

MINUTES OF THE House COMMITTEE ON Federal and State AffairsThe meeting was called to order by Rep. Neal D. Whitaker at
Chairperson12 Noon~~XXXXXX~~ on April 21, 1983 in room 526-S of the Capitol.

All members were present except: Reps. Barr, Roe, & Vancrum, who were excused.

Committee staff present:

Russ Mills, Legislative Research
Mary Torrence, Revisor of Statute's Office
Nora Crouch, Committee Secretary

Conferees appearing before the committee:

Chairman Whitaker called the meeting to order and reminded members that there was a substitute motion on the floor to table Sub. for SB 277. Rep. Sallee reinstated his motion stating that the bill had some definite problems that needed to be addressed. After considerable discussion, the substitute motion lost. Rep. Matlack made a substitute motion, Rep. Rameriz seconding, that on Line 20 and 21 language be inserted clarifying eligibility for permanent appointment, and that the technical amendments on the balloon copy of the bill be adopted. (See Attachment A) The motion carried. Rep. Eckert moved, Rep. Peterson seconding, that on Line 133, Page 4, after the words "is free of any" the words "physical or mental" be added. The motion carried. Rep. Peterson moved, Rep. Hensley seconding, that Sub. for SB 277 be reported favorably for passage as amended. The motion carried. Jim Flory of the Attorney General's Office presented a handout to the Committee further explaining questions on the bill. (See Attachment B)

The Chairman advised the Committee of 3 bills referred to the Committee to keep them alive that were now needed on the floor. Rep. Runnels moved, Rep. Peterson seconding, that SB 156, SB 265, and SB 302 be reported favorably for passage. The motion carried.

The Attorney General had requested the introduction of a bill concerning bribery of public officials. (See Attachment C) Rep. Fuller moved, Rep. Peterson seconding, that the bill be introduced. The motion carried.

Rep. Fuller moved. Rep. Runnels seconding, that the minutes of the April 7, April 19, and 20, 1983, be approved. The motion carried.

The meeting adjourned.

Sub. for SENATE BILL No. 277

By Committee on Federal and State Affairs

0016 AN ACT relating to law enforcement and law enforcement
0017 training; amending K.S.A. 1982 Supp. 74-5601, 74-5604a, 74-
0018 5605 and 74-5607 and repealing the existing sections.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 New Section 1. (a) ~~Every police officer and law enforcement~~
0021 ~~officer shall~~ be certified to perform the function of law enforce-
0022 ment by the Kansas law enforcement training commission. The
0023 commission's certification shall be awarded to persons: (1) Who
0024 are at least 21 years of age, have successfully completed or
0025 satisfied the training requirements specified by subsection (a) of
0026 K.S.A. 1982 Supp. 74-5607a and amendments thereto and meet
0027 the requirements of K.S.A. 1982 Supp. 74-5605 and amendments
0028 thereto; ~~or~~ (2) who received a permanent appointment as a police
0029 officer or law enforcement officer prior to July 1, 1969; or (3) who
0030 ~~holds~~ a permanent appointment as a police officer or law en-
0031 forcement officer on July 1, 1983.

0032 (b) The commission may suspend, revoke or deny the cer-
0033 tification of a police officer or law enforcement officer who fails
0034 to meet the requirements of K.S.A. 1982 Supp. 74-5605 and
0035 amendments thereto or has met such requirements by falsifying
0036 documents or failing to disclose information required for certifi-
0037 cation.

0038 (c) ~~The commission may adopt such rules and regulations to~~
0039 ~~establish~~ the procedure for the suspension, revocation and de-
0040 nial of certification of a person as a police officer or law enforce-
0041 ment officer or an applicant for certification. A hearing shall be
0042 conducted to determine the justification for suspending, revok-
0043 ing or denying certification of a police officer or law enforcement
0044 officer.

To be eligible for permanent appointment as a full-
time police officer or law enforcement officer, a
person must first

hold

shall be established by rules and regulations of
the commission

Attach A

Atch. A

0045 New Sec. 2. (a) Every candidate for a position as a police
0046 officer or law enforcement officer shall meet the minimum
0047 training criteria specified in K.S.A. 74-5605 and amendments
0048 thereto and shall have attained 21 years of age.

0049 (b) For the purpose of determining the eligibility of an indi-
0050 vidual for certification under this act, the commission may re-
0051 quire the submission of training and education records, and
0052 experience history, medical history, medical examination, re-
0053 ports and records, and interview appraisal forms.

0054 (c) Law enforcement agencies in Kansas shall be responsible
0055 for their agency's observance of the hiring requirements of this
0056 section.

0057 (d) No law enforcement agency head or other appointing
0058 authority shall knowingly permit the hiring of any person in
0059 violation of the requirements of this act. Any violation of the
0060 requirements of this act shall be deemed to constitute miscon-
0061 duct in office and shall subject the agency head or appointing
0062 authority to removal from office pursuant to K.S.A. 60-1205 and
0063 amendments thereto.

