

Approved: Feb. 4, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS, CONGRESSIONAL & LEGISLATIVE
APPORTIONMENT AND GOVERNMENTAL STANDARDS

The meeting was called to order by Chairperson Barbara Lawrence at 1:30 p.m. on January 19, 1993 in Room 529-S of the Capitol.

All members were present except: Senator Richard Bond, excused
Senator Don Sallee, excused

Committee staff present: Dennis Hodgins, Legislative Research Department
~~Mary Galligan, Legislative Research Department~~
~~Raney Gilliland, Legislative Research Department~~
Arden Ensley, Revisor of Statutes
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Joe de la Torre, Office of the Secretary of State
Jana Atchison, Kansas Commission on Governmental Standards
and Conduct
Janet Williams, Kansas Commission on Governmental Standards
and Conduct

Others attending: See attached list

Joe de la Torre, Secretary of State's Office, appeared before the committee to request introduction of legislation pertaining to election laws. The first would require adding city of residence of candidates on ballots for elections. The second dealing with withdrawal and filling of vacancy in candidacy of independent candidate for vice president.

Mr. de la Torre also provided the committee members with a packet of 1992 election laws. (On file in the Office of the Secretary of State.)

A question and answer period followed.

A motion was made by Senator Ranson to introduce the first piece of legislation requested by Mr. de la Torre, representing the Secretary of State's Office. Seconded by Senator Wisdom. Motion carried.

A motion was made by Senator Parkinson to introduce the second piece of legislation requested by the Office of the Secretary of State. Seconded by Senator Hardenburger. Motion carried.

Jana Atchison, Kansas Commission on Governmental Standards and Conduct, appeared before the committee to request introduction of legislation pertaining to campaign finance and lobbying.

A motion was made by Senator Ranson to introduce legislation relating to elections; filing fees for candidates for certain offices; amending K.S.A. 1992 Supp. 25-4119f and repealing the existing section. Seconded by Senator Wisdom. Motion carried.

A motion was made by Senator Hardenburger to introduce legislation relating to elections; concerning campaign finance; promoting or opposing adoption or repeal of constitutional amendment; amending K.S.A. 1992 Supp. 25-4180 and repealing the existing section. Seconded by Senator Wisdom. Motion carried.

A motion was made by Senator Wisdom to introduce legislation relating to lobbying; concerning the registration of lobbyists; amending K.S.A. 1992 Supp. 46-265 and repealing the existing section. Seconded by Senator Hardenburger. Motion carried.

Janet Williams, Kansas Commission on Governmental Standards and Conduct, appeared before the committee requesting legislation be introduced pertaining to conflict of interest laws and lobbying. (Attachment I)

Senator Wisdom moved to introduce all requested legislation. Seconded by Senator Parkinson. Motion carried.

The meeting adjourned at 2:27 p.m.

The next meeting is scheduled for January 21, 1993.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE January 19, 1993

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Michael Woolf, Topeka

Common Cause/KS

G. DeLaTune Topeka

SOS

Rebecca Besanmeyer Topeka

SOS

Cindy Hermes

KCGS+C

Jana Atchison Topeka

KCGSC

Janet Williams Topeka

KCGSC

COMMISSION RECOMMENDATIONS

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs revision, modification, and in some cases, major changes. To that end, the Commission makes the following recommendations:

GENERAL PROVISIONS

House Bill 2038

1. The Commission recommends that the qualifications for serving on the Kansas Commission on Governmental Standards and Conduct be modified. With the qualification restrictions that were enacted in 1990 and 1991, it has become increasingly difficult for vacancies to be filled on the Commission. Several appointing authorities have gone through as many as twenty candidates before finding one that qualifies. There has been a vacancy on the Commission since March 1, 1992. As of this date, this position has yet to be filled. The portions of the provision which have excluded many capable individuals from serving should be amended as follows:

"..No person shall be appointed to membership on the commission who has within five years preceding such appointment held the office of chairperson, vice chairperson or treasurer of any county, district or state political party committee, or who within five years preceding the date of such appointment has been a candidate for or the holder of any partisan political office or who has within three years preceding the date of such appointment: (1) Held an elective state office; (2) held the office of secretary of any department of state government; (3) been a lobbyist as defined by K.S.A. 46-233 and amendments thereto; (4) ~~had a substantial interest in or~~ been an officer of any vendor of goods or services to the state of Kansas or any agency thereof; or (5) provided services under contract to the state of Kansas or any agency thereof.

CAMPAIGN FINANCE PROVISIONS

2. The Commission recommends that K.S.A. 25-4119f be amended to require county treasurers to remit county candidate registration fees to the state treasurer and city treasurers to remit city candidate registration fees to the state treasurer. In working with State Treasurer Sally Thompson's office in determining the best way to handle the remittance of candidate registration fees, the State Treasurer felt that the county clerks should remit the fees they collected to their respective county treasurer for quarterly remittance to the State. Though the vast majority of the counties complied with this request, there were a few county clerks as well as county treasurers who insisted that the clerk remit the funds since the statute required them to do so.

