

Who has precedence in state-wide smoking ban?

The much talked about statewide smoking ban advocated by Governor Mark Parkinson has some crying foul.

The law, if enacted, would allow some smoking inside public buildings, provided the smoking sections are separate and are well-ventilated. Restaurants would also be able to pay a fee to have smoking and non-smoking sections. But what is rankling some folks is that the state law would overturn the stricter smoking bans enforced by some Kansas cities.

The issue then is municipal sovereignty vs. state sovereignty. Who has precedence? If we wanted a more lenient smoking ban, or none at all, should our wishes trump the state's?

It's an old argument with its roots in the state vs. federal sovereignty argument that our founding fathers struggled with as they were building a nation. Indeed the Articles of Confederation, which placed much more power in the hands of the state, failed miserably.

Ironically, the Kansas Senate Judiciary Committee just passed a non-binding resolution affirming that the state's power to govern itself is protected by the 10th Amendment of the U.S. Constitution. It is true, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," or more plainly, anything the federal government doesn't do the states do.

This resolution was aimed at the national healthcare initiative currently floundering in the U.S. Congress, specifically provisions that would require people to purchase insurance. What they really wanted to do was assert that states should be able to decide these issues for themselves.

If we state in principle – the resolution is non-binding after all – that state powers should trump federal powers, wouldn't by that same principal cities and counties trump the states? How far does power trickle down? Or does it trickle up?

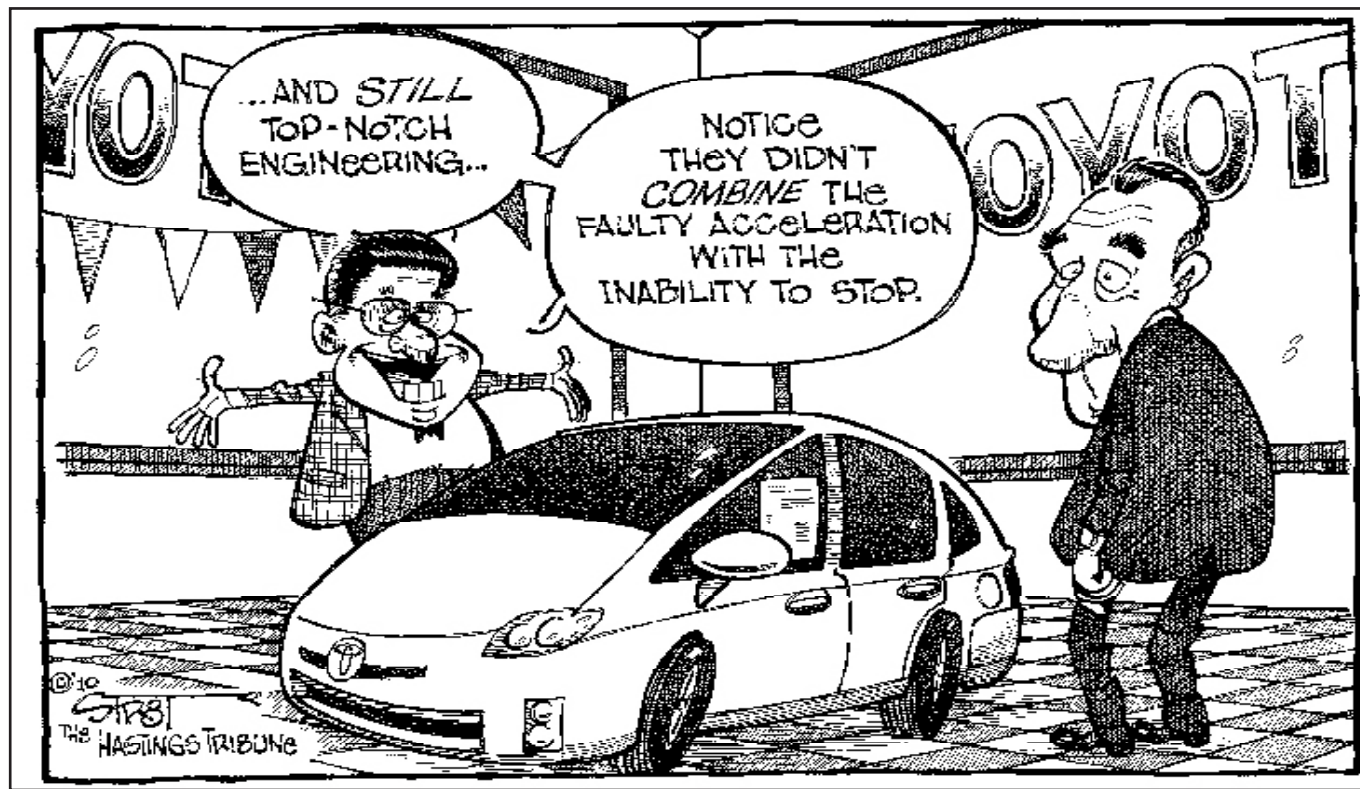
We've dealt with similar issues in Kansas before. The 21st Amendment of the U.S. Constitution repealed the prohibition of alcohol, but to this day we have many dry counties. In fact, Kansas had the second-longest prohibition law in the country; it officially ended in 1948 with an amendment to our constitution. Each county had to approve it, or else they were still allowed to prohibit the sale of alcohol.

