

Approved: Feb. 9, 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 21, 1993 in Room 529-S of the Capitol.

All members were present

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: Carol Williams, Kansas Commission on Governmental Standards and Conduct  
Ron Smith, Kansas Bar Association  
Keith Landis, Christian Science Committee on Publication for Kansas  
Michael Woolf, Common Cause for Kansas  
Joe de la Torre, Office of the Secretary of State

Others attending: See attached list

Senator Lawrence opened hearings on **SB 44** - relating to lobbying; concerning restrictions on gifts or contributions.

Carol Williams, Kansas Commission on Governmental Standards and Conduct, appeared before the committee urging passage of **SB 44** stating the Commission feels very comfortable with new wording which would include publications published on a regular basis and official publications of trade and professional associations. (Attachment 1)

Ron Smith, Kansas Bar Association, appeared as a proponent of **SB 44**. Mr. Smith stated he feels their publication doesn't promote or oppose legislation. He recommends a change in wording. On line 23, after the word "associations", he would add the phrase "and foundations". With or without the amendment, he urges passage of the bill favorably. (Attachment 2)

Keith Landis, Christian Science Monitor, appeared before the committee in favor of **SB 44**.

Michael Woolf, Common Cause for Kansas, appeared before the committee in opposition to **SB 44**. He stated he has a problem with some of the language in the proposed legislation.

Hearings were recessed on **SB 44**.

Hearings were opened on **SB 48** - relating to elections; requiring the adding of the city of residence of candidates on ballots for elections.

Joe de la Torre, Secretary of State's Office, appeared before the committee in favor of **SB 48**. He stated this legislation would make the language uniform.

Hearings will continue on **SB 48** on Tuesday, January 26.

Joe de la Torre, Office of the Secretary of State, requested introduction of two bills. The first relates to the official primary ballot, changing voting box from right to left side.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS, CONGRESSIONAL & LEGISLATIVE APPORTIONMENT AND GOVERNMENTAL STANDARDS, Room 529-S Statehouse, at 1:30 p.m. on January 21, 1993.

A motion was made by Senator Martin to introduce legislation. Seconded by Senator Wisdom. Motion carried.

The second relates to the vacancy of office of county commissioner and when successor should take office.

A motion was made by Senator Sallee to introduce legislation. Seconded by Senator Hardenburger. Motion carried.

The meeting adjourned at 2:37 p.m.

The next meeting is scheduled for January 26, 1993.

# GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE January 21, 1993

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

KEITH R LANDIS  
 J. R. LaTourette  
 Michael Wolf  
 Ron Smith

TOPICA  
 "  
 "  
 "

CHRISTIAN SCIENCE COMMITTEE  
 ON PUBLICATION FOR KANSAS  
 SOS  
 CC/KS  
 KS Bar Assoc



## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

### Testimony before Senate Elections, Congressional and Legislative Apportionment and Governmental Standards on Senate Bill 44

By Carol Williams, Kansas Commission Governmental Standards & Conduct

Senate Bill 44 which is before you this afternoon would amend K.S.A. 1992 Supp 46-271. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1992 Annual Report and Recommendations. The amendment being requested is found in lines 21-23 of this bill. The new language would not consider publications published on a regular basis and official publications of trade and professional associations to be gifts subject to the \$40 gift limitation since these documents are presumed not to influence a state officer or employee or candidate for state office in the performance of official duties.

In October of 1992, the Kansas Bar Association, in an advisory opinion request, asked if their association could provide elected officials and senior executive branch officials with a copy of their association's 1991 Annual Survey. In Advisory Opinion No. 92-35, the Commission opined, in pertinent part, that read together, K.S.A. 46-277 and K.S.A. 46-271 prohibit the giving of gifts to state officers and employees and their acceptance of such gifts in an aggregate value of \$40 or more in a calendar year from any person. The Commission holds that any gift given to state officers or employees because they serve in that position are presumed to be given to influence official action. While the item itself may not be intended to influence, the giving of the item seeks goodwill or access and therefore the opportunity to influence. Thus, the gift limitation applies to the giving of The Annual Survey. The Commissioners voted unanimously on Advisory Opinion No. 92-35 as drafted. The Commission felt that due to the current language of K.S.A. 46-271, it had no alternative but to consider

SENATE ELECTIONS  
1-21-93  
ATTACHMENT 1

this publication as a gift subject to the \$40 gift limit. At the Commission's next meeting, members voted unanimously to recommend to the Legislature that this section be amended to exempt official publications of trade and professional associations which are published on a regular basis from the \$40 gift limit on the basis that these publications are presumed not to be given to influence a state officer or employee in the performance of official duties.

