

Approved: 2-15-94
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 10, 1994 in Room 521-S of the Capitol.

All members were present except: Representative Walker Hendrix
Representative Russell Mills
Representative Ruby Gilbert
Representative Jim Long (E)
Representative Judy Macy (E)

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:

Tom Slattery
Charlotte O'Hara
Britt Nichols
Peter Gutowski
Michael Welton and son, Rob
Carol Williams, Kansas Commission on Governmental Standards and Conduct
Bill Curtis, Kansas Association School Boards

Others attending: See attached list

Representative Wells made a motion to introduce a bill providing for the appointment of members of the board of agriculture. Representative Bradley seconded. The motion carried.

Tom Slattery provided testimony requesting introduction of a bill concerning mistakes in bids and how to handle same (Attachment 1).

Representative Bradley made a motion to introduce above bill. Representative Benlon seconded. Motion carried.

Hearing on:

HB 2745 - elections; enacting the election finance act.

Charlotte O'Hara testified in support of HB 2745, relating her experiences during a primary and general election in which she was a candidate for the Olathe School Board (Attachment 2). The examples related to the school district supporting specific candidates.

Britt Nichols as the principal author of HB 2745 furnished written testimony on the bill that would create the Election Finance Act (Attachment 3). He stated this legislation was designed to ban the use of public funds and resources in candidate elections and to clarify issue election contribution and expenditure reporting dues for all persons and public agencies.

Peter Gutowski, a candidate for the Olathe School Board, testified that he felt he had run against the school district itself (Attachment 4).

Michael Welton and his son, Rob, appeared before the committee to relate Rob's witnessing of certain actions

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 10, 1994.

2745. (Attachment 5)

Carol Williams, Commission on Governmental Standards and Conduct, provided written testimony regarding some of the ramifications of passage of HB 2745 (Attachment 6). This bill changes the description of public office and expands the prohibition of attempting to influence the nomination or election of any candidate to state or local office. Without considerable increase in funding for the agency, there would be no way the Commission could administer the Act because it would increase candidate population by about 20,000.

Bill Curtis, Kansas Association of School Boards, made a few statements before the committee to advise that it is presently a law that public funds cannot be spent in support of candidates nor advocate a position on issues to be voted on. There is a difference between information being given and trying to influence the voter. He later provided written material, along with the Attorney General's opinion in this regard (Attachment 7).

Chairman Smith announced subcommittee members to review the Department of Administration as Rep. Cox, Chair, Rep. Bradley, Rep. Farmer, Rep. Majure and Rep. Van Fleet.

Representative Farmer made a motion to approve minutes of the February 9, 1994, meeting as submitted. Representative Scott seconded. Motion carried.

The meeting was adjourned at 9:55 a.m. The next meeting is scheduled for February 15, 1994.

GUEST LIST

COMMITTEE: House Governmental Organization & Elections DATE: 2-10-94

[illegible]

MISTAKE IN BID STATUTE

1. A bidder may correct mistakes in its bid before the time and date set for bid opening by withdrawing or correcting its bid. (I think some language needs to be added to this portion of the proposed statute to specify to whom the statute will apply. It might be wise to confer with the Revisor of Statutes office for appropriate language.)

2. After opening of bids, a representative of the awarding authority shall examine all bids for mistakes. A bid mistake based upon an error in judgement may not be withdrawn pursuant to this statute; provided, however, that nothing in this statute will prevent an awarding authority from allowing a bidder to withdraw its bid without penalty or forfeiture of bid security for any type of mistake which the courts have determined under the common law to be an excusable bidding error which should allow the bid to be withdrawn.

3. In cases where a representative of the awarding authority has reason to believe that nonjudgmental mistakes, hereafter referred to as a mistake, has been made, the representative of the awarding authority shall request from the bidder a verification of the bid calling attention to the suspected mistake. A bidder may either verify the bid as submitted or withdraw it after a request for verification has been made. If the bidder does not respond within 2 business days after the bidder receives a request for verification it shall be considered verified. Once a bid has been verified it shall be considered submitted as verified and may not be withdrawn.

4. If a bidder notifies the awarding authority within 2 business days after the bids have been opened that there is a mistake in its bid and there has been no verification requested for the bid, the awarding authority shall permit a bidder to withdraw its bid without penalty or forfeiture of bid security if:

- A. A mistake is evident on the face of the bid.
- B. The bidder establishes by clear and convincing evidence that a mistake was made.

House Gov't Org + Elections
February 10, 1994
Attachment 1

To: Marvin Smith
Governmental organization
and Elections Committee Chairman
Capitol building
Topeka, Kansas

February 10, 1994

From: Charlotte O'Hara
14585 W. 155th terr
Olathe, Kansas 66062

Chairman Smith and Committee Members:

My name is Charlotte O'Hara and I live at 14585 W. 155th terr. Olathe Kansas. Today I am here to testify as a proponent of HB #2745.

Last year I ran for the Olathe School Board, USD 233. Had the revision to election regulation been in place this bill is proposing, perhaps I would not have had to run my school board election campaign against an entire school district machine.

I want to share with you just a few of the incidents that occurred during my campaign.

1. I was denied access to distribute campaign literature, to patrons of our district, at Pleasant Ridge Elementary School. This is the same school which campaign buttons for the three school district's candidates were displayed in the principles front office window. Section 17 of HB #2745 would assure equal access to public buildings that I was denied.

2. Dr. Wimmer, Superintendent of U.S.D. 233, wrote a letter to patrons of the district in direct opposition to my campaign and signed it Ron Wimmer, Superintendent of Schools. Again HB #2745 would no longer allow such practices under section 19.

3. The Olathe South newspaper endorsed the three school districts candidates and made negative comments concerning my candidacy. Section 19 of HB #2745 would prohibit this.

4. A memo written by Paige May, Assistant Principle of Pioneer Trail Jounior High urged staff members to attend a candidate forum and support Rick Marriot, one of the school districts candidates. The memo falsely alleged, and I quote "Mrs. O'Hara is packing the place early so that her people can be seated up front to give Mr. Marriot a hard time. Some PTO parents called today asking us to get people to that forum to support Mr. Marriot." This would be prohibited under section 19 (a) of HB #2745.

