

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m./p. m., on March 27, 19 78.

All members were present except: Senators Steineger, Berman and Gaar

The next meeting of the Committee will be held at 11:00 a. m./p. m. on March 28, 19 78.

~~These minutes of the meeting held on XXXXXXXXXXXXXXXXXXXX, 19XX were considered, corrected and approved.~~

  
Chairman

The conferees appearing before the Committee were:

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Cynthia Burch - Legislative Research Department

House Bill 2612 - Sub. for HB 2612; mobile home liens. Following committee discussion, Senator Parrish moved to report the bill favorably as previously amended; Senator Mulich seconded the motion, and the motion carried.

House Bill 2633 - Compensation of certain district attorneys. The chairman distributed copies of a memo he had requested the research department to prepare concerning salaries of state elected officials and other state officials whose salaries are fixed by statute. Committee discussion followed concerning those salaries, and also concerning SB 906, which had been introduced by this committee and referred to Ways and Means Committee; that bill contains the salary recommendations for judges recommended by the Citizens Study Commission; SB 858 introduced by the Ways and Means Committee contains the governor's recommended increases for judges. Senator Burke moved that HB 2633 be amended to include salary increases for state officials; following further committee discussion, during which the thought was expressed that perhaps it would be better done by a floor amendment, Senator Burke withdrew his motion. There was further committee discussion concerning the salaries for district attorneys being the same as district judges, and discussion of differences in workload. During the discussion, it was pointed out that apparently Sedgwick County has a supplement for the district attorney. Staff was requested to obtain information concerning county supplements for district attorneys and also for district judges.

House Bill 3234 - Counsel for indigent defendants, partial indigency, public defenders, budget approval. Following committee discussion, Senator Burke moved to report the bill favorably. That motion was withdrawn. Senator Everett moved to amend the bill to

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HB 3234 continued -

eliminate the extra "to"; Senator Parrish seconded the motion, and the motion carried. Further committee discussion was had concerning the bill. Staff was requested to check on the salaries presently being paid to the public defenders.

Senate Substitute for Substitute House Bill 2619 - Procedure for contest of elections. Mr. Griggs explained the background of the bill and reviewed the provisions of the bill, section by section.

The meeting adjourned.

These minutes were read and approved  
by the committee on 4-24-78.

3-27-78

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

*Charles V. Hamm*

*State of Alaska*

*S.R.S.*

## SALARY INFORMATION FOR CERTAIN STATE OFFICIALS

<u>State Officer</u>	<u>K.S.A.</u>	<u>Prior Salary &amp; Year Set</u>	<u>Prior Salary &amp; Year Set</u>	<u>Current Salary &amp; Year Set</u>	<u>Consumer Price<sup>1</sup> Index (CPI) Increase Since the Effective Date of the Last Salary Increase</u>	<u>Proposed Salary<sup>2</sup> Based on CPI Increase</u>
Governor	75-3101	\$16,500 (1961)	\$20,000 (1963)	\$35,000 (1974)	19.2%	\$41,720
Lt. Governor <sup>3</sup>	75-3103	8,000 (1969)	8,440 (1972)	10,400 (1974)	19.2	12,397
Attorney General	75-3110	18,463 (1972)	25,000 (1973)	32,500 (1974)	19.2	38,740
Corporation Commis. Chairperson	74-601	23,500 (1973)	27,500 (1974)	29,500 (1976)	8.8	32,096
Members		21,000 (1973)	25,000 (1974)	27,000 (1976)	8.8	29,376
Board of Tax Appeals Chairperson	74-2434	21,000 (1973)	25,000 (1974)	26,750 (1976)	8.8	29,104
Members		21,000 (1973)	23,500 (1974)	25,000 (1976)	8.8	27,200
Minority Business <sup>4</sup> Enterprise Director (KDED)	74-5010a	--	--	22,500 (1976)	8.8	24,480
Secretary of State	75-3104	15,000 (1973)	18,500 (1974)	20,000 (1976)	6.2	21,240
State Treasurer	75-3108	15,000 (1973)	18,500 (1974)	20,000 (1976)	6.2	21,240
Insurance Commissioner	40-102	19,000 (1973)	23,000 (1974)	25,000 (1976)	6.2	26,550

