Approved: 2-3-93
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by Chairperson Marvin Smith at 9:00 a.m. on February 2, 1993 in Room 521-S of the Capitol.

All members were present except: Representative Tom Bradley (Excused)

Committee staff present: Carolyn Rampey, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Arden Ensley, Revisor of Statutes
Nancy Kippes, Committee Secretary

Conferees appearing before the committee:

Michael Byington, Kansas Association for the Blind and Visually Impaired
Carol Williams, Kansas Commission on Governmental Standards and Conduct
Ron Smith, Kansas Bar Association
Chris McKenzie, League of Kansas Municipalities

Others attending: See attached list

Michael Byington, Kansas Association for the Blind and Visually Impaired, appeared before the committee to request introduction of a bill which would enable human services providers to provide voter registration to clients, thus making voter registration easier for persons who are unable to register in person and who are print handicapped (Attachment 1).

HB 2050 - governmental ethics; conflicts of interest of local governmental officers and employees.

Carol Williams testified in support of HB 2050, stating this bill would bring state and local provisions in line. They recommend individuals participating in making of any contract be prohibited from accepting employment with that business for two years (Attachment 2). At present an employee may serve on a board but abstain from voting on any issue where there would be a conflict of interest.

Ron Smith, Kansas Bar Association, appeared to provide information concerning HB 2050 relative to attorneys (Attachment 3). He stated the bill appeared to be more liberal than the Court Rule would be. He suggested "personally and substantially" might be helpful.

Chris McKenzie, League of Kansas Municipalities, provided written testimony with concerns with HB 2050 (Attachment 4). He is concerned about possible problems by the reaction of small communities: 1) may discourage service in elective and appointive office; 2) may discourage purchasing goods and services locally; 3) competitive bidding exemption not adequate; 4) would remove knowledgeable persons from decision making process. Possibly adding the words "personally and substantially" would help. In answer to a question, Mr. McKenzie said small communities could create an ordinance.

Representative Dillon moved acceptance of Michael Byington's bill request. Representative Gilbert seconded. Motion carried.

Representative Ballard moved for approval of the minutes for January 28, 1993 as presented. Representative Gilbert seconded. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 3, 1993.

GUEST LIST

COMMITTEE: House Local Government & Elections DATE: 2-2-93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Michael Woolf	Topeka	CC/KS
Janet Williams	Topeka	GSC
Farrell D. Maichel	Topeka	K.S.B.A.
Williams	Topeka	KCOSC
Ron Smith	"	Ks Bar
Cindy Tinsley	Paola	Intern R. Gilbert
Mark Tallman	Topeka	KASB
Harry Heckington	TOPEKA	League of KS municipalities
Michael Burgeton	Topeka.	KS Assn of Blind & Visually Impaired
Rebecca Bosiemeyer	TOPEKA	SOS
Pete Lowry	Topeka	Public

#1

Kansas Association for the Blind and Visually Impaired, Inc.

AN AFFILIATE OF AMERICAN COUNCIL OF THE BLIND

TO: Committee on Elections

FROM: Legislative Committee
Bonnie Byington, Chair
Michael Byington, Registered Kansas Lobbyist

SUBJECT: Request for introduction of legislation

DATE OF REQUEST: February 2, 1993

We wish to have introduced legislation amending voter registration statutes, and particularly the Act passed in the 1992 session commonly called the Kansas Motor Voter Act. The proposed legislation would make voter registration easier for persons who are unable to register in person, and who also are print handicapped thereby making it difficult or impossible for them to handle the completing and mailing of print register by mail forms.

The recently adopted statutes tie voter registration to the acquisition of a Kansas Driver's License or to the Non-Driver's Kansas Identification card. Very severely physically or sensory disabled individuals, however, often do not drive and do not find a need for the identification card. If these individuals can not see or write sufficiently to fill out forms by mail, and can not get to registration stations to procure help, they can not register to vote. Indeed, for them, the process of registering to vote is more difficult than the process of voting in and of itself.

We thus request legislation which would require and enable human services providers to provide voter registration to clients. We further request that the legislation require and enable entities which provide in-home services for disabled individuals to include voter registration among those services offered. This is not to suggest a requirement for new employees, but simply that such providers as rehabilitation teacher for the blind, visiting nurses, independent living trainers, etc. would offer voter registration along with the services they already provide.