Maybe this is the route we should go with the smoking ban. Allow counties or cities to decide whether they want it, or whether they want a stricter version of it. It's a similar issue after all, restricting the use of a substance that can cause harm to others.

On the other hand, precedence can be a slippery slope. What if a city or a county wanted to reestablish segregation? Should they be able to in the name of municipal sovereignty?

In any case, established politicians of any stripe rarely do anything that would limit their own power. We must be prepared for a weak smoking ban and no hope of anything better from the city or county level.

— Kevin Bottrell



Senate happenings include Town Hall

We are beginning the Town Hall Meetings next Saturday, February 13. Representative John Faber and I hope to see as many of you as can make it. Our schedule for Saturday is

8 - 9 a.m., Bird City at the American Legion

9:45 - 10:45 a.m., Atwood at Williams Brothers Grocery

11:30 a.m. - 1 p.m., Oberlin at the Decatur County Court House, 3rd fl

1:45 - 2:45 p.m., Norton at the Town & Country Kitchen

The following recaps the activities and information from the Kansas Senate for this past week.

January Revenue Collections: The month of January was the third monthly report based on the revised consensus revenue estimates made in November 2009. Through January, total State General Fund (SGF) receipts for the 2010 fiscal year were \$39.1 million, or 1.3 percent, below estimates. Tax only collections to the general fund were \$36.5 million, or 1.2 percent below predictions. Total SGF receipts through January of FY 2010 were \$301 million, or 9.2 percent, below comparable receipts from FY 2009. For FY 2010, tax only receipts are \$252.2 million, or 7.9 percent, below the same period in FY 2009.

Multiple tax sources fell below estimates by more than \$1 million. Those sources include a \$24 million deficit in individual income tax collections, \$5.3 million shortfall in compensating use taxes, \$5 million loss in severance tax collections, \$3.5 million shortage in estate taxes, and a \$3.5 million deficiency in estate taxes. Corporate income tax receipts exceeded estimates by \$9.9 million, or 7.7 percent. It was the only tax source to exceed estimates by \$1 million.

SB 391 - Anatomical Gifts: SB 391 amends the 2007 Revised Uniform Anatomical Gift Act by including language that a person who has agreed to put their name in the Midwest Transplant Bank registry has also given full legal consent to the donation of their organs or tissues upon their death. The bill also allows a donor to amend or revoke an anatomical gift by accessing the registry website or

Senate Doings Sen. Ralph Ostmeyer



by notifying the organization designated for organ procurement in Kansas. If a donor chooses to withdraw their consent to be listed in the registry it does not withdraw their donation of organs or tissues. SB 391 passed 39 to 0 on Tuesday, February 2.

