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General Affairs Committee
September 25, 2015

[LR288 LR290 LR307]

The Committee on General Affairs met at 10:00 a.m. on Friday, September 25, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR288, LR290, and LR307. Senators present: Tyson Larson, Chairperson; Matt Hansen; Dan Hughes; John McCollister; Merv Riepe; and Ken Schilz. Senators absent: Colby Coash, Vice Chairperson; and Mark Kolterman.

SENATOR LARSON: Welcome, everybody, to the General Affairs hearing. I am State Senator Tyson Larson of O'Neill, Chairman of the committee. Joining us today, committee members to my far left: Senator Kolterman from Seward will not be able to make it today; Senator Hansen of Lincoln; Vice Chairman Senator Colby Coash of Lincoln; I have my legal counsel, Josh Eickmeier, also the mayor of Seward. To my far right, Jeff Fryman, the committee clerk; Senator Merv Riepe of Omaha; Senator McCollister of Omaha, our newest member to the General Affairs Committee; Senator Dan Hughes of Venango; and Senator Ken Schilz of Ogallala to my direct right. There are three different sheets located on the tables in the back of the room: one sign-in sheet is for those not publicly testifying but want their presence and position noted as an exhibit in the official records of the committee; a second sign-in sheet are for those who are present at the committee hearing and who offered written testimony in lieu of testifying, which will be noted on the committee statement; and the third sign-in sheet is for anyone planning on testifying before the committee. When it is your turn to testify, give your sign-in sheet to one of the pages so that they can give that sheet to the committee clerk. This will help us make a more accurate public record. After the introduction of each of my interim studies, I will then call for testimony from the public. When you come up to testify please speak clearly into the microphone. Please tell us your name and please spell both your first and last names. Also, please tell us whom you are representing, if anyone. We will be using the light system for a few or at least one of our hearings, I believe. I'll take a poll at the beginning of each to see how many testifiers we have. Testifiers will have three minutes during those lights--I might move it to four, depending on the amount of testimony--which will be represented by a green light when you begin and an amber light when you have one minute remaining and a red light when your time is up. Please turn your cell phones or any other electronic devices to silent. Please keep your conversations to a minimum or take them out into the hallway. The General Affairs Committee is

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participating in a pilot program to go completely paperless, therefore, we are only accepting handouts and written testimony electronically. Due to this new policy, if you would like to submit something but only have paper copies then we will try to accommodate you. We also do not allow visual aids or display items. Because the committee is going paperless, senators are allowed and even encouraged to use electronic devices during the hearings. Thank you for your cooperation. And I'll start today's hearings with LR288. I'll come around and I'll open on it and then I'll come back to the Chair and run the committee from here. Good afternoon, members of the committee. My name is Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n. I represent O'Neill and the 40th Legislative District. I am here to introduce LR288 after hearing from a community in my district about the issues that we're having with their local library, specifically, when it came to the budgetary process. I know that this and similar issues regarding cities and their libraries have been before the Legislature in the past, but I felt it would be productive to revisit this conversation as an interim study. Following me today are representatives from a number of communities as well as the League of Municipalities to testify as to the issues that they are seeing in their communities across Nebraska regarding how their cities and libraries are working together. With that, I'll take a few questions. I'll ask Senator Hughes to run it if any of you guys have any questions for me before I come back over there. [LR288]

SENATOR HUGHES: That would be fine. Any questions for Senator Larson? Seeing none, thank you, Senator. [LR288]

SENATOR LARSON: Excellent. How many testifiers do I have on LR288? Five. Five is it? All right. Jeff, I'll put five minute...do a five-minute light system on this. All right. I will take the first testifier and we'll be running a five-minute light system on LR288. So you'll have four minutes; when you see the amber light that means you have a minute left. Welcome to the General Affairs Committee. [LR288]

JEFF KOOISTRA: Thank you. Good morning. I am Jeff Kooistra. I am the city administrator in Gretna and I'm representing the city of Gretna. My last name is K-o-o-i-s-t-r-a, good Dutch name. The current state code does not allow second-class cities and villages the flexibility to have the ability to oversee the operations of the library in the areas of staffing and hours. In our present situation in Gretna we have two facilities. When the library lost two part-time employees

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they didn't feel they could cover both facilities, so each facility is open every other day. They are now back to full staff and they have not adjusted their schedule back. I have also noted that during this period they are staffing the children's library, which is approximately 1,200 square feet, with five employees. This is not a good use of public funds. The city has made recommendations several times that the director needed to build the development of a friends' library organization to help with special projects and needs. This effort has been dismal at best. The city has also asked the library to redevelop their foundation for the purpose of working towards a new library facility. This effort has been miserable. The city only has control of the budget, but not how the funds are utilized. We have recognized some poor management but cannot rectify the problems. The board has been going along with the staff's recommendation, which the city does not agree to. The main issues we have had is a lack of good scheduling; a lack of the best use of the staff; lack of cooperation with the mayor, city council, city staff; creation of negative attitudes towards the city, including negative documents in Facebook posts-- I did acquire a copy of what they've been handing out to the public; less than truthful information going out to the public concerning their situation. In fact, this week I just got a call from another resident complaining about how the operation of the library has been going. They can't understand why the city administrator and the mayor and city council can't get things straightened out. And I said, well, our state code doesn't allow us to do anything about that, so. And we've had a few other calls like that and it's hard for these citizens to understand what our limitations are. We'd just like to have the ability to have some control of the library like first-class cities have. [LR288]

SENATOR LARSON: Thank you. [LR288]

JEFF KOOISTRA: You bet. [LR288]

SENATOR LARSON: Are there any questions from the committee? Senator Riepe. [LR288]

SENATOR RIEPE: For clarification purposes...thank you, first of all, for being here. You're looking for, in my opinion, it sounds more like a organizational structure change than it is necessarily a strict budget process. [LR288]

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JEFF KOOISTRA: It's a management issue. [LR288]

SENATOR RIEPE: It's a reporting relationship. [LR288]

JEFF KOOISTRA: Right. And I think the solution we're looking for is to have the same ability as first-class cities have to help manage our library. Another city in our county that's a first-class city was able to utilize that code section and we were unable to do that since we're a second-class city. [LR288]

SENATOR RIEPE: Can you help me to understand why we ended up where we're at today with difference between a first-class city and a second-class city? [LR288]

JEFF KOOISTRA: I'm probably the last one to ask that. [LR288]

SENATOR RIEPE: Okay. [LR288]

JEFF KOOISTRA: I don't understand why. I haven't been in the state long enough to know why those code sections are different. I know Lynn Rex is here and she probably can explain that a lot better than I could. I'm sorry. [LR288]

SENATOR RIEPE: No, no. Thank you. Thank you. [LR288]

SENATOR LARSON: Senator Hughes. [LR288]

SENATOR HUGHES: Thank you, Mr. Chairman. Thank you for being here today. [LR288]

JEFF KOOISTRA: Yeah. [LR288]

SENATOR HUGHES: Could you give me just a brief thumbnail sketch of the library budget and what percent comes from the city? [LR288]

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JEFF KOOISTRA: Okay. Their budget is...in fact, I brought one with me so I...because...into quoting numbers it gets kind of bad. But their budget for next fiscal year is \$404,000 approximately. In fiscal year '15 their budget was \$357,000 which is, of course, we're ending that year here in a couple of days. Of the revenue they generate we budgeted they're generating about \$13,500. Sometimes it gets up to about \$16,000 because we do charge a fee for nonresidents to use the library and so that kind of varies. Of course, with the area growing it's going up a little bit, but not drastically. But so it's pretty minor what kind of revenue they do generate. It's mostly coming out of the property taxpayers in the community. [LR288]

SENATOR HUGHES: Okay. Thank you. Thank you, Chairman. [LR288]

SENATOR LARSON: Thank you, Senator Hughes. I do have a...not seeing any more from the rest of the committee, I have a few quick questions. How big is the community of Gretna, roughly? [LR288]

JEFF KOOISTRA: Officially, we're 4,905. [LR288]

SENATOR LARSON: So just just under the... [LR288]

JEFF KOOISTRA: Yeah, and we like being a second-class city. [LR288]

SENATOR LARSON: And you like being a second... [LR288]

JEFF KOOISTRA: Yes. [LR288]

SENATOR LARSON: (Laugh) Okay. What's the difference between officially and "nonofficially"? I know you... [LR288]

JEFF KOOISTRA: Well, I'm sure that with our growth we've had we probably could be over, but we haven't had a special census and we haven't annexed anything additionally since, but I think there's probably a chance that in another year or so we'll probably go over. But we think this is

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an important enough issue, even for all second-class cities and for ourselves, that we still want to bring it up. [LR288]

SENATOR LARSON: You talk about gaining, you know, more flexibility and more control. Do you think...obviously, I have no first-class cities in my legislative district. We're all villages or second-class cities or unincorporated. Do you think that a lot of cities...when you talk to city administrators, do you think a lot of cities are facing these similar problems with the libraries or is this isolated to an instance or two? [LR288]

JEFF KOOISTRA: I think there are a few cities. Our city attorney is dealing with another community he represents having very similar problems between the city council and the board and management there. I'm not sure I should say what town it is, but it is Bennington, so, sorry. But I know he had to facilitate a meeting between them because they've had so many issues there. And this all has happened like in the last probably three or four months. [LR288]

SENATOR LARSON: Okay. [LR288]

JEFF KOOISTRA: And I know of other towns that have had issues too. And I don't know if it's just...why it's all happened here recently. Papillion has had issues but, of course, they have a...their code section allows them to handle that, so they've been able to handle that situation. [LR288]

SENATOR LARSON: Okay. Thank you very much. I may have some for those that follow. Any more questions? And I'd like to welcome Senator Schilz for making the long drive from Ogallala. [LR288]

SENATOR SCHILZ: I was here already, so (inaudible.) [LR288]

SENATOR LARSON: So Senator Schilz has joined us. And thank you for joining the General Affairs Committee today. [LR288]

JEFF KOOISTRA: Yeah, thank you very much. [LR288]

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SENATOR LARSON: I'll take the second testifier. Welcome to the General Affairs Committee, Ms. Rex. [LR288]

LYNN REX: Thank you. Good morning. My name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appreciate the committee reviewing this important issue. In fact, Gary Krumland, our assistant director and also he's an individual that lobbies with me and many of you know him, we met with Rod Wagner and Richard Miller from the Library Commission just this week and talked about several of the issues. And they've raised issues about how cities need to do a better job. And we communicated to them that there are obviously issues that we have with some of the libraries that need to do a better job too. One of the things that I think became very apparent when we had a legislative committee meeting on Wednesday...and your committee counsel, as mayor of Seward, serves on that legislative committee with us, which is an internal League of Nebraska Municipalities committee. We have representation of all first-class cities, Lincoln and Omaha, and then about 40 representatives of second-class cities and villages. And basically, in terms of exactly why the first-class cities have more authority than do second-class cities and villages, I don't have that answer for you today, but we've been searching that out. A lot of the legislative history and transcripts were not available when those statutes were first put in play. Rod Wagner may know. But what I do know is that we've had a longstanding effort. And I think based on what happened on Wednesday with our committees and what some of the elected officials on my board shared with me at our executive board meeting Wednesday night, we will be looking again at trying to get authority for second-class cities and villages to have the same authority that first-class cities have. And that statute is 16-251, and that was last amended with this committee's assistance with passage of LB470 in 2012. And the language that was added to that section...and this gives the cities of the first class where they can establish a library with a board or basically one that is directly accountable to them because, as Jeff Kooistra pointed out as city administrator of Gretna, the dilemma that many of our second-class cities and villages are having is that some of the citizens--many of them--you know, they want to know the city isn't taking care of better business, why they're not doing a better job on the management. Well, they can't control that. The analogy I would use for you is that, whereas the State Legislature appropriates funds for the University of Nebraska, the Nebraska Supreme Court has said, you don't have authority to decide how the Board of Regents spends those funds. I'm not saying you should; I'm just saying that's what it is,

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based on Supreme Court decisions. This is not a Supreme Court decision. This is simply a statutory provision which you could address for other cities to give them the same flexibility. Frankly, to me the ideal world is for everybody on the local level to work better together and to understand that in the same way that cities need to do a better job, as it was pointed out to us, in perhaps agenda preparation, things of that nature, libraries need to do a better job of understanding they are part of city government. And you can't just create liability and then walk away from it, because at the end of the day it all ends up back on the city and the ultimate taxpayer. So in 2012, LB470 passed. Section 1 of that says as follows. This was the new language in 16-251, which is the statute governing cities of the first-class, giving them the option to go, again, library board versus direct responsibility for it with the city: "The mayor and city council," of a first-class city, "shall approve any personnel administrative or compensation policy or procedure applying to a director or employee of a public library, reading room, art gallery, or museum before such policy or procedure is implemented." Reason for that, obviously, there's got to be a continuity there. You've got to have personnel procedures that go across the board, because you've got legal counsel for cities that are looking at what they can do to limit liability, making sure people understand that when you're making hiring decisions you cannot say to someone, we're not going to hire you because you're too old. We have examples. Those are...you know, and not that cities are perfect. Believe me, we have a long way to go, too, to do a better job. But the point is at the end of the day the city is going to be responsible. Now I think the librarians have a very important role to play. There's no question the quality of life, the important role that they play across the board, and their role is expanding. And they explained to us, Rod Wagner and Richard explained to us this week the kinds of very innovative things that they're doing across the board. And that's great. But, again, we've had issues with cities. This has been an ongoing issue. This is not a new issue. As Senator Larson said, it's been an ongoing issue. But I think it is time to do something here. And, frankly, until Wednesday I thought, well, maybe this is yet another year when we can just say, let's all work, you know, let's see if there isn't a way that local folks can work better together. And I think that always needs to happen, but some of the examples that came out Wednesday with our members, and also Wednesday night with our board, indicate that there seems to be a lack of understanding that what a library board does has a direct relationship on a liability for a city, and it's a management issue. So with that, I'd be happy to respond to any questions you might have. I'm sorry, I just noticed the red light, so, sorry.

