recently testified on HB 2291, a bill that would move state prisoners from the State Department of Corrections to the custody of the sheriff, if the inmate’s term in the state prison was up but the inmate had not yet been processed for admission to a state hospital. In other words, during the waiting period for a bed at the state hospital, the state prisoner would go to the county. Naturally, KAC testified against the bill; we do not want to hold the state's inmates during the state-hospital admission process, especially given that the hospitals are understaffed and underfunded and admissions are on a backlog.

During the hearing I was asked by a representative about mental illness in the jails. I was given a homework assignment of reporting back the percentage of jail inmates with mental illness. I soon discovered this homework was worse than 8th grade algebra, because just defining “mental illness” for measurement was a challenge. There is no single definition of “mental illness” used for jail populations, and therefore, there is no standard used to measure the incidents of mental illness. Also, some jails just don’t track the information.

According to the NACo “Stepping Up” campaign that is intended to combat mental illness in the county jails, approximately 17% of people in local jails have serious mental health issues, such as schizophrenia, bipolar disorder or other psychological problems. This number does not include other forms of illness, such as anxiety or post-traumatic stress syndrome. Including all types of mental illness takes the estimate up to 64% of jail populations.

According to Rick Cagan, the Executive Director to the National Alliance on Mental Illness, the history of the mentally ill in jails “has come full circle.” He writes that the mentally ill were incarcerated in the early history of the United States due to ignorance. By the early 1900s it was determined that imprisoning a person merely for being mentally ill was immoral and inhumane, and states began to build psychiatric hospitals. This led, however, to the segregation of populations into warehouse-like facilities. In 1963, President Kennedy signed legislation creating community mental health facilities. This was also the era when psychotropic medication became available. The concept behind the community mental health centers was
to keep patients in their community and home, where their support system existed. Following the creation of the CMHCs, state hospitals began to close, a phenomenon we have definitely seen here in Kansas. Kansas has now only two hospitals: Osawatomie and Larned. Nationally, the number of psychiatric hospital beds has decreased 90% since 1955. Meanwhile, the number of people with mental illness incarcerated in our jails has grown by more than 400%

Counties own and operate the majority of all jails in the U.S. and spend $70 billion annually on their criminal justice system. Key findings by the National Association of Counties in its publication Addressing Mental Illness and Medical Conditions in County Jails include:

- A large share of the jail population has a mental illness or medical condition.
- Addressing the mental and medical health needs of the jail population is a major challenge confronting county jails.
- A small number of county jails supervise jail inmates outside of confinement in mental health or medical treatment programs.

According to NACo, 64% of jail inmates have mental illness, 40% of inmates have a chronic medical condition, and 40% of inmates with a chronic medical condition take prescription medications while in jail.

A 2015 NACo survey found that covering the mental health needs of jail inmates is the biggest concern for county jails. Inmate health care, medication and hospital stays are significant costs for counties, costing 9-30% of the total jail costs. Counties are required to cover these costs because of case law that holds medical care is a constitutional requirement.

Some jails treat inmates for their mental ill issues within the jail, while others are providing treatment outside the jail through community programs. Of the jails responding to NACo’s survey, 22% provide community-based supervision. Often these programs cover alcohol and drug use as well as mental health. About 18% of county jails provide medical treatment outside of confinement in community programs. Collaboration between the counties, county health system and other community-based programs can be extremely helpful in meeting the health care needs of jail inmates, and Kansas counties may want to look at a collaborative approach, as demonstrated by Montgomery County, Maryland.

What are the consequences of increased mental illness in our community with no hospitals and community mental health centers to care for them? Increased homelessness, instability within families, recidivism, unemployment, increases in injuries to our law enforcement officers and the public, and the wasteful and inefficient use of tax dollars that do not fix the problem. For more information from NACo, you can visit the following website publications:

Addressing Mental Illness and Medical Conditions in County Jails
Reducing Mental Illness in Rural Jails

Information from Nastassia Walsh, MA, Program Manager for National Association of Counties.
Justice Matters: Mental Illness & Jails, Rick Cagan, Executive Director to NAMI.
Addressing Mental Illness and Medical Conditions in County Jails, Natalie Ortiz, PhD, NACo Why Counties Matter Series, Issue 3, September 2015.

