Approved 1-29-90
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS.

The meeting was called to order by Senator Don Sallee at
Chairperson

1:30 ~~a.m.~~/p.m. on January 22, 1990 in room 529-S of the Capitol.

All members were present except:

Committee staff present:
Pat Mah, Legislative Research Department
Ardan Ensley, Revisor of Statutes Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Senator Michael Johnston
Michael Woolf, Common Cause
Craig Grant, KNEA
Others attending: See attached list

Chairman Sallee called the meeting to order shortly after 1:30 p.m.

A call for bill requests was made with none forthcoming.

The chairman asked Committee members to review bills presently in committee with regard to possible future action.

Senator Michael Johnston, co-sponsor of SB-417 appeared to introduce and support the bill which would establish a select commission on ethical conduct. The commission would be composed of public and private persons and charged with studying the entire scope of problems dealing with conflict of interest, campaign finance, etc. Reference was made to areas of difficulty in legislation passed late in the 1989 legislative session. Senator Johnston stated that it was his position such decisions should not be left totally to legislators but should include general public membership as well. (Attachment 1)

The fiscal note of $25,320 would be paid from the general fund. Concern was voiced as to whether the time frame allowed a sufficient period for organization and thorough study of the issues prior to the final adjournment of the 1990 legislature. Reference was also made to Proposal No. 24 which evolved from an interim study. A committee member requested consideration be given as to whether the Legislature would want their chief election official involved in such a commission. The even number of members provided for in the bill was also an area of concern.

Michael Woolf, Common Cause appeared in support of SB-417 and presented written testimony. (Attachment 2) Mr. Woolf also provided to the committee a copy of his organization's "Ethics Agenda for Kansas" which contains proposals to improve the Campaign Finance Act and to set up voluntary campaign expenditure limits tied to a system of partial public financing of legislative and statewide campaigns for qualifying candidates. (Attachment 3)

Mr. Woolf was asked how Kansas laws compared with other states and it was noted that Kansas did have some very strict laws but there were also difficulties with enforcement of those laws. Twenty-two states have a form of partial public funding.

Craig Grant, KNEA, appeared in support of some concepts in SB-417. Mr. Grant stated his organization believe a studied approach to the entire situation is needed and suggested the use of SB-417 or possibly an extensive interim study. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS,

room 529-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on January 22, 1990

The chairman told committee members he had made a request with the Revisor of Statutes Office for several bills, one of which would make corrections to last year's legislation with reference to the two parties operating on a year around basis.

A motion was made to approve the minutes of the January 16, 1990 meeting was made by Senator Lee with a second by Senator Bond. The motion carried.

The meeting adjourned at 1:58 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE January 22, 1990

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
Michael Woolf, Topeka	Common Cause
Dave Williams	KPDC
Craig Grant	KT-WEA
Paul Shelby	AIA
Matt [illegible]	AP
Don Lindsay	UTU

STATEMENT BY SENATOR MICHAEL L. JOHNSTON
BEFORE THE SENATE ELECTIONS COMMITTEE
CONCERNING SENATE BILL 417
JANUARY 22, 1990

Mr. Chairman and members of the Committee. I appreciate the opportunity to appear before you today concerning Senate Bill 417 that would establish the Kansas Select Commission on Ethical Conduct.

Through the years, there has been periodic public debate about the ethical conduct of elected officials. Those debates and the legislative remedies proposed after those debates generally have been precipitated by some threshold event. For example, our current set of laws governing campaign finance and public disclosure were a reaction to a national scandal: the Watergate fiasco that eventually drove Richard Nixon from office.

Today, we are in the middle of another round of public discussions concerning campaign finance and perceived unethical behavior of public officials. The real question, in my mind, is how to best respond to the public's legitimate concern about the ethical conduct of elected officials.

Last year, in an 11th hour attempt to push through so-called campaign finance reform, we enacted a bill that actually has worked against the goals it was designed to achieve. Without a thorough debate, we enacted a bill that may require us to take corrective action this year. Let me take a moment to point out one problem with what we did last year.

Senate Election
1-22-90
Attachment 1

There was a legitimate concern about candidates converting campaign contributions to their own use. The bill we passed last year only prohibits a candidate from taking the balance of his or her campaign treasury as shown on the final report. A candidate could still delete all but a token amount from his campaign account prior to the final report, and that would be legal.

There are several other examples of errors the legislature made because we did not take the time to do a thorough review of the laws. Instead, there's always a flurry of activity and, as a result, many members do not know the full ramifications of their actions.

The time is long overdue for the Kansas Legislature to take a thorough look at the campaign finance laws and public disclosure laws. In fact, I have found no record of the legislature ever doing a complete review of those laws. There needs to be a thorough, reasoned, and exhaustive review of those laws, and the legislative atmosphere does not lend itself to that approach. Does anyone really think we can undertake a thoughtful and reasoned review of this area during this session and make reasonable recommendations to the legislature?

In my mind, there exists a possible conflict of interest for legislators alone to attempt to rewrite our campaign finance laws, our public disclosure laws, and to establish a code of ethics for public officials. It is an enormous task, and I do not feel any one person has all the answers.

I am proposing that a select commission on ethical conduct be established to undertake a thorough review of those laws and to make recommendations to the legislature. If the panel is established quickly, I am convinced they can make preliminary recommendations to the 1990 legislature, with a final report to be submitted by the beginning of the 1991 session.

A key ingredient to the success of this panel is its membership. I think this task is too important to be left just to legislators. To build public confidence in the legislature and other public officials, the general public membership of this panel is very important; in fact, critical.

Mr. Chairman and members of the Committee, I don't pretend to have all the answers. I don't think any one legislators can have all the answers. But I believe a public commission that represents the diverse segments of Kansas society can take a thoughtful, reasoned look at our public disclosure and campaign finance laws.

Thank you.

COMMON CAUSE / KANSAS

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January 22, 1989

Statement in Support of Senate Bill 417
Presented to the Senate Committee on Elections
by Michael Woolf, Executive Director

I am Michael Woolf, Executive Director of Common Cause/Kansas, and I want to thank you for allowing me to appear before you today in support of Senate Bill 417.

As some of you may know, last Friday Common Cause held a news conference where we unveiled a package of proposals that would significantly improve the governmental ethics laws here in Kansas. It is called the "Ethics Agenda for Kansas", and I would like to submit a copy to the Committee for its records.

The "Ethics Agenda for Kansas" contains proposals to improve the Campaign Finance Act and to set up voluntary campaign expenditure limits tied to a system of partial public financing of legislative and statewide campaigns for qualifying candidates.

We have also included proposals to improve the conflict of interest and lobbying laws and to strengthen the Kansas Public Disclosure Commission.

There is a total of 26 different proposals in the packet, and while we hope that the legislature will address many of these proposals this session, we understand the need for the kind of in-depth study that this Commission could provide.

While we support the bill, Common Cause would ask that it be amended to specifically outline that the Commission is to study not only campaign finance, conflict of interest, and ethical standards, but also laws governing lobbying and the Public Disclosure Commission.

Once again, Common Cause rises in support of SB 417, and we hope the Committee will pass the bill out favorably with amendments mentioned.

Senate Elections
1-22-90
Attachment 2

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ETHICS AGENDA FOR KANSAS

PACKET CONTENTS

The Common Cause/Kansas "Ethics Agenda for Kansas" contains the following information:

* Statement by Lynn Hellebust, State Chair
* Campaign Finance Proposals
* Campaign Expenditure Limitation and Funding Act
* Conflict of Interest Proposals
* Lobbying Law Proposals
* Public Disclosure Commission Improvements
* Common Cause Fact Sheet

For additional copies or further information, contact the Common Cause/Kansas office at 913-235-3022.

Senate Elections
1-22-90
Attachment 3

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AN ETHICS AGENDA FOR KANSAS

Remarks by
Lynn Hellebust
Common Cause/Kansas Chairperson
January 19, 1989

In a democracy, the right of citizens, individually and collectively, to elect those who govern them and to influence governmental decisions is axiomatic. That is, it's a basic, virtually self-evident, truth.

However, it's also a basic truth that over time an individual or group will try to obtain an advantage through the use of wealth or position over other individuals or groups. Wealth . . . money . . . can be and is used to crowd out ordinary citizens.