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SENATOR LARSON: It just came on. Thank you. Any...Senator McCollister. [LR288]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Thank you for testimony, Lynn. You indicated there's two organizational structures that the cities can employ with their libraries. [LR288]

LYNN REX: First-class cities can. [LR288]

SENATOR McCOLLISTER: First class. [LR288]

LYNN REX: Second-class cities and villages cannot. And what Jeff Kooistra from Gretna was indicating, and he actually has a legislative request in for us to look at this--which has happened several times before--but that is to allow second-class cities and villages the same authority that first-class cities have under 16-251. [LR288]

SENATOR McCOLLISTER: To what extent are cities free to change that structure? [LR288]

LYNN REX: Cities of the first class, you mean? [LR288]

SENATOR McCOLLISTER: Yes. [LR288]

LYNN REX: Well, cities of the first class, I mean, they...it's difficult to do, because you're going to get...the librarians are very, very, typically extremely well received by the citizens. You know, it's not like a police officer who's out there giving tickets and causing people to have some frustration when they see the lights behind them. I mean, librarians do great things. There's no question about that, so they've got strong support within a community. And so it's very difficult to change it from... [LR288]

SENATOR McCOLLISTER: Politically difficult? [LR288]

LYNN REX: Oh, politically difficult to do it,... [LR288]

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SENATOR McCOLLISTER: But... [LR288]

LYNN REX: ...but legally not difficult for a first-class city. [LR288]

SENATOR McCOLLISTER: I see. [LR288]

LYNN REX: Not legally, but politically it is. But first-class cities have done it when they, in fact, have had outstanding liability caused by librarians. And, again, I'm not just finger pointing at librarians. I mean, you can take any city department, they all need to do a better job. [LR288]

SENATOR McCOLLISTER: Thank you. [LR288]

SENATOR LARSON: Senator Riepe. [LR288]

SENATOR RIEPE: Thank you, Senator. Ms. Rex, my question would be this is, has your board taken a position, either a straw position, in terms of how they would like to see the outcome? [LR288]

LYNN REX: We have had, on behalf of the league, legislation introduced in the past to allow second-class cities and villages to have this same option that first-class cities have. We've been unsuccessful in that so far, but certainly that's something that they have done. And I envision...I mean, the larger cities' and smaller cities' legislative committee recommended introduction of this measure, which is a recommendation to the league executive board, 15 elected officials across the state that are elected to our board. They're going to be...actually they're going to be elected at 10:45 a.m. today. And they will, I have no doubt after what happened and developed on Wednesday, they will be giving us a directive to staff to have this legislation introduced again. Let me give you one other example, if I can. The former city administrator of Springfield made this comment--and this is the former city administrator--which was that essentially when she pointed out some of the liability issues that were outstanding with her library, then the response was she was no longer invited to come to those meetings. Well, those are also public meetings. So you have all kinds of issues like that. And, again, it was brought to our attention cities need to

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do a better...by Rod Wagner and others, cities need to do a better job in development of agendas and things like...and we do need to do that. We need to work together with them. [LR288]

SENATOR LARSON: Thank you. I have a question just for clarification for the record. We've...obviously, this LR288 focuses a lot on second class and villages. And we've highlighted the difference between second class and villages and first class. Do primary and metro-class cities have the same flexibility that first-class cities do as well? [LR288]

LYNN REX: No. In fact, I would think...I'm pretty sure Marty Bilek, who is the chief of staff to Mayor Stothert, is going to be here to testify that Omaha would like to have this expanded to include them as well. [LR288]

SENATOR LARSON: So only first-class cities have... [LR288]

LYNN REX: Only first-class cities have this. And, again, I went back some time ago to--unless committee counsel has found it--to try to find why this distinction and to date have been unable to locate that, but we're going to continue working on that. [LR288]

SENATOR LARSON: All right. [LR288]

LYNN REX: And, again, we want to continue working with the Library Commission. They do a phenomenal job. I think everyone is trying hard out there, but I think, too, that if you had any city department, Senator, either in a city or village, any one of them, they would all love to have independent authority to say, this is what we're going to pay people; this is what we're going to do; this is how we're going to do it, and that's just the way it is. But everybody else is under the same sort of requirements, guidelines. They don't come forward to...I mean, the police department, as an example, there may be some cities that have a foundation, probably not that many. Firefighters certainly do most of the time. But you don't have constituencies as solid as the librarians do. I mean, they're a very solid organization locally and they do a great job for all of us. But there is a point where you have to have accountability. And the frustration that the elected officials have is that they don't have that. They can't manage it, because it is again the

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analogy between the Legislature and the Board of Regents. I'm not impugning the integrity of the Board of Regents or the Legislature. [LR288]

SENATOR LARSON: All right. And I believe that the Board of Regents is also enshrined in our constitution in the sense of... [LR288]

LYNN REX: That would be the difference, yes. [LR288]

SENATOR LARSON: ...where for them to use that example... [LR288]

LYNN REX: Yes. [LR288]

SENATOR LARSON: ...might not be the best example to be used. [LR288]

LYNN REX: Yeah, it's...yes. [LR288]

SENATOR LARSON: They are enshrined in the constitution in terms of that. [LR288]

LYNN REX: That's the only example I could...well, maybe Game and Parks, too, maybe. But there are some examples where the Legislature, you appropriate certain funds, but you may be not able to control how those agencies spend them. But you're exactly right. I mean, that is constitutionally based. [LR288]

SENATOR LARSON: All right. Thank you. [LR288]

LYNN REX: Thank you. And thank you for holding the hearing and, again, welcome back to Lincoln. I know you're here a lot, so thanks for all your effort. [LR288]

SENATOR LARSON: Mr. Bilek. Welcome to the General Affairs Committee. [LR288]

MARTY BILEK: (Exhibit 1) Thank you. Good morning, Senators. My name is Marty Bilek, I'm Mayor Stothert's chief of staff. And Lynn Rex was very eloquent and I agree with everything that

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she says. We've had a chance to discuss this issue not only individually but also at the recent League meeting. And I was kind of surprised to see that so many cities across the state of Nebraska had the same and similar issues with respect to their libraries. And we all have one thing in common, we would like to improve the libraries. We would like to make them better in the same sense that we would concern ourselves with all the other city departments that are funded by taxpayer dollars, whether it be police department, fire department, parks and recreation, and the library. However, in the case of the city of Omaha, which is a metropolitan-class city, as you know, and I guess fundamentally the reason I'm here today is to ask you to include Omaha and metropolitan-class cities in this study and in this effort to improve libraries across the state of Nebraska. And the reason that we want to jump into the fray is because we do have issues and you've read about some of them in the World-Herald, the local newspaper, and I'm going to just summarize briefly a couple of them. One, over the years we've felt that the library doesn't have a sense fiscal responsibility that we wish they did. The other city departments understand that a mayor has a responsibility to prioritize all of the city operations across all of the city departments in an effort to be fiscally responsible. However, in Omaha, we're not able to do that because the library board is responsible for that function, even though the money comes from the city and even though the mayor is typically responsible for taxpayer dollars in every other case, so. And other management concerns that we have with the library is hiring a director. We'd like to have more input. We have none now, even though the city pays a six-figure salary for that person. We have no input as to who is selected. We did meet the finalist, but we didn't have any final say over who they are like we do every other city departments, including police and fire. And, in fact, in some cases we do a rather elaborate selection process to make sure we have the ideal candidate for that job, because they will have huge impact, especially on a city the size of Omaha. The other thing that arose recently is we have some public safety issues. I won't be specific unless you ask, but generally speaking we feel...at least the downtown branch of our library we feel has been somewhat indifferent toward public safety at the library to the point now where those issues were addressed in the Omaha World-Herald. And now there's concern that people would be afraid to go to the downtown branch of the Omaha Public Library, certainly take their kids there. Some of the library staff see the libraries as sort of a sanctuary, almost like a church. And I've got to tell you, I don't see it that way. To me the library is...it's an institution of learning. People should...when they go there they should be able to feel safe whether they're there as adults or whether they're there with children, whether

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they're taking advantage of programming or whatever. So the bottom line is we feel like the libraries should be...instead of being a quasi-city department like you may consider them now, we feel like they would be better served, the people of Omaha, the taxpayers would be better served if the libraries were just simply another branch, another department of city government. It would be able to take advantage of all the management services the city has to offer. Legal...we have a legal department, we have an HR department, we have a finance department, and all of those services are available and continue to be available to the libraries. But with our added management capabilities, the libraries in Omaha I believe would be a better place. Thank you. Any questions? [LR288]

SENATOR LARSON: Thank you, Mr. Bilek. Senator McCollister. [LR288]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Good morning, Marty. [LR288]

MARTY BILEK: Senator. [LR288]

SENATOR McCOLLISTER: I noticed the county also has an item in their budget for counties. What's the interface or what's the relationship between the county and the city with regard to libraries? [LR288]

MARTY BILEK: You are absolutely correct, there is an interface. The library pays a...I don't have the number with me, but the library pays a certain amount every year to the city of Omaha to provide library services to the people outside of the city limits. And in the case of Douglas County the people outside the city limits of Omaha number right around 70,000, so they would like to be able to enjoy the services of a local library and we do provide that to them for a fee. [LR288]

SENATOR McCOLLISTER: As you look at the budget for the library, what percentage is contributed by the city and what percent by other sources? [LR288]

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MARTY BILEK: The...I don't have the percentage up; I will get it for you. I will tell you that the library's budget is \$14 million. But they do have a friends of the library fund and they do go to that for certain things, but I don't know what the percentage is between the two funds. [LR288]

SENATOR McCOLLISTER: But a major component of their budget or their revenues are from the city? [LR288]

MARTY BILEK: Absolutely. The lion's share of their budget comes either from Omaha taxpayers or, in the case you pointed out, Douglas County taxpayers who are paying the city for that service. [LR288]

SENATOR McCOLLISTER: Okay. Thank you, Mr. Chairman. Thanks, Marty. [LR288]

SENATOR LARSON: Senator Riepe. [LR288]

SENATOR RIEPE: Senator Larson, thank you. Marty, thanks for being here. [LR288]

MARTY BILEK: You're welcome. [LR288]

SENATOR RIEPE: The question that I would have would be is, does the board...library board now become the library advisory board? [LR288]

MARTY BILEK: You know what... [LR288]

SENATOR RIEPE: If you take the financials away from it, you fundamentally have neutered it in a way. [LR288]

MARTY BILEK: Well, the short answer is going to be, yes, we would like to have an advisory board for the library. As a matter of fact, the city of Omaha has probably 55 boards and commissions that exist for the sole purpose of advising us on a wide variety of issues from law enforcement to libraries to parks. The Landmarks Heritage Commission advises us on historic buildings in downtown Omaha. Regardless, we would love to have that advisory group there so

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that they can make decisions on content of the library, in other words, what materials are being purchased. We don't want to tamper with that. We like the fact that this advisory board is in place to decide on issues like that, because that's one of the criticisms is that if government has more control then they're going to start dictating what's on the shelf. We have no interest in doing that. We would love to have the library board continue to do that. Whether it's called a board or a council or some advisory group, we would love to have them continue in that capacity. [LR288]

SENATOR RIEPE: Senator Larson, my question would be, what action, if any, is needed to include Omaha in this process? [LR288]

SENATOR LARSON: I think as the General Affairs Committee will continue to look at how we make changes or if there are going to be changes introduced, as the Chairman, I usually would be happy to look at that and work with any of the Omaha senators or even if Senator Hughes from Venango wants to get involved in a metropolitan class. Would Venango qualify for that? [LR288]

SENATOR HUGHES: No, not quite. [LR288]

SENATOR SCHILZ: Not yet. [LR288]

SENATOR LARSON: I don't think it would be very difficult at all. So if you'd like to... [LR288]

SENATOR RIEPE: I just didn't know whether we needed some motion, action or... [LR288]

SENATOR LARSON: No, no, no motion or action. I think as we continue to collect testimony, if it's the consensus of the committee that we want to continue and bring metropolitan and primary class cities within the scope of this, then we can do that fairly easily. [LR288]

SENATOR RIEPE: Thank you. [LR288]

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SENATOR LARSON: You're welcome, Senator Riepe. Any further questions? I do have a few, Mr. Bilek. First of all, I appreciate you coming in. You do have very similar concerns. I'll have a letter for the record coming in... [LR288]

MARTY BILEK: Thank you. [LR288]

SENATOR LARSON: ...soon from a couple...from a second-class city that has very similar concerns that you have, as well as Mayor Stothert. And I appreciated you talking about and I just want to get clarification for the record because, as I start to think of how this could lay out, what you guys are asking for is much more control or much more oversight over the budgetary and the personnel aspects of it and less so the content aspects of the library budget. Correct? [LR288]

MARTY BILEK: Correct. [LR288]

SENATOR LARSON: So would the city of Omaha...and I know you can't speak for...you might have to ask Mayor Stothert for a key example. But you would like the ability, if your budget was...I know you said \$14 million, the administrative part of that \$14 million may be \$8 million and the content portion of it is \$6 million. The city would like to control the \$8 million of that...the administrative side of it but maybe the library council or board or whatnot, when it comes to the content side, that that might be their purview of what books to buy, what magazine subscriptions, something like that to where, you know, you guys aren't telling them what they can and can't buy. [LR288]

MARTY BILEK: I would prefer that that's the way that it was. [LR288]

SENATOR LARSON: That's the way...so, you know, that way there is none of that, you know, politics is trying to stop Harry Potter or Fahrenheit 451 didn't get on the shelf or anything like that, just more the administrative side and less of the content. [LR288]

MARTY BILEK: For some, this will be a First Amendment issue. And for those who are concerned about the First Amendment, I agree with them. We don't want to tamper with that aspect whatsoever. [LR288]

