

Approved: 2-16-93
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 11, 1993 in Room 521-S of the Capitol.

All members were present except: Representative Delbert Gross (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:

~~Carol~~
Janet Williams, Kansas Commission on Governmental Standards and Conduct

Others attending: See attached list

Representative Kenneth King appeared before the committee to request introduction of a bill which would limit the U.S. Senate terms to 12 years and the U.S. House to 6 years. This bill would merely send a message to Congress because individual states cannot change the length of terms of U.S. Congressional members. Other states are passing the same type bills.

Representative McKechnie moved introduction of such bill. Representative Haulmark seconded. Motion carried.

Hearing on:

HB 2043 - conflicts of interests of state officers and employees.

~~Carol~~
Janet Williams, Kansas Commission on Governmental Standards and Conduct, testified in support of HB 2043, stating the phrase "holds a position" is not presently defined. This bill would change "position" to substantial interest and substantial interest is defined (Attachment 1).

HB 2052 - criminal penalties for violation of state governmental ethics laws.

~~Carol~~
Janet Williams, Kansas Commission on Governmental Standards and Conduct, testified in support of HB 2052, stating this bill would reinstate the criminal penalty for use of confidential information, which was inadvertently deleted (Attachment 2).

HB 2054 - conflicts of interests; employment as consultant after leaving state service.

~~Carol~~
Janet Williams, Kansas Commission on Governmental Standards and Conduct, appeared in support of HB 2054, stating this bill amends a provision of the state conflict of interest statutes (Attachment 3). This would include consultants to a person or business.

Action on:

HB 2051 - governmental ethics; filing of disclosure statements by legislators contracting with a state agency.

Representative McKechnie moved favorable passage of HB 2051. Representative Macy seconded. Motion carried.

HB 2053 - governmental ethics; defining substantial interest.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 11, 1993.

Representative McKechnie moved favorable passage of HB 2053. Representative Hendrix seconded. Motion carried. Chairman Smith asked for mutual consensus for consent calendar and passed.

Representative Scott moved approval of the minutes for February 10, 1993. Representative O'Connor seconded. Motion carried.

The meeting was adjourned at 9:40 a.m. The next meeting is scheduled for February 16, 1993.

GUEST LIST

COMMITTEE: House Governmental Organization
 & Elections

NAME (PLEASE PRINT)

ADDRESS

COMPANY/ORGANIZATION

[illegible]



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before House Governmental Organization and Elections on House Bill 2043

By Carol Williams, Kansas Commission on Governmental Standards & Conduct

House Bill 2043 which is before you this morning would amend a provision of the state conflict of interest statutes, K.S.A. 46-286. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1992 Annual Report and Recommendations.

Under current law, a state officer or employee cannot license, inspect, or enforce any regulation with a business in which he or she "holds a position". The phrase "holds a position" is not defined in the Act. Therefore, "holds a position" can mean anything from an employment situation to stock ownership. The Commission feels that K.S.A. 46-286(a) is currently confusing and inconsistent with the rest of the Act. In comparison to K.S.A. 46-233, which prohibits a state officer or employee from participating in a contract with the officer or employee's spouse's business, K.S.A. 46-286 permits a state officer or employee to participate in licensing the spouse's business if he or she does not hold a position in that business.

House Bill 2043 would amend K.S.A. 46-286 on line 18 by changing the word "position" to substantial interest. Substantial interest is defined in K.S.A. 46-229 which is attached for your review. The amendment in this bill would prohibit a state officer or employee from participating directly in the licensure, inspection, administration or enforcement of any regulation of a business in which the officer or employee holds a substantial interest rather than a position.

The Commission feels this language would be more consistent with other sections of the Act and therefore, urges your support of House Bill 2043.

2-11-93
House Govt Org & Elec
Attachment 1

46-229. "Substantial interest" and "client or customer" defined. "Substantial interest" means any of the following:

(a) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.

(b) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(c) If an individual or an individual's spouse, either individually or collectively, has received directly or indirectly in the preceding 12 months, gifts or honoraria having an aggregate value of \$500 or more from any person, the individual has a substantial interest in that person. If a gift is received for which the value is unknown, the individual shall be deemed to have a substantial interest in the donor. A substantial interest does not exist under this subsection by reason of: (1) A gift or bequest received as the result of the death of the donor; (2) a gift from a spouse, parent, grandparent, sibling, aunt or uncle; or (3) acting as a trustee of a trust for the benefit of another.

(d) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

(e) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

As used in this subsection, "client or customer" means a business or combination of businesses.