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5. At a LOB rally held at the Nazarene College, Mrs. Smith, a teacher from Olathe South, carried a sign which stated, and I quote "Frankly Charlotte, we give a damn." This would be prohibited with the adoption of HB #2745.

8. The Olathe School District spent \$16,880.00 in campaigning for the LOB and then directly touted their three candidates as heroic supporters of the LOB. This type of practice must be stopped and would be if HB #2745 is adopted.

My campaign spent over \$10,000.00 trying to counter the Olathe School District's massive campaign against me and their support of the school districts three candidates. The task was impossible.

Unless legislation, such as HB #2745 which would subject all school districts to these codes of conduct, is adopted democratic and fair school board elections will be impossible. I am here today supporting this legislation in the hope that future candidates will not have to face the discriminatory and patently unfair practices that I and my supporters suffered from our local school district.

Who really cares if this bill is passed? People such as myself, who when researching election regulations, wish to have legal protection of their rights find to their surprise and dismay that their school district or other public agency does not have to comply to these regulations and really may do as they please. That was a real shock to me.

In closing, I have one simple question. Why would any public agency oppose this legislation unless they fear it will erode their power base.

Thank-you for your time and I will stand for questions at the committee's convience.

Testimony offered on House Bill 2745
February 10, 1994
Thos. Britt Nichols

Mr. Chairman, Ladies and Gentlemen of the Committee, Friends and Guests of the Great State of Kansas:

I appear before you as a proponent of House Bill 2745 - the proposed Election Finance Act.

I am Britt Nichols. I am an attorney - but don't hold that against me. I am not here as an attorney. Instead I am here as a citizen advocate - a role that I relish. I deeply appreciate the opportunity to come before you on behalf of an often abused but much needed minority in our political process - the taxpayers. I know that each of you are all advocates for that same group - especially when it appears that their interest is being harmed or even merely lost in the shuffle. In the matter before your consideration at this time, it appears that not only are taxpayers getting lost in the shuffle but they are being harmed. Whether by accident of history or by intent, there are several gaps in Kansas law that permit tax dollars and taxpayer resources to be used in elections - elections concerning issues and in the election of candidates to public office.

I am here to ask this committee to recommend that the House pass House Bill 2745 thereby creating the Election Finance Act. I am familiar with the bill having acted as the principal author of the version you have before you. This child has several parents. And, if there is credit to be shared, I will gladly share it. If it is to be failure or blame, I will surely accept it.

In addition to thanking the Honorable Kay O'Connor, who agreed to bring this bill to the Committee's attention, and the Honorable Vince Snowbarger who served as a sounding board to help refine some of the ideas being presented and to separate the practical from the impossible, I would thank Mr. Phil Harness who listened to the various drafts of this bill as it was being born and provided some substantial insight into legislative drafting. Most of all, before turning to a technical description of what I believe the proposed legislation would accomplish, I would like to thank the committee for their time and attention this morning.

SCOPE OF THE PROBLEM:

Let me begin by sketching the outline of the need for the Election Finance Act in Kansas.

For example, did you know that in Kansas:

1. Tax money and taxpayer provided resources can legally be spent to finance candidate elections in all school boards (except in Wichita), second and third class cities, township boards,

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community college boards, drainage and water districts and any other minor elective boards and other offices subject only to the minimal, annual, post-election reporting requirements of K.S.A. 25-901.

2. Second and third class cities, school boards (except Wichita), township and community college boards, drainage and water districts and perhaps others can contribute or expend public funds or resources to or for candidates in state or local elections without limitation (other than generally applicable amount and reporting limitations in the Campaign Finance Act) with only the minimal, annual, post-election reporting duties found in K.S.A. 25-901.

3. All public agencies, from the state to the lowest publicly funded agency, can expend public funds or resources to promote or defeat issues at election without limitation and with minimal or no reporting duties.

4. All public agencies can expend public funds or resources in "informational" campaigns without limitation and with no reporting duties.

5. Expenditure and contribution reports for issue elections are almost always filed, if they are filed at all, well after elections.

There are other problems with the current law that will be addressed throughout the proponent's testimony this morning. I am certain that you may also be aware of other problems in election finance. Suffice it to say that the problems that I just described, are substantial and warrant your attention. In fact, when I have explained current Kansas law to regular voters and taxpayers - law that permits tax dollars to be spent in election efforts - most voters are: first, shocked or even amazed; second, angered; and then, third, they almost always ask me what the legislature is doing about this. This bill - House Bill 2745 - is what the legislature may be doing about this. I would encourage you to act favorably on the bill as proposed.

I understand that you will hear testimony this morning relating to specific cases of use or abuse of the current law's loopholes. As you hear that testimony, I would ask that you keep in mind that the testimony that you are hearing represents only a small segment of the abuses that may have occurred to date. This testimony does not represent the case of any single election that may have gotten out of hand. I have had private conversations with several members of the House about the issues raised by this bill. I would be willing to guess that each of you may be aware of a situation where a public agency has abused the privilege to use tax dollars by spending more than was reasonable in an election effort or perhaps by spending money for elections in which it should not have taken a position.

The proposed legislation, in essence, is designed for two purposes. First, it would ban the use of public funds and resources in candidate elections. Second, it would clarify issue election contribution and expenditure reporting duties for all persons and

public agencies making clear the fact that use of public funds and resources, while still permitted in issue elections - usually for "informational" campaigns, must be reported. The hope is that by these simple changes, taxpayers can feel that even if their candidate or issue loses an election, that the loss was not inflicted upon them by a public agency spending their own tax dollars against them in a campaign. Having had that very feeling in a few elections, I can assure you that nothing feels worse to a taxpayer nor makes one angrier about wastefulness than to lose an election against a public agency willing to spend substantial amounts of tax dollars to defeat your position.

SOLVING THE PROBLEM:

Having described the general outline of the problem that exists with current Kansas law, I would outline the solution that is being proposed.