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SENATOR LARSON: Okay, good. And I think that's important. As we continue to move through this and as we've studied it through the summer I think we understand what the cities are facing and some of the issues. My second-class cities and villages are...as I said, I don't have any city bigger than a second-class city in my legislative district, so I understand what they're facing. And it's interesting to hear that Omaha is facing similar issues and if we pursue this I'm sure we can work to include them. So, thank you. [LR288]

MARTY BILEK: Okay. Thank you, Senator. Senators, thank you. [LR288]

SENATOR LARSON: Welcome to the General Affairs Committee. [LR288]

RICHARD MILLER: (Exhibit 2) Thank you, sir. Good morning. Senator Larson, members and staff of the General Affairs Committee, my name is Richard Miller. I'm the library development director at Nebraska Library Commission. Rod Wagner, who is our director at the commission, has asked me to share information with you which we hope will be useful for you as you look at LR288. There are 267 public libraries in Nebraska. The Nebraska Library Commission, which is a state agency, along with four regional library systems, works with all of these libraries providing consultation, training, planning, and so forth to help them deliver services to their constituents. LR288 addresses what I would call a delicate balance between local elected officials and their appointed library boards in cities of the second class and villages. And in those cities, as you've heard, those are governing--also called administrative--library boards. And in libraries of the first class, as you have heard, they have the option of having either governing or library boards. In our 30 first-class cities in our state, 18 of those library boards are governing; 12 are advisory. Now there is at least one hybrid. And since the mayor of Seward is here, in the city of Seward their personnel issues are handled by the city, whereas the rest of the issues that I'll be talking to you about are handled by the library board. When I'm asked by city council or a village board to come and do training on basically what the library laws say--and I'm asked fairly often--I talk to them about the relationship between them and their library board. And basically to summarize what Chapter 51 says in several sections, and that's the major library section of the statutes: The village board or city council decides how many board members there will be, the length of their term, and whether those library board members are appointed or elected. We used to have one library in our state with elected board members; that's Ralston. They don't do that

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anymore, but that option is still there in the law. The library board, in turn, is governing over the affairs of the library and it's empowered under Chapter 51 to: adopt bylaws, rules, and regulations for its own guidance and the government of the library; to decide the expenditure of all money collected and donated to the library fund; to make decisions about where the library will be housed; to appoint, evaluate, and remove library employees; to approve policies under which the library operates; and to report on their trust to the village board or city council on an annual basis. LB470, which you've heard Lynn talk about and other people talk about, was passed about three years ago, did change a couple sections related to the personnel policy administration and procedures. And that was to address perceived difficulties in library boards not following legal personnel policies and procedures. As we work with local officials, however, whether those are library board members or village councilmembers or city councilmembers, we find that some of them don't understand the content of that statutory change and are sometimes confused about laws in general. I'm going to list just a few of them and in the full text, which you'll get electronically which we will send to you, there are more examples. Here are a few: a second-class city in which the library board in this case violated the Open Meetings Act when they were talking about their library director and she wanted the meeting open, they refused to do that, clear violation of the Open Meetings Act; in that same town the mayor placed that library director on a six-month probation--that is not within the purview of the mayor, according to Chapter 51; the village in which the roles of the village board, the village clerk, and the library board were so confused that the village board members were selecting books for the library, the village clerk was serving on the library board, and a support staff member in the library was reporting to the clerk--very confusing. I won't list the rest of the examples, but you can see those. I did want to tell you that we address on a regular basis at the commission and the Nebraska Library Association and our regional systems attempt to address issues like this by doing things like providing scholarships to John Spatz's workshops on the open meetings law; by working with Susan Sapp, of Cline, Williams, Wright, Johnson and Oldfather, to produce a template and video related to personnel policies; by teaching at Nebraska Municipal Clerk Institute and Academy, both at the state level and the regional level; by requiring that library boards to take 20 hours of CE every three years and library directors take 45 hours; and on and on. Basically, what I want to say is--because I know I'm running out of time--is that I think that the work that library boards do is much too detailed to be handled at the level it needs to be handled by the city. I

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think the city or the village has to choose good library board members to do that work. Thank you. [LR288]

SENATOR LARSON: Thank you, Mr. Miller. Any questions? Senator Riepe. [LR288]

SENATOR RIEPE: Thank you, Senator Larson. My question gets to be is you've stated that 18 of, I believe it's the first class, correct me if I'm wrong here... [LR288]

RICHARD MILLER: Yes. Yes. [LR288]

SENATOR RIEPE: ...are governing and 12 are advisory. [LR288]

RICHARD MILLER: Yes. [LR288]

SENATOR RIEPE: I'm interested how the benefits, if you will, of those staff play out. I mean, are they...I'm talking about healthcare and pensions, because you're going to get probably a different price, different policies,... [LR288]

RICHARD MILLER: Sure. [LR288]

SENATOR RIEPE: ...which then becomes possibly very confusing if they're in one camp versus the other. Can you give me some insight? [LR288]

RICHARD MILLER: Well, basically, we've talked to attorneys about this before. And those library employees are city employees, because an attorney will say, who issues the check for those people? Well, they're issued by the city. They're not issued by the library board. [LR288]

SENATOR RIEPE: They're issued...you said city, not state? [LR288]

RICHARD MILLER: By the city, yes, by the city. To answer your question directly, there is not a difference in whether they have benefits or not. That's determined, certainly, by the city. What is different is that the selection of the library director and then the administration of the library

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staff by that library director is done by that library director, because the library board selects, hires, and evaluates or fires the library director. That's the way it works. And the difference between administrative or governing and advisory, that's driven not so much by this structure as it is by how much money the library has to operate. Many of our libraries have part-time staff because they don't have much budget. So most of them don't have benefits. There are some libraries where that's not the case, but... [LR288]

SENATOR RIEPE: Okay, thank you. [LR288]

SENATOR LARSON: Senator McCollister. [LR288]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. And thank you for your testimony. [LR288]

RICHARD MILLER: Sure. [LR288]

SENATOR McCOLLISTER: Just to make certain that I heard you correctly, irrespective of the structure that you choose to operate under, the open meetings law and all the EEOC regulations are complied by...with. [LR288]

RICHARD MILLER: Yes. [LR288]

SENATOR McCOLLISTER: That's correct? [LR288]

RICHARD MILLER: Yes. [LR288]

SENATOR McCOLLISTER: How do you deal with the issue that Senator Larson brought up, which is the First Amendment and book selection and things like that, under the structures employed? [LR288]

RICHARD MILLER: Well, what we tend to talk to libraries about is that there are issues of First Amendment, as was brought up by the gentleman from Omaha. There is an organization called

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the American Library Association which is a proponent of intellectual freedom, of the ability to choose what needs to be chosen to be put on the shelf without political...undue pressure being brought to keep this book, take this book out, whatever. So librarians, and in particular professional librarians, really follow national guidelines on intellectual freedom, selection of materials, and so forth. [LR288]

SENATOR McCOLLISTER: Great. [LR288]

SENATOR LARSON: Mr. Miller, I do have one. So are you testifying on behalf of Rod Wagner, the director of the commission, or... [LR288]

RICHARD MILLER: No. I'm testifying...he will be testifying on LR290, which is coming up. [LR288]

SENATOR LARSON: Okay. So you...but you are testifying as part of the Nebraska Library Commission, correct? [LR288]

RICHARD MILLER: Yes, sir, I am. [LR288]

SENATOR LARSON: And so is it...and you are a state agency? [LR288]

RICHARD MILLER: Yes, we are, as opposed... [LR288]

SENATOR LARSON: Agency...I can't remember what agency number you are. [LR288]

RICHARD MILLER: Yes. [LR288]

SENATOR LARSON: I've sat on Appropriations for... [LR288]

RICHARD MILLER: 34. [LR288]

SENATOR LARSON: 34. [LR288]

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RICHARD MILLER: Yes, that's it. [LR288]

SENATOR LARSON: Agency 34, all right. I guess nobody else has sat on Appropriations so you and I... [LR288]

RICHARD MILLER: I have to sign it on the parking slip, so I know it's 34, yeah. [LR288]

SENATOR LARSON: So is it...and you have a board as well, correct? [LR288]

RICHARD MILLER: Yes, we do: board of commissioners appointed by the Governor. [LR288]

SENATOR LARSON: Appointed by the Governor. And is the Library Commission taking...because as I read through the last paragraph, are you guys taking a position on LR288? I mean, it feels like you're kind of walking a line but it...saying that you really don't support giving the cities any more control than they currently have or there... [LR288]

RICHARD MILLER: I think...yeah. [LR288]

SENATOR LARSON: It just...I guess what I wanted to say, like, is the commission taking a position? And two, if you are, when did the directors decide that, or the commissioners, I should say? [LR288]

RICHARD MILLER: I would say that our position would...I don't know how much they've talked about this yet, but I would say that our position at the commission is that we want to work with the cities because we hear as many stories on the elected official violating this versus the board violating this as we hear otherwise. [LR288]

SENATOR LARSON: Okay. [LR288]

RICHARD MILLER: And so we are kind of neutral in that sense. But what I would say to you-- and this is passed on to you from Rod Wagner--is that we look forward to working with the League of Nebraska Municipalities or whoever else to work on improving this whole thing. But I

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think that the point that I was making earlier is that the amount of detail that library boards deal with is way beyond what I think city councils and village boards want to deal with. [LR288]

SENATOR LARSON: Do you think...we heard from Mr. Bilek and how the city of...and I'm using that as an example or even how this could work with the city of Gretna. We heard their city administrator come in. Mr. Bilek talked about how Mayor Stothert would like to appoint her own director to run the city library system in Omaha and that they'd still be willing to have that advisory board for content or whatnot. And do you think that if second-class cities and villages and even the one metropolitan-class city and the one primary-class city in this state, if they were able...if their mayors were able to hire their own library directors to serve in their cabinet and whatnot, don't you feel or do you feel that those library directors would be able to dive into the details far enough to understand what is going on instead of just, you know, the library board, because, frankly, I know all the library board directors in O'Neill very well. [LR288]

RICHARD MILLER: Sure. [LR288]

SENATOR LARSON: And great people, love them all, and they all go to the meetings, and they're all interested, but I can tell you that it's not high on the priority. You know, they...church on Wednesday nights and everything else. I think in small towns, at least, it's oftentimes the library director that's dealing with almost all of this. [LR288]

RICHARD MILLER: Sure. [LR288]

SENATOR LARSON: So I guess that's kind of my question. But wouldn't you kind of agree that it is the library director in most instances? [LR288]

RICHARD MILLER: It really depends on the library. Let me answer your question by saying this: I think when you look at Chapter 51 and it says that the city council or village board has the opportunity to determine if those library board members will be appointed or elected, that to me bespeaks the importance of those library board members. I think that village boards and city councils don't spend enough time vetting members of those library boards. I think that that's the case. I think that's why we, at the commission, and why Nebraska Library Association and why

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our regional library system is doing training. I think we do regular training for those folks. We feel it's important. Of course, I'm coming from a library perspective. Of course, I have that bias. But what I'm saying is that I think the public administration lesson is that the elected officials appoint excellent library board members who then carry out their charge. I had a whole list when the red light came on of the kinds of things that library boards deal with that I don't think, quite honestly, city councils and village boards want to deal with. Some years ago I was living and working in Montana and there was a book that was being attacked by a particular group in town. They wanted it removed. And I thought to myself, I bet the city council was saying, I'm glad we don't have to deal with that. Now that's a content issue, I realize that. So that answers some of what you were saying earlier. [LR288]

SENATOR LARSON: Yeah, and I appreciate that. And I think you're probably right to a certain extent. There are issues that the city council might not want to dive that deep into, but...and I can appreciate that and whatnot. But I think we also understand probably most members of this committee are those of us that, you know, hearing certain concerns from our communities and whatnot,... [LR288]

RICHARD MILLER: Sure. [LR288]

SENATOR LARSON: ...also understand the plight of the cities in the sense of how they want a little more control over, you know, the personnel decisions and not so much... [LR288]

RICHARD MILLER: No, I understand that. [LR288]

SENATOR LARSON: ...the day-to-day operation of the library, which I think you guys have a very strong concern in,... [LR288]

RICHARD MILLER: Yes. Yes. [LR288]

SENATOR LARSON: ...but more of an overall management of the system and not the day-to-day aspects. I would hope, because I think when we do talk about the First Amendment issue that a number of people have brought up, that's very important to... [LR288]

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RICHARD MILLER: Sure. [LR288]

SENATOR LARSON: ...more fly at the 30,000 feet level instead of the crop duster 500 foot level. [LR288]

RICHARD MILLER: Yeah. I would ask, Senator Larson, that as you're considering any of this, whether it's legislation or discussion or whatever it is, that you get to the bottom of the whole situation in a village or in a town before you come up with legislation or say, oh, this is this, this...and so forth, because we're hearing, of course, the library side since we're library oriented. You folks are hearing the elected official side or perhaps management side. [LR288]

SENATOR LARSON: We get both sides, I can assure you. [LR288]

RICHARD MILLER: Yeah. It needs to be the whole picture, because... [LR288]

SENATOR LARSON: Okay. [LR288]

RICHARD MILLER: And when you get my testimony...I'm sorry, I didn't realize that it was supposed to be electronic. [LR288]

SENATOR LARSON: They still printed it out for us, don't worry. [LR288]

RICHARD MILLER: Yeah, anyway, there's a colored map in there showing where all the libraries are in your districts. That's why I'm sorry you don't have that. If you want it, I'll pass it out to you. Anyway, when you do that, look at some of the examples that I have listed in there of situations where, you know, violation of open meetings law by a village board. In fact, there's even a court case in there that occurred in which the city lost going to district court, because they basically started making decisions and talking about public affairs over e-mail rather than following the Open Meetings Act. So just look at those examples. I think that's useful. [LR288]

SENATOR LARSON: In looking at the map, Senator Schilz and I might have the most libraries in our districts. I think we both counted 20 in both of us. [LR288]