<sup>1</sup> The current salaries for the Governor, Lt. Governor, and Attorney General were effective on January 13, 1975. The CPI computation for these officials was made from January, 1975 through December, 1977 - the latest month for which these figures are available. The current salaries for the Corporation Commission, Board of Tax Appeals and Minority Business Enterprise Director were effective on July 1, 1976. The CPI computation for these officials was made from July, 1976 through December, 1977. The current salaries for the Secretary of State, State Treasurer and Insurance Commissioner were effective January 10, 1977. The CPI computation was made from January, 1977 through December, 1977.

<sup>2</sup> Figures are rounded to the nearest dollar.

<sup>3</sup> The Lt. Governor currently receives \$1,875 annual expenses.

<sup>4</sup> This office was created in 1975, however, the salary of the Director was not set by statute until 1976.

## SENATE Substitute FOR HOUSE BILL NO. 2619

By Committee on Elections

AN ACT relating to elections; prescribing the procedure for the conduct of certain contests of elections; amending K.S.A. 25-308, as amended by 1978 Senate Bill No. 797, and repealing the existing section; also repealing K.S.A. 25-1402 to 25-1406, inclusive, 25-1408 to 25-1412, inclusive, 25-1416, 25-1417, 25-1419, 25-1420, 25-1422 to 25-1424, inclusive, 25-1426 to 25-1429, inclusive, 25-1433, 25-1501, 25-1502, 25-1504, 25-1505 and 25-1507 to 25-1510, inclusive, and K.S.A. 1977 Supp. 25-1401, 25-1407, 25-1413, 25-1414, 25-1415, 25-1418, 25-1421, 25-1425, 25-1430, 25-1431 and 25-1506.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in this act, words and phrases defined in article 25 of chapter 25 of the Kansas Statutes Annotated shall have the meaning ascribed to them in said article 25, except as otherwise specifically provided in this act. Contest of primary elections shall be determined as otherwise provided by law and the provisions of this act shall not apply thereto. The provisions of this act shall not apply to recounts under K.S.A. 1977 Supp. 25-3107 and amendments thereto. Nothing in this act shall prevent a suit under articles 8, 9 or 12 of the code of civil procedure in appropriate cases.

New Sec. 2. Any registered voter may contest the election of any person for whom such voter had the right to vote, when such person is issued a certificate of election to any state, county, township, city or school office, except that the foregoing shall not apply to the election of persons to the United States congress. Any registered voter may contest the determination of the result of any question submitted election at which such voter had the right to vote.

New Sec. 3. Any contest of election to which section 2

applies shall be brought on any one or more of the following grounds:

(a) The person to whom a certificate of election was issued was ineligible to hold such office at the time of the election;

(b) some voters were deprived of the right of voting for a candidate or on a question submitted, when such voters had the right under the election laws of this state to vote thereon, and such deprivation could change the result of the election; the ground in this paragraph (b) may include the deprivation of the right of voting by the intentional failure of any person entrusted with the return of another person's application for voter registration to return such application to the appropriate county election officer as required by K.S.A. 1977 Supp. 25-2309 and any amendments thereto;

(c) illegal votes were received or legal votes were rejected which would change the result of the election;

(d) error or fraud occurred in computing the results of the election which would change the result of the election;

(e) the person to whom the certificate of election was issued offered or gave, or caused to be offered or given, a bribe to any person charged by law with any election duty, for the purpose of procuring such person's election; or

(f) any other cause which shows that another was the person to whom the certificate of election for such office should have been issued.

