

Approved 1-25-90
Date

MINUTES OF THE House COMMITTEE ON Elections

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

9:07 a.m./p.m. on Tuesday, January 23, 1990 in room 521-S of the Capit

All members were present except: Representative Cates, Representative Foster and Representative Gilbert who were excused.

Committee staff present:
Pat Mah, Research
Arden Ensley, Revisor
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Attorney General Robert Stephan
Ron Thornburgh, Office of the Secretary of State

The House Election Committee was called to order by Chairman Kenneth R. King on Tuesday, January 23rd, 1990 at 9:07 a.m.

The Chair called on Attorney General Bob Stephan to explain a recent decision by the United States Supreme Court declaring as unconstitutional certain California statutes regulating political parties. Given the Supreme Court's decision, he listed several Kansas statutes that appeared to be unconstitutional and recommended remedial action be taken. (Attachment I)

The Chair next opened SB 294 for hearings, an act concerning certain elective offices; filling vacancies, resignation from office.

Attorney General Bob Stephan appeared before the committee in support of SB 294 and presented testimony stating his position. (Attachment II)

Ron Thornburgh, from the office of the Secretary of State, also presented testimony in support of SB 294. (Attachment III)

There being no further discussion on SB 294 the hearings were closed.

Representative Sebelius requested legislation be introduced by the committee expanding the opportunity for mail ballot elections from bond issues, which we now have, to non-partisan city and school board elections. Following discussion this motion was seconded by Representative Blumenthal. The motion carried.

Representative Sebelius requested a second bill also be introduced regarding qualified voters for drainage districts. Representative Johnson seconded the motion and the motion carried.

Chairman King announced the members to the Sub-Committee on Ethics with Representative Shallenburger serving as Chairman with the committee members as follows:

Representative Empson
Representative Johnson
Representative Lucas
Representative Sader
Representative Sawyer
Representative Wilbert

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,
room 521-SStatehouse, at 9:07 a.m./p.m. on Tuesday, January 23, 1990.

Arden Ensley, Revisor, came before the committee asking for legislation concerning duplications of statutes from last year and wished to have a bill introduced that would put two or more of the bills together or, in some cases, repeal the alternatives that were exactly the same. This could be accomplished with three bills. It would be purely technical with no policy changes. He stated it would help in the publication. A motion was made by Representative Shallenburger to proceed with same, seconded by Representative Sawyer and carried.

The minutes of the meeting on January 9th were presented to the committee for approval. A motion was made by Representative Blumenthal to approve the minutes, seconded by Representative Sawyer and carried.

The meeting of the Election Committee was adjourned at 9:30 a.m.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

The Honorable James Braden
Speaker of the House
State Capitol
Topeka, Kansas 66612

Dear Representative Braden:

The purpose of this letter is to inform you of a matter that has come to my attention on which you may wish to take legislative action. I am directing this letter to the leadership of the Senate and House of Representatives and chairs of the Senate and House of Elections Committees.

In a recent decision, Eu v. San Francisco Democratic Com., 489 U.S. _____, 103 L.Ed.2d 271, 109 S.Ct. _____ (1989), the United States Supreme Court declared as unconstitutional California statutes regulating political parties. I believe that, as a result of this decision, certain Kansas statutes regulating political parties may be unconstitutional.

The California statutes were challenged on the basis of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution. The court stated that, if state election laws burden these rights, the laws can survive constitutional scrutiny only if the laws advance a compelling state interest and are narrowly tailored to serve that interest. The court dealt with the statutes in two categories: restriction of party activities and regulation of political parties' internal affairs.

Restriction of party activities. California law provided for a hierarchy of political party organization, such as a state committee and county central committees. By statute, political parties could not endorse, support, or oppose candidates in primaries. The court ruled this prohibition burdened the rights of free speech and free association "while serving no compelling governmental interest. . . ." 103 L.Ed.2d at 286.

Attachment I

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Regulation of internal affairs. California statutes regulated the following:

- size of state central committee
- composition of state central committee
- selection and removal of committee members
- fixed the maximum term of office for the chair of the state central committee
- required the chair to rotate between residents of northern and southern California
- specified the time and place of committee meetings
- limited the amount of dues parties could impose on members.

Violation of any of these statutes constituted a criminal offense. The Court ruled that the above statutes burdened the associational rights of the party and its members and that the state did not advance a compelling state interest.

"[A] State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair."
Id. at 288.