Id.
Id.
Id.
Id.
In June of last year, I wrote about the pending Department of Labor changes to the overtime rule. The change intended to increase the minimum salary requirements for exempt employees. For over a decade, the minimum salary held at $23,660 annually, but the rule elevated the minimum to $47,476 with a set formula to continue salary adjustments in upcoming years.

But in December, a Texas judge issued an injunction blocking implementation of the rule. This led to speculation on what is to become of the rule change and how employment laws and regulations might look under President Trump’s administration. As March arrives on the calendar, it is important that employers pay close attention to changes in D.C.

President Trump initially pegged Andrew Puzder, a longtime fast-food executive, to run the Department of Labor. Puzder withdrew his name from consideration in February, and President Trump selected R. Alexander Acosta as his new nominee for DOL Secretary. Acosta served previously under President Bush as a member of the National Labor Relations Board. He was also the Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. He is currently the Dean of the Florida International University College of Law, and the expectation is that confirmation in the Senate will be relatively smooth.

These developments tie back to the DOL rule changes and how counties should proceed. On one hand, President Trump has publicly panned the overtime rule, and a number of republicans in Congress have taken a similar stance. But on the other, the rules process is a formal legal process that is not easily reversed without a full change in federal law. So what does this mean for counties in Kansas?

A December article from the Kansas City Star, looked at the injunction that stopped implementation of the overtime rule. Despite the injunction, a number of employers, including the City of Kansas City, Missouri, Walmart, and others continued with implementation because they had already laid the groundwork for doing so. But the change to either pay more employees overtime for hours worked beyond the weekly 40 or paying exempt employees at least $47,476 gave many employers reason to halt implementation.

SHRM noted how Congress might use the Congressional Review Act (CRA) to change the overtime rule. One point to highlight, however, is that the CRA bars agencies from issuing substantially similar regulations to the disapproved rule.

The SHRM article notes that even opponents to the salary increase tend to favor increasing the minimum salary for exempt employees.

continued next page
Bloomberg BNA reported that President Trump’s delay in filing briefs on the injunction could indicate that the administration will drop its appeal. The publication also noted that Secretary Acosta could submit an alternative rule or withdraw the rule entirely. There are multiple options to change course, though it is yet unclear beyond the president’s plan for deregulation.

What this highlights is that even experts like those at SHRM and Bloomberg are in speculation mode. But it is educated speculation on a subject that warrants consideration. At the end of February, the House Committee on Education and the Workforce conducted a hearing on “Federal Wage and Hour Policies in the Twenty-First Century Economy.” An article from SHRM provides some of the hearing highlights.

The discussion highlighted how many business owners—particularly small businesses—are struggling with the antiquated nature of the Fair Labor Standards Act. These realities are similarly a struggle for many counties.

Regardless of how the DOL rule unfolds, counties need to prepare to implement any changes that occur. It can be incredibly expensive when a county finds itself facing a wrongful wage suit. Counties need to keep an eye on the speculation to properly prepare for this and other changes under the Trump Administration. While my 2016 article trumpeting the 6-month countdown for rule implementation proved premature, it is important that we remain watchful for implementing whatever is to come once it arrives.
Why Webinars?

Webinars — or online, real-time presentations — have obvious benefits to our members. Here are just a few reasons you should consider attending our upcoming webinars:

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  An archived video of our webinar at the KAC’s website allows anyone interested in the topic to listen to the presentation at their convenience. And once you’ve signed up, you can listen to the content over and over again.

You don’t want to miss the upcoming webinar *Mapping with Citizens in Mind*, scheduled for Thursday, March 30 from 10 – 11 am.

Join us for this insightful webinar about how you can use GIS to promote your county's events and services. During “Mapping with Citizens in Mind,” Trey Phillips, Finney County's GIS Supervisor, will cover how Finney County went from nothing on their website to a citizen-friendly web application. They started by thinking about what information they need to get out to the citizens, identified where that data would come from and then how to portray it using a web application. Trey will offer his insights that you can apply to your own county's needs.
Following are our webinars we have scheduled so far, so mark your calendar now!