Similar provisions to those suggested here were contained in the United States Motor Voter Act which was vetoed by the President in 1992. Even if these provisions are again contained in the new federal act now under consideration, Kansas should reinforce the federal provisions.

For more information, please contact (913) 354-9933 or (913) 233-3839. Thank you.

2-2-93
House Govt Org. & Elec.
Attachment 1

Post Office Box 292 / Topeka, Kansas 66601

STATE OF KANSAS

A. ..stration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

109 West 9th Stree.
Suite 504
Topeka, Kansas 66612
(913) 296-4219

KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before House Governmental Organization and Elections

on House Bill 2050

By Carol Williams, Kansas Commission on Governmental

Standards & Conduct

House Bill 2050 which is before you this morning amends a provision of the local conflict of interest law, K.S.A. 75-4304(a). This is a recommendation the Kansas Commission on Governmental Standards and Conduct made in its' 1992 Annual Report and Recommendations.

Under current law, a local government official can participate in the making of a contract with a person or business and accept employment with that person or business the next day, while continuing to serve as a local government official. (See attached Advisory Opinion 92-27.) Currently, the time frame for holding a substantial interest at the local level is "in the preceding 12 months". Prior to 1991, the local conflict of interest definition of substantial interest covered the time period "current, preceding, or succeeding calendar year". In essence, prior to 1991, this meant that if a local government official had a substantial interest in any business or combination of businesses, he or she could not participate in the making of a contract with such business.

Current state conflict of interest provisions prohibit a state officer or employee from accepting employment with any person or business for one year if the state officer or employee had participated in the making of any contract with such person or business within the preceding two years.

The Commission recommends that K.S.A. 75-4304(a) be amended

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Attachment 2

on lines 18-24 to state "Whenever any individual has, within the preceding two years participated as a local government officer or employee in the making of any contract with any person or business, such individual shall not accept employment with or provide contractual services to such person or business for one year following termination of employment as a local government officer or employee. This amendment would bring the local and state conflict provisions in line with each other.

The Commission urges your support of House Bill 2050.

STATE OF KANSAS

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

109 West 9th Street
Suite 504
Topeka, Kansas 66612
(913) 296-4219

KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

August 21, 1992

Opinion No. 92-27

Paul R. Oller
Trego County Attorney
216 N. Main
WaKeeney, Kansas 67672

Dear Mr. Oller:

This opinion is in response to your letter of July 17, 1992, in which you request an opinion from the Kansas Commission on Governmental Standards and Conduct concerning the local conflict of interest law (K.S.A. 75-4301a et seq.)

We understand you request this opinion in your capacity as County Attorney for Trego County, Kansas. You also have a part-time law practice and have received an offer of employment from The Farm, Inc., which will run concurrently with your duties as County Attorney.

You indicate that you may have participated in recommendations to the county to contract with The Farm, Inc., in your capacity as County Attorney.

You ask whether this situation precludes you from accepting the part-time position with The Farm, Inc. while County Attorney, and for general guidance from the Commission should your acceptance of this position be permissible.

While the situation you describe may well be prohibited under K.S.A. 46-233 which applies to state officers and employees there is no corresponding provision in the local law. Thus, you are not prohibited from accepting the position with The Farm, Inc., while serving as County Attorney. However, under K.S.A. 75-4304 and 75-4305, we suggest you file a disclosure statement and also avoid participating in your capacity as County Attorney with any contracts between the County and The Farm, Inc.

Sincerely,

Richard C. Loux, Chairman

By Direction of the Commission

RCL:DDP:dlw

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KANSAS BAR ASSOCIATION

Legislative Information for the Kansas Legislature

TO: Members, House Governmental Organization & Elections Committee

FROM: Ron Smith, KBA General Counsel

SUBJ: HB 2050, Original Draft

SUMMARY

Unless amended, HB 2050 as drafted creates extraordinary problems for attorneys and other management level employees of city and county government in leaving employment. It may also impermissibly regulate the practice of law.

KBA POSITION

The Board of Governors of the Kansas Bar Association have no official position on this bill. This information is offered as background to the ethics issues contained in the bill from the view of many Kansas lawyers who work in, and for, local governments.