Since it is the vote of the individual taken collectively that is paramount, it is imperative that the impact of money be neutralized, or at least held in reasonable check.

In large part, that is what the ethics battle is all about. Holding wealth in check. Keeping money from deciding issues. And helping people control their lives.

A lot of lip service has been given to the need for ethics reform. We in Common Cause feel it's about time our elected leadership -- Governor Hayden, Senate President Burke, House Speaker Braden, and members of the state legislature -- quit

talking about ethical conduct and start to demand it. Everyone knows what ethics is. It's behavior you're not afraid to tell your kids about.

And we need that kind of straight forward approach to changing the laws that govern the way our elections are held, that control the behavior of elected and other public officials, and that define the ground rules for lobbying activity.

The Problem

Campaign costs have sky rocketed. Special interest and political action committee (PAC) contributions dominate elections. It's virtually impossible to mount an effective campaign against an incumbent legislator because of all the PAC dollars he or she receives.

Conflict of interest standards are inadequate. State officials quit working for the state only to go to work for the very businesses they have been regulating. The financial interests of public officials are not adequately disclosed. Legislators represent clients before state agencies whose budgets they control.

The vast sums of money spent to influence legislation go unchecked and unreported. Even the lavish parties held for legislators go essentially unreported. And what records that lobbyists do keep go unaudited.

And the Public Disclosure Commission charged with enforcing these laws lacks sufficient courage as well as the tools to enforce these statutes.

The end result is that individual Kansans are squeezed out of the process. And we wonder why confidence in government is declining.

Our Proposal

Common Cause is proposing an "Ethics Agenda for Kansas" as a starting point in the battle to bring contested elections back to Kansas, to reduce special interest pressures on public officials, and to keep money from crowding ordinary Kansans out of the governmental process.

Specifically, some of the highlights of what we propose are:

Amend the state's Campaign Finance Act to prohibit a candidate from accepting more PAC contributions than that same candidate accepts from individual contributors. Prohibit the use of campaign contributions for personal benefit. Ban direct corporate and union contributions. Extend the provisions of the Campaign Finance Act to school board elections.

In addition, we believe the time has come to begin a serious study of proposals to limit campaign expenditures and

provide minimum financing for the campaigns of qualified candidates through an income tax checkoff. To that end, we offer our comprehensive "Campaign Expenditure Limitation and Funding Act."

Amend the state's conflict of interest laws to require more adequate financial disclosure, prohibit the acceptance of honoraria or other gratuities, prohibit legislators from representing clients before state agencies, and ban "revolving door" employment situations.

Amend the lobbying statutes to require more adequate reporting, including lobbyists' salaries, the recipients of meals and drinks, and detailed information on parties. In addition, provide for the periodic auditing of records kept by lobbyists.

Amend the statutes governing the Public Disclosure Commission to require that it's members not include individuals who are in turn regulated by the Commission. Double the Commission's staff and salary. Increase the size of the Commission. Give the Commission adequate subpoena power. And provide the Commission access to income tax returns on a confidential basis to cross check the disclosure of financial interests by public officials.

These are some of the more obvious needs. Others are detailed in the accompanying material. The Common Cause "Ethics

Agenda for Kansas" is meant as a guide and resource for public officials as well as individual Kansans interested in ensuring an accountable and accessible system of government.

Abraham Lincoln is reported to have noted at one point that "You can't dip clear water from a muddy stream." In Kansas the stream has gotten muddy. We need to clean it up.

Kansans need to demand that the Governor and legislative leaders quit smirking at concern over these kinds of issues. We need to demand that the Governor and legislative leaders act in such a way that they won't be ashamed to tell their kids what they've been doing in Topeka.

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COMMON CAUSE FACT SHEET

In 1970, the idea of a group of individuals joining together to make our government more responsive to citizens was greeted with hearty skepticism. "You can't change politics and government," was the conventional wisdom.

Founded by John Gardner, former Secretary of Health, Education, and Welfare, Common Cause was referred to as Gardner's "Lost Cause".

But Common Cause confounded the skeptics. Today, the nonpartisan, nonprofit citizens' lobby is a leading force in the battle for honest and accountable government at the national, state, and local level--with a proven track record of hard-fought legislative campaigns and victories.

As *The Christian Science Monitor* has written: "In terms of the depth and breadth of its efforts--in the Congress and state legislatures--there probably has never been a reform movement so active and with such a record of accomplishment."

Today, more than 270,000 citizens across the nation are joined in Common Cause, fighting to restore ethics in government, to curb the undue influence of special interest money in politics, to end the nuclear arms race, to protect the civil rights of all citizens, and to make government more open and accountable.

True to its founding principles, Common Cause draws its financial support from the dues and contributions of it individual members. Common Cause does not accept government grants or money from political parties, nor does it seek contributions from foundations, labor unions, or corporations for its financial support. It is beholden to no one but those citizens who comprise its membership.

The Kansas affiliate has approximately 2000 members. In the past 20 years, Common Cause/Kansas has lobbied the Kansas Legislature on a variety of issues, including campaign finance, governmental ethics, lobbying regulation, reapportionment, sunset laws, and open meetings laws. In addition, over the last several years, Common Cause/Kansas has prepared and released a series of studies analyzing the impact of campaign financing on Kansas elections.

The organization's state chair is Lynn Hellebust of Topeka. Lynn is a former executive director of the Kansas Governmental Ethics Commission (now called the Public Disclosure Commission). Michael Woolf is the organization's Executive Director.

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CAMPAIGN FINANCE ACT PROPOSALS

Summary

1. Aggregate PAC Limit. Prohibit a candidate from accepting more contributions from PACs than from individuals.

2. Use of Campaign Funds. Place a tight ban on candidates from using campaign contributions for their own personal benefit.

3. Local Candidate Disclosure and Limitations. Require candidates for elective office in second class cities and school districts to file the same campaign expenditure and receipt reports that are required to be filed by state office candidates and candidates for many other local offices. In addition, limits should be placed on the amount of money that local candidates may accept from contributors, as current law now provides for state office candidates.

4. "Last Minute" Contributions. Require large contributions that are received after the cutoff date for the campaign finance reports filed before elections to be reported to the Secretary of State and appropriate local offices.

5. Ban Direct Corporation and Union Contributions. Ban partnerships, corporations, trusts, organizations, and associations from contributing directly to candidates.

6. Prohibit Non-Election Year Fundraising. Prohibit candidates from accepting contributions in years when there is no election held for the office sought.

7. Eliminate Recognized Political Committees. Amend K.S.A. 25-4153 to eliminate the provisions that set up "recognized political committees."

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CAMPAIGN FINANCE PROPOSALS

Last year the Kansas Legislature passed what has been called the most far-reaching reform of the Campaign Finance Act since it was originally signed into law in 1974. But last year's bill failed to correct many of the problems with the Act, and contributed to the confusion surrounding campaign financing.

As the law now reads, candidates are still allowed to use campaign contributions for their personal benefit, and hide large contributions from the public when they are received late in a campaign. Further, many candidates for local office still do not need to report their campaign contributions and expenditures until after the public's vote has been cast.

In addition, a candidate can still rely on special interest political action committee (PAC) contributions to finance most or all of a campaign. In state elections, unions and corporations are allowed to contribute directly to candidates, a practice that is banned in federal elections and in many other states.

Before the 1990 elections, the Legislature should act on the following recommendations to strengthen the Campaign Finance Act.

1. Aggregate PAC Limit. Amend present law to provide that no candidate or candidate committee may receive total contributions from political action committees (PACs) which exceed the total of contributions received from individuals in any election period.

Comment: This provision would prevent a candidate from accepting more money from PACs than from individual citizens. It would decrease the heavy reliance that many candidates have on PACs to fund most of their campaign. It would also encourage candidates to get many small contributions from their current or

prospective constituents and help those individuals feel that their contribution makes a difference.

2. Use of Campaign Contributions. The way in which campaign contributions may be spent needs to be specifically defined in the statute books. The following language is suggested.

(a) A candidate or candidate committee having an unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further the candidate's candidacy shall designate how the surplus funds are to be distributed. The surplus funds may:

(1) escheat to the state general fund;
(2) be returned pro rata to all contributors;
(3) in the case of a partisan candidate, be transferred to the state or local central committee of the candidate's political party; or
(4) be distributed using a combination of these options.