<table>
<thead>
<tr>
<th>Webinar</th>
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<tr>
<td>Legislative Update</td>
<td>Wed., April 12</td>
<td>Melissa Wangemann, KAC Legislative Director &amp; General Counsel; Nathan Eberline, KAC Assoc. Legislative Director &amp; Legal Counsel</td>
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<td></td>
<td>10 am – 11 am</td>
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<tr>
<td>20 Clues for Community Survival-</td>
<td>Wed., May 17</td>
<td>Trudy Rice, Extension Associate, K-State Research and Extension</td>
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<td>highlighting some of our PRIDE communities across</td>
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<td>the state as examples</td>
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<td>Know Before You Go-Plan, Action, Results!</td>
<td>Wed., June 14</td>
<td>Trudy Rice, Extension Associate, K-State Research and Extension</td>
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<td>I'm an elected official. Do I have to follow that</td>
<td>August TBD</td>
<td>Melissa Wangemann, KAC Legislative Director &amp; General Counsel; Nathan Eberline, KAC Assoc. Legislative Director &amp; Legal Counsel</td>
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<td>policy?</td>
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<td>Creating Aging-Friendly Communities’</td>
<td>September TBD</td>
<td>Erin Yelland, Assistant Professor and Extension Specialist in Adult Development and Aging at Kansas State University and K-State Research and Extension</td>
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If you have topics you’d like to have us cover in a webinar, **send your idea** to Dorrie Sullivan, Education & Communications Director at sullivan@kansascounties.org.
Removing Obstructions

It seems like many adjacent landowners do not consider roadway safety and do things on road right-of-way that are hazardous to traffic. The most common obstructions are crops, culvert headwalls, monument mailboxes, hay bales, farm equipment, junk cars, and electric fences next to the road.

Counties have a duty to construct and maintain public roads reasonably safe for use by motorists. We understand that objects close to the road can cause damage to errant vehicles and injury to the driver and occupants. We are careful in our maintenance and construction to make roads safer. We avoid building rigid objects such as headwalls close to the road, and if that cannot be avoided we may install guardrail and at least provide proper signing to warn the driver. Land owners should also consider traffic safety when they work on road right-of-way.

KSA 68-115 states that the county and the township “shall keep the same in repair, and remove or cause to be removed all obstructions that may be found therein.” An obstruction does not have to block the road; almost anything that could block sight distance, or cause damage if hit is an obstruction. In 1928 the Supreme Court of Kansas (126 Kan. 81) determined that a sign 20 by 14 inches, 6 feet above ground, extending 8 or 9 inches over the highway right-of-way line is an obstruction that can be removed by the county, and were of the opinion the board of county commissioners has the right to remove any and all obstructions from the public highway.

Farming of the right-of-way is fairly common; you might wonder if farm crops are an obstruction. In 2000 the Supreme Court of Kansas (268 Kan. 432) stated that Kansas case law dating back to the late 1800s establishes a well-articulated principle of law that where there is an obstruction across a public right-of-way which obstructs the travel of an individual, the obstruction is a nuisance per se, and the affected individual may remove the obstruction by way of abatement. The court found that wheat growing in the public right-of-way was an obstruction and a nuisance per se. If a small sign extending 9 inches over the right-of-way line is an obstruction, and farm crops are an obstruction I think it is fair presumption to conclude that large hay bales, electric fences, culvert headwalls, rigid mailboxes and trees are all obstructions that could be removed by the county. See Figure 1 below for an example of a rigid mail box violation, and Figure 2 for an example of vehicle obstructions.
Theoretically we should not have a problem with landowners installing obstructions on the right-of-way. KSA 68-545 clearly states written permission is required from the county or township prior to performing work on the right-of-way:

“68-545. Unlawful obstructions, excavations, removal of materials, dumping trash or other materials or plowing of roads; penalty; payment of cost to restore. It shall be unlawful for any person or persons to obstruct any portion of a public highway, including any portion of the entire right-of-way, in any manner with intent to prevent the free use thereof, or to make any holes therein, or to remove any earth, gravel or rock therefrom or any part thereof, or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material, on any highway or any ditch on the side of any highway, or to plow any public highway for the purpose of scouring plows, or for any other purpose except for the improvement of such highway and as directed in writing by the county engineer and the township board of highway commissioners acting jointly. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than $200, and shall pay costs of the action and the cost of cleaning the public highway and restoring it to its prior condition.”