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New Sec. 4. Any registered voter desiring to contest an election of a person to an office shall be referred to as the contestant, and the person whose election is contested shall be referred to as the contestee. The contestant, if authorized under section 2, shall file a written notice of contest specifying the grounds upon which the contest is based. The notice shall specify with particularity the facts and circumstances in support of the grounds alleged for the contest. In the case of an office elected on less than a statewide basis, the notice of contest shall be filed with the clerk of the

district court of the county in which the person whose election is contested resides. In the case of an officer elected on a statewide basis, including presidential electors, the notice of contest shall be filed with the clerk of the district court of Shawnee county, and the place of trial shall not be changed.

New Sec. 5. Any person wishing to contest the determination of the result of a question submitted election, if authorized under section 2, shall file a written notice of contest specifying the grounds upon which the contest is based. Such filing shall be made with the clerk of the district court of the county specified by this section:

(a) In the case of a constitutional amendment or other question submitted on a statewide basis, in the district court of Shawnee county, and the place of trial shall not be changed.

(b) In the case of a question submitted in a school district, the district court of the home county of the school district.

(c) In the case of a question submitted in a city election, the district court of the county in which the greater part of the population of the city is located.

(d) In the case of a question submitted at a county election, the district court of such county.

(e) In the case of a question submitted at a township election, the district court of the county in which the township is located.

(f) In the case of a question submitted in a district smaller than the entire state and extending into more than one county and not otherwise provided for in this section, the district court of the county any part of which is located in the district and which has the greatest population of all such counties.

(g) In the case of a question submitted in a district entirely within a single county and not otherwise provided for in this section, the district court of such county.

New Sec. 6. The notice of contest shall be filed within

five days after the certificate of election is issued, except in the case of question submitted elections. In the case of a question submitted on a statewide basis such notice shall be filed within five days after the publication of the determination of the results of such election and in the case of other question submitted elections such notice shall be filed within five days after the certification by the county board of canvassers of the final abstract of the election returns. Within five (5) days after such filing in the case of election to an office, the clerk of the district court shall cause a copy thereof to be served upon the contestee and upon the secretary of state or the county election officer authorized to issue the certificate of election as the case may be.

New Sec. 7. When the contest relates to a contest of a question submitted on a statewide basis, the secretary of state shall be designated the contestee, and the clerk of the district court shall cause to be served a copy of the notice of contest upon said secretary within five days after the notice of contest is filed with said clerk. When the contest relates to a question submitted in a county, school district, city, township or other subdivision of government, the governing body thereof shall be designated the contestee, and the clerk of the district court shall cause to be served a copy of the notice of contest upon the chairperson or clerk of such governing body within five (5) days of the filing of the notice with the clerk of the district court.

New Sec. 8. Service of the notice of contest upon the contestee shall be made by the sheriff or some other person appointed by the court for such purpose in the same manner as provided for the service of summons in civil actions. In cases of election to an office two copies of the notice shall be furnished to the secretary of state or county election officer authorized to issue the certificate of election at the time of service upon such official, and the official shall send one copy thereof by restricted mail to the contestee at the contestee's last known address. If personal service upon the contestee



cannot be made, then the affidavit of the secretary of state or county election officer authorized to issue the certificate of election that such official sent a copy to the contestee by restricted mail to the contestee's last known address shall be sufficient to confer jurisdiction upon the proper court to hear and determine the contest.

New Sec. 9. In contests of election of state senators and members of the house of representatives of the state, notice of contest shall be filed and served as provided in sections 4, 5, 6 and 8, except that the clerk of the district court with whom the notice has been filed shall, within three days of receipt thereof, submit by restricted mail one copy thereof to the chief justice of the supreme court. Upon receipt of the notice of contest, the chief justice shall, within five days, submit to the parties a list of all the district judges in the judicial district or districts all or any part of which is located in the district of the legislative office being contested. If there be more than one name on the list the contestant and contestee shall within two days after receiving the list of judges meet together at a time and place designated by the chief justice and, under the supervision of the clerk of the supreme court, by alternating strikes commencing with the contestee remove the names of all judges until but one remains who shall then proceed to hear the contest pursuant to this act. The judge shall, within twenty (20) days after notice has been filed, convene at an appropriate place within the county, or, if the legislative district includes all or portions of more than one county then within one such county, and hear testimony of the parties, under the ordinary rules of evidence for civil actions. If the contestant does not proceed within the time provided for herein the action shall be dismissed and the judge shall transmit a copy of the order of dismissal to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