(b) A candidate, the candidate's spouse or children may not receive payments, other than reimbursements for expenditures pursuant to (c) below, from campaign contributions. Campaign contributions may not be used to defray normal living expenses for the candidate or the candidate's family.

(c) An expenditure may only be made by the treasurer of a candidate or a candidate committee to influence or attempt to influence the actions of the voters for or against the nomination or election of a candidate to the office for which the candidate has filed. An expenditure may not be made if it is clear from the surrounding circumstances that it was not made for these purposes. This section does not apply to:

(1) post-election "thank you" advertisements;
(2) an election night "victory party"; and
(3) fees of lawyers or accountants necessary to comply with the election laws, or to represent the candidate or the candidate's candidate committee in a subsequent proceeding arising from the election.

Comment: Under the changes made to the Campaign Finance Act last year, a candidate can still use campaign contributions for his or her own personal benefit. Current officeholders are even allowed to use money collected for campaigns to pay for the "expenses of holding political office". Such language includes almost any expenditure. In addition, each legislator is already provided an allowance from state funds for expenses related to holding office. Contributions are made to a campaign to help

that candidate convey his or her position on issues to the voters. They are not contributed to pay a candidate's personal or other non-campaign related bills.

3. Local Candidate Disclosure and Limitations. K.S.A. 25-4143(n) needs to be amended to include candidates for elective offices in second class cities and school districts in the definition of local office. In addition, contribution limits similar to those that apply to state elections need to be enacted.

Comment: Candidates for elective office in first class cities, counties, and the Kansas City, Kansas, board of public utilities file the same type of campaign contribution and expenditure reports as candidates for state office. However, when the Legislature made these additions last year, they did not include second class cities and school districts. These officeholders control large budgets funded mostly from locally generated taxes. Such control carries with it the possibility of misuse. Most candidates for local office spend very little on their campaigns, and would be able to exempt themselves from this requirement under the terms of the law. The public, however, has the right to know where a candidate's contributions come from. In addition, the public is entitled to prevent a candidate from being unduly influenced by large contributions.

4. "Last Minute" Contributions. Any contribution of $200 or more received by a candidate after the cutoff date for the campaign finance reports filed prior to the primary and general elections must be reported within 24 hours of receipt to the appropriate offices.

Comment: Under current law, contributions received less than 12 days before an election go unreported until after the election has been held. A situation can occur where an interest group or candidate holds contributions until after this cutoff date so the money received will not be detectable by the public or an opponent until the election is over. This section would let the voters know about significant contributions received late in a campaign.

5. Ban Direct Corporation and Union Contributions. Partnerships, corporations, trusts, organizations or associations, should not be permitted to contribute to any candidate or candidate committee.

Comment: An individual with controlling interest in one or more corporations, for example, can give the maximum contribution individually, and again, on behalf of each corporation he or she controls. Corporate and union

contributions are prohibited in federal elections and in many states. If these groups wish to continue contributing to political campaigns, they are free to set up political action committees for that purpose, or encourage their members to contribute individually.

6. Prohibit Non-Election Year Fundraising. State law should be amended to provide that a candidate or candidate committee cannot accept contributions in a year other than a year in which the election for the office the candidate is seeking is held.

Comment: Fundraising in years in which there is no election is done almost exclusively by incumbents and usually during the legislative session. This language would help narrow the financial gap between incumbents and challengers and reduce the influence that special interest group contributions can have on public officials.

7. Eliminate Recognized Political Committees. K.S.A 25-4153 should be amended to eliminate "recognized political committees".

Comment: House Bill 2359, which passed the Legislature last year, provides for "recognized political committees". These are political action committees (PACs) for each political party in each house of the Legislature that are specially designated so that they may contribute exclusively to candidates vying for a seat in their own chamber. Senate committees can contribute $5000 and House committees $750. These committees provide a loophole through which contributors can funnel money to candidates. Under current law, a "recognized political committee" could continue to operate as a PAC in order to accept unlimited contributions. Then, as the election nears, they could be designated as a "recognized political committee" to contribute as much as ten times the amount that a PAC can contribute. Moreover, "recognized political committees" are not provided for under K.S.A. 25-4145 and, therefore, do not have to appoint a treasurer or file a statement of organization. Because of that, they are apparently not required to file disclosure reports.

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CAMPAIGN EXPENDITURE LIMITATION AND FUNDING ACT

Summary

1. Election Campaign Fund. Establishes the Election Campaign fund which would receive funds from a $3.00 Kansas income tax checkoff and direct appropriations.

2. Qualification Procedures. A candidate would qualify for a grant from the fund if the candidate collects small contributions from individuals over the threshold amount. In addition, the candidate's opponent must have also raised 25% of the expenditure limit or have qualified for a grant.

3. Contribution Limits. Candidates who intend to accept a grant would have to agree to limit the amount of money they can contribute to their own campaign. These candidates would also be forbidden from accepting special interest contributions.

4. Expenditure Limits. Candidates who participate in this voluntary system would be bound by the following expenditure limits:

Candidate	Primary/General
Governor/Lt. Governor	$500,000/$1,000,000
Attorney General	$250,000/$500,000
Other Statewide Office	$100,000/$150,000
State Senate	$25,000/$25,000
State Representative	$12,500/$12,500

5. Supplemental Grants. If a candidate who participates in the system is opposed by a candidate who rejects the contribution and expenditure limits, then the participating candidate is no longer bound by the expenditure limit and is entitled to an additional grant from the fund.

If independent expenditures are made over a threshold amount, a participating candidate who is negatively affected by these expenditures would also be eligible for an additional grant from the fund.

6. Use of Grant Fund. Grant funds may only be used for expenditures which are intended to benefit the candidate's candidacy and not the candidate personally. These expenditures include: services from a communications medium, printing, postage, photography, graphic arts, advertising, and office supplies.

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CAMPAIGN EXPENDITURE LIMITATION AND FUNDING ACT

Without a fair campaign financing system, we cannot have competitive elections, and without competitive elections, voters do not really have a choice on election day, and democracy suffers.

In 1974, the Kansas Legislature passed the Campaign Finance Act to ensure fair campaign financing, competitive elections, and to protect against the influence of wealthy special interest groups. However, that law has failed to stop the escalating cost of campaigns, it has not leveled the playing field between wealthy incumbents and their poorer challengers, and it has not reduced the dominance of special interest group contributions. As the law operates today, it discourages many citizens from running for public office and makes many individuals feel that their small contributions make no difference.

Until we place a limit on the total amount that can be spent on an election and offer a substitute for these special interest group contributions, we will continue to see these problems grow in intensity.

The attached Campaign Expenditure Limitation and Funding (CELF) Act offers solutions to these problems.

In 1976, the U.S. Supreme Court ruled in Buckley v. Valeo that total campaign expenditures could only be limited if it was

done within a voluntary system that included some form of partial public funding.

The attached Campaign Expenditure Limitation and Funding Act sets up a system where candidates for statewide and legislative office, who volunteer to participate, would be bound by an overall cap on the amount of money that they can spend on their campaign. These limits range from $1.5 million for gubernatorial candidates to $25,000 for candidates for the state House of Representatives.

Participants would also be banned from accepting contributions from special interest groups and these candidates would be subject to limits on the amount of money that they can contribute to their own campaign.

In return for agreeing to these limits, a qualifying candidate would receive a grant from the Election Campaign Fund created by the Act. The money in this fund would be derived from a check-off program on Kansas Income tax forms similar to that on federal tax forms for the presidential election campaign fund.

Twenty-two states currently have some form of public financing for their elections. They have found that it encourages the participation of small individual contributors, that it decreases the reliance on special interest money, that it decreases the overwhelming financial advantage enjoyed by incumbents over their challengers, that it helps reduce a candidate's preoccupation with fundraising, and it encourages

more serious candidates to run for political office.

Also attached is a chart showing the expenditure limits, grant amounts, and qualifying thresholds for the Act, as well as a time line that highlights the sequence of events referred to in the Act.

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Campaign Expenditure Limitation and Funding Act

AN ACT concerning elections; creating the election campaign fund.