History: L. 1974, ch. 353, § 15; L. 1983, ch. 172, § 1; L. 1984, ch. 189, § 1; L. 1987, ch. 198, § 1; July 1.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before House Governmental Organization and Elections on House Bill 2052

By Carol Williams, Kansas Commission on Governmental Standards & Conduct

House Bill 2052 which is before you this morning amends a provision of the state conflict of interest statutes, K.S.A. 46-276. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1992 Annual Report and Recommendations.

Under current law, there is no penalty provision for a state officer or employee to disclose or use confidential information acquired in the course of his or her official duties in order to further his or her own economic interest or those of another person. From 1974 to July of 1983, K.S.A. 46-241, which prohibits the disclosure or use of confidential information by a state officer or employee, was included in the criminal penalty section of K.S.A. 46-276. When this penalty section was amended in 1983, the word "to" was inadvertently deleted from "46-240 to 46-242", thereby deleting the criminal penalty for K.S.A. 46-241 in this penalty provision.

The Commission was conducting an investigation into a possible violation of this confidentiality provision in 1992 when it discovered that the criminal penalty for violating this section no longer existed. The Commission recommends that once again, K.S.A. 46-241 be included in the criminal penalty provision, K.S.A. 46-276.

The Commission urges your support of House Bill 2052.

2-11-93
House Gov't Org + Elec
Attachment 2



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before House Governmental Organization and Elections

on House Bill 2054

By Carol Williams, Kansas Commission on Governmental Standards & Conduct

House Bill 2054 which is before you this morning amends a provision of the state conflict of interest statutes, K.S.A. 46-233. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1992 Annual Report and Recommendations.

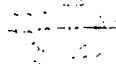
Under current law, a state officer or employee can leave state government and become an independent contractor for a business. The business may have entered into contracts with the state officer or employee's state agency during that persons' employment and the state officer or employee could have participated in the making of contracts with that business. K.S.A. 46-233 currently prohibits any individual, who has participated within the preceding two years as an officer or employee in the making of a contract with any person or business, from accepting employment with such person or business for one year following termination of employment as a state officer or employee.

The Commission has opined in Advisory Opinions 87-13, 90-28 and 91-20 that being a consultant to a person or business does not constitute employment with said business. Thus, an individual can, within one year following termination of employment as a state officer or employee, perform consulting services for a business that has contracted with the state.

The amendment to House Bill 2054 found on line 31 would include "consult for compensation" in the one year ban on employment when a state officer or employee has participated within the preceding two years in the making of any contract with that person or business.

The Commission has not been comfortable issuing these opinions in the past and feels that including consulting for compensation should be included in K.S.A. 46-233. They urge your favorable consideration of House Bill 2054.

3-11-93
House Govt Org & Elec
Attachment 3



KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

May 15, 1991

Opinion No. 91-20

Dan Biles
Gates & Clyde, Chartered
10990 Quivira, Suite 200
Overland Park, Kansas 66210

Dear Mr. Biles:

This opinion is in response to your letter of May 7, 1991, in which you request an opinion from the Kansas Public Disclosure Commission concerning K.S.A. 46-233(a).

We understand you request this opinion on behalf of Horace B. Edwards, former Secretary of Transportation for the State of Kansas. Mr. Edwards is now employed in the private sector by HBE & Associates, Inc. You also state HBE & Associates, Inc., may be retained as an independent contractor by other private sector firms holding State contracts with Mr. Edwards' former department.

From communications between yourself and our staff, we understand that Mr. Edwards incorporated HBE & Associates. You ask whether it would be permissible for Mr. Edwards to do consulting with businesses which contracted with the Department of Transportation during his service as Secretary.

K.S.A. 46-233(a) relates to your question. That section states:

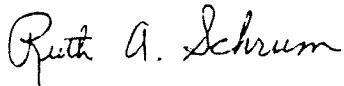
"No state officer or employee shall in the capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one year following termination of employment as a state officer or employee."

The issue raised in applying this language is the appropriate definition of the word "employment". While it could be argued that a broad definition of that term would include consulting as an independent contractor, it is our opinion since the term is used twice in the same sentence and the second usage clearly applies to a master/servant setting, and further, since this is a criminal statute which must be strictly construed, that "employment" means those settings where a true employee/employer relationship is established.

Thus, we believe so long as he serves as an employee of HBE & Associates, Inc., that it would be permissible for HBE & Associates, Inc., and therefore Mr. Edwards, to do business with entities that contracted with the Department of Transportation during his service as Secretary.

Sincerely,



Ruth A. Schrum, Chairwoman

By Direction of the Commission

RAS:DDP:dlw