Young, Rt. 1, Box 15, Kingsdown, KS 67858

* Considered essential houses.



POLICY MANUAL
Kansas Fish and Game Commission

Filing No. 11-1

Effective 7-1-86

Page 1 of 2

SUBJECT: OCCUPANCY OF COMMISSION DWELLINGS

The Kansas Fish and Game Commission has dwellings located on or immediately adjacent to Commission installations. These dwellings are occupied by permanent employees of the Commission and their immediate families.

Commission employees occupy these dwellings as a condition of their employment to provide security to Commission installations, undertake actions in the event of emergency or other unscheduled situations, and to provide public services beyond basic job requirements. A "Housing Maintenance Guidelines Agreement" detailing the responsibilities of the Commission and the employee with regard to state owned housing must be processed with the employee through an Agency Housing Committee appointed by the director. Prior to any employee occupying a state owned residence, the "Housing Maintenance Guidelines Agreement" must be signed by the employee and placed on file with the Administrative Services Division at headquarters.

Dwellings determined by the Commission to be unnecessary for the foregoing purposes will be removed from the property and from the inventory pursuant to applicable state laws, regulations and procedures.

It is the opinion of the Commission that occupants of these dwellings meet the Internal Revenue Services Code, Section 119, for exemption, and it should not be considered part of the employees' gross income.

All agency residences will be placed into one of two categories:

- (1) Essential--essential residences are those designated by the director as necessary to the operation of the agency.
- (2) Desireable--desireable residences are those not designated essential.

Effective July 1, 1986, all occupants of essential and desireable agency residences will be charged for utilities service with usage determined by meter.

Effective January 1, 1987, all occupants of residences designated desireable will be charged \$150.00 per month rent in addition to utilities service.

The director may declare any agency residence surplus and, when the premise becomes vacant, may make other disposition of the house.

The acceptance of some positions will require the employee to live in "essential" residences as a condition of employment. "Desireable" residences will be offered to employees stationed in the area on a priority basis established by the director.

All occupants of state housing will be required to sign the "Housing Maintenance Agreement."

Kansas Fish & Game

HEADQUARTERS
BOX 54A, RT. 2, PRATT, KS 67124



(316) 672-5911

MEMORANDUM

TO: Hatchery Managers and Fish Hatchery Assistants
FROM: Bill Hanzlick, Director *BH*
DATE: June 10, 1986
SUBJECT: Declaration of "Essential" Housing as Per Policy H-1,
Effective Date 7-1-86

As per Kansas Fish and Game Commission Policy H-1, effective 7-1-86, I hereby designate the following houses as being "essential."

<u>Location</u>	<u>Residence No.</u>	<u>Current Resident</u>	<u>Classification</u>
Meade Hatchery	14	Joe Lillie	Hatchery Manager
Pratt Hatchery	5	Don Patton	Hatchery Manager
Pratt Hatchery	7	Chris Mammoliti	Hatchery Asst.
Pratt Hatchery	4	Kyle Austin	Hatchery Asst.
Pratt Hatchery	6	Mark Kumberg	Hatchery Asst.
Farlington Hatchery	16	Steve Mense	Hatchery Manager
Farlington Hatchery	15	Randy Nelson	Hatchery Asst.
Farlington Hatchery	17	Dan Mosier	Hatchery Asst.
Milford Hatchery	36	(vacant)	Hatchery Manager
Milford Hatchery	38	Harold Jagerson	Hatchery Asst.
Milford Hatchery	37	Tom Dorzab	Hatchery Asst.

Further, as previously notified upon hiring, Hatchery Managers and Hatchery Assistants are required, as an employment condition, to reside in hatchery residences, when provided.

KANSAS FISH AND GAME COMMISSION
HOUSING MAINTENANCE GUIDELINES

The following are guidelines on the subject of maintenance of state-owned houses that will serve as an agreement between the Commission and the employee occupying a state-owned house.