House Bill 2745, as proposed, would:

1. Ban any and all tax money (public fund) and resource use in all candidate elections in Kansas.
2. Provide a pre-election and on-going contribution and expenditure reporting requirement in all issue elections for all persons and public agencies for all election activity (including "informational" campaigns) but would not ban issue election activity - including traditional "informational" campaigns - by publicly funded agencies.
3. Provide an issue election contribution and expenditure reporting requirement exemption for individuals spending less than \$250 per reporting period.
4. Provide a simplified report (via affidavit) for persons or public agencies expending or contributing less than \$500 per reporting period.
5. Clarify what constitute expenditures or contributions to indicate that resource use (and misuse) of public agency money, resources, personnel and materials (in any way that returns less than the fair market value to the public agency) would be a reportable contribution or expenditure.
6. Criminalize failure to comply with the act and would set a civil penalty and provide a collection and enforcement process.
7. Require print and electronic media advertising disclosure of the entity responsible for placing an ad along with the group's treasurer.
8. Provide that information used by a public agency in connection with election activity shall be, contemporaneously with its use, open to the public for inspection in spite of other KORA limitations that might otherwise apply.

SPECIFICALLY, THE PROPOSED BILL WOULD:

I. Public funds and resource use ban for candidate elections (P 11/L 2 - 22):

Section 19 and ancillary changes would ban spending tax money

(public funds) and resources in candidate elections for all purposes at all levels.

The changes proposed would expand the scope of the ban to include any entity - defined as a "public agency" (P 10/L 14-23) that has tax money in its budget.

The changes proposed would clarify (P 11/L 8-10) what public agency resources cannot be used for elections.

The changes proposed would clarify (P 11/L 11 & 16) that services provided by an employee or officer of a public agency for which that employee or officer is compensated by the public agency cannot be expended or contributed to a candidate election.

A key to this section is the proposed definition of "public agency" (Section 18/P 10/L 14-23). A public agency would be defined as any entity that, in whole or in part, has tax dollars as a part of its budget. This is virtually the same definition of public agency that is found in KORA. It expands the ban on tax money and resource use in candidate elections to include entities that not only have taxing authority but also to include entities that have tax dollars as a part of their budget. The expanded definition would prevent surreptitiously circumventing the ban on tax money and resource spending by making the ban resource specific as opposed to entity specific. In other words, rather than relying upon a "scope of ban" definition based upon who the contributor or expender might be, the ban would be based upon the source of the money or resources. The test would be: If the money or resources being used in the candidate election are or might have been acquired or provided by taxpayer dollars, the use of those moneys or resources is barred. The section goes further, however, to preclude an entity from taking the position that, for example, since they only have \$1 in their budget from public sources, that they can contribute or expend everything else (except for that \$1) in elections. Commingling would attach the ban to commingled budget monies. It is impossible to determine which dollar, from a common budget, was or was not contributed to an election effort.

A second key to the section is the amended definition of the elections for which the ban would apply. By defining "local office" (P 10/L 40 to P 11/L 1) to include all offices which are not defined to be "state offices" (P 10/L 28-29), the gap between current 25-901 and current 25-4169a - a gap which does not ban the use of tax money or tax payer provided resources in some candidate campaign contributions or expenditures - would be closed. The proposed change would extend the public agency fund and resource ban to all candidate elections in Kansas. There may be other, more complicated methods of reaching the same result, but the simplest and cleanest method appears to be by simply expanding the local office definition. By way of explanation, it is true that the expansion of the local office definition would place some additional elective offices within the purview of the Campaign Finance Act. However, keep in mind that the \$500 reporting exemption remains in place for smaller campaigns and we now have substantial evidence that the Campaign Finance Act is working well, it is widely understood by campaigns and candidates and it is easily enforced. Therefore, expanding the definition of local

office should not increase the burden on the system or on candidate compliance with the Campaign Finance Act.

The proposed changes would also increase the criminal penalty for a violation of the ban on public agency money or resource use in candidate elections from a "C" to an "A" misdemeanor. (P 11/L 21-22).

II. Person and public agencies' money or resource use reporting in issue elections: (Sections 1 through 17)

Please keep in mind that the proposed Election Finance Act is modelled upon the Campaign Finance Act - which is a familiar and successful framework with which most people involved in election activity in Kansas are already familiar. Please also note that the proposed Election Finance Act does not replace the Campaign Finance Act but would create a similar, but not identical, framework for the reporting of election expenditures for issue elections just as the Campaign Finance Act provides for candidate elections. Also, while the discussion that follows is largely focused upon including public agencies in the reporting process and with fleshing out the timing and details of the required reports, the proposed act also applies to non-public agency campaign activity and may help to clarify timing and reporting issues generated by 25-901.

The key definitions to the Election Finance Act are:

"Contribution" (P 1/L 21 to P 2/L 1) is crafted to include not only usual acts but also:

- permissive use of money or other things of value (P 1/L 22-23) including tangible property, information, resources, services and records (P 1/L 24-25) including the reporting party's own monies or resources (P 1/L 25) made in connection with election activity (a defined term - P 2/L 4-7) or made for the purpose of influencing an issue election or for the purposes of informing voters about an issue election (P 1/L 26-28);

- sale or transfer of goods or services by a public agency at less than fair market value (P 1/L 29-31); or

- payment of services by another (P 1/L 32-34); but volunteer services (P 1/L 36-37); minimal volunteer out-of-pocket expenses (P 1/L 38-41) and miscellaneous volunteer based contributions (P 1/L 42 to P 2/L 1) are not included in the definition.

"Election activity" (P 2/L 4-7) broadly includes adoption or defeat of issue elections as well as informational campaigns about issue elections.

"Expenditure" (P 2/L 12-30) largely mirrors the definition of "contribution" as above.

"Public agency" (P 2/L 43 to P 3/L 11) is the same definition proposed for use in the campaign contribution ban and is based upon KORA's definition of public agency for determining what is a public record.

Having set the definitions in place, the proposed act bans (Section 3/P 3/L 18-40) all persons or public agencies from

engaging in election activity until a treasurer is appointed (P 3/L 18-19) and has filed a report of such appointment (P 3/L 20). Section 3 also provides that, until a replacement is appointed and reported, the members or officers of such a person or public agency are charged with fulfilling the duties of treasurer (P 3/L 26-32). The section provides some degree of exoneration for successor treasurers from the acts of predecessors (P 3/L 33-35) and places a continuing requirement of compliance and performance on prior treasurer's for the discharge of reporting duties and penalties (P 35-40). In other words, simply quitting does not end the job for a treasurer.

Section 4 (P 3/L 41 to P 4/L 6) established the same record keeping duties and standards found in the Campaign Finance Act for Election Finance Act treasurers.