BACKGROUND

The proposal in HB 2050 is fairly clear as to intent. It appears to regulating a "revolving door" problems that we often hear about in the Federal government. The language causes some problems, however.

Please be careful in these ethics codes that you do not make it so difficult to move from public to private employment that people would be foolish to enter public employment in the first place.

The phrase "local government officer or employee" in lines 19-20 presumably covers privately-hired attorneys or professionals who are employed by local government. Obviously attorneys for local government are involved in the "making of any contract" (line 20).

The problem for attorneys is they are involved in the making of *most* contracts, simply because of the nature of their work.

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

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House Govt Org. + Elections
Attachment 3

What this bill says, essentially, is that for every contract an attorney makes, (s)he is precluded from going into private practice and providing any other service for that contracting party for a year.

Example. An assistant city attorney drafts contracts involving provision of private janitorial services for city buildings. If the attorney, who personally does not benefit from the city's contract with the janitorial service, goes into private practice, HB 2050 appears to preclude the janitorial service from hiring the attorney on any matter.

The type of services provided is not limited to the type of services provided in the contract when the attorney was employed by the city. HB 2050 does not allow the attorney to provide legal services to the janitorial company regarding corporate restructuring, corporate taxes, or handling corporate matters for the CEO of the janitorial company.

HB 2050 bans all subsequent employment or services for a year. Question: why is it necessary to have such a broad sweep to this law?

Attorneys and some other employees for local governments may participate in the making of hundreds of contracts over a two-year period.

) you truly intend to cluded such former em ees from rendering *any* legal services whatsoever to these companies or individuals, merely because the former employee once handled the contract on behalf of city government?

Linkage. Should there not be some link between the type of work the employee did for the city, and the type of work the former city employee is now doing for the private business? If I am a city attorney and work on a widgit contract with Boeing Corporation, and Boeing later hires me not to manage their widgit division but as their association general counsel for international litigation and I am not involved in widgits anymore, HB 2050 would apply but I fail to see the ethical harm that it is regulating.

Termination. Line 23 is troubling. It uses the phrase "termination of employment." Does this phrase mean an amicable parting of the ways between government and employee, or does it include instances where the employee is fired? I can see regulation being necessary if the employee works on a contract and then quits the job to help the contracting company manage the contract with the city.

But if the employee is fired and seeks employment

he private sector, to n that for a year the city can control that person's future employment *regardless* of the reason for termination, do you really intend the bill regulate all government employment to that extent?

CONTRACT PRIVATE COUNSEL. Subsection (a) applies only to "local government officer or employees." Perhaps that is defined somewhere. However, is a law firm hired by a smaller city to be the city attorney an "officer?"

Most smaller towns cannot hire city attorneys on staff. They appoint local lawyers or firms to be their "city attorney."

If private lawyers hired by cities and counties are not "officers" by definition, then my concern in this paragraph is not valid.

If they are officers, however, many of these firms in smaller cities do not make that much of a fee representing these smaller towns. If working for local government means they must give up more of their private practice because they will be unable to represent any other business which in the past has contracted with the city, then even fewer lawyers and law firms will make their services available to smaller towns.

Larger cities who hire attorneys as employees do not have this problem. Thus you're creating two sets of problems for these cities, and the attorneys who work for them.

MODEL RULES

For lawyers, the Model Rules of Professional Conduct, effective in Kansas March 1, 1988, covers the situations you have prescribed in HB 2050. MRPC 1.11 states in part, *"Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation."* The rule also bars lawyers in the firm with which the former government lawyer is associated from handling the matters.

HB 2050 regulates lawyers differently than this rule. First, MRPC 1.11 applies only to representation of private clients on matters in which the lawyer participated *personally and substantially*. HB 2050 is limited to "contracts." Line 19 of HB 2050 uses the benign trigger word "participated" I suggest that "personally and substantially" is a good limitation for HB 2050, too.

Second, MRPC 1.11's proscribed conduct is lifetime, unless the government entity

consents. HB 2050's prohibitions are for a year after leaving employment, but then HB 2050 does not allow for the government agency to consent to the private employment representation.

You may way to consider some sort of "government consent" exception into HB 2050.

