

Approved: 2-2-94
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 1, 1994 in Room 521-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Representative Don Rezac, Ranking Minority Member, Joint Committee on Pensions, Investments & Benefits
Michael Johnston, Secretary, Kansas Department of Transportation
Steve Starr, Deputy Director, Kansas Bureau of Investigation
Representative Jene Vickrey
Debra Leib, Executive Director, Common Cause/Kansas

Others attending: See attached list

Hearing continued on:

HB 2596 - KPERS, confirmation and investigation of members of board of trustees, review of information.

Representative Don Rezac gave testimony in support of HB 2596, stating this bill provides for oversight of KPERS Board by the Joint Committee on Pensions, Investments and Benefits, of which he is the ranking minority member. He advised that the Kansas Bureau of Investigation checks that are done on a prospective KPERS Board member would be looked at by the Chairman and Ranking Minority Member of this Joint Committee. Every other year it would be the House of Representatives as chair and opposite years would be the Senate.

Michael Johnston, Secretary, Kansas Department of Transportation, provided written testimony in opposition to HB 2596 (Attachment 1). He expressed his fears of unwise and unnecessary exposure of any Kansas Bureau of Investigation report done on prospective KPERS Board members. If this bill does permit viewing of the KBI reports by the Joint Committee on Pensions, Investments and Benefits, he urged criminal penalties for breach of confidence in disclosing that information. Attachments to Mr. Johnston's testimony is a sample of an Investment Disclosure Form and a list of a proposed ideal system of Legislative oversight that would make it unnecessary to disclose any KBI report to the Joint Committee.

Steve Starr, Deputy Director, Kansas Bureau of Investigation, provided testimony to express the strong feeling of his agency that if the background information in a KBI report is provided, the same confidentiality provisions that apply to the Senate Confirmation Committee must also be observed (Attachment 2).

HB 2597 - KPERS, closed or executive meetings of joint committee on pensions, investments and benefits.

Representative Rezac appeared before the committee in support of HB 2597 to permit executive or closed meetings of the Joint Committee on Pensions, Investments and Benefits in the event a Kansas Bureau of Investigations report on a prospective KPERS Board member needed to be discussed.

Michael Johnston, KDOT, gave written testimony in opposition to HB 2597, stating the untimely publication or release of confidential legal information and other confidential information concerning real estate and direct

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 1, 1994.

placements could damage the Retirement System's legal position and impair the market values and marketability of specific direct placement and real estate investments (Attachment 1).

HB 2702 - prohibits legislators from lobbying within one year following term of office.

Representative Jene Vickrey appeared in support of HB 2702 to prevent legislators from being a registered lobbyist for one year after the end of their last term.

Debra Leib, Common Cause of Kansas, gave testimony in support of HB 2702 (Attachment 3), stating they believe a sound conflict of interest statute must contain clearly defined prohibitions on the post-employment activity of former public officials.

Arden Ensley, Legislative Revisor, provided background on a bill limiting a candidate on out-of-state contributions to 40% of their total contributions.

Representative Hendrix made a motion to introduce the bill. Representative Macy seconded. Motion carried.

Representative Scott made a motion for approval of the minutes for January 27, 1994, as submitted. Representative Ballard seconded. Motion carried.

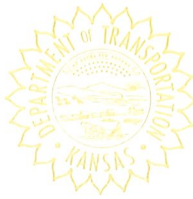
The meeting was adjourned at 10:10 a.m. The next meeting is scheduled for February 2, 1994.

GUEST LIST

COMMITTEE: House Governmental Organization & Elections DATE:

2-1-4, 1
~~1-31-94~~

[illegible]



Michael L. Johnston
Secretary of Transportation

KANSAS DEPARTMENT OF TRANSPORTATION

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
FAX - (913) 296-1095

Joan Finney
Governor of Kansas

**TESTIMONY
HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE
HB 2596 AND HB 2597**

By Michael L. Johnston
Secretary of Transportation

February 1, 1994

Mr. Chairman and Committee Members:

Mr. Chairman, thank you for allowing me to appear here today since I was out of town last week when these bills were originally heard. I appear here today on my own as a member of the Board of Trustees of KPERS, not at the request of anyone and not representing the administration. I would like to share with you some of my concerns about both HB 2596 and HB 2597.