Clearly road departments are in the business of keeping the roads in repair and removing obstructions. Should a land owner ask permission to install a unnecessarily hazardous obstruction we would not give permission. But what do we do if someone installs an obstruction, without permission as required by law? Although the land owner will be unhappy with us, we obviously have the authority, and perhaps the duty, to remove the obstruction. Installing the obstruction is a criminal act, a misdemeanor, but likely our aim is not prosecution, but removal of the obstruction and restoration of the right-of-way. See Figure 3, pictured below, for an example of a traffic hazard on a right-of-way.

First, you need to make a decision if this matter is important enough to invest your time. Do not start something unless you are going to finish it. Few things are worse than backing down to an unhappy property owner when you are right and they are wrong but mad.

Obstructions in the road, blocking sight lines at intersections, or otherwise an immediate threat to public safety should be removed at once by the county crew. For obstructions that are not an immediate threat to traffic safety, the owner should be given an opportunity to remove his property and/or restore the road. The initial contact with the owner is usually a phone call notifying the owner he installed a traffic hazard in the right-of-way, that for public safety it needs to be removed. I would suggest you give the owner a reasonable time to remove the obstruction. Tell him that after that time you will remove it and send him a bill, or perhaps you will just file a complaint with the county attorney.

Figure 3. An unauthorized traffic hazard on the r/w.
If the land owner objects to removing the obstruction you should suggest he talk with his insurance company to make sure he is insured for illegally installing traffic hazards in front of his property. If the land owner does not remove the obstruction in the stated time period, you could follow up with a demand letter stating the same things as in the phone call. Then if the land owner does not respond you do exactly what you said you would do in the letter.

If we do remove an obstruction from the right-of-way we need to consider if the material has any value. For instance, large hay bales may have some value, and we should probably just push them off the right-of-way, not remove and sell them. See Figure 4 below for an example of hay bales as an obstruction.

Sometimes an obstruction is accidentally damaged by the county. We need to avoid using public funds to repair a traffic hazard, even if we damaged it. If we repair an obstruction we are perpetuating a traffic hazard. We are supposed to remove traffic hazards, not perpetuate them. A good example would be the headwall in Figure 5, pictured below. If we replaced the culvert because it was rusted out, we would not replace the headwall. Another common example is a monument mailbox that might be damaged by a mower or snowplow. We would decline to repair the mailbox, and might offer to replace it with a standard mailbox. This might cause some hard feelings with the landowner, but our duty is to the travelling public.

Farming the right-of-way has become more common in the last 50 years and needs special mention in this article. Crops, especially when they restrict sight distance at an intersection, are a major issue. It is a common legal principle that every person is expected to know where their property line is located. I tell people when you are mowing, do not mow around crops. Don’t send your mower out looking for crops, but if the policy is to mow 10 feet, then when the mower

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Continued next page

Figure 4. Bales block sight distance and obstruct maintenance operations.

Figure 5. Headwalls are a hazardous obstruction
gets to a crop, mow the standard 10 feet. If you mow around growing crops you have just implied it is ok to farm the right-of-way. Of course, the county is supposed to know where the right-of-way line is located, so don’t go over the line, stay back a few feet.

If a farmer plants to close to the road at an intersection that is a major safety issue. If an accident would occur at an intersection due to bad sight distance, the farmer could be liable for causing the accident by illegally planting crops on the right-of-way. You are doing the farmer a favor by mowing off crops on the right-of-way to clear sight distance.

If you haven’t done so recently if would be a good idea for the commission, county counselor, and the road supervisor to discuss how to handle obstructions in the right-of-way. Removing obstructions is our duty, but it can cause hard feelings with land owners, so everyone needs to be on the same page.

If you like roads, and who doesn’t, you may be interested in my twice monthly email on current road issues and road items of statewide interest. If you would like to receive these emails just send me an email request with position, and county or company at bowers@kansascounties.org.