New Sec. 10. When a notice of contest is filed in the district court of Shawnee county in the case of an office voted

for statewide or in the case of a question submitted upon a statewide basis, the case shall be heard and determined by three district judges of the state assigned by the supreme court. If there be a division of opinion of such district judges that of the majority shall prevail. The clerk of the district court shall notify the supreme court when any such notice is filed. When the supreme court receives such notice, it shall assign as soon as practicable such judges and specify one such judge as the chief judge. The supreme court shall also specify the day and hour of convening of such three district judge panel.

New Sec. 11. When the notice of contest questions only which of the parties to the contest received the highest number of votes legally cast at the election for the office, the contestee need not file an answer. For all other election contests or in any contest in which the contestee desires to offer testimony on points not specified in the contestant's notice, the contestee shall file and serve on the contestant an answer to the notice of contest. The answer shall so far as practicable, conform to the rules for pleading in civil actions. Service of the answer shall be made within the time fixed by the court, but not exceeding five days after service of contestant's notice upon the contestee. Service of the answer shall be made in the same manner as provided for service of an answer in civil actions or in such manner as the court may by order direct.

New Sec. 12. Upon application by any person to intervene, within five (5) days after the filing of notice of custody stating facts sufficient to show an interest in the contest not in common with the contestant or contestee, and specifying with particularity the basis of such interest and result requested, the court may permit such intervention and make such orders as may be appropriate under the circumstances. Any person permitted to intervene shall be referred to as the intervenor.

New Sec. 13. The notice of contest, answer and application to intervene (if permitted) shall be treated as the pleadings in the case, and may be amended in the discretion of the court. The

contest proceedings shall be heard as soon as practicable and within twenty (20) days after the filing of the notice of contest. Notice of the time and place of the hearing shall be given as directed by the court. The matter shall be tried by the court in the manner provided for the trial of civil actions so far as practicable and the provisions of K.S.A. 20-311d to 20-311g, inclusive, shall be applicable to election contests. Except as otherwise provided by this act, the code of civil procedure shall be applicable to contests of elections authorized by this act.

New Sec. 14. (a) After a contest has been instituted, either party including any intervenor may request the ballots and voting machines be inspected before preparing for trial. The party applying for such inspection shall file with the clerk of the district court in which the contest is brought a motion, stating that such party cannot properly prepare such party's case for trial without an inspection of such ballots or voting machines and designating the precincts in which the party desires to have ballots inspected, and stating the reasons that such inspection is needed. Thereupon the judge of the court wherein the trial of such case is pending may authorize such inspection or a part thereof, and if so authorized shall name three inspectors, and if there is no intervenor one inspector shall be selected by each of the parties and a third selected by the two inspectors named by the parties. In case either party neglects or refuses to name an inspector, or the two selected inspectors cannot agree on the name of a third inspector, or there is an intervenor, the inspectors shall be named by the judge. The compensation of inspectors shall be the same as for witnesses in civil cases, unless otherwise stipulated.

(b) The party applying for the inspection shall file with the clerk of the district court a bond in the sum of two hundred fifty dollars (\$250) if the contest be within a single county; otherwise the bond shall be in a sum to be fixed by the court in its discretion, with such sureties as shall be approved by the

court, and conditioned that such party will pay the costs and expenses thereof in case the party fails.

