

Approved 2-19-91
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

The meeting was called to order by SENATOR DON SALLEE at
Chairperson

1:30 ~~xx~~m./p.m. on February 11, 1991 in room 529-S of the Capitol.

All members were present ~~xxxxx~~ or excused:

Committee staff present:

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

Conferees appearing before the committee:

Vic Miller, Attorney
Karlen Christensen-Wellman Jones
Ron Hein, Attorney
Representative Elaine Wells

Others attending: See attached list.

The meeting was called to order by Chairman Sallee at 1:30 p.m.

Senator Bond presented seven bill requests from the Johnson County Elections Commissioners relating to cleanup of statutes concerning the position of election commissioners. (Attachment 1)

Senator Bond, with a second from Senator Lee moved introduction of the bills. The motion carried.

Vic Miller appeared before the committee noting he had represented Karlen Christesen-Wellman Jones in the recent contested election for the House seat in the 59th District. Noting the experience had been both interesting and educational he recommended repeal of election laws, KSA 25-3002 (b)2 pertaining to identifying marks and (b)3 pertaining to torn, defaced and mutilated ballots. He noted the statutes would appear to serve no constructive purpose. Mr. Miller noted there is no definition of "identifying marks" used in (b)2. In discussing torn, defaced or mutilated ballots it was noted that there were instances where it was not equitable to the voter to apply (b)3 and void the ballot.

Mr. Miller noted he had no suggestions relating to the contested elections although he did not like the process as it relates to the legislature with the candiate having to appeal to the legislative body. He did suggest a panel of three judges to decide which votes to count since it might be open to less criticism than a decision determined by a single person.

Mr. Miller commented that members might be interested in reading the decision as there were questions raised which he, personally, had never envisioned such as counting an absentee ballott which arrived in an unsigned envelope and a vote cast at a wrong polling place although advised they were not a registered voter in that polling place.

Mr. Miller also mentioned that change of name legislation was needed as present statutes are wholly discriminatory. He felt the process should be automatic and that an affidavit could be used.

Karlen Christensen-Wellman Jones spoke to the committee thanking the members for looking at the various laws. Ms. Christensen-Wellman Jones noted the laws should be open to interpretation by different people with the same results. Clear instructions and training are necessary for people working election boards. Difficulties arise due to the fact that people may have worked election boards for many years without receiving proper training or were not advised of procedural changes.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 529-S, Statehouse, at 1:30 ~~am~~/p.m. on February 11, 1991

Mr. Miller was asked whether the step involving a judge could be eliminated as the ultimate decision was made by the legislative house involved. Mr. Miller noted one fiscal problem in doing this was that between the first Monday in November and the second Monday in January there is no legislative input as the new body would be the one to act on the election. While noting problems were anticipated, the number of difficulties which came to light during "discovery" were not anticipated. However, to delay until the legislative session convened would mean the session would be quite far along before a decision could be reached.

A member asked Mr. Miller if he was really saying an improvement would mean a constitutional amendment. Mr. Miller answered that in order to take the legislature out of the process it would take a constitutional amendment.

Ron Hein appeared before the committee noting he concurred with the statements made by Vic Miller. The sections of the two statutes, KSA 25-3002 (b)2 and (b)3, should be repealed as section (b)1 states no ballot or portion thereof shall be declared invalid unless it is impossible to determine the intent of the voter.

Mr. Hein presented examples of identifying marks made to correct an error and which ultimately caused the ballot not to be counted. Other problems encountered were marking inconsistencies where instructions were not followed. Different counties have different ballots and methods of marking them as well as numerous write-in discrepancies.

Mr. Hein told the committee that the determination of ballots to be counted is laborious, time consuming and an extremely expensive process for the candidates.

Mr. Hein recommended looking at the contest laws themselves as well as the grounds stated in statutes, possibly fine-tuning them in order to determine, once there was a final determination by the recount board, at what point does the process go, either into court or to the legislature. Mr. Hein pointed out changes were made in 1968 concerning bipartisan election boards where those boards were supposed to vote unanimously as to whether to count a ballot. If there is not a unanimous vote the minority should object to the ballot and the ballot would be removed. Mr. Hein noted it was his opinion and probably that of Mr. Miller that the election board personnel do not know how this process is supposed to operate. Therefore educational procedures appear necessary. Such ballots are separated to be judged by the board of canvassers.