Section 5 (P 4/L 7 to P 5/L 10) requires the records kept to be used to generate reports (separately for each issue election in which the reporting entity has engaged in election activity - P 4/L 7) including the same type and style information that the Campaign Finance Act would impose if it applied to issue elections.

The report requires:

- value or amount of assets and cash on hand at start of period (P 4/L 11-13);
- name and address of persons or agencies contributing \$50 or more during reporting period (P 4/L 14-17);
- amounts of sales incomes (P 4/L 21-24);
- aggregate of unknown contributions received during reporting period (P 4/L 25-27);
- each contribution not otherwise listed (P 4/L 28-29);
- total of all receipts during covered period (P 4/L 30-31);
- name and address of all persons or public agencies to whom expenditures in excess of \$50 made together with information re reason for expenditure (P 4/L 32-41);
- in kind contribution information (P 4/L 42 to P 5/L 6);
- the aggregate of all other non-reported expenditures (P 5/L 7-8); and
- total of all expenditures during period (P 5/L 9-10).

Section 6 (P 5/L 11-16) requires the listing of the occupation of the contributor for contributions in excess of \$150 just as the Campaign Finance Act does.

Section 7 (P 5/L 17-21) exempts individuals expending an aggregate of less than \$250 during a calendar year from filing their own reports.

Section 8 (P 5/L 22-28) provides that a treasurer may file an affidavit - rather than the more detailed report otherwise required under Section 5 - if the reporting person or entity has spent less than \$500 on election activity during the reporting period.

Section 9 (P 5/L 29 to P 6/L 5) sets out when the required reports are to be filed. A treasurer's report would be due 8 days before an election for an issue in which the reporting entity engaged in election activity (P 5/L 35-43) covering the period from the last filed report or January 1 of the preceding year if no previous report has been filed (P 5/L 37-41) until ten days before such election (P 5/L 39-43) or until a termination report is filed (P 5/L 30). A year end treasurer's report would also be

due on January 10 following a year for which reports are required (P 6/L 1-5) covering the period from the last report until December 31 (P 6/L 4-5).

Section 10 (P 6/L 6-9) permits certified or registered mail filing.

Section 11 (P 6/L 10-28) requires a termination report and sets the period to be covered by such a report. Section 11 also provides that funds not obligated for election activity debts are to be:

- contributed to a charitable organization (P 6/L 24-25);
- returned proportionately to the reporting person or agencies' contributors (P 6/L 25-27); or
- paid to the state's general fund (P 6/L 27-28).

Section 12 (P 6/L 29-33) requires that reports be filed with each county election officer for every county in which the treasurer's reporting person or public agency engages in election activity. This is different from the Campaign Finance Act in that it does not involve PDC in reporting, filing, policing and agency processes in the enforcement or monitoring of the Election Finance Act. The proposed act also does not place an additional agency burden on local election offices.

Section 13 (P 6/L 34-38) provides for the publication of suggested report forms and requires that reports be kept open for public inspection in the county election officer offices.

Section 14 (P 6/L 39 to P 7/L 11) requires that both the responsible entity and its treasurer must be disclosed in media ads in election issues. This is drawn directly from corrupt political advertising sections found elsewhere in Kansas election laws.

Section 15 (P 7/L 12-33) sets the penalties for violation of the Election Finance Act. Generally, intentional violation of the act is a Class A misdemeanor (P 7/L 12-13) while unintentional violation is a Class C misdemeanor (P 7/L 14-15). Additionally, a civil penalty of \$10 per day for each unfiled report is set for treasurer's or those required to act in their place (P 7/L 16-20). The attorney general or a district attorney are empowered to collect the penalty (P 7/L 22-26). The failure to pay a civil penalty or to file a required report would be a curable bar to public office candidacy for a treasurer who fails to discharge those duties (P 7/L 27-33).

Section 16 (P 7/L 34 to P 8/L 1) provides that the AG, a DA or CA or a private person may enforce the act in law or in equity including mandamus. This private right of enforcement is a critical part of the Election Finance Act. It provides any member of the public with the ability to police compliance with the reporting requirements of the act thereby avoiding the need to place any administrative burden upon any public office to serve as watchdog in issue elections. It has been my experience that each of the two or more opposite sides in most issue elections is more than willing to police the others side's compliance with these types of laws.

Section 17 (P 8/L 2-9) permits public agencies to continue to current practice of making facilities available for election activity provided that the facilities are made available to all other persons on an equal time or cost or both basis.

House Bill 2745 also amends KORA to provide that public agency information or records used in election activity are to be made available for public inspection in spite of other statutes which might weigh against disclosure by adding subsection (g) to K.S.A. 45-221 (P 16/L 16-20).

CONCLUSION

As pointed out there are some shocking gaps in Kansas current election laws. Not only can public funds and resources be legally used for or against candidates in elective office, but there is substantial evidence that it has been done. Not only can public funds and resources be used in "informational campaigns", but there is no limit to how much public money or resources can be used in such elections and, under current law, there is no requirement that "informational" campaign spending be reported. Additionally, even if a public agency runs a "for" or "against" campaign, that agency can spend unlimited amounts of tax payer provided money or resources in that effort with only a minimal, post-election disclosure requirement.

House Bill 2745 presents this committee with a good government issue. To the extent that House Bill 2745 will put an end to the practice of making public funds or resources available to selected candidates, the bill would be a success. To the extent that House Bill 2745 requires that public fund and resource contributions or expenditures in issue elections be done on the record, the bill would be a success. I ask that you make this committee a part of this good government story by passing the bill out of committee recommending that the House adopt the bill.

In anticipation of any criticism that might be levelled against the principles underlying the bill, I would ask this simple two part question to determine the merits of their opposition: "Precisely who is it who wants to be able to spend public funds or resources in elections and why don't they want to be on the record when they spend that money. I think that most can see the merits of the passage of House Bill 2745. I ask you to vote to do so.

Thank you for your time and attention. I stand prepared to answer questions at the chair's discretion and convenience.

THANK YOU,
BRITT NICHOLS

Mr. Chairman, Members of the committee,

My name is Peter G. Gutowski, I was a candidate for the school board in Olathe last year. I have come today, to testify concerning the actions of the school district during the school board race.

