

Approved 2-8-90
Date

MINUTES OF THE House COMMITTEE ON Elections - Special Meeting on Ethics

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

12:00 noon a.m./p.m. on Tuesday, February 6, 1990 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

Pat Mah, Research
Ellie Luthye, Secretary

Conferees appearing before the committee:

Dr. Marvin Harder
Justice Harold Herd
Pete McGill

A special meeting of the House Election Committee was held on Tuesday, February 6 at 12:00 noon in the Old Supreme Court Room.

The purpose of this meeting was to hear expert testimony from three conferees regarding possible changes in the ethics laws.

Chairman King called on Justice Harold Herd to speak to the committee first. He stated he felt the state should have a code of ethics in its statutes in that it would be easier on everyone if there was a standard of conduct to follow. He further stated that the decision would have to be made whether this would be statutory, governed by the courts, or be rules of the House and Senate and any misconduct would be handled within their own group.

Dr. Marvin "Mike" Harder, a professor of political science at Kansas University, next presented written testimony. He listed sixteen ethical principles which he felt were appropriate and also listed the ten most often heard complaints regarding politicians. He then listed, by categories, what he felt the solution might be. (Attachment I)

Pete McGill, former speaker of the House, was next to present written testimony. He reminded the committee that as they amend the necessary laws to create a better public perception of the appropriate level of ethics in government, they should be careful not to be so restrictive as to diminish public participation in the elective process. (Attachment II)

Following the presentations the Chair opened the floor for questions.

The meeting was adjourned by Chairman King at 1:00 p.m.

Kenneth Wilson EP Board, Ka.

Vance Sordahl

John T. Marshall

Steno Kraske

Mike Heber

Julia Hein

W. O. Clements

Rebecca Harsch

Rebecca Bassomeyer

Doug Handman

Harris news Service

K & Dor

Rep. Klaus Stapp

Hein & Ebert

Wichita Eagle

Rep. Charlton's Office

SOS

Intern

Presentation to a Meeting of the Committee
on Election of the Kansas Legislature
February 6, 1990

by Marvin A. Harder

When we speak of ethics we are talking about moral principles, moral obligations which exist independently of and transcend obligations imposed by laws.

When we discuss ethics in the political realm we are narrowing the focus to those principles and obligations that are inherent in the doctrine that public office is a public trust.

Having been a political activist and a participant in political decision-making for many years I am aware of a tendency of some officeholders and candidates to regard ethical principles as hopelessly idealistic or as impractical in the world of politics where the name of the game is power and success.

I don't mean to suggest that politicians intend to behave unethically; rather that they tend to justify ethically border line actions as essential to being politically effective.

And some, for whatever reasons, are simply not very conscious of ethical standards and therefore do not apply them as tests when they make decisions.

It is this last fact (assuming is a fact) which suggests the desirability of promoting consciousness of ethical standards and guidelines.

The strength and value of these standards is that they

may and should inspire voluntary commitment to the highest moral aspirations of the public service.

I will not attempt to identify all of the ethical principles which are appropriate, but I want to illustrate what I have said by listing a few, not invented by me, but expressed by a bipartisan, non-partisan commission of prominent Americans.

1. Public servants should exercise the authority of their office in a manner consistent with the rules and spirit of representative democracy, using public resources and power only to advance public interests, and not for personal gain or private advantage.
2. Though there is a disagreement on what constitutes the public interest, the principle of public service dictates that some vision of public good and common welfare, as opposed to the pursuit of narrower private interests, should govern public decision making.
3. In pursuing the public interest, public servants should put loyalty to democratic principles and to the broadest public good above loyalty to political party, individual constituencies and persons.
4. It is improper to use Government facilities, services, or personnel to perform personal errands, conduct private business or assist in writing of books, articles, or speeches that will result in personal compensation.
5. It is improper for a public official to provide favors to

- exercise official influence in exchange for money or any other thing of value.
6. Public servants who run for office should not use or appear to use campaign funds for personal benefit.
 7. Public servants should safeguard their ability to make independent, fair and impartial judgments by scrupulously avoiding financial, social and political relationships which might compromise their objectivity, independence or honesty.
 8. Public servants should exercise the powers and prerogatives of office fairly and without prejudice or favoritism. It is improper to use public authority to reward relatives, friends or political supporters or to hinder or punish enemies and opponents.
 9. In order to preserve the ability of all public servants to exercise independent objective judgement, public officials should not directly or indirectly intervene with normal decision making, investigatory or adjudicative processes of any other governmental body unless there is substantial and convincing evidence that the citizen has been aggrieved.
 10. Public power should be exercised openly so that the citizenry is able to make informed judgments and hold public servants and their agents accountable.
 11. Public servants should set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules. Efforts to evade or circumvent the intent of legal requirements, even if technically lawful, are

inconsistent with a public servant's obligation to honor and respect the law.