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RICHARD MILLER: Yes, you do, you have a lot of them. You have a lot of them. Yeah, you do, because in some of the more populous areas it's usually one library covering a broader area, that's right. [LR288]

SENATOR LARSON: And you're even missing one on here. [LR288]

RICHARD MILLER: Oh? What are we missing? [LR288]

SENATOR LARSON: Yeah, it's Monowi has their own library. [LR288]

RICHARD MILLER: Oh, okay. I don't think... [LR288]

SENATOR LARSON: I have two constituents in the room and they're the two that... [LR288]

RICHARD MILLER: Those are what we call the legally established libraries. [LR288]

SENATOR LARSON: Legally. [LR288]

RICHARD MILLER: They've gone through Chapter 51 or Chapter 16 or whatever and they've done their business. [LR288]

SENATOR LARSON: She is a town of one and she has her own library. [LR288]

RICHARD MILLER: (Laugh) Okay. We have another library that's in somebody's garage. That doesn't count as a public library either. [LR288]

SENATOR LARSON: Senator Riepe would like to close out here. [LR288]

SENATOR RIEPE: I have an additional question. You said that, I hope that you get to the bottom of this. And so that intrigued me because, quite frankly, that's what hearings are about. [LR288]

RICHARD MILLER: Sure. [LR288]

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SENATOR RIEPE: And so it leaves a little bit of suspense and mystery in terms of, quote unquote, what is the bottom? And it implies that there are a lot of secret things or something like that, and I think that this is the time when we want to clear those. [LR288]

RICHARD MILLER: No, it's just that I...no, no, no. It's just that I ran out of time. I could give you the other examples if you want it. [LR288]

SENATOR RIEPE: No, but I'm asking the question... [LR288]

RICHARD MILLER: Oh. [LR288]

SENATOR RIEPE: ...to give you more time to explain to us what are these... [LR288]

RICHARD MILLER: Oh, okay. Okay. [LR288]

SENATOR RIEPE: ...to the bottoms. What is the bottom? [LR288]

RICHARD MILLER: I'm sorry, I was ignorant of that move. Thank you. Let's see: the second-class city in which the mayor told the library director that she could not offer English as a second language to Spanish-speaking people outside of the town on her own time, the situation was considered so egregious that it caught the attention of the American Library Association, which granted \$5,000 to the library director to help with legal fees and other costs after she resigned her position; the second-class city that wants the library to follow the city's personnel policies despite situations that make that impossible, their personnel policy stated that every employee has to sign in at the beginning of the day and out at the end of the day, even though the library is open on weekends and evenings, so they couldn't possibly sign in or sign out again; that second community in which a statement that the city council makes the final decision on hiring or terminating of employees; another statement that says that every employee must be interviewed by the department head and by city council; another second-class city in which the city manager will not provide accurate budget information to the library director and the library board to enable them to make informed budgetary decisions--I just met with that village board and library board in the last two weeks; a village in which the village board decided without consulting with

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the library director or the board to install security cameras in the library; two village board members, young people who were very tech savvy, bragged about the fact that they now could view library users in the library on their smartphones, not realizing that there's confidentiality of library records; and that same village board, whose agenda for the meeting where I was doing training for the board, the agenda consisted of seven individual words for their seven agenda items, a clear violation of the Open Meetings Act. Those are just some examples. [LR288]

SENATOR RIEPE: Is it fair to say that those are all fundamentally management issues? [LR288]

RICHARD MILLER: Oh, I think so. [LR288]

SENATOR RIEPE: And should be handled as management issues? [LR288]

RICHARD MILLER: I think so. [LR288]

SENATOR RIEPE: Okay. So not legislative issues? [LR288]

RICHARD MILLER: I don't think they're being handled. Well, that's my view, but I think training issues, management issues is what they are. And if we can work successfully with the League of Nebraska Municipalities and NLA, Nebraska Library Association, and our regional library systems, I think that's an issue. I think part of the problem here is that you have these two silos. You've got the elected officials and you've got the appointed library board. And in a lot of these towns, I don't know why they're not talking to each other. If I were there, I'd talk to everybody--you can tell by how I run my mouth--but some of these people are reluctant to talk to each other apparently. But I think this is an issue that, yes, I agree with you, sir. [LR288]

SENATOR RIEPE: Thank you. [LR288]

SENATOR LARSON: Thank you, Mr. Miller. [LR288]

RICHARD MILLER: Certainly. Thanks for your time. [LR288]

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SENATOR LARSON: All right. And I think...do I have one more testifier? Just the one or is there...did someone else come in? All right. Welcome to General Affairs Committee. [LR288]

GARY DUNCAN: Thank you. Good morning. [LR288]

SENATOR LARSON: Good morning. [LR288]

GARY DUNCAN: (Exhibits 3 and 4)I'm Gary Duncan, I'm a city administrator of the city of Yutan and I represent the city of Yutan. And with me is Dawn Schmidt who's the city clerk, treasurer of the city of Yutan. Yutan is a city of the second class with a population of 1,200, and it is located in Saunders County. First, the mayor, council, and administrative staff of Yutan are very, very pro city library. During the past two years, the city has spent over \$86,000 plus allocating 500 maintenance man hours to convert a vacant building into a new library facility with more than twice the space of the previous library facility. In the past 12 months, the mayor, council, and administrative staff have become frustrated with the local library board due to the fact that we have been allowed little, if any, input in how the library is operated and what the library staff is paid. This year, for example, the library board gave the library director a 50 percent pay increase over the objections of the mayor and council. This created budget issues for the library. In communicating with other administrators of cities of the second class I've learned that many other communities have the same problems Yutan has had. Several of the administrators have stated that they wished that the cities of the second class could have the same option of treating their library board as an advisory board like cities of the first class do. Chapter 16-251 of the Nebraska statutes allows cities of the first class to treat their library boards as an advisory board with the members of the advisory board having only those powers and duties to advise and recommend to the council, mayor, and city administrator as granted by the city council. All of Yutan's other community boards are considered advisory boards. We respectfully request that the General Affairs Committee consider recommending legislation allowing cities of the second class the right to classify their library boards as advisory boards and not governing boards. Some examples of the problems that we've had: I have had several residents come to our office and say the library staff is badmouthing the city council, the city administrator, and others, that they are destroying the library. And that is not what the council, mayor, and administrator is trying to do. Also, the league does have and is compiling examples of problems that various

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communities are having. And Lynn Rex said she will be providing that information to you.
Thank you. [LR288]

SENATOR LARSON: Thank you, Mr. Duncan. Are there any questions from the committee?
Seeing none, thanks for coming down today. [LR288]

GARY DUNCAN: Thank you. Now am I correct that because this is a paper copy... [LR288]

SENATOR LARSON: Get it...hand it to my committee clerk and we'll make sure it'll get into the
record. [LR288]

GARY DUNCAN: Okay. [LR288]

SENATOR LARSON: And I'll make sure that we'll provide that entire record for the whole
thing that we send to the committee members. So everything... [LR288]

GARY DUNCAN: Thank you very much. [LR288]

SENATOR LARSON: Yep. Oh, you would like to testify? All right, one more testifier. Thank
you. Welcome to the General Affairs Committee. [LR288]

GAYLE ROBERTS: Thank you. Okay, I'm very new at this. I've never done it so I hope I don't
break any rules. [LR288]

SENATOR LARSON: Senator Hughes will get on you if you do, don't worry. [LR288]

GAYLE ROBERTS: Okay, good. [LR288]

SENATOR HUGHES: You'll be fine. [LR288]

GAYLE ROBERTS: (Exhibit 5) My name is Gayle, G-a-y-l-e, Roberts, R-o-b-e-r-t-s. I live in
Omaha, I am the director at the Blair Public Library, and I am the current president of the

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Nebraska Library Association, also known as NLA. And NLA is a chapter of that bigger American Library Association, so we kind of all funnel downward. We support and stand for all libraries in the state of Nebraska and have been doing so for the past 34 years. We've met and we believe that both LR288 dealing with library administration and the LR290 on the digitization project, which is a little later, are both items that are necessary and need to be discussed. And we appreciate that you are forming this committee and doing a study and, hopefully, coming up with some answers to it in resolutions. I am here on behalf of NLA only to offer our expertise and knowledge to the General Affairs Committee, if necessary and appropriate, and to ask that we be considered a partner and contributor to the study. We believe that a collaboration between the state of Nebraska, the Library Commission, and NLA could prove beneficial and the final outcome would possibly prove that our interests are not necessarily at odds. Communication can be forwarded to one of three people I have listed on my form: myself as president; Julee Hector as NLA vice president, she's here at Lincoln City Libraries; and Steve Fosselman who is the NLA advocacy committee chair and he is at the Grand Island Public Library. The people of Nebraska we feel are well served by our outstanding libraries, whether it be public libraries, special or academic, copyright and administration legislation affects the service provided to the people of the great state of Nebraska. Let us continue our efforts to not only provide the best service possible to our fellow Nebraskans, but to uphold the integrity and rights of our patrons, our employees, and our institutions. Thank you for your time and consideration on this. And just having listened to everything else now, I just feel compelled that I have to say, I am probably the strangest librarian in the world in that I'm a very proadministration kind of person and management kind of person. But I also have avid beliefs in the right of the patron. And whatever rules and regulations we come up with need to reflect that whoever has that power has to use it diligently and correctly so that we do not lose power to the...for confidentiality, we do not lose not just material concerns but we have the right. It's really hard for me to go to my city...I work with an advisory board and I love my city administrator and all the council but, gosh, they would never want to have to deal with hiring my students every other week, you know. So there are limits that we agree on and we've worked it out. Some of those smaller areas we feel might not have that kind of capability just because they are smaller. And nepotism, abuse of power, all of that can work in. And in smaller towns we sometimes all know each other when we're working together. So just...we would like to make sure that all of those things are kind of covered and held responsibly as well. [LR288]

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SENATOR LARSON: Thank you so... [LR288]

GAYLE ROBERTS: So thank you very much and I hope I didn't mess that up. [LR288]

SENATOR LARSON: No, you did well. Thank you, Ms. Roberts. The first time is always interesting, so you did very well. And thank you for coming to join us. [LR288]

GAYLE ROBERTS: Okay, good. Thanks. [LR288]

SENATOR LARSON: Are there any questions from the committee? Seeing none,... [LR288]

GAYLE ROBERTS: Seeing you were all so nice, I might be coming back again sometime. [LR288]

SENATOR LARSON: Please do. Please do. [LR288]

GAYLE ROBERTS: Thank you. [LR288]

SENATOR LARSON: Have a nice day. Any further testimony on LR288? Yes. [LR288]

MIKE FEEKEN: Hello. [LR288]

SENATOR LARSON: Welcome to the General Affairs Committee. [LR288]

MIKE FEEKEN: Thank you. Chairman Larson, committee members, good morning. I apologize, I got here a little bit late and so maybe some of this had been covered and I don't have any prepared... [LR288]

SENATOR LARSON: Can you please state your name and spell it? [LR288]

MIKE FEEKEN: Yeah, it is Mike Feeken, F-e-e-k-e-n. And, again, I apologize, I don't have written testimony. I didn't think that I was even going to maybe say anything, but I am actually

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on the library board in an appointed position for the city of St. Paul, Nebraska. And we're actually in a unique situation in St. Paul as we are a combined public library and a school library. And so on our board...on our library board we actually we have representation from the school district as well. And so there's a whole nother set of budget concerns and policy concerns that we have to deal with in addition to some of the public library thoughts. I don't have a whole lot to maybe contribute. I just think that...I just wanted to add that as far as St. Paul is concerned or as our library board is concerned, we take this as a huge responsibility. Okay? And talking with our city council, who appoints three members of the board--and, again, the school district appoints three members to our board--that they understand that the city council has a big responsibility in choosing the type of representation that will listen to city personnel and the city council and some of their wishes in regards to personnel, in regards to budget, in regards to certain content issues. And so, again, I don't have maybe a whole lot to add, but I just want you to maybe understand or realize that we, as an appointed board, and throughout the state, I think we do understand what our role is and what kind of awesome responsibility that we really do have and that it is maybe part of the due diligence of a council or a village board that appoints these members to make sure that they are appointing those types of folks that are going to, you know, understand the issues or wants of the council. So with that, if you have any questions... [LR288]

SENATOR LARSON: Senator McCollister. [LR288]

SENATOR McCOLLISTER: Yeah. Thank you for your testimony. Thank you, Mr. Chairman. Interesting concept and unique, as you indicated. Do you also split the budget? Is this the... [LR288]

MIKE FEEKEN: Yes. Yes, in fact, we do. I can't give you the percentages just off the top of my head, but...so...and Richard Miller, he might be able to actually follow up because we just had to go through this big accreditation renewal with Richard and the Library Commission. So let me try to maybe talk about our budget a little bit. So when the city council...at their annual budget hearings, we, as a library board, go and make our annual request. And in that, out of certain operation budget items, we will receive a reimbursement from the school district. [LR288]

SENATOR McCOLLISTER: So it's not a 50-50 split? [LR288]

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MIKE FEEKEN: It is not a 50-50 split because the hours are not 50-50. Okay? [LR288]

SENATOR McCOLLISTER: Okay. [LR288]

MIKE FEEKEN: So...but by combining those efforts, obviously, there's a big savings through... [LR288]

SENATOR McCOLLISTER: I see. [LR288]

MIKE FEEKEN: ...the number of books, the personnel, and the number of hours that we can be open. So when the school is in session and the...basically, the typical school hours, the school pays for that school media specialist, which is, in turn, our library director. It's the same person. When the school is not in session or outside of those typical school hours, it's paid to city personnel. [LR288]

SENATOR McCOLLISTER: I see. And is the library inside the school building? [LR288]

MIKE FEEKEN: It is a...it is connected to the school, but it is not inside the school. [LR288]

SENATOR McCOLLISTER: I see. [LR288]

MIKE FEEKEN: I mean, it's kind of an annexed type of situation... [LR288]