As things turned out there were 16 candidates for 3 positions on the school board. I began to see some problems within a short time after the race began. At the same time as the school board race, the school district was pushing for the local option budget. The school district held quite a few meeting at different schools to push for the local option budget. At most of the meetings were one or more of the school districts choice candidates. After the superintendent spoke pushing the local option budget, the school board candidate was then given time to say a few words. It was never said, but made quite clear that which ever candidate was with the superintendent at the time was clearly the district's choice. Any one that dared to get up and say anything but praise for the local option budget or the district was booed and intimidated by the teachers and some choice parents. This action as swift and final, as it was planned to silence whoever disagreed so that only one side could be heard.

Most of my campaign was centered around meeting people, so I spent a great deal of time going door to door on the weekends. I began to hear some strange things and at first laughed them off, but as time went by I kept hearing the same statements over and over, statements like " I was told that if you were elected that Olathe South High School would be closed down". I began to ask where they heard this from. Almost every time it was from the school, or their children came home upset and told them this. Depending on where I was working I would hear the same thing with different schools. Always it was the high school or junior high school where I was working. I began to get the feeling that I had to defeat the district not the candidates.

After the primary, I was one of the six to go to the general election. I had to step up my campaign and the amount of money spent so as not to be swallowed up by the districts campaign. As a result of what seemed like an unlimited money supply used by the district. I had to spend nearly \$6,900 on trying to win a job that pays nothing. While the preferred candidates seemed to have the district doing most all of their campaigning for them.

It is my opinion that the school district not only worked to get the local option budget passed, but to elect the three candidates they wanted. This was done by use of 15,000 plus students that were sent home many times to their parents telling them of all the things that would be cut from the school if the local option budget were not passed and board members elected that supported the school district. It was by use of the children that the wild tales were sent home to scare the parents. Now being on the out side I cannot say for sure that it was the district itself doing all of this but only when it became too visible did the district say anything to the teachers, and then it was quite mild. If the school district did not condone the actions directly, they did so indirectly by their silence.

I thank you for taking the time to listen to my testimony and I will be happy to stand for questions at the pleasure of the committee.

Peter G. Gutowski
2105 S. Apache Ln.
Olathe, KS 66062

*House Gov't Org + Elections
February 10, 1994
Attachment 4*

Mr. Chairman and Members of the Governmental Organization and Elections Committee,
thank you for the opportunity to address you concerning **legislation imperative to regaining
the voter's trust in our tax funded public institutions.** I am here today as a proponent for **Kansas
House Bill # 2745 .**

This legislation addresses the problem of the violation of fair elections and the financial conflict
of interest that is created when any **"public agency"** permits access and/or usage of its facilities as a
((New Section 17))
discriminatory "contribution" in effect to **influence** taxpayers, fiducial wards (minor students), parents
((New Section 2 (a) (1) (A))
and employees **about election issues** or to actually **promote a particular "candidate"** for political office.
((Section 18 (2))

My name is Michael Welton and accompanying me is my now ten year old son Rob Welton.

I am a personnel and data processing consultant residing in Lenexa, Kansas at 13223 West
107th Court. My son Rob Welton is an A+ student and is known to set the example for his peers
as a respectful and productive young citizen. Every teacher, coach, friend and neighbor who has
ever known Rob Welton would confirm every word I say here.

You may be wondering why a ten year old boy is standing next to me today? It is because he
unfortunately experienced a public agency (his elementary school principal's office intercom
system) repeatedly broadcast promotions directing teachers to pick up "issue specific buttons, materials
and yard signs" at the conclusion of the school day. He witnessed as common place both teachers and
school administrators displaying issue specific electioneering buttons on many occasions. Materials
included statistics indicating a threat to the financial and employment security to literally hundreds of
dedicated educational professionals within the school district. He carried home a newsletter published by
the PTA ((401 (c3) tax status) actually soliciting campaign contributions for this issue election. He noticed
and reported home daily of these accounts having grown accustomed to displays that contained caches
of political items and materials. Rob received no reaction from his mother or myself, because we
supported the passage of the "Local Option Budget" issue. In fact, when you consider Rob's younger
brothers special needs, the Welton Family surely benefited more from its passage than almost anyone
we knew in the district.

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But then the Friday before election day, Rob came out of his school and out to the car with an astounding look on his face. He said "Dad, you will not believe this, but the principal's office is campaigning for those other candidates."

I replied, "You mean all those local option budget materials?"

Then he impatiently insisted "No Dad, you know those other three candidates on little signs that say all three of their names. There are a whole bunch of them all across the window of the principal's office. It has those three other guys names on them, not the candidates that you are for!"

As I drove the car home I was astounded at the thought that the very amiable and highly professional principal of our school was actively endorsing three candidates out of a field of six. I could not believe what this "steel-trap for a mind" son was telling me. So I loaded a camera and headed back to the school to hopefully prove that Rob was mistaken. As I headed through the front door and witnessed this site with my own eyes I began to tremble. I am not sure whether I was trembling from the absolute disbelief of the site or whether it was more fear or outrage! Exactly as Rob had described, there were probably 14 or 15 of these badges promoting both the election issue and discriminately three of the six candidates. So I flashed several pictures as I prayed that in the poorly lighted school lobby the pictures would not turn out well. Then still shaking I picked up a couple of the campaign badges and then walked less than 15 feet to find the principal sitting in her office. I then inquired about the situation, to which she seemed to be completely unsympathetic nor remorseful for this intrusion upon my right and the other three candidates' rights to a fair election. I suddenly began to realize just a little bit, what it must feel like to be a woman that had just been forcibly raped by someone she once trusted and respected. What a helpless feeling! But what amazed me more than anything was the lack of appreciation that anything here was wrong at all! Could the blinding factor have been such a strong dedication to providing a quality education? Maybe this was coupled with an intense threat of job loss. I do not know.

Well the Olathe Daily News covered the event as front page news. And Poor Rob was harassed by his peers for the next week for having a father "that was not doing the school district any good". It just shows how easily well intentioned people can let things get so out of hand when they lack the proper legal guidelines. Especially when they feel threatened by the possible loss of job or property values.

In conclusion, the public trust in our tax supported institutions and leaders is a valuable, however, very scarce commodity. And conversely, public distrust of the same easily divides communities, neighbors and friends.

