

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 23, 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:

Julene Miller, Deputy Attorney General
Ron Thornburgh

Others attending: see attached list

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

The Chairperson announced appointment of a subcommittee to review concerns expressed regarding SB-417. Senator Bond will serve as chairperson with Senators Fred Kerr, Michael Johnston and Janis Lee serving as members of the subcommittee.

The chairperson called attention to a letter received from the office of the Attorney General concerning the campaign finance act passed in the 1989 session. Julene Miller, Deputy Attorney General, appeared before the Committee to provide additional explanation of the Attorney General's position on the unconstitutionality of certain statutes regulating the internal workings of political parties. (Attachment 1) Ms. Miller noted that it appeared there was no way to "fix" or correct those statutes noting "[A] State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair."

Following a lengthy discussion staff pointed out that it does not say you cannot regulate but that when regulations invade the province of private organization to the extent that it goes beyond insuring an orderly and fair election they would be unconstitutional.

Ron Thornburgh told the Committee that the office of the Secretary of State did agree with the Attorney General noting there it was possible the state would eventually have to pay attorney fees and lose the case should someone from within one of the parties file suit against in the state of Kansas on the issues as they appear in Attachment 1. Mr. Thornburgh noted that the total question was whether the state had a vested interest in certain laws put forward, especially in the election of precinct committee men and women because that is the vehicle with which vacancies in office are filled.

Mr. Thornburgh, Office of the Secretary of State appeared to request a bill which would authorize the governor, upon the advice and with the Secretary of State, to establish state agency based voter registrations. This would only be used in specific instances such as in the last three months prior to a primary or general elections and would provide more voter outreach. Senator Johnston moved the committee introduce the bill as requested. Senator Bond seconded the motion. The motion carried.

Ron Thornburgh told the committee the Secretary of State's Office would like to review SB-59 of last year which deals with party recognition.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 529-S Statehouse, at 1:30 ~~xm~~/p.m. on January 23, 1990

The chairman requested the wishes of the committee concerning SB-81. Senator Yost moved, with a second by Senator Lee, to report SB-81 adversely. The motion carried.

The motion was made by Senator Bond with a second by Senator Lee to report SB-82 adversely. The motion carried.

Senator Kerr, with a second by Senator Johnston moved to report SB-137 adversely. The motion carried.

Senator Bond announced the subcommittee would meet in Senator Fred Kerr's office following adjournment of the afternoon briefing session.

The meeting adjourned at 2:15 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE January 23, 1990

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Rebecca Bossemeyer TOPEKA

SOS

Ken Thornburg Topeka

SOS

Karl Pelington Wichita

Libertarian Party of Kansas

Bill D. Earnest Wichita

Libertarian Party of Kansas

MARK KIRK WICHITA

LIBERTARIAN PARTY OF KANSAS

MIKE LAW Lawrence

INTER- BURKE

Julene Miller Topeka

AG



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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Senate Committee on Elections
Constitutionality of
Statutes Regulating
Political Parties

Testimony Presented by
Julene L. Miller
Deputy Attorney General
January 23, 1990

Mr. Chairman and Members of the Committee:

I have been asked to present to you the Attorney General's position on the unconstitutionality of certain statutes regulating the internal workings of political parties.

By letter dated January 11, 1990, a copy of which is attached, Attorney General Stephan advised the leadership of the Senate and House and chairs of the Senate and House Elections Committees that the Supreme Court of the United States found unconstitutional certain California statutes which regulated such things as the size and composition of the state central committee, selection and removal of committee members, maximum term of office for the chair of the state central committee, time and place of committee meetings, and the amount of dues parties could impose on members. The Court found that these statutes burdened the associational rights of the party and its members and that the state did not advance a compelling state interest for doing so. The Court held that:

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

Based on this case, it is the opinion of Attorney General Stephan that the statutes listed in the attached letter would be found unconstitutional if challenged.

Senate Elections
January 23, 1990
Attachment 1



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 11, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
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The Honorable Don Sallee
State Senator
State Capitol
Topeka, Kansas 66612

Dear Senator Sallee:

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

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

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

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

Regulation of internal affairs. California statutes regulated the following:

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

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

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

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

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

- K.S.A. 25-3802. County Central Committees. Establishes membership, dictates that a meeting must be held two weeks after each primary, mandates the officer positions, provides how meetings are to be called, and provides for proxies.
- K.S.A. 25-3803 as amended by L. 1989, ch. 110, § 1. District Committees. Establishes membership, mandates the officer positions, provides how meetings are to be called,

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

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

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

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


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

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

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

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

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

RTS:RLN:bas

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