0064 (e) The commission shall make such inquiry as necessary to
0065 determine compliance with the requirements of this section and
0066 the rules and regulations adopted under it.

0067 (f) It shall be the responsibility of the agency head to ensure
0068 that every police officer or law enforcement officer under their
0069 supervision has the opportunity to receive the mandatory train-
0070 ing as prescribed in K.S.A. 1982 Supp. 74-5604a and amend-
0071 ments thereto.

0072 Sec. 3. K.S.A. 1982 Supp. 74-5604a is hereby amended to
0073 read as follows: 74-5604a. (a) The associate director shall es-
0074 tablish a program for periodically extending the law enforcement
0075 training and instruction of the training center throughout the
0076 state on a regional basis. The associate director also shall certify
0077 annually the training schools of state and local law enforcement
0078 agencies providing a course of law enforcement training for
0079 full-time police officers or law enforcement officers of not less
0080 than 320 hours of instruction, and whose training programs also
0081 satisfy the qualifications and standards promulgated by the as-

permanent appointment to

full-time



Attach B

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

April 20, 1983

The Honorable Neal D. Whitaker
Chairman
House Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66612

Re: Sub. for SENATE BILL No. 277

Dear Representative Whitaker:

I have been informed that three questions have arisen in your committee regarding the above referenced bill. I would like to briefly identify these areas of concern and respond.

1. Whether the language of New Section 1. (a) prohibits an individual from functioning as a law enforcement officer prior to receiving certification by the Kansas law enforcement training commission?

Although it is arguable that an individual would be required to receive certification prior to engaging in law enforcement activities the provisions of Sub. for S.B. No. 277 should be read in conjunction with existing portions of the act. K.S.A. 1982 Supp. 74-5607a(c) provides:

"Any person who is appointed or elected as a police officer or law enforcement officer who does not hold a certificate as required by subsection (a) may be elected or appointed as an officer on a provisional basis for a period of not more than one year. Any person appointed as a police officer or law enforcement officer on a provisional basis who does not receive

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the certificate required under subsection (a) within one year following the date of their original election or appointment shall forfeit such office or position at the end of such one-year period. Any person appointed as a police officer or law enforcement officer on a provisional basis who does not receive the certificate required under subsection (a) within one year following such original appointment shall not be reappointed as a police officer or law enforcement officer on a provisional basis within one year following the date on which such person last served as a police officer or law enforcement officer. The associate director may extend the one-year time period when it is shown that the failure to comply with the requirements of subsection (a) was not due to the intentional avoidance of the law."

Thus, while the bill under consideration requires certification, existing law provides for provisional appointment for a period not exceeding one year. If the committee is concerned that New Section 1.(a) would supercede the foregoing statute, possible remedies are to amend K.S.A. 1982 Supp. 74-5607a(c) to expressly refer to certification pursuant to New Section 1.(a) or to include a new subsection in New Section 1. which is identical to the language of subsection (c) of K.S.A. 1982 Supp. 74-5607a.

2. Whether the language of Sec. 4(f), which provides, "is free of any condition which might adversely affect the applicants performance of a police officer's or law enforcement officer's duties" is an appropriate minimum requirement?

I would only note that virtually identical language has been included as an admission standard since the Law Enforcement Training Act was originally enacted in 1968. Since the language was not initiated with the immediate proposal nor discussed by the various law enforcement representatives, I am not in a position to present the merits of retaining or deleting the subsection.

3. Whether the comma following the word examination on line 0052 should be deleted?

In meetings of interested law enforcement personnel that I attended, this comma was a topic of considerable discussion. It is my understanding that the commission did not desire access to all

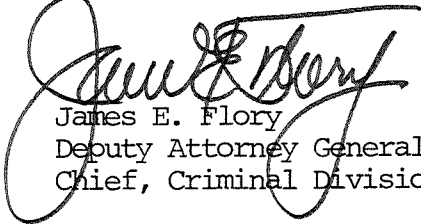
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"reports and records," but rather, required access to "medical examination reports and records" in order to assure compliance with statutory minimum standards. To the best of my recollection all interested parties agreed with the foregoing assessment.

I trust that this information will be of some assistance to you and the committee. If I can be of assistance or provide further information please feel free to call upon me.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN



James E. Flory
Deputy Attorney General
Chief, Criminal Division

JEF:may

Attach C

HOUSE BILL NO. _____

By Representative Whitaker

AN ACT concerning crimes affecting public trusts; amending K.S.A.
21-3901.

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

21-3901. Bribery. Bribery is:

(a) Offering, giving or promising to give, directly or indirectly, to any public officer or candidate for public office or public employee any benefit, reward or consideration to which he is not legally entitled with intent thereby to influence such officer or candidate or employee with respect to the performance of his powers or duties as such officer or employee; or

(b) The act of a public officer or candidate for public office or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that he will be so influenced.