Therefore, the Commission urges your support of Senate Bill 44.

Adm      on of  
Cam,      Finance,  
Conflict of Interest  
& Lobbying Laws



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

## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

October 22, 1992

Opinion No. 92-35

Mr. Ron Smith  
General Counsel  
Kansas Bar Association  
1200 SW Harrison, PO Box 1037  
Topeka, Kansas 66601-1037

Dear Mr. Smith:

This opinion is in response to your letter of September 22, 1992, in which you request an opinion from the Kansas Commission on Governmental Standards and Conduct concerning the state level conflict of interests law (K.S.A. 46-215 et. seq.).

### ACTUAL STATEMENT

We understand you request this opinion in your capacity as General Counsel for the Kansas Bar Association. You attach with your opinion request a copy of The Annual Survey which is a publication of the Kansas Bar Association's continuing legal education department. It is sold to your members and non-members at a cost which may exceed \$40.00 depending upon sales volume.

You state that the survey is primarily a survey of statutory law enacted by the legislature from the previous sessions and a review of the state and federal case law development from that same twelve month period. You state the survey is not used nor intended to be used to influence law making in any form.

You advise us that you want to give copies of the survey to legislators and senior executive branch officers at no cost.

### QUESTION PRESENTED

You ask whether giving a copy of The Annual Survey to legislators and selected senior executive officers constitutes a gift under K.S.A. 46-237 and 46-271.

ANALYSIS & OPINION

K.S.A. 46-237(a) states:

"(a) No state officer or employee or candidate for state office shall accept, or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year from any one person known to have a special interest, under circumstances where such person knows or should know that a major purpose of the donor is to influence such person in the performance of their official duties or prospective official duties."

K.S.A. 46-271 states:

"No lobbyist shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year to any state officer or employee or candidate for state office with a major purpose of influencing such officer or employee in the performance of official duties or prospective official duties. Hospitality in the form of recreation, food and beverages are presumed not to be given to influence a state officer or employee or candidate for state office in the performance of official duties, except when a particular course of official action is to be followed as a condition thereon. Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to (1) any contribution reported in compliance with the campaign finance act as amended, or (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business."

Read together, the above sections prohibit the giving of gifts to state officers and employees and their acceptance of such gifts in an aggregate value of \$40 or more in a calendar year from any person. The trigger to both sections is whether the gift has a major purpose to influence the recipient in his or her official actions.

Opinion No. 92-35  
October 22, 1992  
Page 3

This Commission has consistently held that gifts given to state officers or employees because they serve in that position are presumed to be given to influence official action. While the item itself may not be intended to influence, the gift seeks goodwill or access and therefore the opportunity to influence. Thus, the gift limitation applies to the giving of The Annual Survey.

Sincerely,

  
Richard C. Loux, Chairman

By Direction of the Commission

RCL:DDP:dlw





KANSAS BAR  
ASSOCIATION

***Legislative Information  
for the Kansas Legislature***

TO: Members, Senate Governmental  
Standards and Elections Committee  
FROM: Ron Smith, KBA General Counsel  
SUBJ: SB 44

**SUMMARY:**

**SB 44 is a reasonable response to a problem that our lobbying laws inadvertently regulate: the free flow of politically and socially important information to public officials.**

**KBA POSITION**

The KBA Board of Governors has no formal position on this topic.

SB 44 is a response by the Commission on Governmental Standards and Conduct to a request for an advisory opinion by me in the summer of 1992. I will say that the Board of Governors is aware of the opinion, and when we discussed dissemination of the *Annual Survey of Kansas Law* to legislators, the general remarks of the Board went to the "silliness" of such regulation of this type of publication.

**BACKGROUND**

The Board of Governors of the Kansas Bar Association, and many of our 5,400 members, believe the best way we can be a resource to

the legislature is to provide timely information about the law, and the practice of law.

We do have issues on which we appear and promote or oppose bills. However, we often are called upon by members of the legislature to provide advice from our members to you and your colleagues on a wide range of issues affecting the decisions you make.

Given that this has become our role, the Board of Governors and the Legislative Committee of the KBA decided last summer to give copies of our *Annual Survey of Kansas Law* to members of the legislature.