Mr. Hein told committee members they repeatedly asked the House legislative committee whether proponents or opponents had the burden of proof. The committee never made that determination. A second area of difficulty was parameters for the standard of review. It appeared the legislative committee operated at their own discretion without considering the judge's opinion. It is difficult to operate without having rules and there is a need to know what the statutes mean in a number of areas.

Mr. Hein noted, as did Mr. Miller, that the re-registration law was discriminatory to women and needed to be changed.

A question was posed as to whether the court should be eliminated from the process. Mr. Hein noted he felt the court is already involved making a finding on the number of lawfully cast votes and therefore, it would seem the judge would make the finding. Another issue mentioned was legislature having a right to look at the qualifications of the person coming into the body. Mr. Hein noted he felt it would be wise to amend the constitution so that a legislative committee whose members have the power in the legislature may come in and declare any of their party as winners.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 529-S, Statehouse, at 1:30 ~~xxx~~ p.m. on February 11, 1991, 19

A member expressed the understanding some of the ballots in question had not been defaced by the voter and questioned whether, when it was very evident the voter did not deface the ballot and you can read the ballot that it should be counted. Mr. Miller suggested the repeal of (b)2 and (b)3 which would take care of this problem.

Following a question concerning a panel of three judges, Mr. Hein, after explaining the process of choosing a judge, noted that if the issue were put into the constitution it would go to the district court and then an appeal would be possible to an appellate court. Mr. Hein noted there was difficulty getting one judge's docket cleared in order to deal with the ballots.

The question was posed as to the type of training used by election boards. Ron Thornburgh, office of the Secretary of State, told the committee they did have training sessions, tried to explain to workers that the training was mandatory, but there was no method of enforcement.

Mr. Miller noted that although the law is in place the persons working on the boards are not lawyers.

A member asked Mr. Hein his feeling on signed absentee ballots with Mr. Hein replying that the system worked at the count and recount level but came up again at the time of trial. There were inconsistencies of counting between counties with one counting such ballots and others not counting them. The district judge said such unsigned absentee ballots should be counted.

Representative Wells told the committee that she had introduced bills related to the election process and would be testifying before the committee if the bills came to the Senate committee. Representative Wells noted that she felt instructions to the voters using paper ballots should make it clear they have the opportunity to obtain a second and third ballot if they make an error. She noted the idea of a three judge panel was good although the presiding judge did consult with other judges when making determinations on the ballots. The judge also volunteered to testify as he was concerned with the legislative committee overturning his decision on the ballots. He felt the judge's ruling should stand firm and the ability to overturn the court decision made it a total waste of a week's time used to make the decision.

Senator Reilly moved with a second by Senator Lee to approve the minutes of February 4 and 5, 1991.

Written testimony concerning SB-85 was presented to committee members by Ron Thornburgh, office of the Secretary of State. (Attachment 2)

The meeting adjourned at 2:28 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE February 11, 1991

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Erika Atwidlo Topeka

Intern. Sen. Sec

FRANK MORRIS Lawrence

Kansas Public Radio

Ann & Conner Peterson KS

Willie L Conner Atchison KS

Brad & Susan Jones Troy KS

Ron Hein Topeka

Pro Se

VIC MILLER TOPEKA

Karen Christensen Jones Osgo City

Teresa Flerchinger Topeka

Budget

25-2110a. Candidates for office elected by district; filing of petition or statement of candidacy; fee; elections conducted by county election officer. (a) In cities of the first and second class, any person desiring to become a candidate for a city office elected from a district, shall file with the city clerk before the filing deadline a statement of such candidacy on a form furnished by the county election officer as specified by the secretary of state. The city clerk of any city upon receiving any filing under this section shall record the same and transmit it, together with the filing fee or petition herein provided, within three business days to the county election officer. In cities of the third class, any person desiring to become a candidate for a city office elected from a district, shall file with the county election officer of the county in which the city is located, or in the county in which the greater population of the city is located if the city extends into more than one county, or the city clerk, before the filing deadline, a statement of candidacy on a form furnished by the county election officer as specified by the secretary of state.

(b) In cities having a population of less than 5,000, each such filing shall be accompanied by a filing fee of \$5 or, in lieu of such filing fee, by a petition signed by 25 qualified electors of the council district or by a number of such qualified electors of the district equal to not less than 10% of the ballots cast in the district at the last general city election, whichever is less.

✓ Amend the boxed phrase in (b), (c) and (d) to read:

"10% of the qualified electors in the district at the last general city election, whichever is less."