3. The Commission feels that K.S.A. 25-4180, which addresses the financial reports required by every person who engages in any activity promoting or opposing the adoption or repeal of any provision of the Kansas constitution, be brought more in line with the reporting requirements of candidates and committees under the Act. Currently, dates for contributions and

expenditures are not required, disclosure of whether or not the contributions were made by cash or check is not required, the occupations of contributors is not required, outstanding loans or account payable are not required to be disclosed, and there is no requirement that the report be signed. Since candidates and committees are required to provide this additional information, the Commission feels that persons filing financial reports under K.S.A. 25-4180 have parallel reporting requirements.

LOBBYING PROVISIONS

4. Currently, the Commission has authority to assess a civil penalty against a lobbyist who is late in filing his or her Lobbyist Employment and Expenditures Report. During this past year, four lobbyists have refused to pay their civil penalties. A lobbyist who has outstanding fines on civil penalties should not be allowed to lobby until his or her obligation is met. The Commission recommends that a new section be added to the penalty provision which states "Any person who has failed or refused to pay any civil fine or civil penalty issued under the provisions of this Act shall not be allowed to register as a lobbyist and shall not lobby."

CONFLICT OF INTEREST PROVISIONS

5. Currently, ²⁰⁴³K.S.A. 46-286(a) is confusing and inconsistent with the rest of the Act. The phrase "holding a position" could mean anything from employment situations to stock ownership. Also, in comparison to K.S.A. 46-233, where a state officer or employee can not participate in a contract with the officer or employee's spouse's business, under this section, a state office or employee could participate in licensing the spouse's business. We recommend that K.S.A. 46-286 be amended using the following language to accommodate both concerns. "(a) No state officer or employee, in the officer's or employee's official capacity, shall participate directly in the licensure, inspection or administration or enforcement of any regulation of or in any contract with any outside organization with which the officer or employee ~~holds a position~~ holds a substantial interest."

^{House Bill 2054}6. At the Commission's August meeting, Laura Nichols, former Secretary of the Department of Commerce, asked for an advisory opinion as to whether she could, as an independent contractor, do business with companies that entered into contracts with the Department of Commerce during the time period she served as Secretary. The Commission could not reach a consensus for issuing an advisory opinion to Ms. Nichols. The issue of independent contractor vs. employee has been dealt with by the Commission on previous occasions. In Opinions 87-13, 91-20 and 90-28, the Commission opined 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 Commission recommends that K.S.A. 46-233 be amended to cover consulting service as follows: "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 or consult for compensation with such person or business for

one year following termination of employment as a state officer or employee"

7. The Commission recommends that quasi-governmental organizations that have discretion to spend state monies, be brought under the provisions of the State Conflict of Interest statutes. Examples of quasi-governmental organizations are Kansas, Inc., INK, Inc., and the Kansas Development Finance Authority. Currently, other than the requirement that its members file Statements of Substantial Interests, these entities do not fall under the provisions of the Act. To reach this outcome, each enacting law for the above organization should be amended to include language to the effect that K.S.A. 46-215 et. seq. shall apply to the officers and employees of these organizations.

House Bill 2053

8. Currently, if an individual owns 100% of a business, that business' holdings are not reportable by the individual on his or her Statement of Substantial Interests. The Commission recommends that K.S.A. 46-229 be amended as follows: "(a) If any 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, or is a general partner in a partnership which is the principal owner of any other business; or is the principal owner of a corporation which is the principal owner of another business, the individual has a substantial interest in that business."

9. Currently, any agency of the State of Kansas which enters into a contract with any legislator, or any member of a firm of which such legislator is a member, under which the legislator or the member of such firm is to perform services for such agency for compensation, must file a quarterly report with the Secretary of State disclosing such employment. The Commission recommends that K.S.A. 46-239 be amended to require current legislators to sign and file a similar statement of contractual services when they or any member of their firm contracts with a state agency. This would provide a means of cross-check for Commission staff.

House Bill 2052

10. In 1983, K.S.A. 46-241, which prohibits the disclosure of or use of confidential information by a state officer or employee, was included in the criminal penalty section. When this section was amended the word "to" was inadvertently deleted from "46-240 to 46-242", thereby deleting the criminal penalty for 46-241 in K.S.A. 46-276. The Commission recommends that, once again, K.S.A. 46-241 be included in the criminal penalty provision.

11. Under current law, a state employee who provides services to the public free of charge, or at a reduced charge, in his official capacity, can contract with a person to perform these services on the state employee's personal time. The state employee charges a fee for this service contending that the service can be provided to the individual sooner than if done during official state time. So in fact, the state employee is charging fees on his or her own time to provide services that could be done on state time free or at a reduced rate. The Commission recommends that a new section be amended into the Act to prohibit this activity. The Commission proposes the following language: "Any state officer or employee who provides a service to any person, may not charge a direct or indirect fee to provide this

service to any person on that state officer or employee's personal time."

12. In Advisory Opinion No. 92-35, the Commission opined that The Annual Survey, a publication of the Kansas Bar Association, falls under the gift provisions set forth in K.S.A. 46-271. Therefore, this publication could not be provided to legislators and senior executive branch officers since the cost of the publication is more than \$40. The Commission recommends that the donation of regular and official publications of trade and professional associations be excluded from the definition of gifts, as set forth in K.S.A. 46-271.

LOCAL CONFLICT OF INTEREST PROVISIONS

House Bill 2050

13. Currently, a local government official can participate in the making of a contract with a person or business and go to work for that person or business tomorrow while remaining a local government official. The Commission recommends that K.S.A. 75-4304(a) be amended to read "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".