

Approved 1-31-89
Date

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Kenneth King at
Chairperson

9:05 a.m./p.m./ on Tuesday, January 24th, 1989 in room 521-S of the Capitol.

All members were present except: Representatives Mary Jane Johnson and Kathleen Sebelius who were excused.

Committee staff present: Fred Carman, Revisor of Statues Office
Myrta Anderson, Legislative Research Department
Ellie Luthye, Committee Secretary

Conferees appearing before the committee: Ron Thornburg, Secretary of State's Office
Carol Williams - Kansas Public Disclosure Commission
Janet Williams - Kansas Public Disclosure Commission

The meeting of the House Elections Committee was called to order at 9:05 a.m. by Chairman Kenneth King.

As stated by the Chairman, the order of business for the day was to hear proposals for bills to be introduced and considered by the Committee.

The first conferee on the agenda was Ron Thornburg from the Secretary of State's Office. He asked the Committee to consider legislation on two bills. One would increase the number of signatures needed to run for office as an independent to a more equitable level. The second would change the filing date for retention judges, the statutory form of declaration of candidacy and dual filing. (Attachment I)

Representative Foster moved that the Committee accept the bills for consideration. Representative Shallenburger seconded the motion. The motion carried.

Carol Williams, Administrative Assistant/Auditor for the State Public Disclosure Commission appeared next before the Committee. She asked the Committee to consider legislation that would preclude a candidate with outstanding penalty assessments from filing for state office, suggesting the following language, "No person who has failed to pay in full a civil penalty assessed by the Commission may file for or seek election to a state office". (Attachment II) She then called on Janet Williams, from the Kansas Public Disclosure Commission, to explain part two of the proposed legislation. She requested the Committee to consider legislation making local Statements of Substantial Interest (SSI) filing requirements parallel to State SSI filing requirements. (Attachment II)

Representative Shallenburger moved that the Committee accept the proposed bills. The motion was seconded by Representative Baker. The motion carried.

Chairman King then called for other bills that the Committee members might want to introduce.

Representative Shallenburger moved the Committee introduce the same bill in the House that was introduced in the Senate concerning a Presidential Primary and request that it be sent back to the Election Committee for action. Representative Helgerson seconded the motion. The motion carried.

Representative Dillon moved to propose legislation, as requested by the Election Commissioner from his district, that would provide a blank space on absentee ballots for committee persons. At this time there is no provision for voters filing absentee ballots to vote for committee persons. Representative Jones seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,
room 521-S, Statehouse, at 9:00 a.m./p.m. on Tuesday, January 24th, 1989.

Representative Cates moved to introduce a bill that would move the date for the central committee to reorganize following the general election to December instead of ten days after the election which is now the date to reorganize. Representative Lucas seconded. The motion passed.

Representative Baker asked Ron Thornburg, from the Secretary of State's Office, whether a decision had been made on the name of the city candidates put on the ballot. He stated that the statute now is very unclear. The Secretary of State's office has been searching for an equitable way to clarify this. Chairman King suggested that Representative Baker and Ron Thornburg perhaps could work together to try to establish recommendations to bring back to Committee.

The minutes of the meeting on January 12, 1989 were presented to the Committee members. Representative Helgerson moved that the minutes be approved as presented. Representative Wilbert seconded. The motion carried.

The rules of order for the Election Committee was handed out so each committee member would have a copy.

There was no further business to come before the Committee and Chairman King adjourned the meeting at 9:25 a.m.

The next meeting of the Elections Committee will be Tuesday, January 31st at 9:00 a.m. in Room 521-S.

SECRETARY OF STATE
1989 PROPOSED LEGISLATION
HOUSE ELECTION COMMITTEE

POLITICAL COMMITTEE BILL

Deadline for Central Committee to Meet to Fill a Vacancy:

We propose requiring a county central committee to select a nominee within 15 days of the receipt of notice of a vacancy in an elected office.