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

Section 1. Title of Act. Section 1 to 16, inclusive, may be cited as the "campaign expenditure limitation and funding act".

Section 2. Definitions. The definitions in K.S.A. 25-4143 and amendments thereto, shall apply to this act. In addition, as used in the campaign expenditure limitation and funding act, unless the context otherwise requires:

(a) "Fund" means the election campaign fund.

(b) "Grant" means a contribution from the fund.

(c) "Legislative office" means members of the state house of representatives and state senate.

(d)(1) "Qualifying contribution" means: (A) a contribution contributed to a candidate or such candidate's candidate committee for statewide office in the amount of $500 or less; or

(B) a contribution contributed to a candidate or such candidate's candidate committee for legislative office in the amount of $100 or less; and

(C) a contribution by and from a qualified voter residing or registered to vote in the state of Kansas; and

(D) a contribution received on or after January 1 of an election year in which the recipient is a candidate for office.

(2) A qualifying contribution does not mean: (A) a loan, pledge, or in-kind contribution; or

(B) any contribution or contributions in which the aggregate amount contributed to a candidate and such candidate's candidate committee that exceeds the limits of Section 2(d)(1), subsections (A) or (B).

(e) "Receipt and expenditure report" means reports of accounts of all contributions and other receipts received and all expenditures made by or on behalf of the treasurer's candidate or committee as required under the campaign finance act.

(f) "Statewide office" means the state officers elected on a statewide basis.

Comment: This section ties the definitions in the Campaign Finance Act to the CELF Act and includes additional definitions which are specifically for the CELF Act.

Section 3. Report required of treasurer; when filed. In addition to the reporting requirements under K.S.A. 25-4148 and amendments thereto, every treasurer for a candidate or candidate committee for statewide office or legislative office shall file a receipt and expenditure report in the offices required by K.S.A. 25-4148 and amendments thereto so that it is received by such office(s) no later than the deadline for filing nomination petitions. Such report shall be for the period beginning January 1 of an election year and ending eight days before the deadline for filing nomination petitions and shall contain the same information as required by K.S.A. 25-4148.

Comment: The additional campaign finance report required under this section is necessary to give the Public Disclosure Commission the information it needs to determine whether a candidate is eligible for a grant from the fund. The additional report could be required by the section above or by amending K.S.A. 25-4148 to include the provisions of this section.

Section 4. Election Campaign Fund.

(a) Each individual filing an income tax return for any taxable year who has a state income tax liability or is entitled to an income tax refund or other payment from the department of revenue may designate an amount of $3 ($6 for individuals filing a joint return) to be deposited into the election campaign fund which is hereby established in the state treasury.

(b) Such designation shall not increase a taxpayer's liability or decrease a refund or other payment to the taxpayer from the department of revenue.

(c) The department of revenue shall place on the top one-third of the first page of all tax returns to be filed the following language:

ELECTION CAMPAIGN FUND	Do you want $3 to go to this fund?	Yes	No
	If joint return, does your spouse want $3 to go to this fund?	Yes	No
	Note: Checking "Yes" will not increase your tax or reduce your refund.		

(d) The director of taxation of the department of revenue shall determine annually the total amount designated for use in the Kansas election campaign fund pursuant to section 4(a) and shall report such amount to the state treasurer who shall credit the entire amount thereof to the election campaign fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the Chair of the Kansas public disclosure commission or the chair's designee.

(e)(1) For each fiscal year which contains an election, the legislature shall appropriate from the state general fund, an amount sufficient to fully fund all candidates eligible to receive grants pursuant to this act from the election campaign fund.

(2) The commission shall provide the director of taxation of the department of revenue with a written estimate of the amount necessary to fully fund all eligible candidates no later than January 1 of any election year.

(3) If insufficient funds are appropriated by the legislature to pay such sums, the finance council, upon the request of the commission, shall transfer sufficient monies from the [appropriation for contingencies] to make all payments authorized by the provisions of the act.

Comment: Section 4 establishes the Election Campaign Fund. The fund obtains its revenue from a $3.00 checkoff on all Kansas income tax forms, which will not increase the taxpayers tax liability or reduce the individual's refund. Since the checkoff may not provide enough revenue to fully finance the fund, direct appropriations to the fund from the legislature are also provided for. Expenditures from the fund can only be made with vouchers approved by the chair of the commission or the chair's designee.

Section 5. Application and Withdrawal Procedures.

(a) Each candidate for statewide or legislative office shall file a statement of intent to accept or reject a grant from the election campaign fund. The statement shall be filed no later than the deadline for filing nomination petitions.

(b) A candidate who intends to accept a grant shall swear or affirm that the candidate and the candidate's authorized agent(s) have complied with and will continue to comply with all applicable contribution and expenditure limits at all times to which the limits apply to the candidate's candidacy for the office sought.

(c) A candidate who intends to accept a grant shall designate in the statement of intent whether the candidate will accept or reject a grant in either the primary or the general election. A candidate may designate both.

(d) A candidate may rescind the acceptance in the statement of intent:

(1) for a primary election grant no later than 15 calendar days after the deadline for filing nomination petitions; or

(2) for a general election grant no later than 15 calendar days after the date of the primary election.

Comment: When an individual becomes a candidate, either by filing nomination petitions or paying a filing fee, that candidate shall also file a statement of intent to accept or reject a grant. If the candidate intends to accept a grant, he or she shall swear to abide by all contribution and expenditure limits included in this act. A candidate may rescind his or her acceptance of the grant.

Section 6. Qualification Procedures.

(a) The commission shall approve the payment of a primary or a general election grant or both a primary election grant and a general election grant if an eligible candidate meets all of the following requirements:

(1) The candidate has filed a timely statement of intent to accept the grant.

(2) The candidate is certified to appear on the ballot for the election and office for which the grant is sought.

(3) The candidate is opposed by a candidate for the same office:

(A) who has qualified to receive a grant; or

(B) whose campaign finance reports or notification provided for in subsection (b) indicate that the opposing candidate has received, expended, or has cash on hand of at least 25% of the applicable expenditure limit.

(4) The financial reports filed by or on behalf of the candidate as of the date of qualification indicates that the candidate has received:

(A) in the case of candidates for statewide office, qualifying contributions equal to at least 5% of the expenditure limits; or

(B) in the case of candidates for legislative office, qualifying contributions equal to at least 10% of the expenditure limits and at least 80% of the aggregate qualifying contributions are from individuals whose residence, as defined in K.S.A. 25-407 and amendments thereto, is in the district the candidate seeks to represent.

(b) A candidate whose report indicates that the candidate has not received, expended, or has cash on hand of at least 25% of the applicable expenditure limit must notify the commission within 24 hours of the date in which the contribution(s) were received or expenditure(s) were made which caused the candidate to have received, expended, or have cash on hand of at least 25% of the applicable expenditure limit.

Comment: To qualify for a grant, an individual must be a viable candidate with a viable opponent. This is determined by how much money each has raised. A candidate for statewide office must raise 5% of the applicable expenditure limit in qualifying contributions. A legislative candidate must raise 10% of the applicable expenditure limit in qualifying contributions with 80% of those contributions coming from within the district. The candidate seeking a grant must also be opposed by a candidate who has qualified to receive a grant or has raised 25% of the applicable expenditure limit.

Section 7. Contribution Limits.

(a) A candidate filing a statement of intent to accept a grant shall not receive a contribution or contributions from the candidate's own funds that exceeds 200% of the amount an individual may contribute to a candidate for that office, or from those of the candidate's spouse that exceeds 200% of the amount an individual may contribute to a candidate for that office.

(b) A candidate filing a statement of intent to accept a grant

shall not receive a contribution or contributions from any committee, corporation, partnership, trust, organization, association, recognized political committee, or political committee other than a political party committee. If such contributions are received before the candidate files a statement of intent to accept a grant, the candidate must return such contributions to be eligible for a grant.

(c) A qualifying candidate filing a statement of intent to accept a grant may receive a primary election grant, a general election grant, or both a primary election grant and a general election grant equal to 65% of the applicable expenditure limit.

Comment: A candidate filing a statement of intent to accept a grant shall swear not to contribute more than 200% of the maximum amount an individual can contribute to his or her own campaign. This limit also applies to the candidate's spouse. Such candidate shall not accept contributions from any source other than the fund, individuals, a political party, or the candidate or the candidate's spouse. This section also sets the amount of the grant at 65% of the expenditure limit.