SENATOR McCOLLISTER: Well, thank you very much. [LR288]

MIKE FEEKEN: ...completely open to the public during school hours, though. And we still follow under all the freedom to view, freedom to read, all of those types of statements that we, as a public library, need to adopt. [LR288]

SENATOR McCOLLISTER: Thank you. [LR288]

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SENATOR LARSON: Thank you, Senator McCollister. Are there any further questions for Mr. Feecken? Seeing none, have a nice day. [LR288]

MIKE FEEKEN: Thank you. [LR288]

SENATOR LARSON: (Exhibit 6) Any further testimony on LR288? With that, I do have a letter for the record that the mayor of O'Neill, my hometown, asked me to read in: Thank you, Senator Larson, for introducing LR288 for the purposes of studying the statutory relationship between second-class cities and public libraries within their jurisdiction. In the past year the city of O'Neill has had disciplinary issues with our library director. City Clerk Schwanz and I worked tirelessly with the library board president in assisting with disciplinary action paperwork, meeting with staff and meeting with the library director. One of the offenses could have led to immediate termination under our current personnel policies. Section 51-211(1), states that "The library board may...appoint a suitable librarian and assistants, fix the compensation of such appointees, and remove such appointees at the pleasure of the board." Our concern is, when faced with disciplinary issues, the statute is holding a library board comprised of volunteers responsible for termination of employment. The city was faced with board members not wanting to take action on these items, including putting to a vote to terminate the director. More specifically, the library board was pressured to make decisions based on the opinions of citizens that had been recruited by the library director. The board ultimately felt that the chain of command in the employee manual should be followed, which would put that responsibility where it should lie, with the mayor and council. As the General Affairs Committee studies the current statutory structure, we ask that you consider amending Section 51-211(1) to the library board serving as an advisory committee with regard to administrative matters; thus allowing elected and appointed officials to work with their library employees as they do will (sic) all the other departments and city personnel. Sincerely, Mayor William T. Price. So with that, I will close the hearing and we will move to our next one, LR290. We will move to LR290. Members of the General Affairs Committee, I'm Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n. I represent O'Neill, Nebraska. I am introducing LR290 after hearing from a newspaper publisher in my legislative district with concerns regarding how libraries are achieving...are archiving their local newspapers. The publisher was concerned about the quality and procedures of how their newspapers were being archived as well as balancing the policy of preserving the local

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newspaper of record with the newspaper's ability to protect its proprietary rights. There are people here representing the newspapers, including the Nebraska Press Association, who can testify as to their concerns regarding this archival method. With that, I will continue to move on, on LR290, and we can hopefully have a good, productive hearing. Thank you. Welcome to the General Affairs Committee. [LR288 LR290]

ALLEN BEERMANN: (Exhibits 1-3) Thank you very much, Chairman. Senator Larson and members of this committee, we appreciate the opportunity to hear...have you hear testimony today from about five or six people on this general topic. I am Allen Beermann, B-e-e-r-m-a-n-n. It is my privilege to be the executive director of the Nebraska Press Association and we represent all of the legal newspapers in the state of Nebraska. This issue will have various components to it. One of the issues that complicates this whole matter is the fact that involved is the copyright law. That law is a federal statute. And there are people here who can talk about that a little bit later, but...so our Legislature does not have much authority to amend the federal law, the Copyright Act. Also involved in this will be the State Library Commission, and they're going to have people to testify because they're a player in this issue. Also the State Historical Society and their director is here today to talk about what their requirements are. We also have three publishers from the state of Nebraska who will talk about the problems they have and so on and so forth. I will have a few exhibits as I go along to hand out so that you can see what is happening and what can happen if procedures are followed. This all started when one of our publishers, actually two--and they're board members of ours and they represent various papers, they're here to testify--they had kind of a surprise happen. And I'm going to talk about a similar surprise. By accident I learned one day that the library in Lyons, Nebraska, had just finished digitizing their paper--all of the back issues and current through I think now, August of this year, which is a nice public service. It has some problems in that the vendor they used may not have done a good enough job and followed standards to make it useful for the library patrons or the citizens. Yes, their paper is digitized, but when you go to look at it on various readers and machines, you can't use it. And so that's sad. But anyway, the Lyons library had contracted with a vendor to come in to digitize all of their papers. I think they worked with the State Historical Society to backfill with microfilm those issues that they did not have. And then of course they're now doing it currently through August of this year. They found out later the publisher doesn't realize that his paper has now been digitized. The publisher is in Blair, Nebraska. Not only that,

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but the vendor is in Cedar Rapids, Iowa. The vendor probably is a good vendor--we don't know. We have copies of the contract which I'll share with you. But the newspaper publisher finds out for the first time that his newspaper in Lyons, Nebraska, is on-line on a Web site in Cedar Rapids, Iowa, and potentially available for commercial use, thus copyright violations. And so we also have a nice history of the various papers that have digitized with certain vendors around the state. And I have some exhibits to hand in for all of you if you want to take these. We also have some copies of contracts that vendors use. And I'm not passing on the legality of these vendors or their legitimacy, but they do exist. Also, there is the Nebraska Community Foundation that is now involved because they have grants to help libraries. So I will give these to the members of the committee so that you'll have them for your files. And I would be happy to answer questions, but there are people here today who are going to attend to the various questions you might have and all of the various components of this issue. [LR290]

SENATOR LARSON: Thank you, Mr. Beermann. I will open it up for questions. And know I see a few individuals waiting to come up that will have...that will probably be able to continue to describe the issue. But any questions from the committee for Mr. Beermann? Seeing none, thank you. [LR290]

ALLEN BEERMANN: Thank you for your courtesy. [LR290]

SENATOR LARSON: Thank you for coming. Welcome to General Affairs Committee, Ms. Year. [LR290]

PEGGY YEAR: (Exhibit 4) Thank you. I think I need a higher chair. Sorry. My name is Peggy Year, Y-e-a-r. My husband is Rob Dump, and he and I own and operate the Northeast Nebraska News Company which consists of six newspapers in northeast Nebraska: the Cedar County News in Hartington; the Laurel Advocate; The Randolph Times; Wausa Gazette; The Osmond Republican; and Coleridge Blade. I would first like to thank Senator Larson for listening to Rob's and my concerns when we stopped to visit with him last spring. As a result of that visit and the concerns of publishers from around the state, we are here today to address the digitization of Nebraska community newspapers. That's a tough word to say and you will hear it several times in the next few minutes, so please allow me to explain a little bit about what

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digitization is. Digitization is the transformation of the printed newspaper, in this case, to an electronic version making it easier to read on your computer, tablet, or phone. If done properly, it can also be made word searchable so as to make searching for and finding information much easier and quicker. Two years ago, Peggy Leiting, the librarian from Randolph, called to ask our permission to digitize one of our newspapers, The Randolph Times. She was interested in applying for the Kruetz Bennett Grant through the Nebraska Community Foundation, a grant that provides matching funds to small Nebraska Libraries. At that same time, we discovered that without our knowledge or permission, the Hartington City Library was already digitizing our newspaper in Hartington and the Osmond Community Library was considering doing the same with the Osmond Republican. Needless to say, the Hartington library's actions caught our attention since they had not even bothered to consult us before taking on this endeavor. The reason we brought this issue to the attention of, first, the Nebraska Press Association and then the State Library Commission and now this legislative committee is because the digitization of newspapers has in the past been rather a hodgepodge process with little guidance, few standards, and even less funding. Libraries are digitizing newspapers to facilitate the ability of users to search newspapers for information, for example, genealogists. The Randolph library went through the proper channels in an attempt to get their hometown newspaper digitized. Since they were applying for a grant through the Nebraska Community Foundation, they were issued guidelines and procedures on what needed to be done in order to receive funding for the project. These guidelines, most especially the ones requiring permission from the publishers of the newspaper before the project was started, were developed by the Nebraska Library Commission but only distributed to the libraries that were applying for this particular grant. The Hartington library, a board Rob served on for ten years before resigning to take a more active role in the Nebraska Press Association, did not receive these same guidelines because they had received funds from a local donor and thus did not receive the information from the community foundation. Later in discussion with Hartington Library Board and staff, we discovered three things: first, their lack of understanding of the importance of copyright and receiving permission of the publishers to digitize their product; the inconsistency of their...the second point was the inconsistency of their digitized product itself, a good percentage of which is unsearchable because of the low standard of resolution used by the company contracted to do the digitizing process; and that the expense of the continuing of this process of...and the expense of continuing the digitization of newspapers at a higher standard resolution would be expensive. We need a

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standardized set of guidelines agreed upon by newspapers, libraries, and historical societies. These guidelines have to be distributed to all entities involved, not just the dozen or so libraries that may apply for a particular grant. We as publishers not only want to be a part of this process, we need to be a part of this process. Rob and I have no problem with granting permission to digitize our newspapers if those products remain available only through the physical local library location, not posted on the library's Web site or someone else's, but through the...and if they are published through the owner of the copyright or the Nebraska Press Association and its on-line portals. We have a major problem with the digitization of our products if they are digitized without our permission or distributed anywhere other than the actual library without our permission. Newspapers are an important part of the social fabric of our small towns. They are community cheerleaders, government ombudsmen, and community history books, all rolled into one. The histories we write about every day and every week must be preserved in such a way that future generations will be able to go back to those archives and learn about the place where their parents, grandparents, and great-grandparents grew up, lived, and died. We are not sure how this committee can help resolve our issues and concerns, but we are hoping that through our dialogue here today we can all begin to work together in a way that preserves these community histories and keeps our news pages alive for generations to come. Thank you for your time today and for our opportunity to present our comments and concerns to you. [LR290]

SENATOR LARSON: Thank you, Ms. Year. Any questions? Senator McCollister. [LR290]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. Thank you for your testimony. I just received a copy of the contract. Is there some compensation that publishers desire as a part of this contract or on some kind of continuing relationship or basis? [LR290]

PEGGY YEAR: No monetary compensation, no. What we're just looking for is...the permission thing is our most important, the copyright. I mean when we found out that we were not even asked if they could do this, we were a little stymied. Yes, we do give the newspaper to our library, but we did think that we still owned our newspaper. [LR290]

SENATOR MCCOLLISTER: Would that still be the case if that...if the images were put on the Internet and distributed widely? Would you still have the same...? [LR290]

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PEGGY YEAR: We already have our images on the Internet. But you have to have a subscription to get to access those. [LR290]

SENATOR McCOLLISTER: I see, I see. [LR290]

PEGGY YEAR: I mean we have all of...since 2006 or 2007, all of our newspapers have been digitized and are on the Internet and available for anybody to access either... [LR290]

SENATOR McCOLLISTER: With a subscription. [LR290]

PEGGY YEAR: With a subscription, but you can get like a daily or a weekly or an annual subscription. You can have access to that either through our newspaper in our portal or through the Nebraska Press Association's portals. [LR290]

SENATOR McCOLLISTER: Okay. Thank you. [LR290]

SENATOR LARSON: Senator Riepe. [LR290]

SENATOR RIEPE: Thank you, Senator Larson. At the risk of sounding harsh, it sounds like theft by deception. And you know, my question would be, is this a simple matter of, you know, a letter going out that says cease and desist and...? [LR290]

PEGGY YEAR: Well, and we have discussed. I mean we sat down with our library and immediately there was open communication and...but what we're finding is that it was much more widespread than just our community and that there were a lot of communities involved in this and that basically it is statewide, that these things have gone on, this process has gone on across the state. And there are several publishers that had no idea, and you'll hear from another one, that this process had happened in their community. And we do want and, in most cases, have a good working relationship with our libraries. But it's the fact that this information isn't disseminated publicly and, yes, it should be. And maybe that is the solution. But there are some other issues that you will hear about, too, that need to be addressed we think that are a part of this process. Number one, if they are going to digitize, we do need a standard set of guidelines

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because several of the products that are being...we think that the libraries are being kind of duped because, yes, you can run it through a scanning bed and you can get a product. But if it's unusable, then what's the point? And so they have just spent \$25,000 to digitize their products, but nobody can use it. And so that was money that was totally wasted, on top of which, for the majority of newspapers in Nebraska, we've all been sending and having our papers digitized for the last six to seven years. And so that process is already done. Nobody came to us and asked us if that was already done. And so they've gone ahead and redigitized all of those newspapers that were already taken care of. So again, it's another waste of...even though if it were donated money, it's another waste of money in that process. [LR290]

SENATOR RIEPE: Have you thought about an editorial that talks about intellectual property? I mean my concern gets to be is, if people aren't keenly aware or understand what intellectual property is, then why are we to believe that if we did have statutory legislation, that they would then read or abide by that as well? [LR290]

PEGGY YEAR: Well, and we will. But we don't want to...again, we don't want to offend our librarians. They weren't doing this as an intentional type of thing. And so even if we did an editorial, we're only directing it to three people in our community at this point. And that's not quite fair to put those three people out in front of everybody when we've already had the discussion and they are totally on line with us at this point. They totally understand and they're very cooperative with us. [LR290]

SENATOR RIEPE: Maybe that's the letter instead of an editorial then so you don't blast them across the entire community. [LR290]

PEGGY YEAR: That's very possible. [LR290]

SENATOR RIEPE: Thank you. [LR290]

SENATOR LARSON: Ms. Year, I do have a few follow-ups just to try to, as we work through this issue, to... [LR290]

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PEGGY YEAR: Go right ahead. [LR290]

SENATOR LARSON: ...kind of get to the deeper-down details. And following kind of what Senator Riepe was saying and what you said, developing these standards. We've known each other for five, six years now on a personal level. And you know my philosophies in government, with limited government. And you've written plenty about them. And what...is this something where we want to set it in statute or maybe give the Library Commission the ability to set its own rules and regulations on digitization? Obviously, doing something, but whenever we write something in statute it becomes very inflexible and it comes back and takes a statutory change. Or would you think the Press Association and newspapers be willing to if the Legislature just gave them...maybe the Library Commission isn't the best place to house it, whether it's the Secretary of State or some...you know, whoever we decide, would that be better or would you rather see them in statute or more guidelines in statute that gives them the flexibility to change as digitization and methods change? [LR290]