Permit me to give a brief history. In the mid to late 1980s, many people began to be concerned with both the administration and the investment practices of the KPERS, specifically those dealing with real estate and so-called direct placements. With an acceleration of those concerns culminating with events surrounding KPERS Home Savings investment, the Legislature by adoption of HCR 5016 created the Joint Committee on Kansas Public Employees Retirement System

*House Govt Org. & Elections
February 1, 1994
Attachment 1*

Investment Practices on March 7, 1991. The joint committee held meetings on 32 separate days through December of 1991, took testimony from 89 individuals, and accumulated literally thousands of pages of testimony. One of their recommendations was the creation of a new joint legislative committee on KPERS "to establish a permanent oversight committee." It is that committee which is the sponsor of the measures currently before you.

As a general proposition, most people would agree that insufficient professional KPERS staff, inappropriate trustee behavior, and inadequate management controls were major factors which led to the legislative study committee in 1991 and its legitimate offspring, the Joint Committee on Pensions, Investments and Benefits, whose role is continued legislative oversight. As a former legislator, I have an understanding and fondness for the legislature as an important democratic institution and support proper legislative oversight. Indeed, I believe the legislature has already taken steps to assure we don't revisit many of the errors of the past by approving an expanded professional KPERS staff, which I see as the single most important element of reform. But I also believe that these measures and other elements of the changes which have occurred cross the line from prudent oversight and are both unwise and unnecessary. Moreover, I do not question the motives of legislators in 1991 or today, and in fact, several legislators prominent in these recommendations are people for whom I have both

professional respect and personal affection. My experience, however, does give me a broader and more balanced perspective from which to view these potential conflict of roles.

HB 2596 attempts to clarify who may see KBI reports conducted on persons who have been appointed to the Board and under what conditions. The reason this has been such a sensitive issue is because these reports have never been part of the mix in the confirmation process. It should stay that way. In my view, these reports will not help the committee make better recommendations. They will have a chilling effect on recruitment to this important board and I believe open the gates to further Senate use of these reports for other confirmation activities. It won't take long for others to argue that other boards and commissions are just as important and this material is essential to the confirmation process. For those who don't know, in addition to very detailed life history information, these reports have personal financial information that many people believe to be just that, personal. I respectfully do not believe any member of the legislature should be privy to my personal financial details nor do I believe anyone should have to surrender that in this confirmation process to give public service. What's more, this information will be of little value in searching for potential conflicts of interest. Trustees already fill out statements of substantial interest and other specific documents related to real estate and direct placement

potential conflicts. I have included samples in this material for your review. My hope is that the legislature will retreat from this dangerous path and repeal any reference to these reports. If not, then I would suggest that stiff criminal penalties be incorporated into the law to discourage any discussion of matters in these reports. And believe me, over time and as the circle of access gets wider, some of this confidential information will be divulged and most likely for reasons we all understand, politics, gossip, etc.. But there need not be future victims!

HB2597 would specifically authorize the joint committee access to virtually all confidential legal information and other confidential information concerning real estate and direct placements. The untimely publication or release of such information could damage the Retirement System's legal position and impair the market values and marketability of specific direct placement and real estate investments. I would ask what value would this information be to the joint committee? What is the committee to do with it? How does it assist in "prudent oversight," whatever that is? Would this level of oversight evolve to the extent that virtually all decisions of the Board of Trustees are subject to joint committee approval? Would we then be joint fiduciaries with joint liability? Once again, I believe the sharing of this information is neither wise nor necessary for prudent oversight; and again, if you must, there should be criminal penalties for any breach of

confidentiality. Take it from me, many members of the legislature don't want to know all this information. By the way, I have attached a document which summarizes a listing of oversight activities that would keep the legislature engaged with KPERS on a level without parallel in America and without the subjects of either of these two bills.

Finally, although I have other comments about the issue of trustee qualifications, I will save them for another time since these bills do not specifically deal with that issue. I simply have come to believe strongly that the enactment of these measures will not assist the joint committee in doing its work but will ultimately lead to problems for both the legislature and the board of trustees. The legislature deserves enormous credit for helping with the structural changes that have already taken place in helping manage the assets of the system. Likewise, many others deserve credit for their work in the changes that have and are taking place with KPERS. But I respectfully urge you to keep in mind that the KPERS Board or Trustees, acting legally as fiduciaries and the legislature, acting in its oversight capacity, have different roles and responsibilities. Let us think and reason together so we can avoid conflict and jointly protect the interest of the members of our retirement system.