12. Candidates for public office should scrupulously abide by the letter and spirit of laws that regulate campaigns and require financial disclosures.
13. Public servants should conduct their professional and personal lives so as to be worthy of honor and respect.
14. Public servants should be scrupulously honest, avoiding any form of lying, deception, deviousness, hypocrisy and cheating, in both their professional and personal life.
15. Public servants should avoid conduct which tends to undermine public trust by creating in the minds of a significant number of reasonable impartial observers the perception that any of the principles of public service ethics have or will be violated.
16. Those seeking public office should conduct their campaigns in a way that aids the citizenry to make an informed choice on appropriate criteria and which casts credit on government and the election process.

Now let me turn to what I believe to be political reality, that is, a growing distrust of politicians and cynicism about the political process. You have all read or heard the litany of complaints about Congressional elections and congressional behavior:

1. Elections cost too much.

2. Political contributors are too influential.
3. Legislators spend excessive time raising money instead of tending the business of government.
4. The will of the majority or the public interest is frustrated by well-funded minorities.
5. By accepting honoraria legislators become indebted to the groups who provide them, which in turn biases their voting behavior.
6. By being able to retain their campaign funds for personal use when they leave office they are open to the charge of bribery.
7. Incumbents are so advantaged that elections fail to serve their intended purpose--holding legislators accountable to their constituents.
8. Collectively, these complaints have impaired the image and reputation of the Congress, one of our three primary Federal institutions.
9. Negative campaigns have discouraged many able men and women from considering campaigning for office.
10. The idea of public service, so important to the Founders of our Nation, has eroded significantly.

But those complaints are directed to members of Congress, you may say, practices of Kansas Legislators are hardly comparable.

Why then should we invent solutions for alleged non-existent problems in Kansas?

My answer is, first, that what is happening in Washington and States like California is a warning to be on guard. Notwithstanding the reasonable health of our political environment, it can happen here. Secondly, the best time to take preventative measures is before a serious decline in public credibility occurs. The reputation of the Kansas Legislature can be damaged overnight: rebuilding credibility takes a long time. And, third, the Legislature's image is not as good as it could be today. Some practices, though not generally well-known, are questionable or worrisome.

So, what ought to be done? Let me respond to that question by categories:

A. Campaign Financing

1. Because campaign expenditures are increasing in Kansas, it is time to review the legal limits placed on contributions and expenditures.

I am not an authority on this complex problem, so I will not presume to advise you as to specifics.

But I am willing to propose two indirect ways of coping with the general problem.

2. Specifically, you can and should shorten the general election campaign period by changing the primary date from August to September. When I first proposed this to

from August to September. When I first proposed this to a legislative committee during the mid Nineteen Fifties, Al McCoy of the Kansas City Star followed me and told the committee that the Star would oppose that change. That killed the proposal. And I suspect that many publishers would oppose it today. But it would be popular with the voters who are weary of long campaigns. And early August is a poor time for a primary. Many are on vacation at that time.

3. And, specifically, I urge a second indirect control: tightening the reporting requirements. The treasurers of campaigns should be required to report itemized receipts every two weeks, not only to the public disclosure commission, but to the district election commissioner or county clerk, in both primary and general election campaigns. That would encourage legislators and opponents to think about which contributions to accept and which to reject and how much they will accept.

I sent back a thousand dollar contribution from liquor dealers in 1954 when I was state chairman. We needed the money, but I thought it would not help George Docking's image to be depicted as a candidate of the liquor interests. Naive of me? Perhaps. But it illustrates the value of reporting laws. They encourage self-

discipline.

B. Legislative Ethics

1. In respect to conflicts of interest, I wish to say that it is only a matter of time before the Press begins to report some of the financial connections of individual legislators, connections which will be viewed as conflicts of interest. I am surprised that these conflicts haven't been exposed before.

For example, in my political lifetime I remember a lawyer-legislator from Salina who openly admitted to me that a major source of his income came from textbook publishers at a time when his legislative position gave him substantial influence over textbook adoption and when he was positioned to prevent a law which would free teachers to select their own textbooks.