Organization of a District Committee:

Political party's district committees are organized based upon the total vote cast for a statewide officer at the "preceding primary election". This year, since there were no statewide candidates on the ballot, there was no way to organize the committee according to the letter of the law. We propose allowing the organization to take place based on the primary election of the previous statewide election.

PETITION REQUIREMENTS FOR INDEPENDENT CANDIDATES BILL

In the recent Libertarian lawsuit, it was recognized that it is inequitable to require an independent county clerk candidate to obtain nearly 6,000 signatures in Sedgwick County, but only 2,500 for an independent candidate for statewide office. We propose legislation to increase the number of signatures needed to run for office as an independent to a more equitable level.

CANDIDATE FILING BILL

Change of Retention Filing Deadline:

Retention judges file for office 60 days prior to the general election. All other candidates for the general election must make the declaration no later than the primary election. We propose requiring all retention judges to file no later than 12:00 noon on the Monday preceding the primary election.

Declaration of Candidacy Format:

Several problems have arisen with the statutory form of declarations of candidacy. We propose amending the statutes to allow the form of the declaration to be prescribed by the secretary of state.

Dual Filing as Independent and Party Candidate:

No statute prohibits a candidate from filing for the primary election as a partisan candidate and as an independent candidate for the general election. We propose prohibiting such a dual filing.

ANNUAL REPORT AND RECOMMENDATIONS
of the
KANSAS PUBLIC DISCLOSURE COMMISSION
STATE OF KANSAS

To the Governor and the Legislature

December 1, 1988

KANSAS PUBLIC DISCLOSURE COMMISSION
109 West 9th
Topeka, Kansas 66612
(913) 296-4219

Attachment II

MEMBERS AND STAFF

Commission Members

Lowell Abeldt, Chairman, Abilene*
John Hayes, Vice-Chairman, Hutchinson*
Ralph Bussman, Mound Valley**
Belva Ott, Wichita*
Don Paxson, Topeka**

Staff

Carol E. Williams, Administrative Assistant/Auditor
Jana Atchison, Report Examiner
Janet Williams, Report Examiner
Donna Watson, Secretary
Ruth Pile, Secretary

General Counsel

Dennis Prater, Lawrence

(*) Terms expire January 31, 1989

(**) Terms expire January 31, 1990

PREFACE

This thirteenth annual report and recommendations is submitted to the Governor and the Director of Legislative Administrative Services for transmittal to the Legislature pursuant to K.S.A. 25-4119a and K.S.A. 46-1212c. With some exceptions, the report covers the period from July 1, 1987 through June 30, 1988, the end of Fiscal Year 1988. Occasionally, data for the first quarter of Fiscal Year 1989 is used in order to provide a more complete picture of the Commission's operations.

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PART I: REPORT

The Commission's efforts focus on full compliance with the Kansas campaign finance, conflict of interest, and lobbying statutes. Staff time is devoted to assuring the accurate and timely disclosure of required financial information. The processing and evaluation of filed reports and statements and an analysis of the supporting records, where appropriate, are crucial to the Commission's efforts. It is through the initial and comprehensive review of these reports and the later audit and investigation, where necessary, that the Commission can assure the people of the state that the laws are being complied with.

In addition, the Commission strives to inform the general public about the information being disclosed and its right of access to that information. This is consistent with the underlying philosophy of the statutes and the Commission's understanding of its ultimate responsibility to the people of Kansas.

RESPONSIBILITIES

The Kansas Public Disclosure Commission administers and enforces the Campaign Finance Act (K.S.A. 25-4142 et seq.) and laws relating to conflict of interests, financial disclosure and the regulation of lobbying (K.S.A. 46-215 et seq.). In addition, the Commission renders advisory opinions under a less comprehensive conflict of interests law covering local government officials and employees (K.S.A. 75-4301 et seq.).

ORGANIZATION AND OPERATION

The Commission is organized to assure complete, accurate and timely disclosure of required financial information. It has developed a work program encompassing six areas: (1) public information; (2) advisory opinions; (3) reviews and audits; (4) investigations; (5) enforcement (including the filing of complaints, holding public hearings and assessing civil penalties); and (6) general administrative activities.