Section 8. Expenditure Limits.

(a) A candidate for office who files a statement of intent to accept a grant from the election campaign fund shall not make, nor shall a candidate's agent make, an expenditure or expenditures in excess of the following amounts:

(1) For the pair of candidates of governor and lieutenant governor, $500,000 in the primary election and $1,000,000 in the general election.

(2) For a candidate for attorney general, $250,000 in the primary election and $500,000 in the general election.

(3) For a candidate for other statewide offices, $100,000 in the primary election and $150,000 in the general election.

(4) For a candidate for state senator, $25,000 in the primary election and $25,000 in the general election.

(5) For a candidate for state representative, $12,500 in the primary election and $12,500 in the general election.

(b)(1) For purposes of the expenditure limits, an expenditure made before August 31 of the general election year shall be considered a primary election expenditure.

(2) An expenditure made from September 1 through December 31 of the general election year shall be considered a general election expenditure.

(3) Notwithstanding the provisions of subsections (1) and (2) above, in the event that payments are made, but the goods or services are not used during the period purchased, the payments shall be considered expenditures for the time period when they are used or during which benefit is derived from them. Payment for goods and services used in both time periods shall be prorated.

(c) A candidate filing a statement of intent to reject a grant from the election campaign fund may file an affidavit agreeing to voluntarily comply with the applicable contribution and expenditure limits no later than the deadline for filing nomination petitions. An affidavit filed under this section shall be binding unless rescinded:

(1) no later than 15 calendar days after the deadline for filing nomination petitions in the case of primary expenditure limits; or

(2) no later than 15 calendar days after the date of the primary election in the case of general election expenditure limits.

Comment: This section sets the expenditure limits for statewide and legislative candidates who accept a grant. It also allows a candidate who rejects a grant to voluntarily agree to abide by the contribution and expenditure limits.

Section 9. Supplemental Grants.

(a) If the commission determines that a candidate who is eligible to receive a grant is opposed by a candidate who has rejected a grant and has not voluntarily agreed to limit contributions and expenditures under section 8(c) above; then

(1) the candidate who is eligible to receive the grant is no longer bound by the applicable expenditure limit; and

(2)(A) in the case of a candidate for statewide office, the candidate who is eligible to receive the grant will also be eligible for an additional grant equal to 50% of the applicable grant amount; or

(B) in the case of a candidate for legislative office, the candidate who is eligible to receive the grant will also be eligible for an additional grant equal to 100% of the applicable grant amount.

(b) If aggregate independent expenditures are made in an amount

greater than 10% of the applicable expenditure limit in support of or in opposition to a candidate for that office, the candidate who is negatively affected by such expenditure and who is eligible to receive a grant, shall also be eligible for additional grant funds equal to the amount of such expenditure up to a maximum amount of 25% of the applicable expenditure limit for either the primary election or general election as appropriate. The expenditure limit for a candidate who receives this additional grant shall be raised in an amount equal to the amount of the additional grant.

Comment: Section 9(a) attempts to keep the playing field even between candidates who accept the grant and those who reject it. It also provides an incentive for candidates to participate in this voluntary system. It provides that if candidate "A" accepts a grant and is opposed by candidate "B" who rejects the grant and does not voluntarily agree to abide by the limits, then candidate "A" is eligible to receive an additional grant of 50% of the original grant for statewide office or 100% for legislative candidates.

Section 9(b) attempts to level the playing field when an outside group makes an independent expenditure in a campaign. This subsection provides that if aggregate independent expenditures are made which equal 10% of the expenditure limit, then the candidate who is negatively affected by such expenditure is eligible for an additional grant which matches the independent expenditure dollar for dollar up to a maximum of 25% of the expenditure limit.

Section 10. Determining Expenditure Limits. A candidate or campaign treasurer may exclude the following items when computing expenditure limits:

(a) A contribution or contributions returned to the contributor.

(b) Repayment of a loan to the campaign.

(c) Expenses incurred as a direct result of an election recount.

(d) A refund of a deposit paid.

Comment: Section 10 allows certain items to be excluded when computing expenditures.

Section 11. Disbursement of Funds.

(a) The commission shall immediately review the:

(1) statements of intent;

(2) nomination petitions; and

(3) receipt and expenditure reports of candidates to determine the eligibility of candidates who have filed statements of intent to accept a grant.

(b) The commission shall certify whether a candidate is eligible to receive a primary election grant no later than 10 calendar days after the deadline for filing nomination petitions.

(c) The commission shall certify whether a candidate is eligible to receive a general election grant no later than 10 calendar days after the date of the primary election.

(d) A separate determination shall be made for a primary and a general election grant.

(e) The certification by the commission must indicate:

(1) whether a candidate is eligible to receive a grant; and

(2) the amount of the grant the candidate is eligible to receive.

(f) If a candidate who has filed a statement of intent to accept a grant is not eligible to receive a grant, the certification must:

(1) state the reasons why the candidate is not eligible to receive a grant; and

(2) what action, if any, the candidate may take to qualify for a grant.

(g) The commission shall immediately certify a candidate who becomes eligible after the dates in subsections (b) and (c) but before the date of the primary election or general election for which the funds are sought.

(h) Immediately after the commission certifies a candidate for a grant, the commission shall deliver a copy of such certification along with a voucher approved by the chair of the commission or the chair's designee to the department of revenue. Upon receipt of the certification and voucher, the department of revenue shall issue a check to the certified candidate or candidate committee for the amount indicated on the voucher. The department of revenue shall then deliver such check and certification to the treasurer of the certified candidate or candidate committee.

(i) A candidate may file a written request to review the determination of the commission no later than 5 calendar days after

such determination.

Comment: Requires the Public Disclosure Commission to make an early determination as to whether a candidate is eligible to receive a grant. If a candidate is not eligible, the commission must explain why and what the candidate can do to become eligible. After the candidate is certified to receive a grant, the commission will send a copy of the certification and a voucher for the amount of the grant to the Department of Revenue which will issue the check and send it along with the certification to the candidate's treasurer.

Section 12. Use of Grant Funds.

(a) All grants must be deposited in a bank account designated as the candidate's campaign fund by the treasurer of the candidate or the candidate's candidate committee.

(b) Grant funds may be expended only for one or more of the following:

(1) Purchase of services from a communications medium, including production costs.

(2) Printing, photography, graphic arts, or advertising.

(3) Office supplies.

(4) Postage and other commercial delivery services.

(5) Repayment of loans secured by a statement of intent to accept a grant pursuant to Section 16(b).

(c) Grant funds may not be expended, directly or indirectly, for the following items or services:

(1) Purchase of capital equipment.

(2) Purchase of computer software.

(3) Payment of fees for placement of political advertisements.

(4) Items or services otherwise prohibited under this act or the laws of this state.

Comment: Since public funds are involved, grant money can only be used for the legitimate campaign purposes spelled out in this section. These expenditures are intended to benefit the candidate's candidacy

and not the candidate personally.

Section 13. Return of Grant Funds.

(a)(1) Grant funds disbursed under this act remain the property of the state until disbursed for lawful campaign purposes.

(2) Grant funds that are unspent by a candidate on the eighth day preceding the general election for a primary election grant or January 10 of the year after the election year for a general election grant must revert to the state. A deposit or refund derived from grant funds that are received by a candidate after the eighth day preceding the general election for a primary election grant or January 10 of the year after the election year for a general election grant shall revert to the state. All reversions shall be returned to the department of revenue which shall deposit the money in the fund.

(b) Return of grant funds after the withdrawal date set forth in Section 5(d) does not remove applicable contribution and expenditure limits.

Comment: This section gives the state a vested interest in grant funds until they are spent for legitimate campaign purposes. Any unspent grant funds will revert back to the fund by the filing deadline of the next campaign finance report. If a candidate returns the grant funds after the withdrawal deadlines, he or she is still bound by the contribution and expenditure limits.

Section 14. Lawful Use of Grant Funds.

(a) A person shall not:

(1) expend;

(2) authorize the expenditure of; or

(3) incur an obligation to expend a grant;

for a purpose other than to advance the candidacy by lawful means of the specific candidate or candidates who qualify for the grant.