Bribery is a class D felony. If the convicted person is a public officer or employee, at the time of conviction, in addition to the other penalties prescribed by law, he shall forfeit his office or employment and be forever disqualified from holding public office or public employment in this state.

Attach. C

believe it to be an identification document issued by a governmental agency; and

(b) Bears a fictitious name or other false information.

(2) As used in this section, "identification document" means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, birth certificates and social security cards.

(3) Dealing in false identification documents is a class A misdemeanor.

(4) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1979, ch. 87, § 1; July 1.

Cross References to Related Sections:

Unlawful use of driver's license, see 8-260; non-driver's ID card, see 8-1324.

Article 39.—CRIMES AFFECTING PUBLIC TRUSTS

21-3901. Bribery. Bribery is:

(a) Offering, giving or promising to give, directly or indirectly, to any public officer or public employee any benefit, reward or consideration to which he is not legally entitled with intent thereby to influence such officer or employee with respect to the performance of his powers or duties as such officer or employee; or

(b) The act of a public officer or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that he will be so influenced.

Bribery is a class D felony. If the convicted person is a public officer or employee, in addition to the other penalties prescribed by law, he shall forfeit his office or employment and be forever disqualified from holding public office or public employment in this state.

History: L. 1969, ch. 180, § 21-3901; July 1, 1970.

Source or prior law:

21-708, 21-709, 21-710, 21-801, 21-802, 21-803, 21-824, 21-825, 34-108.

Judicial Council, 1968: Originally, at common law, the crime of bribery was limited to judges. Only the receiver of the bribe was criminally liable. The modern concept has been much broadened, extending to most persons occupying positions of public trust and including the giver as well as the receiver.

In some states it has been enlarged to include officers of political parties and labor organizations. Sports officials will be dealt with in another section.

The basic concept in all cases is the giving or receiving of benefits, or the request or receipt of influence official action favorable to the giver.

This comprehensive statute is intended to supplant the former Kansas statutes which prohibited bribery and related offenses. The import is broader than former Kansas law in that it applies to public officers and employees, including judges, and reaches the public officer or employee who receives a bribe.

The language is taken from Minnesota Criminal Code, § 609.41, with modifications.

CASE ANNOTATIONS:

1. Statute is not unconstitutionally vague and does not require indictment sufficient. State v. Campbell, 756 P.2d 771, 774, 777, 780, 539 P.2d 323.

2. Indictment hereunder sufficient for federal offenses where alleged acts included travel and interstate commerce; two indictments insufficient for instructions on two conspiracies. United States v. ... 527 F.2d 1051.

3. Record examined on appeal from conviction; no error. State v. Jordan, 220 K. 119, 121, 122 P.2d 773.

4. Section applies whenever the recommendation of a public officer would be influential; conviction affirmed. State v. Marshall & Brown-Sidoti, 220 K.A.2d 182, 183, 208, 577 P.2d 803.

21-3902. Official misconduct. Official misconduct is any of the following committed by a public officer or employee in his public capacity or under color of his office or employment:

(a) Willfully and maliciously committing an act of oppression, partiality, misconduct or abuse of authority; or

(b) Willfully demanding or receiving any fee or reward, knowing that same is illegal for the execution of any official act, or the performance of a duty imposed by law, the terms of his employment.

Official misconduct is a class A misdemeanor. Upon conviction of official misconduct a public officer or employee shall forfeit his office or employment.

History: L. 1969, ch. 180, § 21-3902; July 1, 1970.

Source or prior law:

21-713, 21-741, 21-742, 21-743, 21-807, 21-808, 21-809, 21-810, 21-811, 21-812, 21-813, 21-1607.

Judicial Council, 1968: Several sections of the former statutes prohibited misconduct by persons in positions of public trust. These sections proscribed oppression, partiality, misconduct, or abuse by public officials (former K.S.A. 21-807), fraud by state county officers (former K.S.A. 21-808), exacting illegal fees (former K.S.A. 21-810) and taxes (former K.S.A. 21-811), and willful misconduct or neglect (former K.S.A. 21-812). This section draws the

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HOUSE BILL NO. 2-390

By Committee on Federal and State Affairs

AN ACT concerning the crime of bribery; amending K.S.A. 21-3901 and repealing the existing section.

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

Section 1. K.S.A. 21-3901 is hereby amended to read as follows: 21-3901. Bribery is:

(a) Offering, giving or promising to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward or consideration to which he the person is not legally entitled with intent thereby to influence ~~such officer or employee~~ the person with respect to the performance of his the person's powers or duties as ~~such~~ a public officer or employee; or

(b) the act of a person who is a public officer, candidate for public office or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that he the person will be so influenced.

Bribery is a class D felony. ~~If the convicted person is a public officer or employee, in addition to the other penalties prescribed by law, he shall forfeit his office or employment--and~~
Any person convicted of bribery shall be forever disqualified from holding public office or public employment in this state and, if the person is a public officer or employee at the time of conviction, shall forfeit the person's office or employment.

Sec. 2. K.S.A. 21-3901 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.