Information Program

The Commission utilizes information brochures, the news media, speaking engagements, and correspondence to inform the public about the laws and their meaning. However, most time in this program area is devoted to informing those directly covered by the laws of their duties and responsibilities. To accomplish this task, the Commission conducts informational seminars, prepares and distributes handouts, campaign finance handbooks, lobbying laws, and conflict of interest laws brochures. In addition, the telephone is used extensively to provide information and advice.

Advisory Opinions

Advisory opinions are issued by the Commission to clarify the application of the statutes in a particular situation. The Commission can issue these opinions on its own initiative or in response to individual inquiries. If an individual requests an opinion and conducts himself or herself according to the guidelines in the opinion, he or she is presumed to be in compliance with the law.

Twenty-four advisory opinions were issued in fiscal year 1988. Of the 525 advisory opinions issued since 1974, 116 or 22% concern campaign finance, 60 or 11% relate to the regulation of lobbyists, 231 or 44% have to do with conflict of interests provision governing state officers or employees, and 118 or 23% concern conflict of interests provisions which apply to local officers or employees. Of the total opinions, 497, or 95% have been issued as a result of requests by various individuals or organizations rather than as a result of the Commission's own initiative.

Review and Audit Program

Complete, accurate and timely disclosure of certain kinds of financial information by candidates, elected officials, state employees and lobbyists is the key requirement of the legislation. It has been and is the Commission's position that active review and auditing of reports is essential for the proper administration of the law.

Campaign Finance. In the campaign finance area, the Commission's procedures include a preliminary review (involving notification of failure to file) and a post-election comprehensive desk review (involving notification of material errors or omissions) of all Receipts and Expenditures Reports filed under the Campaign Finance Act. In addition, a certain number of reports are selected for audit.

Through the first reporting period of 1988, 415 candidates and 379 committees have filed 794 receipts and expenditures reports. In addition, 96 candidates and 73 committees have filed affidavits of exemption. A total of 77 notifications of failure to file and 139 notifications of material errors or omission have been sent for Report No. 1. Eighteen percent of all first period reports contained a material error and/or omission.

Audits of the records of candidates and committees are conducted based on generally accepted auditing standards and procedures adapted to the area of campaign finance. Audits are conducted on a priority basis. Accorded first priority are situations involving formal complaints. The next priority is assigned to situations in which it is necessary to clarify problems identified during the desk reviews. A general investigation may also be authorized at this point. Finally, a random sample of candidates and committees is audited. If a candidate is selected for a random audit, his or her opponent is also examined.

Conflict of Interest. The Kansas conflict of interests statutes provide for (1) the filing of statements of substantial interests and for public inspection of those forms; (2) a code of conduct making it illegal for

state officials and employees to be involved in certain conflicts; (3) the issuance of advisory opinions; and (4) citizen participation in the enforcement of the conflict law.

Those required to file statements of substantial interests are elected state officials and candidates for such office, individuals whose appointments are subject to confirmation by the Senate, general counsels for state agencies and state officers, employees, and members of boards, councils or commissions meeting the definition of a "designee" and so listed by the head of their agency. In 1988, 5,536 individuals have filed statements of substantial interests. Included in the 5,536 are 188 elected officials; 217 candidates for state office; 143 appointees whose positions are subject to confirmation by the Senate; 40 general counsels; 240 board members, and 4,708 state employees. Of those being required to file, 125 were sent past due notices followed by 60 receiving failure to file notices. A total number of 39 notifications of errors or omissions were also sent.

Many state officials and employees are in a position to make or influence decisions which could directly affect their personal interests. The state conflict of interest laws prohibit such activity. To assist these individuals, the Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies. In FY 1988, the Commission issued 18 opinions to state employees concerning their positions, personal interests and how the conflict laws applied to them.