(b) A person shall not:

(1) expend;

(2) authorize the expenditure of; or

(3) incur an obligation to expend a grant;

after the date of an election where the grant is returnable to the state under Section 13(a).

(c) A candidate shall not:

(1) expend;

(2) authorize the expenditure of; or

(3) incur an obligation to expend a grant;
if the candidate violates the pledge required under Section 5(b).

(d) Every report or statement made under the campaign expenditure limitation and funding act shall be made on forms prescribed by the commission, and contain substantially the following:

> "I declare that this (report)(statement) including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is true, correct and complete. I understand that the failure to file this document or filing a false document is a class A misdemeanor."

_____ _____
(Date) (Signature)

Every report or statement shall be dated and signed by the treasurer.

Comment: Section 12 prohibits any person from spending grant funds except to advance the qualifying candidate's candidacy or from using grant money that should be returned to the state. It also prohibits a candidate from spending grant money if he or she has violated the pledge required under Section 5(b).

Section 15. Proof of Payment.

(a) The candidate or the candidate's treasurer shall deliver or transmit to the commission sufficient proof of payment of all disbursements made from grant funds no later than the eighth day preceding the general election for a primary grant and no later than January 10 of the year after the election for a general election grant.

(b) The commission shall determine what constitutes sufficient proof of payment.

(c) The commission may conduct a random audit of the accounts and records of a candidate filing a statement of intent to accept a grant.

Comment: Requires a candidate to provide the commission with sufficient proof of payment of grant funds to ensure that this money was used for its intended purposes.

Section 16. Miscellaneous Provisions.

(a) The Kansas public disclosure commission shall adopt rules and regulations for the administration of the campaign expenditure limitation and funding act.

(b) A candidate or a candidate's treasurer may use the candidate's statement of intent to accept a grant as security for a loan made for campaign purposes from a financial institution that ordinarily makes loans in the course of its business.

(c) To the extent that proceeds of a loan obtained under the provisions of (b) above are used for a purpose set forth in Section 12(b), repayment of such a loan may be made from grant funds.

Comment: Requires the commission to adopt rules and regulations necessary to administer the act. It also allows a candidate to use the statement of intent to accept a grant as security for a loan for the campaign. If the loan is used for allowable expenditures, the candidate can repay the loan with grant funds.

Section 17. Violation of any provision of the campaign expenditure limitation and funding act is a class A misdemeanor.

Section 18. This act shall take effect and be in force from and after its publication in the statute book.

TIMELINE

December 31, 1989:
- Cutoff date for annual Campaign Finance Report. [CFA]

January 1, 1990:
- Commission must provide written estimate of the amount necessary to fully fund all eligible candidates. [4(e)(2)]
- Candidates can begin collecting qualifying contributions. [2(d)(1)(D)]
- Candidates, from this date on, must either not accept special interest contributions or return all special interest contributions that are received between this date and the deadline for filing a statement of intent. [7(b)]

January 10, 1990:
- Annual report due, covers Dec. 1, 1988 to Dec. 31, 1989 [CFA]

June 11, 1990 (Usually June 10, but it falls on a Sunday):
- Filing fee must be paid or nomination petitions must be filed. [K.S.A. 25-205]
- Statement of Intent due. [5(a)]
- Deadline to voluntarily abide by contribution and expenditure limits [8(c)]
- Additional Campaign Finance Report due. [Sec.3]

June 21, 1990 (10 days after deadline for filing nomination petitions):
- Commission must certify eligibility to receive a primary election grant. [11(b)]

June 26, 1990 (15 days after deadline for filing nomination petitions):
- Deadline for filing written request to review the determination of the commission. [11(1)]
- Deadline to rescind acceptance of a primary grant. [5(d)(1)]
- Deadline to rescind voluntary abidance of contribution and expenditure limits for primary election. [8(c)(1)]

July 26, 1990:
- Cutoff date for pre-primary report. [CFA]

July 30, 1990:
- Pre-primary report due. [CFA]

August 7, 1990:
- Primary Election

August 17, 1990 (10 days after primary election):
- Commission must certify eligibility to receive a general election grant. [11(c)]

August 21, 1990 (15 days after primary election):
Deadline for filing written request to review the determination of the commission. [11(i)]
Deadline to rescind acceptance of general grant. [5(d)(2)]
Deadline to rescind voluntary abidance of expenditure limits for general election. [8(c)(2)]

August 31, 1990:
Cutoff date for primary election expenditures. [8(b)(1)]

October 25, 1990:
Cutoff date for pre-general election report. [CFA]

October 30, 1990:
Pre-general election report due. [CFA]
Proof of payment for primary grant due. [15(a)]
Unspent primary grant funds revert to state. [13(a)(2)]

November 6, 1990:
General Election

December 31, 1990:
Cutoff date for annual report. [CFA]
Cutoff date for general election expenditures. [8(b)(2)]

January 10, 1991:
Annual report due. [CFA]
Proof of payment for general grant due. [15(a)]
Unspent general grant funds revert to state. [13(a)(2)]

* Notes: Number in brackets refers to section in the Act.
[CFA] refers to the Campaign Finance Act.

LIMITS, GRANT AMOUNTS, AND QUALIFICATION THRESHOLDS

Candidate	Expenditure Limits	Grant	Candidate Qualifying Contrib.
Governor	500,000 / 1,000,000	325,000 / 650,000	25,000 / 50,000
A.G.	250,000 / 500,000	162,500 / 325,000	12,500 / 25,000
Statewide	100,000 / 150,000	65,000 / 97,500	5,000 / 7,500
Senate	25,000 / 25,000	16,250 / 16,250	2,500 / 2,500
House	12,500 / 12,500	8,125 / 8,125	1,250 / 1,250

Candidate	Opponent Qualifying Contrib.	Candidate or Spouse Contribution	Individual Contribution
Governor	125,000 / 250,000	4,000	2,000
A.G.	62,500 / 125,000	4,000	2,000
Statewide	25,000 / 37,500	4,000	2,000
Senate	6,250 / 6,250	1,000	500
House	3,125 / 3,125	1,000	500

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CONFLICT OF INTEREST PROPOSALS

Summary

1. Financial Disclosure. Require legislators and state officials to publicly disclose their financial interests by dollar categories.

2. Honoraria. Prohibit state and local officials from accepting honoraria or other gratuities.

3. Appearances Before State Agencies. Prohibit "representation cases" for compensation by legislators before state agencies, except the courts.

4. Revolving Door Situations. Ban former legislators and public officials from lobbying and appearing before state agencies for a period of time, to be determined by the amount of responsibility that the official had while serving with the agency he or she wishes to lobby.

5. Whistle Blowers. Protect state employees from reprisal for disclosing improper acts.

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CONFLICT OF INTEREST PROPOSALS

Public service in government should not be motivated by personal gain. Public officials serve the public trust, a trust that governmental decisions will be made in the public interest. When public officials are instead motivated by personal gain, or are overwhelmed by special interest influence, that trust is undermined. Although most public officials strive to fulfill their duty with integrity and dedication, they nevertheless are subject to constant pressures from special interests seeking political favor and influence. Conflict of interest laws mitigate against the pressures of special interests and serve to prevent unlawful conduct and abuse of public office by public officials.

While Kansas has financial disclosure provisions and several conflict of interest standards governing state and local officials, in some cases the provisions do not go far enough and in others they are inadequate. The recommendations proposed below are offered to remedy these gaps and ambiguities.

1. Financial Disclosure. The appropriate sections of K.S.A. 46-215 et seq which provides that legislators and other state officials shall file Statements of Substantial Interest and disclose their economic interests should be amended. Instead of merely disclosing an interest in a business or a source of income, which surpass a minimal threshold amount, categories of value should be established sufficient to determine potential conflicts without being unnecessarily

intrusive. That is, these interests should be disclosed by dollar categories, for example $5,000-$25,000; $25,001- $50,000; $50,001-$75,000; etc.

Comment: Financial disclosure must be comprehensive enough to reveal any potential conflicts of interest to the public. And disclosure must balance the rights of the official against the public disclosure necessary to guard against conflicts. The objective of disclosure is not to determine a person's net worth, it is to identify potential conflicts. Kansas law is presently inadequate to that task. It is appropriate to amend the statutes to provide for disclosure by dollar categories so that magnitude of an individual's holdings or sources of income is revealed so as to determine the real potential for conflict.