(c) In cities having a population of not less than 5,000 nor more than 100,000, each such filing shall be accompanied by a filing fee of \$10 or, in lieu of such filing fee, by a petition signed by 50 qualified electors of the council district or by a number of such qualified electors of the district equal to not less than 1% of the ballots cast in the district at the last general city election, whichever is less.

10 %

10 %

(d) In cities having a population of more than 100,000, each such filing shall be accompanied by a filing fee of \$50; or, in lieu of such filing fee, by a petition signed by 100 qualified electors of the council district or by a number of qualified electors of the district equal to 1% of the ballots cast in the district at the last general city election, whichever is less.

10 %

(e) All city elections shall be conducted by the county election officer of the county in which such city is located, or of the county in which the greater population of the city is located if the city extends into more than one county.



LOGIC:

Johnson County Election Office

Revisions are requested to adjust the basis of computing petition signatures from 'ballots cast' to 'electorate' to conform with that used for state level candidates in 1990 and school districts.

Senate Elections
February 11, 1991
Attachment 1

25-2110. Candidate for office elected at large; filing of petition or statement of candidacy; fee; elections conducted by county election officer. (a) In cities of the first and second class, any person desiring to become a candidate for a city office elected at large shall file with the city clerk before the filing deadline a statement of such candidacy on a form furnished by the county election officer as specified by the secretary of state. The city clerk of any city upon receiving any filing under this section shall record the same and transmit it, together with the filing fee or petition herein provided, within three business days to the county election officer. In cities of the third class, any person desiring to become a candidate for city office elected at large shall file with the county election officer of the county in which the city is located, or of the county in which the greater population of the city is located if the city extends into more than one county, or the city clerk, before the filing deadline a statement of candidacy on a form furnished by the county election officer as specified by the secretary of state.

(b) In cities having a population of less than 5,000, each such filing shall be accompanied by a filing fee of \$5 or, in lieu of such filing fee, by a petition signed by 25 qualified electors of the city or by a number of such qualified electors of the city equal to not less than 10% of the ballots cast at the last general city election, whichever is less.

10 % ✓ Amend the boxed phrase in (b), (c) and (d) to read:

"10% of the qualified electors at the last general city election, whichever is less."

(c) In cities having a population of not less than 5,000 nor more than 100,000, each such filing shall be accompanied by a filing fee of \$10 or, in lieu of such filing fee, by a petition signed by 50 qualified electors of the city or by a number of such qualified electors of the city equal to not less than 1% of the ballots cast and counted at the last general city election, whichever is less.

10 %

(d) In cities having a population of more than 100,000, each such filing shall be accompanied by a filing fee of \$50; or, in lieu of such filing fee, by a petition signed by 100 qualified electors of the city or by a number of qualified electors of the city equal to 1% of the ballots cast at the last general city election, whichever is less.

10 %

(e) All city elections shall be conducted by the county election officer of the county in which such city is located, or of the county in which the greater population of the city is located if the city extends into more than one county.

✓ **LOGIC:** Johnson County Election Office

Revisions are requested to adjust the basis of computing petition signatures from 'ballots cast' to 'electorate' to conform with that used for state level candidates in 1990 and school districts.

Article 22.—ELECTION EXPENSE APPORTIONMENT

25-2201. Expenses subject to apportionment; payment by county; reimbursement; basis for apportionment. (a) Election expenses of all primary, general and question submitted elections which are township, city, school or community junior college elections shall be paid by the boards of county commissioners of the respective counties. Election expenses of all public special districts for which it is provided by law that the county election officer, county clerk, or county election commissioner is to conduct the election, shall be paid by the boards of county commissioners of the respective counties, and the provisions of this act shall apply thereto in the same manner as the same apply to township, city, school, and community junior colleges.

(b) The direct expenses of any primary, general and question submitted elections which are township, city, school or community junior college elections, except for any such election held on a day when every registered voter in the county is authorized to vote at one election or another, shall be reimbursed to the county by the township, city, school or community junior college district for which such expenses are incurred. Indirect expenses of such elections shall not be reimbursed to the county. All costs of publication of notices of election shall be reimbursed to the county by the township, city, school district or community junior college to which the notice applies.



Delete boxed phrase.