PEGGY YEAR: I think I would like to see guidelines established through the commission that would be disseminated throughout the entire state. I don't know that it needs to be part of a statute. [LR290]

SENATOR LARSON: Okay. [LR290]

PEGGY YEAR: But that, I think, needs to be determined by the...and as you'll see with the other presenters and what information they have to put forward. Personally, I would just like to see us all work together and come up with a standard list of the guidelines, the quality of reproduction, and the ability...and searchability is the key to this, being able to put in the name "Senator Tyson Larson" and actually utilize the newspaper...the ability of the program to pull up your name and utilize the search product. Otherwise, the whole point of this is just pretty pictures--and some of them, not so pretty since they're...it's unusable. And so that's the point. And so we have to get to where we have that standardization of quality, otherwise, the whole point of this is gone. [LR290]

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SENATOR LARSON: When you're dealing with this, you're mainly dealing with the libraries, correct? [LR290]

PEGGY YEAR: Yes, at this point. [LR290]

SENATOR LARSON: Are there other organizations that could be digitizing that are within state government that...? [LR290]

PEGGY YEAR: The Historical Society has done...has been in control of, not digitizing, but of copying, microfilming all of the newspapers of the state for I don't know how long the process has been. But they have most I would guess--and they're here, they can attest to it--probably 100 percent of the newspapers on microfilm at this point in time. [LR290]

SENATOR LARSON: And that's kind of, as I think through it, as you say, you know, developing these guidelines for libraries to use, we want to make sure that these guidelines are disseminated across to all the libraries. And I think that's part of the problem is they, as you said, they don't know what they don't know. And maybe, you know, statute isn't the best way but, you know, as we look to reform libraries in a number of other ways--you were here for the first hearing--that this could be part of something that goes into it as well in the sense of telling the Library Commission and the State Historical Society to create guidelines that they can then change. That way, we don't have to...and something of that nature so it's not broken down into statute, but we ensure that you guys get what you want. [LR290]

PEGGY YEAR: Right. [LR290]

SENATOR LARSON: And then the libraries can at that point be educated on the issue as well. Is that kind of where we're...? [LR290]

PEGGY YEAR: Yep, right. [LR290]

SENATOR LARSON: Are we following the same path here? [LR290]

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PEGGY YEAR: Correct, yes. [LR290]

SENATOR LARSON: I do have...just as technology continues to change, and this is my own personal curiosity, what's the longevity of microfilm? [LR290]

PEGGY YEAR: Again, the Historical Society will be able to inform you better. [LR290]

SENATOR LARSON: Okay, okay. [LR290]

PEGGY YEAR: But to my knowledge, microfilm is...can last up to 300-400 years. [LR290]

SENATOR LARSON: Okay. [LR290]

PEGGY YEAR: But another person that's here today will testify... [LR290]

SENATOR LARSON: I see heads shaking back there. [LR290]

PEGGY YEAR: Yes...will testify that the digital process has also been...is such that it will be upgraded as the technology changes also. So I'll let them discuss and debate those processes. [LR290]

SENATOR LARSON: Well, thank you for making the drive from Hartington. [LR290]

PEGGY YEAR: You bet. Thank you. [LR290]

SENATOR LARSON: Thank you. Welcome to the General Affairs Committee. [LR290]

KURT JOHNSON: (Exhibit 5) Thank you, Mr. Chairman, members of the committee. My name is Kurt Johnson. I live in Aurora, Nebraska, where I am copublisher of the weekly Aurora News-Register. I've worked in the newspaper industry my entire life and my wife and I have owned the paper in Aurora for 15 years. Today I'd like to share some concerns I have regarding unauthorized use of our copyrighted publication. In April this year, I became aware of a grant

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request from the Alice Farr Library in Aurora to expand its efforts to make a word-searchable digital version of our newspaper available to library patrons. When I asked the library director, with whom we have a very positive relationship, what the project involved, she informed me that the library had been sending microfilmed copies of the paper to Advantage, a company in Iowa, for years to have them convert it into a digital file that could be accessed on a computer in the library. Approximately \$9,000 had been spent converting films from 1942 to 1975 and the goal was to add additional years. Until that day, I had no knowledge of this initiative. It also surprised me when she reported that several other libraries in the state are doing the same thing. As a past president of the Nebraska Press Association, that raised a red flag in my mind. So I shared what I had learned with the NPA staff and board, which is what brings me here today. I informed the director and later the library board that the News-Register is a copyrighted publication, noting that part of our business in today's high-tech world is creating a digital version of our own product and making it available to subscribers on our Web site. I support the library's goal of helping preserve the community's history and have no problem with those files being accessible on a library computer as long as they are not sold for a profit or made available on the Internet. I also pointed out that they should have sought our permission before having a digital version created and asked that they not continue the process. They agreed and I'm happy to report that we have maintained our positive ties, which is so important in rural Nebraska. I have since learned that the Nebraska Library Commission has been working on guidelines for libraries considering newspaper digitization projects. I applaud that effort but realize that, in this case, the Aurora library staff was not aware of those guidelines. My hope is that this hearing may help lead to improved communication on this issue so that libraries and perhaps other third-party vendors who may be unaware comply with copyright laws designed to protect content that, in today's world, is the essence of Nebraska newspapers. Thank you for your time. I'd be happy to answer any questions you may have. [LR290]

SENATOR LARSON: Thank you, Mr. Johnson. Do we have any questions from the committee? I have one. It was just one that you brought up. Both you and Ms. Year have talked about how willing you are to work with the libraries. And this is just, again, out of curiosity. With some of the older newspapers that they're obviously digitizing or microfilming, what is the basis--and I can understand the newspapers that have been in the last ten years or whatnot--but what is the

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basis for not wanting that content available to be publicly searched on the Internet or something of that nature if somebody that might be Germany now... [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: ...or Washington, D.C., and wanted to search historical records of the Aurora News-Register? [LR290]

KURT JOHNSON: News-Register. [LR290]

SENATOR LARSON: You get what I'm saying? [LR290]

KURT JOHNSON: Absolutely. It's a fair question. [LR290]

SENATOR LARSON: I understand, you know, the last 10, 15, 20 years, that's content that's new and whatnot but... [LR290]

KURT JOHNSON: Um-hum, fair question, and I can just answer that as one publisher. But our initiative at the News-Register is to do just that. But again, as a copyrighted publication, we pay staff thousands of dollars every year to take those pictures and write those stories. And it's a resource that we believe we have the legal right to manage. So the answer is, that is a good goal. There is a paywall involved. I have to pay those reporters and upgrade equipment. So for example, if you live in Aurora or Germany and you want to subscribe and have access to those searchable files in Aurora, you can do that today for \$30 a year. We are in the process of digitizing back issues just as the library is. So frankly, that's an initiative I would have loved to have come to a library board meeting and had that conversation. They spent \$9,000 that some of which...some of those years we have not digitized. So again, I think there's a shared mission there. But in terms of making it available to the world, the newspaper has the legal right to be part of that conversation. [LR290]

SENATOR LARSON: And, yeah, like I said, I completely understand like the last 20, 30 years. And I think you bring up a good point. You know, looking back farther, is there room as the

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libraries go through the digitization, and you are going through the digitization as well, you say,... [LR290]

KURT JOHNSON: Yes. [LR290]

SENATOR LARSON: How old is the News-Register? Does it say on here? [LR290]

KURT JOHNSON: Eighteen eighty-something. [LR290]

SENATOR LARSON: Eighteen eighty...and are you working to digitize all the way...as far back as you can? [LR290]

KURT JOHNSON: Well, that comes at a cost. [LR290]

SENATOR LARSON: Yes. [LR290]

KURT JOHNSON: And there's...you have to kind of evaluate that from a management standpoint. So, no, we're not, at this point, not going back to the 1800s. Those are available on the microfilm at the library. But as we go back further, certainly we let our readers know that. And so again, I think there's a shared mission here. So the libraries and newspapers should be working together on it, not unaware of each other. [LR290]

SENATOR LARSON: Yeah, and I think that was more my point. [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: As we just kind of look, and again this is not...and I support the standards and making sure it's kind of the...even with the \$30 paywall, if the library has digitized the 1880 copies but you don't have the 1880 copies digitized yet... [LR290]

KURT JOHNSON: Sure, there would be a benefit to working together, absolutely. [LR290]

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SENATOR LARSON: There would be a benefit to those possibly being on-line because you... [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: ...can't yet offer them or can...are there ways where the libraries and the...if they are paying to digitize it, can you pay to...or, you know, is there some way... [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: ...to get some of that information that is too expensive for you to do as a small-town newspaper... [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: ...but still good public information? I understand the last 30, 40 years those are...you've made the investment to pay the reporters and do that. And you have those digitized. They shouldn't be offered on the Internet because you are. [LR290]

KURT JOHNSON: So frankly, some of the parties represented here today--the Library Commission and the Historical Society--could work together, frankly, to digitize. And there's a company here as well who can testify that has incredible resources that can do it very efficiently and at those higher standards. So perhaps that's part of the end result here is... [LR290]

SENATOR LARSON: Or maybe anything that you can't offer on your paywall could be available. [LR290]

KURT JOHNSON: Right, right. [LR290]

SENATOR LARSON: Or you know, obviously I want to protect the libraries as much as possible because you're right with the copyrighted content and whatnot. [LR290]

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KURT JOHNSON: Right. One of the main issues here is I was surprised quite frankly that our own librarian just had no idea that we are a copyrighted publication. And I would guess that that's a pretty common misconception or unawareness statewide. And so that's part of the puzzle that I think needs to be answered. And I don't think, in referring to a previous question, I don't think that needs to be in a statute. But clearly there needs to be better communication on that. And then, okay, what do we do? What's the next step? How can we work together? [LR290]

SENATOR LARSON: And like I said, I don't want you to give your content away for free,... [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: ...especially the newer ones or whatnot. [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: It's just, how do we balance what you guys as a small-town business can offer but, you know, might already be being digitized by the library or the Historical Society, you know, to make that available to people if you aren't? [LR290]

KURT JOHNSON: Right. [LR290]

SENATOR LARSON: Kind of...I think there's a balance there... [LR290]

KURT JOHNSON: It's a good conversation to have. [LR290]

SENATOR LARSON: ...that that conversation has to happen because there is good information that, you know, not everybody has access to come into the Aurora News-Register, the Aurora library to access what their great-grandparents did in Aurora in the 1880s. [LR290]

KURT JOHNSON: Right. Good point. [LR290]

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SENATOR LARSON: So any further questions? No? Thank you for coming in, Mr. Johnson.
[LR290]

KURT JOHNSON: Thank you for your time. [LR290]

SENATOR LARSON: Welcome. [LR290]

ROD WAGNER: (Exhibit 6) Senator Larson, good morning. Members of the committee, Senators, I am Rod Wagner, R-o-d W-a-g-n-e-r. I'm director of the Nebraska Library Commission. The Library Commission collects a considerable amount of information from the state's 267 public libraries. However, for the most part, that is statistical data and we don't necessarily have a lot of information about the content of what libraries hold and, therefore, we don't necessarily know a lot about which libraries are involved in newspaper digitization projects. We're aware of some; we've worked with some. But there are not necessarily many across the state that are. Certainly we'd like to see more. Over a year ago, back in early 2014, the Library Commission collaborated with the State Historical Society to develop guidelines for newspaper digitization projects. Excuse me if I stumble over that word. It doesn't roll off the tongue very easily. And those guidelines were prompted by requests for funding through the Nebraska Community Foundation, a private funding source that is administered by the foundation that provides project grants to libraries in smaller communities. Some of these libraries requested funding for newspaper projects. And in order to provide them some guidance in undertaking those projects, the guidelines were developed, again, with collaboration with the State Historical Society. And your document that I had passed out has attached that one-page document. So we believe that if libraries follow those guidelines they will have successful projects. The Library Commission absolutely agrees with those who have testified earlier about the copyright issues. One of the necessary steps in any of these projects is to assure that the use of those newspaper documents are used in a way that is approved by the owner of those publications. And I note in my document given to you what the statement includes about copyright, and that is that when a library undertakes a project, they have to have permission of the owner in order to undertake that work. Now it's also been noted that libraries may not necessarily be aware of those guidelines. They are posted on the Library Commission's Web site. But so what? You have to find them. You have to know they're there. So we have come to realize,

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probably more recently than earlier, that we need to do a lot better job of informing all of our libraries in Nebraska about digitization projects and what is involved and what they need to do if they are going to undertake one. And we'd like very much to work with our Nebraska press people, the State Historical Society and further develop the guidelines and provide the basic information that is needed by the libraries in order to be sure that they are following all the requirements and that we can be sure not to have some of these issues related to copyright come up. So thank you. [LR290]

SENATOR LARSON: Thank you, Mr. Wagner. Any questions from the committee? Well, just for clarification, you talked about the Library Commission does need to disseminate the information a little better. [LR290]

ROD WAGNER: Yes. [LR290]

SENATOR LARSON: Are you guys...do you believe that...or what are your thoughts on us giving you and maybe the Historical Society or the Library Commission the statutory authority...or not just the authority, the mandate to develop these guidelines and continue to update these guidelines and disseminate them to the libraries? Or is this something that... [LR290]

ROD WAGNER: Oh, that's... [LR290]

SENATOR LARSON: ...you think that you can do without this statutory mandate because I get hesitant for us to develop... [LR290]

ROD WAGNER: Yeah. [LR290]

SENATOR LARSON: ...the guidelines or whatnot because these can change and move on as digitization changes and I don't want to set something in statute with technology going the way it is. So what are your thoughts on that? Do you need the mandate to do it, or can you do it? [LR290]