2. Honoraria. State and local public officials in any branch of government should be prohibited from accepting honoraria or other gratuities, as well as travel expenses, for any public appearances, speeches, articles, or attendance at seminars or conventions.

Comment: As the stakes in government decisions continue to rise, so are the stakes rising related to honoraria and associated travel expenses. In order to prevent honoraria and other gratuities, as well as travel expenses, from becoming conduits of influence and access to the governmental decision making process under the guise of legal compensation, it becomes necessary to prohibit their giving and receiving.

3. Appearances before state agencies. Legislators should be prohibited from appearing before state agencies, with the exception of the courts, as paid representatives of businesses, groups, or individuals.

Comment: Legislators authorize the budgets and control legislation concerning the activity of all state agencies. As a result, it is an inherent conflict, whether disclosed or not, for them to appear on behalf of or represent someone before a state agency for compensation. It should therefore be prohibited.

4. Revolving Door Situations. There should be a comprehensive ban on so called "revolving door" situations which refers to the practice of legislators and public officials who leave positions of power and influence in government only to return immediately as lobbyists or representatives of businesses or other entities.

Comment: In the absence of restrictions on public officials' post-employment activity, the revolving door creates the potential for serious abuse of the public trust. Restrictions on the revolving door between government service and lobbying should approach the problem at three levels. The first should consist of a ban on former officials or employees, except legislators, from representing nongovernmental interests before their former agencies of employment in regards to specific cases in which they were involved. The second should be a similar two or three year ban on former officials, except legislators, representing, aiding, or advising nongovernmental interests before their former agency on particular matters involving specific parties for which the former official was more generally responsible. Third, there should be a one or two year ban for high-level officials, including legislators, from lobbying the state or any state agency on any matter after leaving public service. Such bans establish cooling off periods for those former government officials with easy access to the halls of decision making.

5. Whistle Blowers. Recommend that language be adopted to protect state employees from reprisal for disclosure of improper acts that they witness or become aware of.

Comment: Any individual, particularly a public employee, should be free to speak out on issues relating to fraud, waste, and abuse in government without fear of retaliation through demotion, transfer, cut in pay, or some other retaliatory act.

Highlighted here are a few of the more obvious needs for reform of Kansas conflict of interest and related financial disclosure statutes. The financial arrangements that are possible, and the potential means of profiting by governmental action in relation thereto, are complex and numerous. A thorough evaluation of this area is necessary and would profit by incorporating into that evaluation a review of two sources. One is the A Model Ethics Law for State Government published by Common Cause in January, 1989. The

other is the "Ethics, Conflict of Interest, and Personal Financial Disclosure Act," developed by the Council on Governmental Ethics Laws, which is affiliated with the Council of State Governments.

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LOBBYING LAW PROPOSALS

Summary

1. Expenditure Report Content. Require lobbyists to file detailed reports disclosing the cost of food and beverage purchased for legislators and other state officials, along with the names of the recipients; gifts, honoraria, or payments; mass media communications; large grassroots mailings; office expenses; and lobbyists' salaries.

2. Monthly Expenditure Reports. Require all registered lobbyists to file monthly expenditure reports, not just those who spend more than a threshold amount.

3. Parties and Other Similar Events. Require separate and specific reports to be filed detailing the expenditures made and the public officials who attend legislative parties.

4. Record Keeping Requirements. Require lobbyists and their employers to preserve records associated with their lobbying expenditures.

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LOBBYING LAW PROPOSALS

In a democracy, the right of citizens, individually and collectively, to influence governmental decisions is axiomatic, that is, it's virtually a self-evident truth. Since, by definition, lobbying is just about any attempt to influence a governmental decision, it follows that lobbying is therefore legitimate. However, difficulty arises when one individual or group tries to obtain an advantage through the use of position or money over another individual or group to such an extent that the ordinary citizen's voice is no longer heard.

Since in a democracy it is the vote of the individual taken collectively that is paramount, it becomes imperative that organized lobbying efforts be publicly disclosed and that powerful individuals and groups not dominate.

Under current Kansas law, dating from 1974, lobbying is defined to include any attempt to influence legislative or administrative decision making. In addition, state statutes provide that virtually anyone paid to lobby or appointed as an organization's primary representative, as well as anyone who otherwise spends more than a moderate amount to lobby, must register as a lobbyist. It is in the area of reporting of expenditures for lobbying as well as the standards that govern lobbying activities that Kansas law is weakest. The following recommendations would substantially strengthen Kansas lobbying laws.

1. Expenditure Report Content. Each report required to be filed by a lobbyist should include the following information:

(a) Expenditures for hospitality provided in the form of food and beverage, including the name of the legislator or other state official receiving the hospitality, the cost of the food and beverage provided, and the date it was received. Individual expenditures of $2 and under do not need to be itemized.

(b) Expenditures for gifts, honoraria, or payments to legislators or other state officers including the name of the individual receiving the gift, honoraria, or payment, the amount, the specific description, and the date. Food or beverage not provided for immediate consumption in a hospitality setting is to be treated as a gift.

(c) The amount paid to the lobbyist by his or her employer or appointing authority.

(d) Expenditures for mass media communications related to lobbying including the date, purpose, and the specific description of the nature of the communication.

(e) Expenditures for each mailing related to lobbying (over a minimum number of letters) including postage, stationery, and other associated costs along with the date, specific description, and purpose.

(f) Expenditures for office rent, utilities, supplies, and compensation of support personnel including the amounts, and the specific description.

(g) Expenditures for any other lobbying purpose including amount, specific description and date.

Comment: Under present Kansas law, few lobbying expenditures are reported. Essentially what is required to be reported is the aggregate amount spent for hospitality in the form of food and beverage; gifts, honoraria, or payments; and mass media expenditures. Expenditures to retain lobbyists and support personnel, as well as money spent for office rent, equipment, supplies, direct mail expenditures, and other expenses related to lobbying go unreported, even in the aggregate. For the limited number of expenditures that are reported, only the aggregate amount is listed. There is no detail provided. The language recommended above or something similar would provide full and comprehensive reporting of all lobbying-related expenditures, both in detail and in the aggregate, so a true

reflection of the amounts spent by any lobbyist and the individual or individuals retaining that lobbyist would be provided for the public record.

2. Monthly Expenditure Reports. State law should be amended so that all lobbyists are required to file monthly expenditure reports.

Comment: Currently, monthly expenditure reports are only required to be filed by lobbyists who make aggregate expenditures of more than $100 or give payments, honoraria, or gifts valued at more than $20 to any one state officer or employee. Since, however, all registered lobbyists are not required to file reports, the Public Disclosure Commission has no way of knowing if a lobbyist has failed to file a required report.

3. Parties and Other Similar Events. In addition to the present reporting requirements and those suggested above, supplemental reports should be required in all cases in which all or part of a party is provided by or underwritten by one or more lobbyists for a legislator or other state official. In those cases, the lobbyist coordinating the party should be responsible for filing the supplemental report by the normal monthly filing deadline for the period covered. That report should contain a complete itemized breakdown of the sources and amounts of all funds contributed to the party including the name, address, and amounts for all those who contribute. In addition, it should include a complete breakdown of all expenditures made from those funds. Also, it should list the name and address of the legislator or other state official for whom the party is being held or on whose behalf the party is being underwritten. If the party or similar event is not being held or underwritten for a particular legislator or state officer, but rather is open to all legislators or a specific list of invitees, that fact should also be noted. In the case where there is a restricted list of invitees, that list should be attached to the report.

Comment: Currently, there are a number of parties held each session, for example, for the Speaker of the House, the chairman of a particular committee, and so on. Present law allows the existence and cost of these events to go essentially unreported. The provisions recommended above would require a detailed, specific and separate report ensuring that this practice would be displayed on the public record.

4. Record Keeping Requirements. Lobbyists and lobbyists' employers or appointing authorities should be required to preserve records associated with any of the expenditures made for lobbying purpose for a period of time to be set by rule and regulation by the Public Disclosure Commission. In addition, the

Commission should be given the power to specify the nature of the accounts and records that are to be kept. Finally, current law should be amended to make it clear that the Commission has the power to audit such records and accounts.