And I remember when two Senators receiving retainer fees from the trucking industry virtually controlled committee action on all bills affecting that industry.

That was yesterday. But I think you should have some means of knowing today, for example, which Senators and Representatives on the Insurance Committees receive retainer fees from insurance companies.

These are a few examples of conflicts of interest by any reasonable definition.

2. So, what ought to be done?

(a) First, the Legislature should create a standing or special committee on legislative ethics, which committee should be charged with the task of developing a code of ethics and rules which the Legislature can enforce.

(b) Second, the Committee should be authorized to investigate any complaints about individual behavior related to one or more of the ethical rules formulated.

I know it is not easy to draft ethical rules, but no other move would serve the Institution's reputation more than this action at this time. Citizens would be reassured by knowing that the Kansas Legislature is self-disciplining.

If you have doubts about the feasibility of ethics committees and procedure in the Congress, I suggest you listen to Senator Warren Rudman. If the image of the

Congress is ever improved, it will be because of legislators like Senator Rudman. You would be well advised to ask him to speak to a Joint Session of the Kansas Legislature on this topic.

TESTIMONY
PRESENTED TO THE
HOUSE ELECTIONS COMMITTEE
ON FEBRUARY 6, 1990
BY
PETE MCGILL
OF
PETE MCGILL & ASSOCIATES, INC.

Attachment II

Elections 2-6-90

Mr. Chairman and Members of the Committee:

My name is Pete McGill and I am both honored and flattered to have been invited to appear here today. I am here in my personal and individual capacity and any comments I may make do not necessarily reflect the opinions of any of our clients.

It has been my privilege to be a participant in or a close observer of the legislative process for most of three decades. It has been my observation and firm opinion there are no better authorities or more eloquent spokesmen regarding ethics in government than the two distinguished gentlemen you have invited here today, the Honorable Harold Herd and Dr. Mike Harder. Both have a distinguished career in State government and both are highly respected for their knowledge of the process. They are two of my favorite people.

As I indicated a year ago when I testified before the House Election Committee, I appear here today with much apprehension, reservation and concern. I learned several years ago after leaving the Speaker's office and the legislature, as have most other former legislators retiring from the process, that many people, and particularly legislators are not too impressed with the opinions and past experiences of those who may have served in the system.

Most are reminded that times have changed, the process has changed and the composition of the legislature has changed both in style and substance.

And that is true. A little more than a decade ago, the average age of legislators had to be in their late fifties and perhaps higher. I have no accurate statistics, but now that average age must be at least fifteen years less. The number of professional people in the legislature in their most productive years has dramatically declined, particularly with attorneys and business people.

Yes, the composition of the legislature has changed, as has the process. But one thing that hasn't changed is the public's expectation that the election process will provide public officials and leadership with ability and integrity to govern effectively, --free of personal conflicts that would compromise the system.

The public would like to think they have elected those committed to making government work in the manner intended for a democratic form of government, free of coercion, intimidation and domination by special interest groups.

I fully recognize I am an integral part of that huge army of special interest groups that are fortunate in having the opportunity to work within the system. I also recognize I am part of that portion of the system that both the public and the media view with some reservation.

Being a part of that system since I left the legislature has given me the opportunity to continue to review the legislative process as the changes have transpired. I like to think that I recognize the evolution that has taken place which may give some credence to my comments here today.

Unfortunately for you, me and everyone else in the system, events in

Washington, D.C. the past few months and years seems to make us all suspect. Whether we like it or not, it is a fact of life and the conviction of numerous public officials associated with government and the resignation of others under pressure has caused the media to be more aggressive in scrutinizing the activities of all associated with government at any level.

Not only is this happening at the national level, but it is reasonable to assume that the state press corps in every state capitol will be operating under an entirely new set of standards. Where the personal activities of state public officials in many of our states have not been a subject of discussion by the press, I think times have changed and a new set of standards imposed.

Having long been a strong advocate of making the legislature an equal branch of government as mandated by the State Constitution, my interest and concern has not diminished even though I am in a substantially different part of the process.

During the time I was Speaker, along with my friend Pete Loux, Senator Steineger and then Senator Bennett, I was one of the principal architects of the original campaign finance act and lobbying control legislation. It is fair to say I have received a substantial amount of criticism from my colleagues of that era and subsequent periods for what many perceive as ill conceived legislation.

But also keep in mind, that was during the aftermath of Watergate and the public was demanding the guillotine for all elected officials throughout the country, Kansas being no exception.