SB 393 - Administrative Hearings: SB 393 would allow the Kansas Department of Agriculture to provide notice and an opportunity for a hearing in instances where the Agency revokes a license. The bill also authorizes the Secretary of Agriculture to temporarily suspend any licenses and permits issued under the Kansas Dairy Law without the opportunity for a hearing and notice as required by administrative procedure law. The temporary suspension could not exceed 90 days without the permanent suspension, revocation or reinstatement of the license or permit. SB 393 passed 39 to 0 on Tuesday, February 2.

SB 421 - Election Crimes: SB 421 changes the penalty for voting without being qualified from a class A misdemeanor to a level 9 nonperson felony. SB 421 passed 39 to 0 on Tuesday, February 2.

SB 426 - Absentee Ballots: SB 426 expands absentee voting opportunities for federal service voters and military personnel and their family members. The bill allows overseas voters to apply for, receive and return their ballots electronically. If needed, overseas voters are also allowed to vote a full ballot for all elections and, if needed, vote by write-in ballot. SB 426 passed 39 to 0 on Tuesday, February 2.

SCR 1615 - Tenth Amendment Resolution: The Senate Judiciary Committee favorably passed out SCR 1615 on Wednesday, February 3. The concurrent resolution declares the sovereignty of Kansas and serves as a Notice and Demand to the federal government to im-

mediately cease and desist all mandates that are beyond the scope of the powers delegated under the Tenth Amendment in the United States Constitution. In addition, SCR 1615 prohibits all federal legislation that requires states to comply under threats of penalties or sanctions or requirements that states pass legislation to maintain certain funding. The concurrent resolution is now up for consideration by the Senate.

SCR 1621 - Litigation Financed with Public Funds: The Senate Judiciary Committee favorably passed out SCR 1621 on Wednesday, February 3. The concurrent resolution declares the view of the Kansas Legislature that courts lack the constitutional authority to order the legislature to make specific appropriations. In addition, SCR 1621 declares that no public funds or funds derived from taxes should be used to finance or support litigation challenging the constitutionality of appropriations by the legislature. SCR 1621 is now up for consideration by the Senate.

Appointments: On Tuesday, February 2, the Senate approved the following appointments:

Suzanne Valdez to the Kansas Crime Victims Compensation Board by a vote of 39 to 0.

Dr. William Allen Reed to the Kansas Health Policy Authority by a vote of 39 to 0.

Suchitra Padmanabhan to the Kansas Development Finance Authority by a vote of 39 to 0.

Thomas M. Cohen to the Kansas Technology Enterprise Corporation by a vote of 39 to 0.

Belinda Sue Vierthaler as Kansas Long-Term Care Ombudsman by a vote of 39 to 0.

John Poertner to the Kansas State Board of Indigents' Defense Services by a vote of 39 to 0.

Scott M. Slabotski to the University of Kansas Hospital Authority by a vote of 39 to 0.

Saturday, February 20, is the deadline for bills to be passed out of their House of origin.

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A remarkably good game

That mustard recipe came in the nick of time. If "my" team isn't playing, I don't pay too much attention to football.

But when I realized the Super Bowl was going to be Sunday, I laid in a store of man-sized snacks. At the top of the list was what I call "Mini-pigs-in-a-blanket." I take those little cocktail wieners and wrap each one in a strip of refrigerator crescent-roll dough.

After they are baked, you can eat them plain or do what I do and dip them in the sweet-spicy mustard. They disappeared faster than Payton Manning could get his team back to the line of scrimmage without a huddle.

Bet you thought I didn't know anything about football, didn't you? Well, I don't know much, but I do know enough to be able to follow and enjoy the game. Going into this game, I didn't really have a favorite, but I decided to root for the underdog considering all the New Orleans Saints had been through in the past few years.