Comment: Present law is unclear as to the nature of the records and accounts required by lobbyists and their employers or appointing authorities. It does no good to have a statute requiring reporting of certain financial data if the manner in which these records are to be kept is not spelled out, the period of time for which they are to be kept defined, and the enforcement agency's authority to audit those records spelled out. Such a proposal as provided here would remedy this lack.

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PUBLIC DISCLOSURE COMMISSION IMPROVEMENTS

Summary

1. Commission Members' Qualifications. Require members of the Public Disclosure Commission to be individuals who are not regulated by that Commission.

2. Staff and Budget. Require the Commission to appoint an executive director, increase the staff from six to twelve, and raise their budget accordingly.

3. Size of Commission. Enlarge the Commission from its current five members to nine.

4. Subpoena Power. Empower the Commission to issue subpoenas at the investigatory stage of its activities.

5. Statement of Substantial Interest Review and Audit. Provide the Commission with confidential access to income tax returns to check the accuracy and completeness of statements of substantial interest.

6. Intentionality Requirement. Repeal K.S.A 46-277 which requires the proof of intentionality thereby allowing the general criminal requirements of intent to be employed.

7. Statute of Limitations. Change the statute of limitations from the current two years to five.

8. Report and Recommendation Provisions. Make clear that the Commission is to make recommendations for improvement in the statutes, both in terms of substantive policy and administrative procedure.

9. Audits Required. Require a minimum of 10% of all receipt and expenditure reports, Statements of Substantial Interest, and lobbying expenditure reports to be audited.

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PUBLIC DISCLOSURE COMMISSION IMPROVEMENTS

It's one thing to have adequate campaign finance, conflict of interest, and lobbying standards on the statute books. It's quite another to have adequate enforcement of those provisions. Kansas already has one of the recommended features of any model law touching on these three areas, that is, an independent enforcement commission. Unfortunately, the Public Disclosure Commission lacks sufficient initiative as well as the tools necessary to enforce these statutes. However, there are ways to address these shortcomings, and we have tried, through our recommendations set out below, to touch on the key ones.

1. Commission Members' Qualifications. Qualifications for members of the Public Disclosure Commission should be clearly set out in the statutes. Among those qualifications should be that no person may be a member of the Commission who by virtue of other political or governmental involvement is also regulated by the Commission. For example, a member should not be a registered lobbyist and serve on the Commission.

Comment: It would seem to be without question that a Commission that sits in judgment of conflict of interest situations should itself have members that are free of conflicts of interest. That is presently not the case. The laws should be changed to make it so and to prevent any conflicts in the future.

2. Staff and Budget. Present law provides that the Commission "may" appoint an executive director. That provision should be changed to "shall". Current Commission staff is set at six. That should be increased to a minimum of twelve. In addition, the budget allocation for the Commission should be raised accordingly.

Comment: In 1981, language requiring the Public Disclosure Commission to have an executive director was changed from "shall" to "may". Since then, the Commission has permitted it's staff to operate without an executive director providing centralized leadership and administrative coordination. This is a handicap for the Commission and its staff. The fact that the

Commission has permitted this to exist is another indication of their lack of independence and resolve to aggressively enforce the statutes entrusted to them. The Legislature should change the statute thereby indicating its interest in seeing the staff effectively coordinated. In addition, the Commission has been understaffed since its creation in 1974. It is imperative that the Commission be given the staff and budget to aggressively enforce the statutes.

3. Size of Commission. The Commission should be enlarged from five members to nine members.

Comment: When it was initially created in 1974, the Commission had eleven members. That number was reduced to five in 1981. The problem that arises here is that if the Commission has one, two, or three members appointed to it that are not sympathetic to the goals of the statutes they're entrusted to administer, it has a devastating effect on the resolve of the Commission as a whole. When you have a greater number, it is easier for the well-intentioned members of the Commission to absorb those less than enthusiastic appointments. In addition, with just five members, they often have schedule conflicts that prevent the attendance of a quorum at their publicly called meetings and often end up resolving business by telephone which is an inadequate practice at best.

4. Subpoena Power. The Commission should be granted subpoena power to investigate any matter covered by the statutes under its jurisdiction, whether or not a complaint has been filed.

Comment: Currently, the Public Disclosure Commission has subpoena power only after a complaint is filed, which means the individual filing the complaint must already have a good deal of evidence in their possession. The hands of the Commission are essentially tied and they are unable to carry out investigations appropriate to their responsibility.

5. Statement of Substantial Interest Review and Audit. The statutes should be amended to provide the Public Disclosure Commission access to the income tax returns filed with the Kansas Department of Revenue by those state officials also required to file Statements of Substantial Interest.

Comment: Presently, the Commission has no mechanism to determine the accuracy of information contained in the Statements of Substantial Interest that are required to be filed. Allowing them access to the income tax returns filed with the Revenue Department would give them a way to confidentially check the accuracy of that information. And if erroneous or fraudulent

Statements of Substantial Interest have been filed, they could act on them accordingly.

6. Intentionality Requirement. K.S.A. 46-277 and K.S.A. 25-4142 et seq. indicate that complaints may be established only if intentionality is proven. This language should be struck from the statutes.

Comment: This additional language raises issues of interpretation which are unnecessary. If this language is removed as recommended, the general criminal requirements of intent, which most attorneys understand, would be employed.

7. Statute of Limitations. The statute of limitations, insofar as it applies to campaign finance, conflict of interest, or lobbying statutes, should be extended to a minimum of five years.

Comment: Violations of the campaign finance, conflict of interest, and lobbying laws presently come under the general statute of limitations. Because of the additional level of complaint, investigation and findings of fact involving the Public Disclosure Commission, matters often take longer than they do under the general criminal statutes of the state. Violations have gone unprosecuted. Others have been dangerously close to having that happen, because of the time it takes to develop a case and for it to find its way into the courts. This matter can be resolved by extending the statute of limitations insofar as it applies to these statutes.

8. Report and Recommendation Provisions. The statutes for all areas of Commission jurisdiction including campaign finance, conflict of interest, and lobbying, should be amended to provide that the Commission shall conduct research and evaluation necessary to provide an annual report for the Governor, the Legislature, and the people of the state. Such periodic reports should include not only activities of the past year, but recommendations for improvement in the statutes, both in terms of substantive policy and administrative procedure.

Comment: While the Commission is presently charged with filing an annual report and recommendations with the Legislature, members of the Commission have interpreted that to mean that it is to be a narrowly constrained report responding just to administrative difficulties they have experienced. They have concluded that it is not their responsibility to make substantive recommendations. A change in the statutes such as that recommended would make clear that the Commission is charged not only with reporting administrative inadequacies to the Legislature, but that it is to go beyond that and make

substantive policy recommendations. Further, the law should make clear that the Commission is to circulate its report to the media, libraries, and other outlets in the state.

9. Audits Required. The Public Disclosure Commission should be required to audit a minimum of 10% of the receipt and expenditure reports, Statements of Substantial Interest, and lobbying expenditure reports filed with the Commission.

Comment: Simply filing disclosure reports will not ensure compliance with the laws. Previous recommendations have sought to increase the Commission's staff, give the Commission greater subpoena power and the ability to review income tax returns. These measures need to be combined with a provision to ensure compliance with the law through an adequate number of audits, both random and those "flagged" in some fashion, to check the accuracy and completeness of reports filed.

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Craig Grant Testimony Before The

Senate Elections Committee

Monday, January 22, 1990

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee on SB 417, a bill to establish a select committee on ethical conduct.

Kansas-NEA supports the concepts embodied in SB 417. We believe that a studied approach to this entire situation is the proper way to proceed rather than the approach used last session to pass campaign "reform" statutes. The rush used to pass such legislation has a tendency to produce laws which may not solve the problems they were intended to solve and create problems which were unintended.

Either the approach used in SB 417 or extensive interim study we believe is necessary to create a body of ethic conduct we can all be proud of in Kansas. We also believe that conduct is proper now, but refinements are always encouraged and welcomed.

Kansas-NEA supports the concepts of SB 417 and hopes the committee will pass the bill favorably. Thank you for listening to our concerns.

Senate Elections
1-22-90
Attachment 4

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