The Commission has found that the conflict statutes are not widely understood either by state employees or the public at large, yet these laws are of fundamental importance to the workings of state government. They draw the line between private interest and public trust which must be guarded carefully. Efforts to clarify and enforce that line are increasingly important as public concern mounts over abuses of the public trust. Consequently, the Commission publishes a conflict of interest brochure. This brochure was distributed to all state employees in October of 1986.

Conflict of Interest (Representation Case Disclosure). There were 21 Representation Case Disclosure statements filed in fiscal year 1988. It is possible that other individuals required to file such statements have not done so. However, given the structure of the statutory requirement, there is no way of knowing who should file such statements.

Lobbying Provisions. There are 618 lobbyists registered in 1988 as of September 30, 1988. These 618 registered lobbyists represent 848 persons or organizations. The Commission's statistical analysis of the lobbyist employment and expenditures reports shows expenditures of \$405,222.04 reported through September, 1988. Lobbyists who make expenditures in excess of \$100 during a reporting period must file a monthly report. Expenses such as lobbyists' salaries and office overhead need not be reported.

Enforcement Program

Complaints. There were 17 complaints filed in FY 1988. Four of these complaints were filed in the campaign finance area. Thirteen complaints were filed as a result of individuals failing to file Statements of Substantial

Interests in a timely manner.

Anyone who believes that any of the provisions administered by the Commission have been intentionally violated may file a complaint in writing to the Commission. As the public becomes more aware of the requirements of the statutes, the Commission expects to conduct more investigations and have more complaints filed.

Hearings. In scheduling a hearing, the Commission first has to conclude that probable cause exists for believing the allegations in the complaint. Probable cause exists if there is present a reasonable ground for belief in the existence of the alleged facts set out in the complaint. Complaints remain confidential until probable cause is found. Ultimate determination as to whether intentional violations have occurred is a decision which is not reached until the conclusion of the public hearing.

Civil Penalties. The statutes enforced by the Commission provide for the assessment of civil penalties for failure to file certain reports or statements. Under the Campaign Finance Act, the failure to file an appointment of treasurer or candidate committee form, a statement of organization for a party or political committee, or a receipts and expenditures report within fifteen days after the Commission places the failure to file notices in the mail subjects the person to a \$10 per day penalty for each day the report or statement remains unfiled, up to a maximum of \$300. Under the state conflict of interest and lobbying statute, the failure to file a statement of substantial interests, lobbyist registration form, or lobbyist employment and expenditure report within five days after having received a failure to file notice by certified mail subjects the person to a \$10 per day penalty for each day the report or statement remains unfiled, up to a maximum of \$300. The Commission is also authorized to waive any imposed civil penalty, upon a finding of good cause. The Commission assessed \$1770 in civil penalties in FY 1988.

RECOMMENDATIONS

The Commission realizes any major piece of legislation periodically needs revision and modification, and in some cases, major changes. Every year the Commission has recommended statutory changes. The recommendations to the 1989 Legislature are set out in detail in Part II of this report.

CONCLUSION

As the Commission has repeated on a number of occasions, its success or failure will depend on its ability to guarantee the Governor, the Legislature and above all, the people of the State, that the campaign finance, conflict of interest and lobbying provisions are being complied with. To a great extent, this means the ability to insure that the financial information reported periodically is timely, accurate and complete. The Commission believes that while the past several years have shown significant improvement in the timeliness of the filing and the quality of the reports submitted, too many



still contain errors and/or omissions. Much remains to be done through education and assistance to upgrade the quality of the reports, and at the same time, to identify and proceed against those who intentionally violate the law. In the same vein, much remains to be done to alert the people of their rights and responsibilities under the law. The Commission recognizes that the strongest safeguard against unethical conduct by public officials and employees is an informed and active public.