Attachments

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM
INVESTMENT DISCLOSURE FORM

Name Michael L. Johnston

Address 5700 Sw 31st Terr.
Topeka, KS 66614

Capacity: Member, Board of Trustees ✓
Executive Officer of KPERS

Board Members: Please list present occupation or employment Secretary, Kansas Dept. of Transportation

Address of employment (if different from above) Docking State Office Bldg.
Topeka, KS. 66612

Investment Holdings as of November 1, 1992:

Please list all direct or beneficial ownership holdings of the following Retirement System investments which are subject to the filing requirements of Section 13(d) of the Securities Exchange Act of 1934:

<u>Company</u>	<u>Description of Holdings</u>
<u>[REDACTED]</u>	<u>None</u>
<u>[REDACTED]</u>	<u>None</u>
<u>[REDACTED]</u>	<u>None</u>
<u>[REDACTED]</u>	<u>None</u>
<u>[REDACTED]</u>	<u>None</u>
<u>[REDACTED]</u>	<u>None</u>

Please indicate the number of shares held and voting class of stock (i.e., common or preferred), options, or warrants to purchase shares of common stock.

Please list all transactions (purchases or sales) which have occurred in these holdings since November 1, 1992:

<u>Company</u>	<u>Date of Transaction</u>	<u>Description</u>	<u>Amount</u>
<i>None</i>			

***Please answer the following questions:

During the last five years, have you been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors)? (If so, please give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case.)

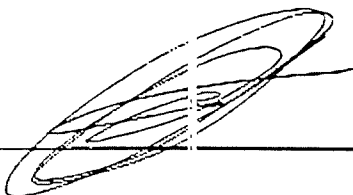
no

During the last five years, were you a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws? (If so, please identify and describe such proceedings and summarize the terms of such judgment, decree or final order.)

no

Are you a U.S. citizen? *yes*

Signature



Date

1-14-93

RECEIVED

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

INVESTMENT DISCLOSURE FORM

20 AUG 17 22:41

Name Michael L. Johnston

Address Kansas Department of Transportation
7th Floor, Docking SOB
Topeka, KS 66612

Capacity: Member, Board of Trustees X
Executive Officer of KPERS

Board Members: Please list present
occupation or employment Secretary of Transportation

Address of employment _____
(if different from above) _____

Investment Holdings as of July 1, 1993:

Please list all direct or beneficial ownership holdings of the following Retirement System investments which are subject to the filing requirements of Section 13(d) of the Securities Exchange Act of 1934:

Company

Description of Holdings

[illegible]

Please indicate the number of shares held and voting class of stock (i.e., common or preferred), options, or warrants to purchase shares of common stock.

July 14, 1993

KPER

1-9

Please list all transactions (purchases or sales) which have occurred in these holdings since July 1, 1993:

<u>Company</u>	<u>Date of Transaction</u>	<u>Description</u>	<u>Amount</u>
None			

***Please answer the following questions:

During the last five years, have you been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors)? (If so, please give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case.)

No.

During the last five years, were you a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws? (If so, please identify and describe such proceedings and summarize the terms of such judgment, decree or final order.)

No.

Are you a U.S. citizen? Yes.

Signature



Date 08/12/93

July 14, 1993

KPERS

Proposed Ideal System of Legislative Oversight

- Quarterly reporting to a designated legislative committee (either the existing Legislative Budget Committee or the Joint Committee on Pensions, Investments and Benefits) of the following information:
 - Investment Performance Report, produced independently by CDA Investment Technology, Inc.;
 - Litigation Status Report;
 - Member Services Activity Report (Benefits Summary / "Serving the Customer");
 - Venture Capital Portfolio Report;
 - Real Estate Portfolio Report;
 - Financial Report, including all administrative and investment expense categories;
 - Changes in the Statement of Investment Policy, Guidelines, and Objectives;
 - Changes in asset allocation targets;
 - Changes in investment manager, consultant, and advisor relationships; and,
 - Changes in actuarial assumptions.