Third, MRPC 1.11 goes on to limit lawyers in private practice who have acquired "confidential government information" while employed with government. The government is treated like any client; confidential information acquired by government lawyers during years representing the government which could be used to the government's detriment cannot be divulged to anyone, ever, including new private clients, without the client's permission. The proscription applies to the other lawyers in the former government lawyer's firm.

The comment to MRPC 1.11 indicates the rule "prevents lawyers from exploiting public office for the advantage of a private client."

If you read MRPC 1.11 and HB 2050 together, the proposed statute is both harsher and more lenient than the Model Rule. For attorneys, HB 2050 is regulating the practice of law, which inherently is a power of the judicial branch. The Judiciary can consent in this proposed bill, but under Separation of Powers doctrine, they do not have to defer to the Legislature in matters regulating the practice of law.

For example, I don't believe the Supreme Court would want the statute applying to former government lawyers if the effect of HB 2050 is more leniency than MRPC 1.11.

We are not suggesting that lawyers should be exempt from HB 2050. We are saying, however, that the Supreme Court already has provided rules which govern post-government employment practice, and in may ways it is more restrictive than HB 2050.

CONCLUSION

The many bills introduced into this legislature designed to fix problems from the 1991 ethics bill should alert you to moving slowly and carefully in this area.

HB 2050 is similar to restrictive employment covenants in the private sector. While such covenants are lawful, they are lawful only if reasonable.

The wording in Section 1(a) needs to be more precisely drawn to identify the precise evil being regulated, and then tailor the remedy for that precise problem.

#4

THE LEAGUE OF KANSAS MUNICIPALITIES

Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Governmental Organization and Elections

FROM: Chris McKenzie, Executive Director

DATE: February 2, 1993

RE: Testimony Concerning House Bill No. 2050

Thank you for the opportunity to appear to express our concerns concerning HB 2050. Each year the League advises numerous local officials about the steps necessary for compliance with the state conflict of interest act, K.S.A. 75-4301 et seq. Furthermore, the League's Statement of Municipal Policy endorses the adoption of local codes of ethics and states that "public officers and employees should maintain the highest level of personal and professional conduct." The League regularly offers training to its member city officials on the state conflict of interest act, and the adoption of local codes of ethics is encouraged.

While the general intent of HB 2050 may appear worthy, we anticipate a number of potential problems that may stem from it. Let me list them briefly:

(1) **It may discourage service in municipal elective and appointive office.** With 627 cities in the state, there are approximately 3,000 elected city officials and many more appointed officials. Each year we get calls from city clerks who are frantic because no one has filed for elective office. If HB 2050 is adopted, it will probably become increasingly difficult to fill many council positions in cities, especially smaller cities, around the state.

(2) **It may discourage purchasing of goods and services locally.** In some cities there are so few businesses that it would be impossible for the restrictions of HB 2050 to be followed **and** for the city to do business with local vendors.

(3) **The competitive bidding exemption is not adequate.** While subsection (d)(1) exempts competitively bid contracts from the limitations of the statute, state law generally does not require competitive bidding for all municipal purchases. For example, does the open account at the local office supply store constitute a "contract" under this act. If it does, the owner or any employee of the office supply store could not have been involved in the "making" of the contract in any capacity with the city. As a practical matter, all such purchases would have to be competitively bid in order to avoid the penalties of this statute. For many cities, this would raise costs and be unworkable. Moreover, since professional services are not competitively bid, there would be no possibility of an exemption for such services.

(4) **It would remove knowledgeable persons from the decision making process.** At present state law requires persons with a "substantial interest" from participating in the making of most contracts. HB 2050 would effectively remove local government experts from the decision making process because they might be employed by or be a subcontractor of a person or business within one year after leaving office. For example, because the city attorney might leave office during the next two years to work for a law firm representing the city in a specialized legal matter (e.g., workers compensation litigation), the city attorney would not be involved in selecting special legal counsel for the city. In other areas of selecting professional services--personnel, engineering, utilities, airports, planning, parking --similar restrictions could occur, leaving the governing body with the most inexperienced people advising them.

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House Govt. Org + Elec.
Attachment 4

For these reasons the League urges you to move cautiously with regard to this proposal. Our formal position on this bill will be established in the next few weeks when our policy committees meet. Thank you.