PART II: RECOMMENDATIONS

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs "fine tuning". To that end, the Commission makes the following recommendations:

State Conflict of Interest Statute

Currently state officers and employees are required to file representation case disclosure statements when they appear before a state agency on behalf of a client. However, if the representation does not require an appearance, the employment need not be disclosed. The Commission believes that whenever a state officer or employee accepts a representation case, that information should be disclosed. We suggest the following amendatory language:

"Representation case" defined. "Representation case" means the representation of any person, client, principal or third person, with compensation, in any matter before any state agency where the action or non-action of the state agency involves the exercise of substantial discretion; but representation case does not mean or include (a) any communication initiated by a legislator on behalf of a constituent or other member of the public for which no compensation is received or to be received, or (b) preparation and filing of tax returns or other governmental forms, or (c) participation in tax audit negotiations, or (d) any activity of a state officer or employee in carrying out the duties of his or her office or employment, or (e) a preliminary inquiry by any person into a matter before a state agency, except as provided in (a) - (e), representation case includes representation with compensation regardless of whether an actual appearance will be made before the agency.

Currently K.S.A. 46-237(c) states: No person licensed, inspected or regulated by a state agency shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$100 or more in any calendar year to that agency. This section currently prohibits a select group of individuals from giving gifts to state agencies which ultimately inure to the benefit of the employees of the agency. The section does not preclude a contractor with the agency from giving the same types of gifts to the agency. Since the status of contractors is similar to licensees, regulatees and those inspected by an agency, we believe the same rule should apply by adopting the following amendatory language: "No person licensed, inspected or regulated by a state agency and no person which contracts to provide goods and services to the agency shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$100 or more in any calendar year to that agency."

Campaign Finance

Currently the Commission has authority to assess civil penalties against candidates who are late in reporting and otherwise violate terms of the Act. It frequently occurs that we deal with repeat offenders, some of whom fail to pay the assessed fines. As an additional aid to enforcement of the Act, the Commission suggests a new section that precludes a candidate with outstanding penalty assessments from filing for state office. The following language is suggested: No person who has failed to pay in full a civil penalty assessed by the Commission may file for or seek election to state office.

Require Campaign Finance reports to be filed with the Secretary of State and locally. Presently, all campaign finance reports are filed with the Secretary of State. It has been suggested that this effectively defeats the public disclosure goals of the Act in legislative and other races of less-than-statewide interest. It is argued that the statehouse press corps is simply too small to digest the large amount of material filed and that local citizens and media representatives cannot get the information without coming to Topeka. As a result, the disclosure goals of the Act are seriously impaired. We recommend that candidates in less than statewide races be required to file in Topeka and with the election officer in their home counties. Local election officials should be authorized to dispose of the reports after a reasonable period of time.

Local Conflict of Interest Statutes

Make local Statements of Substantial Interest (SSI) filing requirements parallel to State SSI filing requirements. Under K.S.A. 75-4301 et seq. local officials are required to file statements of substantial interests for more of their holdings and at more frequent intervals than state officials under K.S.A. 46-215 et seq. Since there would seem to be no policy requiring a greater burden on local officials, we would recommend that the local and state level filings be made parallel on what should be disclosed and how often.

Protocol of Meeting & Committee Information

- Motions and substitute motions are allowed.
- Motion to table, if successful, will lay over a minimum of one day and takes a simple majority to bring off table.
- Motion to kill or report unfavorably are synonymous.
- Motion to report favorably without recommendation is allowed.
- To reconsider, a motion must be made by a member voting on a prevailing side.
- All bills considered for final action will be on the agenda.
- A simple majority is required to reconsider.
- A point of clarification is always in order.
- The chair reserves the right to adjourn at any point.

Information for Conferees

- Committee requires written testimony be provided to the committee and staff (the appropriate number to provide is 25)
- If testimony exceeds 5 pages double spaced in length, the committee requires a one page summary sheet which may be single spaced.
- Conferee time limit may be set by the chairman and will be determined by number of conferees and order of business.

Miscellaneous

- It is our intention to run 1 hour meetings.
- Any request for excused absences will be honored. Prior notification will be appreciated.
- Smoking will be prohibited.