The KBA publishes a number of handbooks on the practice of law, in many areas of law. In addition our KBA Foundation has other publications of value to lawyers and judges. We also publish timely arti-

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

SENATE ELECTIONS  
1-21-93  
ATTACHMENT 2

cles on the law in our monthly magazine, the *Journal of the Kansas Bar Association*.

Most of our publications, including the *Annual Survey of Law*, are not political documents. They neither support nor oppose legislation. The *Survey* is three years old this year, and basically provides a summary of legislation and case law occurring over the previous 12 months. Lawyers who write the chapters are recognized experts in their field, and put their own spin on the laws that you've already written. I haven't examined every word of the *Survey*, but I do not think they discuss laws not yet enacted.

We think the *Survey* is a valuable research tool not only for lawyers and judges, but also for state public policy makers.

Before I leap into such endeavors, I usually check with the Commission. I did not read the statutes or rules of the Commission that giving such information to lawmakers would be a gift. But to be safe I requested an opinion from the Commission. It was issued, and I believe Carol Williams has included it with her testimony on this bill.

I personally believe that you should consider all written published or broadcast information as part of the information flow that good legislators need to make wise public policy decisions. The fact that such information has tangible value is focusing on the wrong thing. Information is key to your work. Lack of information, or incomplete information, stymies your work.

One argument I've heard for retaining the current law is that but for your position as a legislator, we would not be giving this information to you. Or at the least we would charge you for it. That is true. However, that argument conveniently forgets one essential fact of lawmaking: you are, by virtue of your new office, inundated with with the *NEED* for information. Political information. Social information. Good information. Bad information. Legislators who do not get or who are not given the information they need to make good decisions may make bad decisions.

You cannot afford to buy every item of information you might need. Nor would the legislative budget withstand such an assault.

Further, I believe government is a poor referee as to what information it should or should not see or hear. It is not government's role to define what information is good or bad. For you to referee those decisions, through restrictive lobbying laws, is silly. Government cannot regulate speech fairly because government officials have as many biases as the public does. Therefore, First Amendment doctrine regulating political speech indicates that government should not undertake this task at all.

SB 44 as amended comports with the theory, in limited instances, that government should not regulate this information (by defining it as

a gift for exclusionary purposes).

Kansas has an interesting Section 3 of the Kansas Bill of Rights says the people of Kansas have the right to "instruct their representatives" as well as petition government for redress of grievances. This provision is as old as our state constitution. I believe it means government cannot condition the free flow of information from the people to their public servants. I do not believe that you can carve out a portion of the lobbying law and say, in essence, lobbyists -- who are agents for their constituents, the voters -- can wine and dine legislators without restriction, but we cannot attempt to give you information contained in a book that also has tangential value to the Association.

The end result in a lobbying "gift" law that prevents the flow of information.

### **CIRCUMVENTION**

Finally I would argue not only the free political speech basis for this information flow, but also that the publications-as-a-gift law is easily circumvented. Had we wanted to, I suppose we could photocopy each chapter of the Annual Survey and when a bill on environmental policy appears on a committee agenda, we could mail copies to legislators with the cover letter that, "when considering SB XX, we thought you might want this information for general background review."

If I can send you the book a chapter or page at a time, through the mail, why can't we do it directly?

Dennis Prater and I debated that scenario one afternoon. Under our lobbying laws the DIRECT costs of lobbying -- photocopying, legal research, travel and subsistence, etc. -- is not reported by lobbyists. Lobbying is defined broadly (if you contact legislators about issues on which your association has no position, that is lobbying) and so are lobbying expenditures. Dennis told me that, *under current law*, he felt such a book is both a gift and a lobbying expense. I fail to see where, in the current lobbying statutes, an item is both a gift and a direct lobbying expense. Gifts are banned. Lobbying expenses to provide information to lawmakers is the essence of democratic lawmaking.

I fail to see how information can be a gift merely because it is put in the form of a book.

### **RECOMMENDATIONS:**

I understand this proposed language is the Commission's. I think it is good, but in line 23 after the word "associations" I would add the phrase "and foundations". Many nonprofit "think tanks" provide White Papers on issues that may have value but are not "associations." Our Bar Foundation, for example, publishes documents about the law. I think the commission meant foundations to be included in the word "associations" but just didn't say so specifically.

**CONCLUSION**

With or without our amendment, I certainly urge you to pass the bill favorably.