(c) If the contest relates to a state office or to the result determined of a constitutional amendment or other question submitted on a statewide basis, the party applying for the inspection shall designate the precincts in the counties in which such party desires the inspection to be made. If the court authorizes the inspection, it shall order the appointment of as many sets of three inspectors as may be necessary to expeditiously count and inspect the ballots and voting machines, and the same shall be inspected in the office of the legal custodian of the ballots in question. The inspectors in a state contest shall be selected in the manner provided in subsection (a).

(d) The inspection shall be made in the presence of the legal custodian of the ballots or voting machines, and the inspectors shall recanvass the votes cast for the parties to the contest or the question submitted in accordance with the rules for counting votes provided in the applicable Kansas election laws. The inspectors shall make a written report of such recanvass and report the number of votes cast for each of the parties to the contest, or for and against a question submitted, for each precinct that is recounted and report any disputed votes upon which the inspectors cannot agree.

New Sec. 15. Upon final determination of a contest of an election to an office by the court, after the time for appeal thereof specified in section 17 has expired, or in case of an appeal, upon the final judicial determination of the contest, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee, and the secretary of state or county election officer authorized to issue the certificate of election shall issue the certificate to the person the court finds is entitled thereto; except that in cases where the court has found that the contestant prevails in the contest on the grounds provided for in

subsection (a), (b) or (e) of section 3, then the contested office shall be deemed vacant. This section shall not apply to any contest of the office of state senator or member of the house of representatives.

New Sec. 16. Upon final determination of a contest of question submitted election by the court, after time for appeal thereof specified in section 17 has expired, or in case of appeal, the final judicial determination of the contest, if the court finds that the greatest number of valid votes where in favor of the question submitted the court shall order that the question submitted has carried and likewise if the court finds that the greatest number of valid votes were against the question submitted the court shall order that the question submitted did not carry, and the court shall make such additional orders as are appropriate.

New Sec. 17. An appeal may be taken to the supreme court from the determination of the district court in any contest instituted under this act, other than contests involving the office of state senator or representative. The party appealing shall file in the district court a bond in such sum, not less than five hundred dollars (\$500) or such reasonable greater amount as the court may order, and with such sureties approved by the court, conditioned for the payment of all costs incurred by the respondent or respondents in case appellant fails on appeal. The notice of appeal shall be served upon the other party or parties and filed with the clerk of the district court no later than five days after the entry of the determination of the contest by the district court. The transcript of the case shall be certified and filed in the supreme court as soon as practicable and in any event within fifteen (15) days after filing of notice of appeal. The appeal shall be advanced for hearing as the supreme court may determine and it may be heard and determined summarily by the supreme court.

New Sec. 18. (a) When a contest of election is for the office of state senator or member of the house of

representatives, the only question to be tried by the court, notwithstanding any other provision of law, shall be the question of what number of legally cast votes each of the parties to the contest received. The judge trying the proceedings shall make findings of fact upon the question so tried. Further evidence upon the points specified in the notice, including but not limited to the question as to the eligibility of any person to office, shall be taken and preserved by the judge trying the contest, but the judge shall make no finding or conclusion thereon. The clerk of the district court shall transmit all the files and records of the proceedings with all the evidence taken to the president of the senate or the speaker of the house of representatives, as the case may be.

(b) In judging the election, returns and qualifications of any member of the house of representatives or senate, in the absence of rules providing otherwise, the speaker or president shall appoint a select committee of equal numbers of members of the two parties having the greatest number of members of the entire senate or house of representatives as the case may be, and shall also appoint the chairperson and vice chairperson of the select committee. The select committee shall consider the files, records and evidence transmitted from the court and shall hear the contestant and contestee and their respective counsel. Such select committee shall have powers of compulsory process and laws applicable thereto shall apply, except that all hearings shall be open. The select committee shall report to the full house of representatives or senate not later than ten days after its appointment. Such report shall be set for the special order of business within five legislative days from the date the report is made. All members shall have access to files, records and evidence transmitted from the court at such reasonable times as determined by the full house of representatives or senate. When the time of the special order of business arrives the full house of representatives or senate except the contestee shall determine, after debate thereon, the person who is the elected

member.