It was a remarkably good game — as Super Bowl games go. I even managed to stay awake for most of it. Especially during the final minutes when the Saints intercepted a pass and ran it in for the touchdown.

But, back to where I started. The snacks were a hit, and the men agreed they were an adequate replacement for supper.

— ob —

Out Back Carolyn Plotts



I ran into a friend at the post office and we took advantage of the occasion to catch up on each other's lives. Eventually, the conversation came around to our various aches and pains. She said she wished someone in the area would build a heated pool so people could get the kind of exercise they need for arthritic joints and brittle bones.

"Oh, well," she added, "if there was a pool, they'd have to build a fence around it."

"Hey!" I said, "I've got the fence. Now, all we have to do is convince Jim he needs to build a swimming pool inside it."

Don't think I haven't thought about it. One time, I heard Jim say building a pool was something he had never done and he always wanted to try it. And, who am I to keep him from realizing all his ambitions?

At our age, though, he better do it pretty soon or we won't be able to afford a full-time life guard on our retirement income.

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THE NORTON TELEGRAM

ISSN 1063-701X

215 S. Kansas Ave., Norton, KS 67654

Published each Tuesday and Friday by Haynes Publishing Co., 215 S. Kansas Ave., Norton, Kan. 67654. Periodicals mail postage paid at Norton, Kan. 67654.

Postmaster: Send address changes to Norton Telegram, 215 S. Kansas, Norton, Kan. 67654. Official newspaper of Norton and Norton County. Member of the Kansas Press Association, National Newspaper Association, and the Nebraska Press Association

Nor'West Newspapers

Dick and Mary Beth Boyd
Publishers, 1970-2002



Winter storms an uphill battle

In some regions of Kansas the winter wheat crops look great. After four to six weeks covered with a heavy, protective blanket of snow, wheat's emerging with a dark green color.

While the wheat is still small in north-central and western Kansas, potential — like the crop — is growing. However, in far southwest Kansas things don't look so good.

Bill Luebbers farms in Wichita County and says the wheat looks terrible.

"The color is brown," Luebbers says describing his winter wheat crop. "Our crop is frozen back."

When the cold, sub-zero temperatures marched into the state this January, the crop was bare.

Having received less than four inches of snow all winter, the crop was exposed to the elements and there will probably be some winter kill.

Luebbers says the ground is splitting apart and pulling some of the roots apart with it.

"We'll have an uphill battle with our

Insight

John Schlageck

wheat crop in this part of western Kansas," the Wichita County producer says. "When the ground pulls apart like this it destroys the roots as they spread across the ground. As that happens the wheat has nothing to do but die."

Other wheat may not be brown, but it's a sickly looking light green. It has little growth and will be susceptible to wind damage.

Luebbers is quick to point out that late February and March are notorious for strong winds that sweep across the High Plains at 30, 40, 50 and even 60 miles per hour.

"You know out here in our part of the world the winds usually blow sideways," Luebbers says. "We need moisture and we need it bad."

During this time of the year in southwest Kansas, wheat farmers would like to

see a nice foot of wet snow — the kind that lies level on the ground and the moisture soaks deep into the soil.

Luebbers says he and his neighbors will take any kind of moisture they can get in February and March. Still, one thing this crop has in its favor is the growing season is still early.

Wheat can hold on for a long time. Growers often remark winter wheat has nine lives. This crop in far southwest Kansas is going to need all of them to survive this year.

Luebbers has his fingers crossed. He remains optimistic this region of the state may still receive the snow he's dreaming of.

And should the additional moisture arrive soon, with it will come the promise of an abundant crop in June.

John Schlageck is a leading commentator on agriculture and rural Kansas. Born and raised on a diversified farm in northwestern Kansas, his writing reflects a lifetime of experience, knowledge and passion.