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ROD WAGNER: Yeah, I agree with your point. You can certainly initiate that, put it in statute if you choose to, of course. But I don't think it's necessary. We have developed the guidelines and we can develop them further with advice and assistance from the Nebraska Press Association and in collaboration with the Historical Society and they do a great job with our historical resources. And through education and dissemination of that information to all the libraries in the state I think we'll address this issue very well. [LR290]

SENATOR LARSON: Okay. Well, obviously, Mr. Wagner--and I'll continue to stay in contact with Mr. Beermann and whatnot--there does need to be some guidelines set up and hopefully, if you guys can work together, then we won't have to put that mandate in. [LR290]

ROD WAGNER: And we agree. [LR290]

SENATOR LARSON: But otherwise it does seem like if certain things can't be...come to an agreement then we will pursue that if... [LR290]

ROD WAGNER: Absolutely. [LR290]

SENATOR LARSON: And obviously I'll continue to talk to Mr. Beermann and Ms. Year and Mr. Johnson on, you know, where they want to go with this as well. But hopefully we can all come to an agreement. [LR290]

ROD WAGNER: Very good. Thanks. [LR290]

SENATOR LARSON: All right, thank you. Any further testifiers on LR290? Welcome to the General Affairs Committee. [LR290]

JAMES MURPHY: Thank you, Senator Larson, for having me today. I'm with Universal Information Services. We are a news...I'm sorry. [LR290]

SENATOR LARSON: Your name? [LR290]

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JAMES MURPHY: Oh, I'm sorry. Todd Murphy, James T. Murphy. [LR290]

SENATOR LARSON: Okay. Spell it, please. [LR290]

JAMES MURPHY: M-u-r-p-h-y. [LR290]

SENATOR LARSON: All right. Continue. [LR290]

JAMES MURPHY: Okay. We've been monitoring the news since 1908, working with the publishers in Nebraska for all those years. We're also an associate member of the Nebraska Press Association. And I've personally been involved with the copyright law since 1991 at the federal level working with attorneys and lobbyists to try to clarify fair use in the media. The Press Association asked me here today to talk about a couple things. And really I would work best reacting to questions because it's such a deep and dark area. Fair use is clear as mud. And probably the 24 years' experience I have in working with it is communication is probably the best way to move forward. If all the parties can work together, that's key. Establishing mutually beneficial outcomes, that's what I'd be advocating. If I had a theme to what I was going to say, it would probably be avoiding the digital dark age that has come to many places. Nebraska fortunately has such an outstanding Library Commission and Historical Society and such a strong publishers association. Many states don't have such enviable situations going. So if those three parties can work together, I'm happy to help them and answer any questions related to that. The primary concerns that are going on right now is the advancement of technology. It sounds like some libraries in the state of Nebraska have spent monies to have publications digitized in which they don't own the copyright to. Whether or not they're violating any laws depends on the use of that. So if a library in Lyons, Nebraska, simply makes it available on site for patrons to look at and it's a 15-cent copy to cover administrative costs, that's probably not a violation of fair use. If they post that database on-line and monetize that in any way, the redistribution, republication, and profit, I'm not an attorney but have been told that takes you across the line of fair use. The digital dark age, however, is something that's very worrisome not only to publishers but states' historical societies. True, microfilm is something that may, as a format, as a physical format, may last for many hundreds of years. But what we're seeing with legacy formats is the technology to play back those formats is disappearing at a rapid rate. I don't know...you guys

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mostly look to be my age; not you, but the rest of you are my age, and some of you are older, no offense. [LR290]

SENATOR RIEPE: Yeah. [LR290]

JAMES MURPHY: You had a VHS tape deck at one time. Maybe your parents had a VHS tape deck. [LR290]

SENATOR LARSON: (Laugh) He's calling you guys old. [LR290]

JAMES MURPHY: But you'd be hard pressed to play back that home video that you shot of Christmas on VHS deck this day. I'm sure you don't have one in your house. So that's just one illustration of how the technology to play it back, even if you have the technology, the people to work on that and maintain it so you can continue to watch legacy formats, like 16 millimeter, 35 millimeter film, negative photographs, and microfilm, those people to keep those systems running are disappearing at an alarming rate. So the whole idea of digitization, d-i-g-i-t-i-z-a-t-i-o-n for the record, involves migrating formats forward into the future. So whereas the Library Commission says they...you know, indicates they have standards--which is currently the national standards of a TIFF file, uncompressed file; JPEG 2000; I mean even usable formats like PDF formats which is a portable document format--those are all great now, but in 20 years what will be the standard? Those who are in the preservation business of content like we are know that the process involves continuing to migrate those formats as technology changes. So in 20 years, if it's the .XYZ format that is the default archiving format, anything that is a TIFF would be converted at that time and continue to move forward. That way we don't get 300 years down the road and figure out we have no way to view a TIFF file. So the three points that I see related to today's issue is communication between the parties. The use and fair use is extremely clear. The publishers own the rights. They give the papers to the libraries for limited use. If the libraries extend that use beyond that limit, they potentially are in violation of the fair-use doctrine. Standards for preservation, the Library Commission in Nebraska has a firm grip on that and I think by further conversation and discussion they can evolve those even further to help all parties involved. If there's anything I can do to answer any questions I'd be happy to. [LR290]

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SENATOR LARSON: We'll open up to members of the committee. One quick, the fair-use doctrine is federal, correct? [LR290]

JAMES MURPHY: Correct. [LR290]

SENATOR LARSON: Okay. [LR290]

JAMES MURPHY: And there's other related, the Digital Millennium Copyright Act. If someone digitizes a database and a vendor creates a circumstance that allows somebody to circumvent copyright law, then potentially the library or the vendor who did that can be held liable as well. [LR290]

SENATOR LARSON: And your company is a digitization company then? [LR290]

JAMES MURPHY: We're a news monitoring company. We also have a digital preservation department. [LR290]

SENATOR LARSON: Digital preservation department. Okay. I think you did well explaining kind of where we move forward and the importance of changing technology and, as I said, that's why I'm hesitant to write something in statute. [LR290]

JAMES MURPHY: It can be very simple, or it can be very complicated. And if you want to tear into fair use, it gets very complicated. And any of the attorneys in the room will be the only winners--no offense to the attorneys. [LR290]

SENATOR LARSON: Senator Hansen is an attorney. We are though, I think we're the only two members in our 20s still in the Legislature, though I'm fast approaching the end of those. [LR290]

JAMES MURPHY: I've seen a lot of fights. [LR290]

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SENATOR LARSON: So...but I think we can understand that. But he's a lawyer. He probably understands most of that. (Laugh) So thank you for coming. [LR290]

JAMES MURPHY: Thank you. [LR290]

SENATOR LARSON: Welcome to the General Affairs Committee. [LR290]

MICHAEL SMITH: (Exhibit 7) Thank you, Mr. Chairman. I'm Michael Smith, M-i-c-h-a-e-l, Smith, S-m-i-t-h. I serve as director and CEO of the Nebraska State Historical Society, Agency 55 of the state of Nebraska. I would offer a few points pertaining to the subject at hand this morning. First, the Nebraska State Historical Society has statutory responsibilities in the areas of collecting and preserving materials that are essential the histories of the people of Nebraska. While those materials range widely from museum artifacts to public records, one of the most important categories in our mind for historical purposes is the printed copies of Nebraska newspapers. To that end, our newspaper collection is comprised of 3,777 distinct newspaper titles from the earliest produced in the state to those published today. To fulfill our responsibilities in the area of newspaper preservation--and here I am talking about preservation--the publishers of 199 current Nebraska newspapers send copies to us for the purpose of microfilming those, which we do on an ongoing basis. Microfilm, correctly done and properly stored in a regulated environment, has a currently life expectancy, as was previously mentioned, of about 400 years; that's an estimate, of course. Furthermore, microfilm is easily read on relatively simple machines and reader printers that will not go away. These are comprised basically of a reel that moves the microfilm film forward, a light, and a magnifying lens. We can say that with every confidence--though some might disagree with us--we can say with every confidence the newspapers preserved today on microfilm will be available to researchers far, far into the future. I would add that newspapers published today contain one of the most--and this has been stated before and I certainly agree with it--one of the most important records of civic, social, and economic life across Nebraska. I often say with confidence that if future generations wish to explore the histories of our communities, particularly our smaller communities, the preservation via microfilming of their newspapers is the single most important step that must be taken, that day-in and day-out record of community life, social life, etcetera, is there. The reels of microfilm that the NSHS contains in its microfilm vault will provide for preservation, while

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reading copies that are microfilmed are available to anyone who wishes to access them. We make those available in our own reference room here in Lincoln. We also ship on loan to libraries, units of government, historians, genealogists in and out of state on request. We do recognize-- and this goes back to the copyright--we do recognize and inform all users that they are, as the user, responsible for conforming with copyright requirements of the law when they use that film. And of course, anything since 1923 is protected by copyright. In 2013--I wanted to add this one additional point that hasn't been made--in 2013, the Legislature enacted LB363 which supports the public records law in Nebraska by requiring that every publicly funded library, museum, or historical society make available to any member of the public--individual, corporation, unit of government, or other--all materials and all information that we hold for a minimal cost of copying. Thus, any newspaper included in a microfilm or digital copy that is held by a publicly funded body is available to any patron or researcher for the cost of making copies. Thus, the published newspapers of Nebraska that are found in these institutions must be and indeed are today treated as public records fully and readily available to all. We recognize that matters of copyright are and must be taken seriously and urge our users to do so. In fact, as historians we often use holdings of other organizations, other institutions which are available in the public domain. We treat copyright with respect ourselves and obviously we urge all others to do as well. Be happy to answer any questions, Mr. Chairman, if I can. [LR290]

SENATOR LARSON: Thank you, Mr. Smith. Any from the committee? Seeing none, thank you for your time, for coming down... [LR290]

MICHAEL SMITH: Thank you. [LR290]

SENATOR LARSON: ...and the history lesson. [LR290]

MICHAEL SMITH: Thank you. [LR290]

SENATOR LARSON: Welcome to the General Affairs Committee. [LR290]

SHAWN RENNER: Thank you, Senator Larson. My name is Shawn Renner, S-h-a-w-n R-e-n-n-e-r. I'm a lawyer here in Lincoln with the Cline Williams law firm. I represent the Nebraska Press

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Association. I'd like to provide a little bit of background on the federal copyright laws. They've been mentioned several times. They obviously are important in the context of this issue. I do agree with what Mr. Murphy said. They are about as clear as mud. As they apply here, that's not necessarily a function of a defect in the copyright laws. It's a function of technology moving really quickly and laws moving relatively slowly compared to that. [LR290]

SENATOR LARSON: Federal law. [LR290]

SHAWN RENNER: The federal ones, that's correct. When we're talk...yeah, sorry about that, Senator, no criticism intended whatsoever and, in fact, not criticism at the federal level either. [LR290]

SENATOR LARSON: It's okay. [LR290]

SHAWN RENNER: As quickly as our technology moves, it would be a fool's errand to try to have our laws be in lockstep with each one of those movements because sometimes they're false starts. Sometimes things look very different in a year or two. Sometimes it's longer than that. There are three particular provisions of the federal copyright laws that are applicable to these sorts of issues: 17 USC 106 provides the nature of copyrights and it treats...we talk about a copyright. A copyright is actually a collection of several different rights that are available to the copyright owner. You have a right to control the copying of your copyrighted material. You have a right to control the derivative works prepared from your copyrighted material. And you have a right to control the distribution of your copyrighted material, particularly for sale, which makes a difference to newspapers. Section 107 of the Copyright Act is the statute that codifies the fair-use doctrine that Mr. Murphy mentioned. It contains four factors which courts are to consider and balance together in addition to several other court-made factors that come into play. For our purposes today, the message is it's awfully hard to predict in advance what is a fair use or what is not a fair use under the federal laws, particularly when you're dealing with a technology that didn't exist when these statutes were written. There is a third section in the copyright laws that apply in the context of this specific debate and that relates to what libraries can and cannot do with copyrighted materials. And that statute was passed a number of years ago. It was a long time before anybody thought of digitization. In fact, it was passed before we had computers that

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operated as personal devices in any way. And it focuses on physical copies and what can be done with those. In general terms, that section of the statute allows a library to make a copy for a patron of materials in the library without violating the copyright laws. It allows a library to provide a photocopy machine to patrons in which they can make their own copies of copyrighted material within the library's collections. But it requires that that photocopy machine have a legend on it that says: You may be copying copyrighted materials, and if you do so, you have to comply with the federal copyright laws. All of those things work relatively well until you start talking about how they apply in the context of electronic information that can be passed over the Internet and is available to anyone on their smartphone at any given time. And you heard the newspaper publishers talk about some of their concerns in that regard. I don't think there's much that the Nebraska Legislature can do to impact the legal end of this from a copyright standpoint at all. That's a federal law. The supremacy clause of the U.S. Constitution makes that the law of the land regardless of what the Legislature does. The Legislature can certainly, if it desires to take steps to encourage digitization quality standards, talk about how libraries deal with their patrons, those sorts of things. But you're relatively limited in what you can do with regard to the actual nuts and bolt of who owns the product and how do we deal with that. That's the, you know, probably 50,000 foot level rather than 10,000 foot level in four minutes. And I'm not sure if that's terribly helpful to anybody. I'll also tell you that I'd be happy to try to answer any questions, but the answer you get may well be, I don't know or it depends. But if there are questions I'll take a shot anyway. [LR290]

SENATOR LARSON: Any questions? I appreciate you...and that helps clarify, you know, some things with the, you know, the Internet base that, you know, it's interesting to see how the federal government moves at the level of you can come in and take a picture of an 1880 issue, but you...if the publisher isn't offering it on their own paywall, that you can't get it on the back end through the Internet. It's interesting and it's something that the feds, it appears, will have to deal with and not us. [LR290]

SHAWN RENNER: And probably the courts before the federal government actually does too. That tends to be how these things get shaken out. There's a case pending in the Second Circuit Court of Appeals right now over the Google Books project. [LR290]