A. Responsibility of the State.

1. Facilities should be conducive to family living.
 - a. Basic house should be structurally and attractively sound and provide for the space needed to meet the basic needs of an average-sized family.
 - b. Good basic heating unit; preferably forced air.
 - c. A window air conditioner of sufficient size to cool the majority of the house. Additional air conditioners, if desired, will be provided by the occupant. Window air conditioners cannot be provided immediately, but will be purchased as monies allow.
 - d. Storm windows and doors for energy conservation where practical.
 - e. Insulation for energy conservation where practical.
 - f. Carpeting in rooms that do not have good hardwood floors or other good floor covering.
 - g. Kitchen cabinets that provide adequate space for an average-sized family.
 - h. Closets that provide adequate space for an average-sized family.
 - i. Garage or other storage facility, -At areas where no garage is available, consider car ports or small sheds.
 - j. Adequate, worable plumbing including bathroom and kitchen fixtures such as stools, sinks and tubs or shower.
 - k. Adequate, workable electric system including attractive fixtures. Occupant may add table lamps, floor lamps, swag lamps, wall mount lamp, etc. that are equipped to be "plugged-in" rather than "wired-in" without Committee authorization. However, the occupant will patch, repair, and repaint any portions of walls, ceilings, etc. where such lamps were attached or mounted prior to his vacating the house.
 - l. TV antenna of sufficient quality to supply good image. When antenna purchase by the agency is necessary, a quality combination VHF/UHF/FM antenna will be purchased. If occupant of state-owned house now owns an antenna it will remain in use until such time as he vacates the house and at that time the Committee will offer to purchase it or have employee remove it. Separate FM, CB, SW, and other types of antennas as desired by the occupant will be installed by the occupant (on his own time and with materials purchased by him, not the state) only after authorization is received from the occupant's supervisor.
2. House should have outside and inside paint as needed.
3. Roofing should be replaced as needed.
4. Inspection of all state houses as needed to determine the general condition of the house, if the house is meeting the needs of the occupants, if requested improvements are justified, etc. Inspections will be conducted at least once per year by the employees' (occupants')

immediate supervisor and/or Housing Committee. Findings will be reported to the appropriate division chief and the occupant. The Committee will inform the occupant at least seven (7) days in advance of any planned inspection and set a time and date for such that is convenient with the occupant and his family. All persons involved should keep in mind that such inspections are NOT intended to impose feelings of being "checked up on" or that personal living habits are being scrutinized. The main purpose of the inspection is to insure that both the Commission and the occupant are fulfilling their responsibilities as set forth in the agreement. An inspection of the house is mandatory if an employee vacates the house for any reason.

5. If the Committee determines that extensive repair work or costly renovations are needed in a state-owned house, the division chief budgeting expenses for upkeep of that house will be expected to budget in the next fiscal year for the money needed for renovation.

B. Responsibilities of the Employee.

1. All care and maintenance of inside and immediate outside facilities.
 - a. Paint as needed with state supplied paint.
 - (1) Painting will be accomplished during normal working hours as schedule allows.
 - b. Repair of facilities and reporting problems.
 - (1) Repair accomplished during normal working hours as schedule allows (except where repair is of an immediate nature). Occupant is authorized and requested to make such minor repairs as leaky faucets or stools, window caulking, screen replacement, wall crack patching, minor repainting, sealing roof leaks, replacing broken windows, etc., when cost of materials does not exceed \$100.00 with no report of such repairs required. All repairs estimated to exceed \$100.00 will be approved by the occupant's immediate supervisor unless such repairs are of an emergency nature, such as plugged sewers, broken water lines, gas leaks, power failures, etc., in which case it will be the occupant's responsibility to see that such emergency repairs are corrected immediately to safeguard life and property. A report of emergency repairs exceeding \$100.00 should be made to the Housing Committee and your supervisor. Repair and maintenance expenditures or needs should not be interpreted to mean new floor coverings, new cabinets, or other new improvements or renovations to the structure, inside or out. If the occupant cannot make the forementioned repairs himself, he may contact local plumbers, carpenters, etc., for the work keeping in mind that purchasing limitations, as set forth for all types of local purchases, still apply.
2. Care and maintenance of immediate grounds around the house.
 - a. Mow the grass as needed (off-duty hours) where a specified maintenance crew does not mow it as part of their duties.
 - b. Attend to flower and/or vegetable gardens to maintain them in an attractive condition. (off-duty hours).
 - c. Trim shrubbery, rake and general clean-up as needed (off-duty hours).