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Summary of Attorney General Opinion 2017-4

The sheriff for Osage County asked whether a county may request reimbursement for costs and expenses, including medical costs, related to the custody of a person awaiting determination of a civil commitment pursuant to the Kansas Sexually Violent Predator Act. Under that law, if the AG petitions the court and the judge finds probable cause that a person is a sexually violent predator, that person is taken into custody and detained in the county jail until a determination is made that the individual is subject to commitment under the act. While the act allows a county to be reimbursed for certain expenses, the AG employed statutory interpretation to conclude that, although the county can seek reimbursement for costs from the sexually violent predator expense fund or by filing a claim against the state, the county may not seek reimbursement for medical costs related to the person’s custody from those sources. The county is limited to seeking reimbursement solely from the individual. [This decision was likely the impetus for SB 150 which adds incarceration costs, including medical costs, to the list of expenses that may be reimbursed.]

Summary of Attorney General Opinion 2017-6

The Marshall County counselor asked about a countywide retailers’ sales tax to support health care services. Specifically, the counselor asked whether a petition could force the BOCC to put the question of imposing the tax on the ballot through the petitioning process because the BOCC was unwilling to put the question on the ballot.

KSA 12-187(b)(1) provides two ways for the question of imposing a countywide sales tax to be placed on the ballot: the BOCC may submit the question or a petition presented to the BOCC signed by no less than 10% of the electors can force the question to be submitted. Subsection (b)(5) of that same section states a BOCC may submit the question of imposing a countywide sales tax for the purpose of financing health care services and that such tax will be in addition to the rate limits that normally apply.

After an analysis using statutory construction, the AG concluded that although petitioners could force the BOCC to submit the question under subsection (b)(1), the legislature did not intend for the petition process to apply in subsection (b) (5) and therefore only the BOCC has the power to decide to submit the question of a sales tax for the purpose of funding health care services. ■
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A new website provides free legal assistance for low-income Kansans.

Kansas is part of a national network to provide free legal assistance to income-eligible individuals. In conjunction with a new program that is hosted by the American Bar Association, the Kansas Bar Association has launched https://Kansas.freelegalanswers.org. The service is geared to expand legal services for those who cannot afford an attorney. Users will have to meet eligibility guidelines applicable to each state. Please consider forwarding this information to county departments that may want to provide this information to low-income citizens in the community.

Civil legal questions (up to three per year) are submitted online and users will receive an answer via email. The site is accessible from any internet connection and open to receive questions at any time or day of the week. All questions asked on ABA Free Legal Answers are protected by attorney-client privilege.

The free virtual legal advice clinic model was first launched in Tennessee and eventually adopted by the American Bar Association to take nationwide. The program is supported by a long list of organizations and is a project of the ABA Standing Committee on Pro Bono and Public Service.

In addition to providing legal advice, the program provides attorneys with an opportunity to give back through pro bono.

The Kansas Bar Association also offers the KANASK-A-Lawyer service which provides callers with a cost-effective way to get answers to legal questions. KBA Lawyer Referral Service representatives will visit with the caller, coordinate a call from an attorney and the client is charged $2 per minute. The service can be reached at 1-800-928-3111.

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Nationwide Retirement Solutions (NRS) administers the NACo 457 Deferred Compensation Program for county employees across the U.S. NRS provides education, investments and recordkeeping functions for these plans. Along with the 457 Plan, NRS also administers a 401a Match Plan and the Post Employment Health Plan (PEHP), a plan that provides retiree health care reimbursements, tax free.
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Kansas Brownfields Program
The KDHE administers a State Brownfields Program that is funded through a federal Environmental Protection Agency grant. Through the program, KDHE can provide Brownfields Targeted Assessments (BTA) to eligible applicants on projects that benefit community need or job creation. BTAs provide a means to evaluate potential environmental liabilities associated with a particular property that may complicate redevelopment or reuse objectives. The State Brownfields Program offers BTAs at no cost to participating entities.

What are Brownfields?
Almost all communities in Kansas, big, small, and rural are affected by Brownfields sites, although not always visible. A Brownfields site is real property of which the expansion, redevelopment or reuse may be complicated by contamination or perceived contamination on the property. Often it is the perception of contamination that keeps properties from being redeveloped. Once the “stigma” is gone, properties can be returned to productive use.

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