- At one of its quarterly meetings, the same designated legislative committee could receive and review:
 - Annual Financial Audit Report prepared by an independent accounting firm under contract to the Legislative Division of Post Audit (includes a review of and opinion on the KPERS' system of internal controls);
 - Triennial Investment Performance Audit Report prepared by the staff of the Legislative Division of Post Audit (current law requires that this audit be conducted on an annual basis);
 - Annual Actuarial Valuation conducted by the System's actuary; and,
 - KPERS Annual Report.

- Once every three or four years, the same designated legislative committee may wish to commission an independent actuarial review or audit. (The System's actuarial experience and the actuarial assumptions made by the Board of Trustees drive the employer contribution rates.)

- The Legislative Post Audit Committee would continue to receive and review the Annual Financial Audit Report, the Biennial Investment Performance Audit Report, and any other Performance Audit Reports directed by the Committee. The Legislature, through the Post Audit mechanism, currently has the ability to direct whatever audit work it deems appropriate. Current statutory provisions allow Legislative Post Audit staff to review confidential information pertaining to the Retirement System's non-publicly traded investments.

- House Appropriations and Senate Ways and Means Committees, together with Legislative Fiscal Staff, continue to review annual budget request. All KPERS expenditures continue to be subject to appropriation acts.

Proposed Ideal System of Legislative Oversight
Page 2

- Maintain existing statutory restrictions on future investments in non-publicly traded investments.
- Maintain expanded Board of Trustees with following changes:
 - All appointed Trustees subject to Senate confirmation;
 - Eliminate specific qualification requirements and replace with more generic requirements. (Mike Russell, convicted former Board Chair, and his fellow Board members met the current qualification requirements.) The emphasis should be on selecting well-intentioned, honest, and intelligent members.
 - Eliminate potentially chilling effect of legislative review of KBI reports. Perhaps such a report could be mandated with distribution limited to the appointing authority.
- Minimize or prevent closed or executive sessions to review litigation matters or confidential, proprietary financial, operational, or valuation information relating to non-publicly traded investments. Sharing such information with non-fiduciaries can limit the Retirement System's legal rights and impair the market value and marketability of such assets. The inappropriate release of such information could also violate contractual, statutory, and regulatory responsibilities of the Retirement System and subject the Retirement System and legislators to liability.



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

(913) 296-8200

FAX: 296-6781



ROBERT T. STEPHAN
ATTORNEY GENERAL

STEVE STARR, DEPUTY DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE GOVERNMENTAL ORGANIZATIONS COMMITTEE
REGARDING AMENDMENT OF HB 2596
FEBRUARY 1, 1994

Mr. Chairman and Members of the Committee:

I am Steve Starr, Deputy Director of the Kansas Bureau of Investigation. I appear before you today to address issues in HB 2596, regarding the background investigation aspect of the Kansas Public Employees Retirement System Board of Trustees confirmation process.

The KBI does not set policy and is not taking a position whether background information should also be provided to the Joint Committee on Pensions, Investments and Benefits, as proposed in this bill. It does feel strongly that if the background information is provided the same confidentiality provisions that apply to the Senate Confirmation Committee must also be observed.

It is the recommendation of the KBI any background information disclosed to a legislative body be provided in a closed or executive session, where the information is protected. We would recommend language similar to 74-8806(p), which was enacted to allow oral and written background information to be received from the KBI by the Kansas Racing Commission. Copies of the language are attached to this testimony. It is recommended to insert the amendment language on page 2, line 25, after "thereto."

Also, on page 6, line 2, strike "forwarded" and insert "provided in executive session." I would be happy to stand for questions.

*House Gov't Org. & Elections
February 1, 1994
Attachment 2*

by the commission pursuant to this subsection, or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act. Nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the commission in a hearing held pursuant to this act.

(p) The commission, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (c) and to ~~negotiate with licensees or applicants for licensure by the commission regarding any such information.~~

(q) The commission shall adopt such rules and regulations as necessary to implement and enforce the provisions of this act.

History: L. 1987, ch. 112, § 4; L. 1988, ch. 315, § 3; L. 1992, ch. 27, § 3; L. 1992, ch. 286, § 2; July 1.

Attorney General's Opinions:

Organization licenses to conduct parimutuel races; facility owner license; facility manager license. 88-120.

Parimutuel racing; county fair association personnel; wagering on or participating in horse race meetings. 88-131.

Health care peer review committee reports; confidentiality and open meeting requirements. 89-42.