I strongly recommend that you support passage of Kansas House Bill # 2745. **Because even a nine year old can see what is wrong here.**

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I will be glad to stand for any questions the committee may have either now or after all have had an opportunity to complete their testimonies.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before House Governmental Organization and Elections House Bill 2745 by Carol Williams

House Bill 2745 which is before you this morning creates an "election finance act" and amends two provisions of the Campaign Finance Act. My testimony this morning will be directed to the two amendments being proposed to the Campaign Finance Act.

Section 18 of the bill, which begins on page 8, amends K.S.A. 25-4143, the definition section of the Act. Line 40 on page 10 of this bill redefines the phrase "local office" to be "any publicly elected office which is not a state office". The current definition of "local office" is an elective office of a city of the first class, a unified school district having 35,000 or more pupils regularly enrolled in the preceding school year, a county or of the board of public utilities.

"Publicly elected office" is not defined in HB 2745. Since I have no idea how encompassing this phrase was intended to be, I have used second and third class cities, school boards, and township offices for my example. Adding candidates for second and third class cities, township office and local school boards will bring approximately 20,000 additional candidates under the jurisdiction of the Commission and require these individuals to file reports and statements under both the Campaign Finance Act and the new "election finance act" which is being proposed in this bill.

Section 19 of HB 2745, which appears on line 2 of page 11, amends K.S.A. 25-4169a. This section currently prohibits an officer or employee of the State of Kansas, any county, any unified school district having 35,000 or more pupils, and any city of the first class from using or authorizing the use of public funds, vehicles, machinery, equipment, or supplies of any such governmental agency for the purpose of influencing the nomination or election of any candidate to state or local office. This section also prohibits the use of time of any officer or employee of such governmental agency for the purpose of influencing the nomination or election of any candidate to state or local office. Current law excludes from the prohibition of the use of time any incumbent officer campaigning for nomination or reelection to a succeeding term to office or to members of the personal staff of any elected officer.

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Amendments being proposed to K.S.A. 25-4269a would expand the prohibition of attempting to influence the nomination or election of any candidate to state or local office to also cover the use of inventory, resources, information, or public records. In addition to prohibiting the use of time of any officer or employee for these purposes, any "agent" of said governmental agency would also be prohibited from trying to influence the nomination or election of any candidate. In addition to the time prohibition, services these individuals might provide for this purpose would not be prohibited. "Public agency" has been added to the prohibition. "Public agency" was added to the definition section of the Act and means the state or any political or taxing subdivision of the state or of any municipal corporation of any entity whose officer or trustees are determined by public election, etc.

The Commission has a full-time staff of six. When the Kansas Legislature brought county and first class city candidates under the purview of the Campaign Finance Act in 1989, the overall candidate population increased by approximately 1,900. The Commission had a full-time staff of six in 1989, the same as today. The Commission was given no additional full-time staff to manage the new candidate population. Without a considerable increase in funding for the agency, there would be no way the Commission could administer the Act. It would be impossible to communicate and work with an increased candidate population of 20,000, and to administer and enforce the provisions of K.S.A. 25-4269 as amended by HB 2745.

I ask you to seriously consider the ramifications of amending the definition of "local office" in Section 18 of HB 2745 and the prohibitions in K.S.A. 25-4169a. If you do want these candidates brought within the purview of the Campaign Finance Act, please be willing to sufficiently fund the agency so it can perform its mandated duties.



TO: House Committee on Governmental Organization and Elections
FROM: Cynthia Lutz Kelly, Deputy General Counsel, Kansas
Association of School Boards
RE: Written Comments on House Bill 2745
DATE: 14 February 1994

Mr Chairman and Members of the Committee:

On behalf of the members of the Kansas Association of School Boards, I am writing to clarify erroneous and misleading statements in the testimony on HB 2745 of Britt Nichols which was presented to this committee on February 10, 1994. Many of Mr. Nichols' statements about the way in which school district funds may be expended for campaigns are not an accurate reflection of what is required or allowed under current law.

1. School districts may not use public funds to finance candidate elections. It is a well settled principle of law in the State of Kansas that school districts are creatures of statute, and have only such powers as are conferred upon them by statute, specifically or by clear implication, and any reasonable doubt as to the existence of such power should be resolved against its existence. Hobart v. U.S.D. No. 309, 230 Kan. 375, 383 (1981). There is no statute which

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grants school districts the authority to expend public funds for this purpose, nor is there a statute from which such authority can be reasonably implied. Any employee of a school district or school board which authorizes the use of public funds for contribution to an individual campaign would be guilty of misuse of public funds which is a level 8, nonperson felony in Kansas. Further, misuse of public funds would be grounds for recall or ouster from office.

2. Candidates for school board in the Wichita school district are subject to the Campaign Finance Act. Candidates in other school board elections are subject to the reporting requirements of K.S.A. 25-901. The difference in reporting requirements for candidates does not create a difference in the way in which any school district may legally expend public funds.
3. A school district has an obligation to educate the electorate regarding issues to be voted on by the electors, and school district funds may be used to produce informational materials for the electorate. However, the district may not advocate a position on issues to be voted on by electors of the school district, and school district funds may not be used to advocate a position on the issue. Officers and staff of the school district may, in their private capacity as electors, advocate their opinions on issues before the electorate, but, in their capacity as public officials they are required to maintain a reasonable semblance of neutrality. The Kansas cases which have developed these principles of law are fully

discussed in Attorney General Opinion No. 93-33, which is attached.

4. Because school districts cannot campaign on an issue, there are not, and should not be campaign reporting requirements. Any amounts which are spent by a school district in providing the electorate with information on issues are public expenditures which are subject to disclosure under the Kansas Open Records Act. Any person could request this information from any school district.