New Sec. 19. If the election be confirmed or dismissed, judgment shall be rendered against the contestant for all costs. No costs shall be rendered against the contestee unless found responsible for any of the provisions in (a) through (f) of section 3. The court, in the interests of justice may waive any costs assessed pursuant to this section in which case the costs shall be paid by the state from any appropriations therefor. Payment by the state shall be made by the director of accounts and reports upon voucher therefor approved by the clerk of the district court.

Sec. 20. K.S.A. 25-308, as amended by 1978 Senate Bill No. 797 is hereby amended to read as follows: 25-308. (a) Any certificate of nomination, nomination papers or declaration of intent, filed or issued in apparent conformity with law, shall be deemed to be valid unless:

(1) Objection thereto is made in writing within three (3) days from the date the certificate, papers or declaration is filed with or issued by the proper officers; or

(2) in the case of nomination papers and declarations of intent, the secretary of state or the county election officer finds them to be invalid as pursuant to section 1.

(b) If the secretary of state or the county election officer finds any nomination papers or declaration of intent to be invalid pursuant to section 1, the candidate on whose behalf the papers or declaration was filed may make objection to such finding in writing within three (3) days of receipt by the candidate of notice of such finding.

(c) In the case of nominations of national and state officers, objections shall be filed with the secretary of state and shall be considered by the lieutenant governor, secretary of state, and attorney general, and a decision of a majority of these officers shall be final. In the case of nominations for county, township, city and school officers, objections shall be filed with the county election officer and shall be considered by

the county election officer, clerk of the district court and county attorney or district attorney, and a decision of a majority of these officers shall be final.

(d) In any case where objection is made, notice shall forthwith be given, by the officer with whom the objections are filed, to the other officers required to determine the matter and to the candidates affected thereby, addressed in the case of candidates to their places of residence as given in the nomination papers, declaration of intent or certificate of nomination. The notice shall state the time when the objection will be considered, which shall be not more than five (5) days following the giving of such notice in the case of nomination of a national or state officer and not more than three (3) days following the giving of such notice in the case of nomination of a county, township, city or school officer, and the place where such objections will be considered.

(e) The causes for objection under this section as to any office may be any of those causes listed in ~~K.S.A. 25-1411~~, ~~subject to the limitations of K.S.A. 25-1412~~ section 3. The officers determining any objections under this section may assess any costs arising therefrom to either the objector or objectee in accordance with the determination made. Such costs shall be paid to the secretary of state or the county election officer, as the case may be, and deposited thereby in the treasury of the state or county to the credit of its general fund. If such costs are not paid within ten (10) days after the same are fixed, the secretary of state or county election office certificate of the facts and file it with the clerk of the district court in the county where the person owing the same resides, and such clerk of the district court shall cause the same to be collected as in cases of collection of court costs, and when so collected the same shall be disposed of as are court costs in such district court.

(f) All mandamus proceedings to compel an officer to certify and place upon the ballot any name or names, and all



injunction proceedings to restrain an officer from certifying and placing upon the ballot any name or names, must be commenced not less than thirty (30) days before the election.

Sec. 21. K.S.A. 25-308, as amended by 1978 Senate Bill No. 797, and K.S.A. 25-1402 to 25-1406, inclusive, 25-1408 to 25-1412, inclusive, 25-1416, 25-1417, 25-1419, 25-1420, 25-1422 to 25-1424, inclusive, 25-1426 to 25-1429, inclusive, 25-1433, 25-1501, 25-1502, 25-1504, 25-1505 and 25-1507 to 25-1510, inclusive, and K.S.A. 1977 Supp. 25-1401, 25-1407, 25-1413, 25-1414, 25-1415, 25-1418, 25-1421, 25-1425, 25-1430, 25-1431 and 25-1506 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.