Kansas racing commission; political activities. 90-111.

CASE ANNOTATIONS

1. Disclosure of K.B.I. reports to racing license applicants permitted hereunder and 45-215 et seq., subject to provisions of 45-221. *Kansas Racing Management, Inc. v. Kansas Racing Comm'n*, 244 K. 343, 353, 770 P.2d 423 (1989).

74-8805. Executive director and other personnel of commission. (a) (1) The commission shall appoint, subject to confirmation by the senate as provided by K.S.A. 75-4315b and amendments thereto, an executive director of the commission, to serve at the pleasure of the commission.

(2) The executive director shall: (A) Be in the unclassified service under the Kansas civil service act; (B) devote full time to the executive director's assigned duties; (C) receive such compensation as determined by the commission, subject to the limitations of appropriations therefor; (D) be a citizen of the United States and an actual resident of Kansas during employment by the commission; (E) not have been convicted of a felony under the laws of any state or of the United States prior to

or during employment by the commission; and (F) have familiarity with the horse and dog racing industries sufficient to fulfill the duties of the office of executive director.

(3) The executive director shall: (A) Recommend to the commission the number and qualifications of employees necessary to implement and enforce the provisions of this act; (B) employ persons for those positions approved by the commission, subject to the limitations of appropriations therefor; and (C) perform such other duties as directed by the commission.

(b) (1) The executive director shall appoint an inspector of parimutuels to serve at the pleasure of the executive director.

(2) The inspector of parimutuels shall: (A) Be in the unclassified service under the Kansas civil service act; (B) devote full time to the inspector's assigned duties; (C) receive such compensation as determined by the executive director, subject to the limitations of appropriations therefor; (D) be a citizen of the United States and an actual resident of Kansas during employment as inspector of parimutuels; and (E) not have been convicted of a felony under the laws of any state or of the United States prior to or during employment by the commission.

(3) The inspector of parimutuels shall: (A) Inspect and audit the conduct of parimutuel wagering by organization licensees, including the equipment and facilities used and procedures followed; (B) train and supervise such personnel as employed by the executive director to assist with such duties; and (C) perform such other duties as directed by the executive director.

(c) (1) The executive director shall appoint a director of security to serve at the pleasure of the executive director.

(2) The director of security shall: (A) Be in the unclassified service under the Kansas civil service act; (B) devote full time to the security director's assigned duties; (C) receive such compensation as determined by the executive director, subject to the limitations of appropriations therefor; (D) be a citizen of the United States and an actual resident of Kansas during employment as director of security; (E) not have been convicted of a felony under the laws of any state or of the United States prior to or during employment by the commission; and (F) be a professional law enforcement officer with a minimum of five years' experience in the field of law enforcement and at least a

Testimony to the House Elections Committee
In Support of House Bill 2702

February 1, 1994

By
Debra R. Leib
Executive Director, Common Cause/Kansas

Mr. Chairman and members of the Committee, my name is Debra Leib and I am the new executive director of Common Cause for our state. I want to thank you for the opportunity to testify before you today in support of House Bill 2702 which would prohibit a legislator from being hired as a lobbyist for one year after leaving office.

As you may know, conflict-of-interest statutes have long been an important issue for Common Cause with the fundamental goal of preventing public officials from abusing -- or appearing to abuse -- the power and status of public office for private gain. We believe a sound conflict-of-interest statute must contain clearly defined prohibitions on the post-employment activity of former public officials.

The problem of unethical post-employment practices is popularly known as "the revolving door" and refers to the practice of legislators and other public officials leaving positions of power and influence in government only to return immediately as lobbyists or representatives of interests that do business with the state. At least 27 states currently have revolving door provisions prohibiting this activity.

While Common Cause/Kansas supports the one year "cooling off" period proposed by HB 2702, we do have some concern over the phrase "engage in lobbying" in line 24. "Lobbying" is very broadly defined in K.S.A. 46-225 and a prohibition as stated could raise some serious constitutional questions. "Lobbyist," on the other hand, is very specifically defined and should not encounter the same questions.

In the absence of restrictions on public officials' post-employment activity, the revolving door creates the potential for serious abuse of the public trust. Common Cause encourages this Committee to act favorably on this measure to prevent even the appearance of such abuse.

*House Gov't Org. & Elections
February 1, 1994
Attachment 3*