The court ruled that "the State has no interest in 'protecting the integrity of the Party against the Party itself.'" Id. Specifically, the Court commented that dictating the structure of the party "prevents the political parties from governing themselves with the structure they think best." Id. at 286. Mandating who the members are of political organizations "interferes with the parties' choice of leaders." Id. at 287.

Given the Supreme Court's recent decision in Eu, the following Kansas statutes appear to be unconstitutional:

- K.S.A. 25-3802. County Central Committees. Establishes membership, dictates that a meeting must be held two weeks after each primary, mandates the officer positions, provides how meetings are to be called, and provides for proxies.

- K.S.A. 25-3803 as amended by L. 1989, ch. 110, § 1. District Committees. Establishes membership, mandates the officer positions, provides how meetings are to be called,

dictates that meetings to be held within 90 days of general election, provides for alternates, and prohibits proxies.

- K.S.A. 1988 Supp. 25-3804. State committee. Establishes membership.

- K.S.A. 1988 Supp. 25-3805. State Committee. Mandates the officer positions, dictates that a meeting must be held within 120 days of the general election, provides how the meeting is to be held, provides for alternates, prohibits proxies, and establishes executive committee and membership of the committee.

- K.S.A. 25-3806. City party committee. Establishes membership, mandates officer positions, and provides how the meeting is to be called.

- K.S.A. 25-3810. Party platform. Establishes platform committee and membership on the committee, specifies the date committee must meet, provides that the Secretary of State call the meeting to order, mandates officer positions to be elected, prohibits proxies, committee must adopt platform, platform must be available by 6:00 P.M. of the day following adjournment, and that a copy must be filed with Secretary of State within one week.

- K.S.A. 25-3811. Chair and vice-chair of committees must be of the opposite sex.

The above statutes heavily regulate the internal affairs of political parties in Kansas which nominate candidates by primary election. K.S.A. 25-3809. These regulations burden the First Amendment Freedom of Association, according to the Court. I do not believe a court would find that these regulations serve a compelling state interest, and therefore would be unconstitutional.

If you have any questions about this matter, or if I or my staff can provide any assistance, please feel free to contact this office.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

RTS:RLN:bas

cc: Senator Paul (Bud) Burke
Representative Kenneth King
Senator Don Sallee
Assistant Attorney General Rita Noll



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ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

House Committee on Elections
Senate Bill No. 294

Testimony Presented By
Attorney General Robert T. Stephan
January 23, 1990

Mr. Chairman and Members of the Committee:

I am here today to testify in favor of Senate Bill No. 294. I will discuss only those amendments to the election statutes I have requested, though I also support all the proposed changes requested by Senator Montgomery and the Secretary of State.

Kansas law provides that vacancies in district offices, including elected county offices, state representative, and state senator, are filled by convention of the county central political committee. K.S.A. 25-3901 et seq.

It is my opinion, and has been of prior administrations, that, as the Kansas statutes currently read, a county central political committee convention cannot be held to fill a vacancy until a vacancy actually exists. Many times it is known weeks or months in advance that a vacancy will occur on

Attachment II

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a certain date. The fact that a convention to fill the vacancy cannot be held until the vacancy actually exists causes problems for local government in many cases. For example, delay in appointing a successor to an office hinders the transition and flow of operations in county offices. Problems caused by such delays are especially prevalent and noticeable in the office of county attorney.

Senate Bill No. 294 amends election statutes and makes it clear in new section 11 that a party convention may be held to fill a vacancy before the vacancy actually occurs. The convention's selection to fill the vacant office, which is subsequently approved by the governor, would not become effective until the actual date of the vacancy.

Testimony of Ron Thornburgh
March 23, 1989

SB 294

Thank you Mr. Chairman and members of the committee.

SB 294 is a conglomeration of bill requests by Senator Montgomery, the office of the Attorney General, and the office of the Secretary of State. All requests are valid, and we encourage their passage.

Section 6 of the bill pertains to the request made by the office of the Secretary of State. We are asking that any time a convention is to be called to fill a vacancy, that the chairman be required to call the meeting within 10 days of receipt of the notice.

In the last election, we had several candidates withdraw following the primary election, thus leaving us without a candidate in that position until the committee made the appointment. Because several committees were very hesitant to fill vacancies, we were unable to print ballots or proceed with the election preparations.

In order to correct this problem and several others addressed by SB 294, I urge your favorable approval of this bill.

Thank you.

Attachment III

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