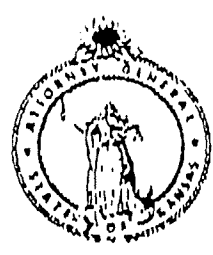
If the committee believes that changes in campaign finance reporting are necessary, the KASB delegate assembly has adopted a legislative position advocating that all candidates for school board be subject to the Campaign Finance Act. We believe that any other changes in the election laws which apply to school districts are unnecessary. Adequate restraints on the expenditure of public funds and adequate punitive measures for misuse of public funds exist under current law.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

March 15, 1993

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ATTORNEY GENERAL OPINION NO. 93- 33

Joseph W. Zima
Unified School District No. 501
624 W. 24th Street
Topeka, Kansas 66611

Re: Schools--Organization, Powers and Finances of
Boards of Education--Boards of Education; General
Powers; Question Submitted Election; Campaigns

Synopsis: A unified school district is under an obligation to educate the electorate regarding issues pertaining to schools which are to be voted on by the electorate. However, officers of the school district must maintain a semblance of neutrality, and information provided by the school district may not advocate a particular stance on the issue. Donations from private sources do not expand the authority or power of a school district to participate in or undertake campaigns. Officers and staff of the school district may, in their private capacity, advocate a position on an issue subject to election by voters of the school district. Cited herein: K.S.A. 10-101; 10-128; 10-1101; 10-1201; 12-825j; 12-1218; 12-1679; 12-2701; 17-2339; 17-4754; 17-4760; K.S.A. 1992 Supp. 25-901; K.S.A. 36-501; K.S.A. 1992 Supp. 44-714; K.S.A. 65-6112; 68-589; 68-2101; 72-6433; 72-8204a; 74-2113; 75-1117; K.S.A. 1992 Supp. 75-2953; K.S.A. 75-3038; K.S.A. 1992 Supp. 75-6102; 77-201; Kan. Const., art. 6, § 5; L. 1969, ch. 188, § 1.

* * *

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Dear Mr. Zima:

As attorney for unified school district no. 501 (U.S.D. #501), you request our opinion regarding campaign activities in which a unified school district may engage. Specifically, you ask:

"1. Does USD 501 have a legal duty to provide information to school district voters relevant to the local option budget election to be held on April 6, 1993?

"2. Can the USD 501 Board of Education and staff advocate a yes vote in the April 6, 1993, local option budget election--using public funds? Using private funds? Without using any funds?

"3. Can USD 501 prepare and distribute informational documents that do not advocate a position on how to vote--using public funds? Using private funds?

"4. Can USD 501 prepare and pay for media advertisements that advocate a yes vote--with public funds? With private funds?

"5. Can USD 501 staff expend time coordinating private efforts to advocate a yes vote and reviewing private parties' materials for accuracy--on duty? Off duty?

"6. Can Board of Education members make public appearances and speeches--explaining the school district's position on the need for a local option budget? Advocating a yes vote?

"7. Can school district staff make public appearances and speeches--explaining the school district's position on the need for a local option budget? Advocating a yes vote?"

The board of education for U.S.D. #501 has adopted a resolution authorizing a local option budget. A petition in opposition to the local option budget was circulated and the requisite number of signatures collected. Upon certification of the validity of the petition, the board of education has called for an election on the question of whether adoption of the local option budget shall be authorized. The election is to be conducted April 6, 1993.

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Pursuant to section 5 of article 6 of the constitution of the state of Kansas, local public schools under the supervision of the state board of education are to be maintained, developed, and operated by locally elected boards of education. The duties and powers of the local boards of education are generally set forth in chapter 72 of the Kansas Statutes Annotated. Following its authority as set forth in K.S.A. 72-6433, a local board of education may adopt a local option budget by passing a resolution authorizing the adoption of the local option budget. In subsection (b)(1) of the statute, it is provided:

"If no petition as specified above is filed in accordance with the provisions of the resolution, the board may adopt a local option budget. If a petition is filed as provided in the resolution, the board may notify the county election officer of the date of an election to be held to submit the question of whether adoption of a local option budget shall be authorized." K.S.A. 72-6433.

There is no provision within K.S.A. 72-6433 which expressly authorizes or prohibits the board of education from participating in or undertaking campaigns regarding adoption of the local option budget. Likewise, we are unaware of any statutory provision contained in chapter 72 of the Kansas Statutes Annotated that expressly authorizes or prohibits boards of education from participating in or undertaking campaigns.

The state board of education has consistently informed persons that a school district has the obligation to "educate" the electorate regarding issues to be voted on by the electors but may not "advocate" a position regarding that issue. See Phillips v. Maurer, 67 NY2d 672 (1986). Quoting Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA, 233 Kan. 801, 810 (1983), the court in Boatright v. Kansas Racing Comm'n, 251 Kan. 240 (1992) states:

"The ruling of an administrative agency on questions of law, while not as conclusive as its findings of facts, is none the less persuasive and given weight, and may carry with it a strong presumption of correctness, especially if the agency is

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one of special competence and
experience." Boatright, 251 Kan. at 246.

Although the courts of Kansas have not expressly addressed the authority of a school district to participate in or undertake campaigns, it appears that the court has recognized that a school district, as a public body, is under an obligation to educate the electorate regarding an issue subject to election. See Kimsey v. Board of Education, 211 Kan. 618, 624 (1973) ("There can be no quarrel with this general proposition--the elector is entitled to know what his money is going to be used for when he votes. . . . [W]e noted that this test is applied to all bond propositions, regardless of the authorizing statute or the type of issuing municipality."); West v. Unified School District, 204 Kan. 29 (1969) (superintendent of the school district mailed printed brochures containing information about the contemplated building, its location, cost, floor plan, capacity, and the fact that grades 9 to 12 would attend; authority to do so not raised as an issue before the court); Kansas Electric Power Co. v. City of Eureka, 142 Kan. 117, 120 (1935) ("[P]ersons who happen to hold city offices in their private capacity as electors are as free as other people to advocate their opinions. But as public officials they should maintain a reasonable semblance of neutrality.")

School districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and any reasonable doubt as to the existence of such power should be resolved against its existence. Hobart v. U.S.D. No. 309, 230 Kan. 375, 383 (1981). It is our opinion that school districts have an obligation to educate the electorate regarding school district issues to be voted on by the electors. However, the school district does not have the authority to advocate a position on issues to be voted on by electors of the school district. Officers and staff of the school district must maintain a semblance of neutrality.

You also ask whether the authority of a school district to participate in or undertake campaigns is altered should funds donated by private persons or organizations be used. You indicate that private individuals and organizations have contacted the school district, expressing a desire to make donations to the school district with the proviso that the funds be used to advocate a position regarding an issue to be voted on by the electors of the school district.