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SENATOR LARSON: Okay. [LR290]

SHAWN RENNER: Google created a project, which it's funded out of its own money, that digitizes 20 million books... [LR290]

SENATOR LARSON: Noncopyrighted books. [LR290]

SHAWN RENNER: ...about 2 million of which are subject to copyright; many are in public domain. And the publishers of those books are fighting right now with Google in federal court about whose rights govern and what controls. [LR290]

SENATOR LARSON: Sounds like they'll handle that for us. Well, thank you so much, Mr. Renner. [LR290]

SHAWN RENNER: Thank you very much. [LR290]

SENATOR LARSON: Any further testimony on LR290? Seeing none, I'll close the hearing on LR290 and we'll move to our last one of the day, LR307. Thank you, members of the General Affairs Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n. I am introducing LR307 as the committee's catchall interim study. This year's catchall takes place at the pickle card industry. It was brought to my attention that there has been a decline in pickle card sales which reduces the revenue available to help our local communities. This interim study is intended to see if there are ways to strengthen the industry, which would provide more revenue for the causes that benefit from pickle card sales. You will hear from members of the pickle card industry who can shed more light on their concerns regarding the current state of pickle cards and suggestions on how to improve the industry in the state of Nebraska. Thank you. Welcome to the General Affairs Committee, Mr. Adams. [LR307]

JOHN ADAMS: (Exhibit 1) Thank you. Thank you, Senator Larson, committee members. My name is John Adams, J-o-h-n A-d-a-m-s, and I am the general counsel for International Gamco, a manufacturer of pull tabs and promotional tickets. In Nebraska, we call them pickle cards. We're a company located in Omaha. We've been around for over 30 years and we have about 170

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employees. While most forms of gambling are illegal in this state, Nebraska law does authorize nonprofit organizations to raise money for charitable and community betterment purposes. And the predominant form of raising money for these purposes is through the sale of pickle cards. Charitable gaming in the state, specifically the sale of pickle cards, has suffered dramatic declines in recent years. And the primary reason for that is the development and existence of casino gambling on our borders. Back in 1994, there were \$177 million in tickets sold in this state. The last figures from the Department of Revenue show that last year there were \$24 million. So it's gone from \$177 million to \$24 million. And as Senator Larson pointed out in his opening, the decline in sales also means the decline in monies available for fire departments, parochial schools, other organizations that use pickle cards to raise money for their charitable purposes. So what we've done recently is visit with...we've visited with all the licensed distributors in the state. We're a licensed manufacturer. We sell to licensed distributors. We visited with all the licensed distributors and a number of organizations as well as pickle card operators who are the retail locations that sell the product. The product can be sold at the organization's own venue, it can be sold at bingo games, or it can be sold through pickle card operators. And about 80 percent of the product is sold through pickle card operators. So that's where most of the product is sold. So we visited with these people and we came up with several ideas that we wanted to share with the committee that they've told us that would really help. The first idea is to increase the operator's commission. Right now the operator can take 30 percent of the definite profit of the game. The definite profit is the gross sales, less the prizes paid; that's the definite profit. So right now they can take up to 30 percent of that for...as a commission to sell the product. But in doing so, they have to pay for the product up-front, the entire...the rest of the sales, a profit. And they have to pay out the prizes and probably at least 90 percent of the product is sold through dispensing devices. And they also have to pay for those, either purchase or lease those devices. So there is a lot for them to do and a lot of costs involved. So they told us that one reason that the numbers have declined is because they don't get enough compensation. And you can see from the handout as well the number of operators has also dramatically decreased. We lose about 80 to 100 a year of venues that are willing to sell pickle cards. So one idea to help them would be to increase the compensation. And we've looked at the idea of bumping that up to 35 percent or 40 percent of the definite profit in order to attract those venues to sell the product, in order for the charities to raise the money that they need for their charitable and community betterment purposes. And this could be written as an optional thing. If a charity just wants to

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stick with the 30 percent and that's working out and the operator is happy to get it, that's fine. But for a number of operators that are reluctant to sell the product, giving them a little bit more would make sense. So that's the first idea. The second idea would be to modify the requirement that the operator must pay for this product up-front. We are not aware of any other jurisdiction where this required. A number of jurisdictions, the charity and the operator will settle up after 30 days or something like that. What our idea would be, to say, okay, pay for 50 percent of it up-front and the other 50 percent pay in 30 days. This would give the operator a chance to sell some of the tickets, recoup some of the money so that all of the expense doesn't have to be paid out right up front. So that could be another idea that would help operators sell this product. And the last idea would be to increase the prize payout for the particular product. Right now Nebraska allows 65 to 80 percent payout for pickle card games. As we've seen many, many times in other jurisdictions, if you can tweak that a little bit and make it a little better, winners make players. There are more winners coming out. People are more excited to play the game. We looked at the state of Minnesota which is the top pickle card or pull tab market in the country. And they generally pay out between 80 percent and 85 percent for their games. So we thought that if we could tweak the law to allow the payout to go from 80 percent to 85 percent, that's something that could help stimulate sales. Having said all that, these ideas don't expand gambling. What they do is try to stop the hemorrhaging of pickle cards in the state. Charities can't compete with the lottery. They can't compete with casinos. But they can, according to Nebraska law, have this product to raise money for good purposes. And all we're asking is additional study of these particular ideas in order to help them and stop the dramatic decline in pickle card sales in the state. Thank you for the opportunity to testify and I'd be happy to answer any questions. I also have Pete Svendgard here, our national sales manager who also is well versed in what other states are doing as well. [LR290 LR307]

SENATOR LARSON: We might pull him up in a second. Any questions? [LR307]

SENATOR HUGHES: I've got one. [LR307]

SENATOR LARSON: Senator Hughes. [LR307]

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SENATOR HUGHES: Is the standard package...is there a standard package of a volume that you have to sell? Or do you have different sizes that different places...? [LR307]

JOHN ADAMS: There are different sizes for... [LR307]

SENATOR HUGHES: Okay. So what's the minimum? [LR307]

SENATOR LARSON: Do you know what they're called? It's a dill. [LR307]

SENATOR HUGHES: A dill? [LR307]

SENATOR LARSON: Pickle. (Laugh) [LR307]

SENATOR HUGHES: Dill pickle. [LR307]

JOHN ADAMS: Yep. [LR307]

SENATOR HUGHES: I'm not asking anything else. (Laughter) So it varies depending on the vendor. [LR307]

JOHN ADAMS: Yeah, it varies. [LR307]

SENATOR HUGHES: They have an opportunity to choose the size that would fit their... [LR307]

JOHN ADAMS: Right. Some charities like the game to be sold out quickly so there may be a few hundred in this deal. [LR307]

SENATOR HUGHES: Yeah. [LR307]

JOHN ADAMS: Others, a typical deal would be 4,000 tickets. [LR307]

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SENATOR HUGHES: Okay. [LR307]

SENATOR LARSON: I'm teasing Senator Hughes. Senator Riepe. [LR307]

JOHN ADAMS: Yes. [LR307]

SENATOR RIEPE: I don't want to hear what he's going to, you know, give me now. Thank you, Senator. I was just running some numbers here and looks to me like in 2014 the charities received 0.08 (sic) percent of the dollars wagered, if you will. I'm not sure that benefits charities very much. [LR307]

JOHN ADAMS: Well, there are several factors involved. The more you give away as prizes, the more attractive the game is and the more sales will increase. We found that to be true across the country. But what we have in law now, it just isn't working. You can see that sales have declined dramatically year after year after year. [LR307]

SENATOR LARSON: So essentially, I think what you're saying is, you know, the...Senator Riepe brings up the point about 8 percent of the total amount wagered goes directly back to the charity. But the other 92 percent that you want to, say, is making that up, a number that might go into the business is selling the dill cards, correct? And some of it might go to the winners, the people that are actually winning, and then the state of Nebraska takes their cut as well out of all that \$24 million, correct? [LR307]

JOHN ADAMS: Right. [LR307]

SENATOR LARSON: So there's a number of different factors happening. It's not just... [LR307]

JOHN ADAMS: There are. The figures you see for dollars wagered is the total amount wagered. But out of that total amount wagered, you have to take out 80 percent for prizes that are given to players. And that's where you arrive at the definite profit figure. And out of that definite profit, the operator now is getting 30 percent, the charity is getting 70 percent. [LR307]

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SENATOR LARSON: So the 80 percent, as Senator Riepe greatly noted, that \$2.1 million is 8 percent. So 80 percent of \$24 (million) you're looking at...that's almost \$19.7 million, when you figure in those numbers, is going back to the players that bought the cards; \$19.7 million is going... [LR307]

JOHN ADAMS: Right, right. [LR307]

SENATOR LARSON: Okay. [LR307]

JOHN ADAMS: And so it's the balance that's split. [LR307]

SENATOR LARSON: And then the balance of that...then there would be about \$3 million that the operators get and the state takes their tax revenue. [LR307]

JOHN ADAMS: Right, 10 percent of the definite profit. [LR307]

SENATOR LARSON: So only 2...and then that all of sudden pulls in. Okay. [LR307]

SENATOR RIEPE: My only concern is that, as a state, you know, our interest isn't to be in the pickle business, dill or otherwise. Our interest is to--or at least mine is--to look at how it benefits what otherwise might take state monies, which would be, i.e., the charity side of it. [LR307]

JOHN ADAMS: Exactly. That's the purpose of the act. [LR307]

SENATOR RIEPE: Thank you. Thank you, Mr. Chairman. [LR307]

SENATOR LARSON: Thank you, Senator Riepe. Senator Hughes. [LR307]

SENATOR HUGHES: One more question, is the trend in Nebraska, I mean are we the only ones that you're seeing this trend in? Or is kind of a nationwide trend? Are some states expanding? [LR307]

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JOHN ADAMS: It varies by state. In Minnesota, it's always been a strong market. And they introduced tribal casinos in the state and it's still a strong market. But in other states where there's been a prevalence of casino gambling, there's been a diminishment of money for charitable gaming. So it varies. [LR307]

SENATOR HUGHES: Thank you. [LR307]

SENATOR LARSON: All right, thank you. Senator Riepe. [LR307]

SENATOR RIEPE: My question would be, this is...I really believe in product life cycles on virtually everything. Has it run its product life cycle and has to be totally reinvented in some format to make it more exciting and attractive and new, fresh? [LR307]

JOHN ADAMS: Well, I don't think it's run its life cycle, but we are always looking at ideas to...what was the word? Digitalization? [LR307]

SENATOR LARSON: Digitization. [LR307]

JOHN ADAMS: ...to enhance the paper product to make it more attractive to a new generation of players. [LR307]

SENATOR LARSON: Are you interested in working on that, Senator Riepe? [LR307]

SENATOR RIEPE: I don't think that I know enough about it to...I might be dangerous in terms of working on it. So I would hold back on volunteering. [LR307]

SENATOR LARSON: I think you bring up an excellent point in terms of I don't think they have run their life cycle, but I think Mr. Adams is getting to the point that if you would want to go visit, you could see how pickles and the pickle industry is moving into the future and could help boost that charitable profits, as you said, because there are things that they continue to reinvent. And I believe you guys are working a lot to do that in your industry, correct? [LR307]

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JOHN ADAMS: That's correct. And some other states are now allowing some of these products as well. [LR307]

SENATOR RIEPE: Mr. Chairman, I get a little nervous when I think of gambling on this. It becomes too easy. [LR307]

SENATOR LARSON: Well, I don't think you'll have to...it's not quite that, but I would recommend and I'm sure Mr. Adams would be more than happy to see how the...show you how the pickle industry could continue to help charities across the state of Nebraska by continuing innovation. [LR307]

JOHN ADAMS: Right. Very good. [LR307]

SENATOR LARSON: Senator Schilz. [LR307]

SENATOR SCHILZ: Thank you. Sir, thank you for coming in today. And you talked about and I'm kind of interested in the effects of where you're seeing declines to where you're seeing stronger markets. And we know that the promulgation of other gambling opportunities may and could have a detrimental effect. But in those states where you see casino gambling right next to, say, the pickle card situation, is that...do you always see less demand in some fashion? Or are there some places where it looks like that it's keeping up just because that's the way it works in that state? I'm trying to figure out... [LR307]

JOHN ADAMS: It's almost always less demand. Minnesota would be the anomaly. [LR307]

SENATOR SCHILZ: Right. So now the question then is, when you have a state like Nebraska that is completely without casino gambling, whereas the other states around it--I think all the other states around it--have it, would you say that if there was casino gambling here that you would see more decline or do you think that maybe that would level off? [LR307]

JOHN ADAMS: It's hard to... [LR307]

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SENATOR SCHILZ: And I know I'm asking you to be subjective, but... [LR307]

JOHN ADAMS: It's hard to say. If you look at the figures that we've...there's been catastrophic decline. [LR307]

SENATOR LARSON: In Nebraska. [LR307]

JOHN ADAMS: So I don't know how much lower it can go. [LR307]

SENATOR SCHILZ: Right. Well, and so, you know, as you talked about moving into things that help to change the game to where it stays fresh and things like that, have you ever thought about doing a dead pickle card race, because they tried that with the horse industry...(laughter). But I'm sorry. I don't mean to keep going, but I think people need to understand that just because the demand isn't there today doesn't mean that without tweaks to modernize what's going on, you can't see that demand turn around again. [LR307]

JOHN ADAMS: Right. I agree. [LR307]

SENATOR SCHILZ: Thank you. [LR307]

SENATOR LARSON: Further questions? Thank you, Mr. Adams. [LR307]

JOHN ADAMS: Thank you so much. [LR307]

SENATOR LARSON: I appreciated the information and we will definitely look into those recommendations. [LR307]

JOHN ADAMS: Thank you. [LR307]

SENATOR LARSON: Any further testifiers on LR307? Seeing none, that closes our hearing on LR307 and the General Affairs Committee's for the day. We'll be back in a month for alcohol day. [LR307]