(c) Whenever reimbursement to the county is required under subsection (b), the direct expenses of any election held at the same time and in the same area as an election for another subdivision of government shall be apportioned among the subdivisions of government for which such expenses are incurred, in equal proportions. In the event that the subdivisions of government sharing the expense of an election are not coextensive in territory, the subdivision of government which does not extend into a particular area shall not share in the expense of the voting place for such area.



LOGIC:

Johnson County Election Office

This statute causes double taxation. Budgets of cities, schools and a community college carry a line item to cover the cost of odd year spring elections if a countywide primary is not called for. A countywide election occurs when one more candidate than twice the number to be elected for a community college board files and creates the condition in which 'every registered voter.....is authorized to vote.'

The county election offices also budget for the same election.

If the election is countywide, the election office bears the cost; the jurisdictions have a windfall in the form of a unexpended line item for the election.

If a the election is not countywide, cities and school boards having elections must reimburse cost which are computed on a precinct by precinct basis. In that case and then very rarely, the election offices can claim the windfall.

Elections should be 'user pays' and prorated costs should be spread between the cities, schools, college and the county, which must fund the township and drainage board elections.

OR

If that is not acceptable, then a statute should direct that the county fund all odd year spring elections and jurisdictions should be required to remove the line item from their budgets.

25-2808. Election board; number of members determined. The county election officer shall determine for each election for each voting place whether the election board thereof will have three members, ~~five members, seven members or some greater odd number of members.~~

✓ Amend by deleting the lined-out words:

"five members, seven members or some greater odd number of members."

and replacing with:

"or some greater number of members. If a tie occurs in a vote among election board members who make up a board consisting of an even number of members, the supervising judge shall abstain from voting."

✓ **LOGIC:** **Johnson County Election Office**

To prevent any conflict with the statute as originally written in cases where events could cause a board to operate with an even number of workers. Votes by election boards are not needed in counties using machines.

25-2506. Same; election boards; voting place and area. (a) "Election board" means a board consisting of ~~any odd number of persons all of whom shall be appointed as provided in this act.~~

(b) "Voting place" means a place designated as provided by law for voters to vote.

(c) "Area" means territory served by one voting place and may include part or all of one or more precincts or voting districts.

✓ Amend (a) by deleting the lined-out words: "any odd number of".

✓ **LOGIC:** **Johnson County Election Office**

Amends (a) to the match the descriptive language of (b) and (c). K.S.A. 25-2808 addresses specifics.

25-3104. Time of canvass of elections by county board. The original canvass of every election shall be performed by the election boards at the voting places. The county election officer shall present the original returns, together with the ballots, books and any other records of the election, for the purpose of canvass, to the county board of canvassers at any time between 8:00 o'clock a.m. and 10:00 o'clock a.m. on the Friday next following any election held on a Tuesday. For elections not held on a Tuesday, the canvass by the county board of canvassers shall be held on a day and hour designated by it, and not later than the fifth day following the day of such election.

✓ Amend by inserting the boxed statement (lower portion of page) in the location indicated in text of 25-3104.

✓ → Insert boxed wording shown in text on lower portion of page. ↑

PROPOSED CHANGE
(in bold)

(Proposed in prior sessions; no action taken)

KSA 25-3104 TIME OF CANVASS OF ELECTIONS BY COUNTY BOARD. The original canvass of election boards at the voting places. The county election officer shall present the original returns, together with the ballots, books and any other records of the election, for the purpose of canvass, to the county board of canvassers at any time between 8:00 o'clock a.m. and 10:00 o'clock a.m. on the Friday next following any election held on Tuesday **(except when Friday falls on a holiday, the board of canvassers shall meet on the next business day between the hours of 8:00 a.m. to 10:00 a.m.)** For elections not held on Tuesday, the canvass by the county board of canvassers shall be held on a day and hour designated by it, and not later than the fifth day following the day of such election.

✓ **LOGIC** Johnson County Election Office

Requested by counties that observe holidays falling on a "canvass day" Friday. Meeting the canvas on "the fifth day following the day of such election" requires the opening and selected staffing of offices involved in a canvass.

19-3420. Assistant election commissioners; appointment, salary; expenses. The election commissioner shall appoint one assistant, known as assistant election commissioner, who shall receive an annual salary to be fixed by the election commissioner and shall be paid in the same manner as other county officers and employees, and in addition the election commissioner shall certify to the board of county commissioners the amount necessary for clerk hire and expense, which amount shall be allowed by the board of county commissioners of said county. The board of county commissioners shall also authorize the statutory mileage allowance provided for in K.S.A. 75-3203 for the assistants of the election commissioner, to provide and maintain means of travel within their county. In counties having a population of more than two hundred thousand (200,000) the election commissioner shall appoint two (2) assistants, known as assistant election commissioners who shall be paid as provided for in this act.