Some of you will recall, the campaign finance act and lobbying control legislation that passed in the 70's were a part of a package of several bills that were

enacted to improve the public perception of ethics in government.

What are ethics? How do you define ethics? What do ethics mean to you? One persons concept of ethics could be immorality to someone else. An over simplified version of a person possessed of ethical conduct as viewed by the public is a public official that does not lie, cheat or steal, accept unlawful gratuities or engage in unlawful practices. But all the laws you could enact would not make an ethical person out of one possessed with immoral conduct and unfortunately there will always be a few of those people in every facet of society whether they be members of the clergy, the press, school teachers, doctors, lawyers, factory workers, farmers, or whatever.

The reform measures that were enacted by the legislature more than a decade ago have served the state well. But as I indicated earlier, times have changed, and the process has changed and, in my judgment, the time has come to review all of those measures, retain what is good, but expand on the purpose and intent of those measures and enact legislation that is more meaningful and compatible with the times.

Public perception of public officials elected by the people, from the White House to the State House to the Courthouse has been substantially eroded in my opinion. History has recorded that government at any level cannot long survive without the support and confidence of the electorate. Absent that basic ingredient the system will fail. Public perception is everything.

I have often stated during my fourteen years as a lobbyist, I have never known anyone in either party that was a part of the legislative process that

knowingly violated the basic laws of state government.

Kansas is recognized throughout our nation as having one of the cleanest state governments in the entire United States. You seldom read about one of our public officials being indicted or convicted of illegal activity as is so prevalent in other states across the land.

I think we would all prefer to keep it that way but there can be no assurance if we sit idly by and believe it will always be an accepted practice.

As I also stated earlier, public perception of the conduct of public officials is as important as reality. It is extremely difficult to enact legislation in a citizen type legislature to attempt to control ethical conduct that does not infringe upon a persons right to engage in normal business pursuits.

To me, that is real simple. Any person that aspires to an elective office should give that due consideration before they file for public office. No person at the local level, state level or the national level should be permitted to do any business with any governmental entity that creates the perception there might be something illegal about any such activity.

There can be no improvement in the public perception of ethical conduct of public officials without addressing the issue of campaign finance. I am not prepared to offer specific figures or specific solutions, however again, I respectfully suggest the time has come to consider major renovations of the existing campaign finance act. Legislation enacted in the last session was an effort in the right direction, but I am not sure the remedies suggested do not create more problems than they resolve.

I don't know that it is possible given the constitutional concerns to the

contrary, but an appropriate solution would be to devise some method to place a lid on maximum expenditures for a legislative campaigns. We have already determined the average candidate can no longer raise enough money from personal and individual sources in order to compete. Hence, a greater reliance on PACs and corporate contributions.

Campaign finance is at the very heart of the public perception of appropriate ethics in government. In many states such as Louisiana, Texas, Oklahoma and Missouri, just to name a few, the public perception is that politics is for sale, that elected officials can be bought and elections are won by the highest bidder. I can stand before you today and categorically tell you I do not believe there is one single legislator in Kansas who would willingly or knowingly participate in the corruption of the legislative process or the electoral system.

But I can also tell you, as I have stated previously, that public perception is just as critical as reality and unless additional safeguards are built in, that potential exists.

Times have changed and so has the cost of running a campaign. Fifteen years ago, the average House race cost a candidate about \$1100. In 1978 it was \$2700. In the election two years ago, there are reports of House races where the House candidate spent in excess of \$30,000 and Senate races costing twice that amount. The public will not long stand for this type of extravagance.

As a lobbyist, and one with a high visibility, I am painfully aware of the public perceptions and the media reports and editorials that already believe special interest groups dominate state government or have undue influence. I don't agree, but I am

concerned.

Ethics among lobbyists is every bit as important as ethics among elected officials. It may also be time to review those laws that regulate lobbyists to determine if existing controls are adequate to protect the public interest.

In conclusion, I do not want anything I have said here today to be interpreted as being critical of any group or individual, nor do I know of any person or group that is motivated by some illegal or unethical purpose. I do not.

As you go about amending those necessary laws to create a better public perception of the appropriate level of ethics in government, I think you should be very careful not to be so restrictive as to diminish public participation in the elective process. It is also becoming more difficult to attract qualified candidates for public office, particularly in a citizen legislature, and anything you do to create a greater deterrent would not necessarily be in the public interest. As you know better than I, the legislature has an inherent obligation to encourage maximum public participation in the election process.