

SESSION OF 2008

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2854

As Recommended by House Committee on
Elections and Governmental Organization

Brief*

HB 2854 deals with the transfer of campaign funds from one candidacy to another. The bill would:

- Permit a candidate to transfer campaign funds to another, new committee or candidacy established by the candidate, provided all money is transferred to the new committee.
- Create and define the term "Bona fide successor committee or candidacy" to indicate the **new** committee being initiated. The term is defined so as to allow for either (1) the termination of the original candidacy; or (2) the existence of both candidacies simultaneously, if debt exists in the original candidacy and all money is transferred to the new candidacy.
- Clarify that the transfer of funds to a bona fide successor committee or candidacy is not considered a contribution.
- Allow the original candidacy (if the candidate chooses to keep it after creating a new account) to accept only contributions sufficient to retire the debt. The contributions in this case would be subject to the contribution limits currently in law. Once the debt is retired, the candidate must terminate the original candidacy.
- Deem all transfers made between January 1, 1976 and the effective date of this act to be in compliance with the provisions of the Campaign Finance Act in existence at the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

time of the transfer, regardless of when the original campaign fund is closed after the transfer is made.

Background

The following information was contained in supplemental notes from previous years' bills on the same topic.

On December 15, 2003, the Kansas Supreme Court ruled that the Campaign Finance Act (Act) prohibited former State Representative Carlos Mayans from transferring unused legislative campaign funds to his campaign for election to be mayor of Wichita. This ruling came after the Kansas Governmental Ethics Commission (KGEC) had issued several opinions, over a number of years, stating that such transfers were permitted under the Act. Former Representative Mayans had sought and received such an opinion. He also received an opinion from the Wichita city attorney that the transfer would not violate a Wichita ordinance dealing with campaign finance.

The Supreme Court, in *Cole v. Mayans and Kenton*, *Kansas Supreme Court Case No. 89,715*, disagreed with the KGEC's interpretation and overruled the trial court and the Court of Appeals, stating:

- “We hold that the Campaign Finance Act and the related regulations, when coupled with the purpose for the Campaign Finance act, must be construed to limit the transfer of campaign contributions from a candidate's campaign account for a specific office to the same candidate's campaign account for election to that same office. Thus, there are only two situations in which the transfer can be made. The first is when an incumbent runs for reelection to the same office. The second is when a candidate loses an election for a specific office but seeks reelection to the same office in a subsequent election. (Opinion pg. 16) (Emphasis added)

The Supreme Court further suggested the Legislature (a) define the term “bona fide successor candidacy,” which is currently contained (but not defined) in KGEC administrative rules and regulations, and (b) require the KGEC to promulgate rules and regulations for the “orderly return of contributions to donors who have contributed to a candidate for a specific office but do not want to contribute to the same candidate if he or she decides to run for a different office.”

Representative Mario Goico testified in favor of HB 2041. The KGEC executive director testified neutrally, saying the bill would codify the previous opinions the KGEC had issued on the subject since 1976.

Since that year, the Commission had issued eight advisory opinions to legislators and other individuals regarding whether excess campaign funds could be transferred to a campaign for another state or local office. In all eight opinions, the Commission had stated these transfers were permissible and did not constitute contributions. A minimum of 60 candidates made such transfers over the years.

____ Representative Steve Brunk testified in favor of the bill. A representative of the KGEC testified neutrally, and a representative of the Libertarian Party of Kansas provided opposing testimony.

____ According to the fiscal note, passage of HB 2854 would have no fiscal effect.