It is perfectly proper for a school board to receive contributions from private sources toward the expenses incident to an exercise of a duty proper under the law. 68 Am.Jur.2d Schools § 87 (1973). However, such funds may not be used in such a manner as to expand the powers of the school board beyond those authorized by law. The fact that the funds are contributions from private sources does not expand the authority or power of the school district. As noted above, we have been unable to locate authority for a school district or its officials to participate in or undertake campaigns. Therefore, receipt of donations from private individuals or organizations does not permit a school district to participate in or undertake campaigns merely because the donations were submitted with a proviso that the funds be used for an activity which is not otherwise authorized by law.

You also advocate that should it be determined that the authority for a school district to participate in or undertake campaigns does not exist in chapter 72 of the Kansas Statutes Annotated, such authority may reasonably be implied from K.S.A. 1992 Supp. 25-901.

K.S.A. 1992 Supp. 25-901 provides in part:

"Every committee, club, organization, municipality or association designed to promote or engaged in promoting the success or defeat of any party or the election or defeat of any candidate or candidates for any city of the second and third class, unified school district, except unified school districts having 35,000 or more pupils regularly enrolled in the preceding school year[,] any community college or township office, or the adoption or defeat of any question submitted at any city, unified school district, community college, township or county election, shall have a treasurer, and shall cause to be kept a detailed account of all moneys or property or other thing of value received by it, and of the manner in which the same shall be expended. . . ." (Emphasis added.)

You advocate that the term municipality includes a unified school district. Under your analogy, the legislature has required unified school districts engaged in the adoption or

defeat of any question submitted at any unified school district election to appoint a treasurer and file the required reports, thereby authorizing school districts to participate in or undertake campaigns.

The interpretation of a statute is a matter of law and it is the function of the court to interpret the statute to give it the effect intended by the legislature. Todd v. Kelly, 251 Kan. 512, 515 (1992). When construing a statute a court must give words in common usage their natural and ordinary meaning. House v. American Family Mutual Ins. Co., 251 Kan. 419, 423 (1992). Words and phrases are to be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law are to be construed according to their peculiar and appropriate meanings. K.S.A. 1992 Supp. 77-201. Second. All statutes are presumed to be enacted with full knowledge of the existing condition of the law and with reference to it. Early Detection Center, Inc. v. Wilson, 248 Kan. 869, 874 (1991).

The term municipality was added to the statute in L. 1969, ch. 188, § 1. A definition of municipality is not included in K.S.A. 1992 Supp. 25-901. A number of other statutes using the term do provide a definition for municipality. A school district is a municipality in the following: K.S.A. 10-101 (bonds); 10-128 (bonds); 10-1101 (cash-basis law); 10-1201 (revenue bonds); 72-8204a ("...for the purpose of K.S.A. 79-2925 to 79-2968. . . ."; budgets); 75-1117 (municipal accounting board); 75-3038 (federal tax withholding); and K.S.A. 1992 Supp. 75-6102 (tort claims act). However, a school district is not a municipality in the following: K.S.A. 12-825j (public utilities); 12-1218 (libraries); 12-1679 (merchant or security police); 12-2701 (water distribution system); 17-2339 (housing law); 17-4734 (urban renewal); 17-4760 (urban renewal); 36-501 (food service and lodging); 65-6112 (emergency medical services); 68-589 (county and township roads); and 68-2101 (junkyard and salvage control). The term municipality is neither a technical word or phrase nor is it a word or phrase that has acquired a peculiar and appropriate meaning in law. It is assumed that at the time the term municipality was added to the statute, the legislature was aware of the lack of authority of a school district to participate in or undertake campaigns. The legislature has not, through this enactment, conferred power upon school districts, either expressly or by clear implication, to participate in or undertake campaigns. The

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legislature did not include school districts within the term municipality as that term is used in K.S.A. 1992 Supp. 25-901.

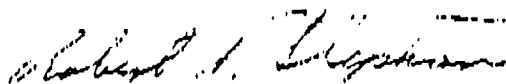
It has been recognized by the courts that the political activities of public employees and officials may be restricted provided a significant governmental interest is served by the restriction. The courts have recognized a legitimate state interest in prohibiting political activity when such prohibition prevents political coercion of the employees of the governmental entity, ensures the independence of the governmental entity, or contributes to the impartiality of public servants. See United States Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973); Washman v. City of Dallas, 704 F.2d 160 (C.A. 5 Tex. 1983), reh. denied, 710 F.2d 837 (C.A. 5 Tex. 1983), cert. denied, 464 U.S. 1012, 104 S.Ct. 537, 78 L.Ed.2d 717 (1983); Morial v. Judiciary Comm'n of State of Louisiana, 565 F.2d 295 (C.A. 5 La. 1977), cert. denied, 435 U.S. 1013, 98 S.Ct. 1887, 56 L.Ed. 2d 395 (1978); Magill v. Lynch, 560 F.2d 22 (C.A. 1 R.I. 1977), cert. denied, 434 U.S. 1063, 98 S.Ct. 1236, 55 L.Ed. 2d 763 (1978). The Kansas legislature has exercised this authority in adoption of: K.S.A. 1992 Supp. 44-714 (restricts political activities of individuals engaged in the administration of employment security law, Kansas department of human resources; however, see State, ex rel v. Wolgast, No. 86-CV-672 [Shawnee County District Court, December 29, 1986]; Attorney General Opinion No. 90-109); K.S.A. 74-2113 (restricts political activities of members of the Kansas highway patrol); and K.S.A. 1992 Supp. 75-2953 (restricts political activities of state employees). A similar provision regarding employees of school districts has not been enacted. Therefore, officers and staff of the school district may, in their private capacity, advocate a position on an issue subject to election by voters of the school district.

In review, a unified school district is under an obligation to educate the electorate regarding issues pertaining to schools which are to be voted on by the electorate. However, officials of the school district must maintain a semblance of neutrality, and information provided by the school district may not advocate a particular stance on the issue. Donations from private sources do not expand the authority or power of a school district to participate in or undertake campaigns. However, officers and staff of the school district may, in

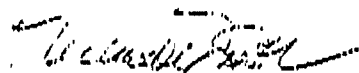
Joseph W. Zima
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their private capacity, advocate a position on an issue
subject to election by voters of the school district.

Very truly yours,



ROBERT T. STEPHAN
Kansas Attorney General



Richard D. Smith
Assistant Attorney General

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