

Approved 1-29-91
Date

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Tom Sawyer at
Chairperson

9:12 a.m./p.m. on Thursday, January 24th, 1991 in room 521-S of the Capitol.

All members were present except: Representative Baker, excused
Representative King, excused

Committee staff present:

Pat Mah, Research Department
Arden Ensley, Revisor
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Pat Mah, Research

The House Elections Committee was called to order by Chairman Tom Sawyer at 9:12 a.m. on Thursday, January 24th in Room 521-S.

Pat Mah, Research, passed out a copy of the Election Case Law '89, a summary of Judicial Precedent on Election Issues concerning fair campaign practices. (Attachment 1)

Carol Williams, Public Disclosure Commission, distributed copies of the Annual Report of the Disclosure Commission and also the expenditures reported by registered lobbyists for December, 1989 and 1990. (These reports are on file in the Public Disclosure Office at 109 West 9th)

Chairman Sawyer called on Pat Mah, Research, to continue the explanation of the report of the Select Commission on Ethical Conduct. She began with the section on Lobbying Regulations. There are five recommendations to this section and the committee discussed each recommendation as they were explained.

The next section of the report addressed Administration. This section of the report deals with subpoena power of the Disclosure Commission, funding for staff, name change of the Commission and repealing of the sunset provisions in the law with regard to the Kansas Public Disclosure Commission. The committee also asked questions and discussed this section of the report.

Chairman Sawyer made the announcement the office of the Secretary of State had some bills which they wished to introduce and that would be the order of business at the meeting on Tuesday, January 29th. He also stated any member of the committee was free to introduce any legislation they might wish at that time.

The meeting was adjourned at 10:05 a.m. The next meeting of the House Elections Committee will be held on Tuesday, January 29th at 9:00 a.m. in Room 521-S.

Election Case Law 89

A Summary of
Judicial Precedent
on Election Issues
Other Than
Campaign Financing

Election Committee
1-24-91
Attachment 1



I Campaign Practices

States are empowered to enact laws to promote and regulate political campaigns and candidacies.¹⁶ Some 17 to 19 states have relied upon this authority to enact variants of laws prohibiting the use of false statements in political campaigns. The statutes typically prohibit a person from publishing or distributing false statements about a candidate for public office, with virtually all imposing misdemeanor penalties for violations.¹⁷

Statutes that prohibit a person during a political campaign from purposely and with knowledge of its falsity publishing a written or printed false statement about a candidate designed to promote the election or defeat of the candidate are not unconstitutional restraints on free speech.¹⁸ Statutes governing publication and distribution of false information about the personal or political character or acts of a candidate designed or intended to elect, injure, or defeat a candidate relate to defamatory publications and do not intend to regulate self-laudation or dated laudatory comments by others.¹⁹

The most common state statutes cover false representations, prohibiting a person from knowingly publishing and distributing a false representation about a candidate or election concern if it is intended to affect voting at an election. These statutes often include proscriptions on defamation, fraudulent endorsement, and false information.

Most case law is on the topic of false information. The courts have been fairly strict in construing what constitutes false information. Statements of opinion, by themselves, are not actionable as false statements, and statements are not considered by the courts to be false if any reasonable inference of opinion or of correct fact can be drawn from them.²⁰ While the courts have preferred to uphold such statutes, they must meet certain conditions to pass muster. Two Ohio rulings illustrate the fine distinctions. In one, the court found that a statute prohibiting a person during a political campaign from purposely and with knowledge of its falsity publishing a written or printed false statement about a candidate designed to promote the election or defeat of the candidate was not an unconstitutional restraint on free speech.²¹ However, when the statute required the maker of the statements to submit to administrative adjudication, this was found to be an unconstitutional prior restraint on free speech.²² A court may also condemn the practice of appeals to bigotry and prejudice in campaign advertisements, but if there is truth in the ads, such tactics are not forbidden in making a false statement about a candidate.²³

In examining the matter of statutes banning fraudulent endorsements, courts have found that prohibitions against implying that one has the endorsement or support of a political party when one does not are sufficiently narrow and specific as to afford due process under both the federal and state constitutions and are not impermissibly vague.²⁴

Defamation statutes restrict a person from publishing and distributing false information about a candidate that generally would defame the candidate or cause people not to vote for the candidate. As with the fair use of opinion in false information cases, courts have also found that the use of extreme or illogical inferences in campaign literature based upon accurate statements of fact are not false information under statutes that prohibit the distribution of material containing false information with respect to the personal or political character of candidates.²⁵ Because of the seriousness of such a violation, courts have been reluctant to uphold statutes that do not meet the standards of current libel law.²⁶ A statute that prohibits deliberate misrepresentation of a candidate's qualifications, positions on issues, party affiliations, or endorsements was found to be unconstitutionally overbroad by the courts because it did not conform to the "actual malice" standard.²⁷ This now appears to be the preferred standard applied by the courts.