3. If major additions or changes to the house are needed or desired, send requests in a memo to the Housing Committee with copies to your immediate supervisor and the division chief. Requests might include living space additions, cabinets, closets, shelving of a permanent nature, new porch, roof, etc.
4. Any article built or purchased by the employee and which is attached to the house, becomes the property of the state effective on and after October 1, 1978.
 - a. This includes such things as permanent bookshelves, cabinets, carpeting, wall shelves, etc.
 - b. It is the intent of the Commission to provide housing for eligible agency personnel that is adequate for employee needs so it will not be necessary for occupants of state houses to purchase, at their own expense, such items as carpeting, closet space additions, and other permanent fixtures.
5. Employees will provide their own draperies and all other window curtains they feel are necessary. The agency will provide drapery and curtain rods and roller type blinds (shades) throughout the house. These items will stay with the house when the occupant leaves.
6. Damage to the state-owned house: The Commission realizes that from time to time occupants of a residence will, by accident, cause damage to that house. When this happens the occupant will make every attempt to repair such damages at his expense and on his own time if he feels that he or members of his family were at fault and that the accident could have been avoided. If, however, the employee feels that the accident and resulting damage was unavoidable on his part and was the result of some inadequacy in the house itself, the occupant will contact his immediate supervisor. The supervisor will determine if the accident was a result of a housing inadequacy or activities of the occupant and therefore his responsibility.
7. Guests of occupants in state-owned housing, their welfare and actions, will be the sole responsibility of the occupant of the house. Persons outside of the employees' immediate family and/or those not considered the employees' immediate dependents will not be boarded nor live for extended and indefinite periods of time in a state-owned house.
8. Other or supplementary income business conducted from state-owned houses.
 - a. Employees will not be allowed to use a state-owned house as a base of operations for other (non-agency) business unless such is cleared and authorized by the employees' supervisor and the Director. Some exceptions to this will be in the case of an employee and/or spouse or other family member conducting business activities that would not infringe upon the living quarters of the house and/or business activities intended primarily to aid the family income rather than a full-scale commercial type business having full day hours, walk-in customers, etc. For example, such small business activities as private music or arts and crafts lessons, small scale child care or babysitting, hobby craft production and sales, etc., may be conducted in the house without the previously mentioned authorizations required. No modifications to a state-owned house to conduct any type of business will be made unless written authorization as previously noted is granted. Employees

are cautioned that no personal tax deductions may be claimed for expenses toward any private business conducted in a state-owned house when those expenses are paid by the state as normal operations of that house, ie. gas, electricity, repairs, etc.

9. Pets in state-owned houses are allowed, but discretion must be used. Large pets, not normally considered house pets, and large numbers of pets that may add above normal wear and tear to the house and fixtures will not be kept in the house. Dogs will be contained (pen or chain) when not under direct observation outdoors.
10. Although employees occupying state owned houses do not pay rent, the State requires that those employees pay Social Security tax, Retirement and Workman's Comprehensive/Unemployment Insurance taxes on a "rental" rate or amount, determined by the Division of Accounts and Reports in Topeka under K.S.A. 75-2961A and K.A.R. 1-19-9, that is representative of the value or benefit gained by the employee while living in no-cost housing and is therefore subject to these taxes.
- a. These rates or amounts are based upon an evaluation by house size (square feet), cost, desirability, maintenance costs, estimated remaining life of the house, general condition and a rental factor rounded to the nearest dollar with all applied uniformly statewide. Utilities rates are included and are based on actual and/or estimated costs.
- b. The deduction from the employees pay is at the following percentages of the determined "rental" rate amount: Social Security 6.05%; Retirement 4.0%; Workmans Comp./Unemployment Ins. .004%.
IE. If your state-owned house was valued at \$100.00 per month "rental" rate, your deductions would be \$6.05, \$4.00, \$.40, or a total of \$10.45. NOTE: These percentages are subject to change with future regulation changes governing such, most of which you would get back later in life through Social Security benefits and retirement.
- c. Employees will be notified each year of the rate or amount on which he will be paying.
11. The state pays all electricity, gas, water and sewer, etc. for state owned houses. The employee, however, must pay for his own telephone and related services.
12. The state carries no insurance of any kind on state-owned houses and attached or surrounding buildings. For this reason, it is advisable, but not mandatory, that state house occupants purchase and maintain a renters' insurance plan to cover the contents they own. The state is not responsible for damages to the occupants or contents of any state owned house.

Allen R. Stoops

Allen Stoops
Housing Committee, Chairman

Mark Kumbler

State-owned House Occupant

William P. Hanzlick

William P. Hanzlick
Director

Bill O'Neil

House Number and Location