Insert:

"a chief deputy or assistant election commissioner"



Amend boxed phrase to read:

"a chief deputy ~~and~~ or two (2) assistants, known as election commissioners.

History: L. 1947, ch. 203, § 2; L. 1949, ch. 207, § 2; L. 1953, ch. 212, § 14; L. 1955, ch. 169, § 2; L. 1957, ch. 245, § 20; L. 1961, ch. 213, § 2; L. 1963, ch. 238, § 2; L. 1965, ch. 181, § 2; L. 1968, ch. 259, § 1; L. 1969, ch. 160, § 2; July 1.



LOGIC

Johnson County Election Office

There is no statutory authorization for a Chief Deputy in County Election Offices managed by Election Commissioners. County Clerks (serving as chief election officers) have that authority.

A Chief Deputy appointment accommodates to the direct designation of authority by the election officer.

Under direction to appoint 'Assistant Election Commissioner(s)', the designation of authority of the election officer is divided and less effective for continuity.

The option for an Election Commissioner to appoint either a Chief Deputy or Assistant Election Commissioner(s) is logical and necessary maintain an unbroken line of authority and accountability in an election office.

24-414. Manner of nomination and election of directors; election boards; notice of election; who entitled to vote; election expenses. Elections to choose directors shall be conducted, the returns made and the results ascertained in the manner provided by law for general county elections except as otherwise provided by law, and all persons desiring to be voted upon as director, in any election, shall, not later than 12:00 noon of the Wednesday next following the primary election as such term is defined in subsection (b) of K.S.A. 25-2006, file a declaration of candidacy with the county election officer of the county wherein the district is located, as a candidate in such election, and the election officer in making up the ballots and in placing the names thereon shall place the names on the ballots in alphabetical order, but the returns of all special or bond elections shall be made to the secretary and canvassed by the board of directors. The county election officer of the county wherein the drainage district is situated shall appoint election boards as provided by law for other elections and shall designate places for holding the election. The county clerk shall cause to be ascertained the names of all persons within the district who are also qualified electors, and shall furnish lists thereof to the judges of the election.

Notice of the time and place of holding each election, signed by the county election officer, shall be given in a newspaper published in the county and posted in a conspicuous place in the office of the board of directors at least five days before the holding thereof. At all elections and meetings held under the provisions of this act, only persons who are qualified electors shall be entitled to vote. In counties having a population of more than 150,000, at all elections and meetings held under the provisions of this act, only persons who are taxpayers and residents of the district who are qualified electors shall be entitled to vote. All election expenses shall be paid for out of the general fund of the drainage district. Election officials shall receive the same compensation as provided under the general election laws.

History: L. 1905, ch. 215, § 13; L. 1913, ch. 184, § 3; R.S. 1923, 24-414; L. 1935, ch. 170, § 1; L. 1953, ch. 190, § 1; L. 1957, ch. 224, § 1; L. 1971, ch. 124, § 1; L. 1972, ch. 125, § 2; L. 1981, ch. 162, § 3; July 1.

Cross References to Related Sections:
 Election expenses in counties over 130,000, see 19-3435, 19-3435a.

Research and Practice Aids:
 Drains 17.
 C.J.S. Drains § 11.

✓ Amend bracketed phrase to read "of the Tuesday preceding by 10 weeks the first Tuesday in April,"

✓ LOGIC Johnson County Election Office

Adjust filing date to conform with all other candidate filings for the spring elections. Uniformity of filing date eliminates confusion for candidates and election offices.

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY OF RON THORNBURGH
SENATE ELECTIONS COMMITTEE
FEBRUARY 5, 1991

Senate Bill 85

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today on behalf of Secretary of State Graves.

Senate Bill 85 Change Changes the number of days in which a person nominated at the primary election has to withdraw following the board of canvassers meeting from ten to three days. We are asking for this change because the current ten day deadline unnecessarily extends the process. This extention does not allow us to print ballots and send federal service absentee ballots in a timely manner.

The deadline to withdraw prior to the primary election will remain June 10, 12:00 Noon.

I would be happy to answer any questions.

Thank you.

Senate Elections
February 11, 1991
Attachment 2