

Approved 3-4-91 Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

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

1:30 ~~xxx~~/p.m. on February 25, 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:

Carol Williams, Public Disclosure Commission

Others attending: See attached list.

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

Janet Williams, Public Disclosure Commission, appeared before the committee to request introduction of a bill concerning consultants and conflict of interest. Ms. Williams told Committee members that two opinions had been issued concerning K.S.A. 46-233(a) dealing with "employment" where a true employee/employer relationship is established. The question continues to arise concerning the position of a consultant and whether they are, in fact, an employee. It was noted previous consideration had determined a consultant receives a check but no benefits. The opinions issued concerning this matter are noted in Attachments 1 and 2. Attachment 3 concerned a request for an opinion concerning consultation work. Ms. Williams told the committee that due to recent changes in board membership, requests concerning this issue have resulted in a split decision by board members. It would appear no resolution can be expected in the near future. The Commission continues to receive questions concerning the problem and without an concensus cannot provide an opinion. Therefore, introduction of a bill to solve the question was being requested. Such a bill should include a "grandfather" clause to deal with those persons operating under previously issued opinions.

Senator Martin moved to introduce a bill which would clarify the position of consultants or contractors regarding conflict of interest. Senator Brady seconded the motion and the motion carried.

The chairman noted hearings were held on the following bills last week and requested the wishes of the committee.

SB-238 - concerning city elections; filing of petitions or statements of candidacy by candidates.

Senator Bond moved, with a second by Senator Kerr, to pass out favorable SB-238. The motion carried.

SB-239- concerning city elections; filing of petitions or statements of candidacy by candidates.

Senator Bond made the motion to pass out SB-239 favorable for passage. Senator Kerr seconded the motion and the motion carried.

SB-240 - concerning election boards.

Senator Bond moved to pass out SB-240 favorable for passage. Senator Reilly seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS,
room 529-S, Statehouse, at 1:30 ~~xxx~~ p.m. on February 25, 1991

SB-241 - concerning canvasses by the county board of canvassers.

Senator Bond moved to report SB-241 favorable for passage. Senator Kerr seconded the motion and the motion carried.

SB-243 - concerning expenses of elections.

Senator Lee moved to table SB-243. Senator Reilly seconded the motion. Senator Kerr made a substitute motion to report SB-243 adversely. Senator Rock seconded the motion and the motion carried.

Senator Bond moved to approve the minutes of February 18 and 19, 1991. Senator Lee seconded the motion and the motion carried.

The meeting adjourned at 2:15 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE February 25, 1991

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Laura Williams

KPDC

Jana Atchison, Topika

KPDC

Paul Walker

RPPK

Michael Wolf

Common Cause

Ken Thompson

SO5

Eunice A. Wetmore

Intern

Teresa Floerchen

D.O. Budget

KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

May 12, 1987

Opinion No. 87-13

John B. Kemp
8004 El Monte
Prairie Village, Kansas 66208

Dear Mr. Kemp:

This opinion is in response to your letter of April 29, 1987, in which you request an opinion from the Kansas Public Disclosure Commission.

We understand you request this opinion in your capacity as a private businessman and former Secretary of Transportation for the State of Kansas. You advise us that you are considering doing private consulting work, some of which could be with businesses that you signed contracts with on behalf of the State in the last two years.

From communications between yourself and our staff, we understand that you intend to incorporate and then serve as an independent contractor doing various types of consulting work. You ask whether it would be permissible to do consulting with businesses which contracted with the Department of Transportation during your service as Secretary.

K.S.A. 46-233(a) relates to your question. That section states:

"No state officer or employee shall in the capacity as such officer or employee participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one year following termination of employment as a state officer or employee."

Senate Elections
February 25, 1991
Attachment 1

The issue raised in applying this language is the appropriate definition of the word "employment". While it could be argued that a broad definition of that term would include consulting as an independent contractor, it is our opinion since the term is used twice in the same sentence and the second usage clearly applies to a master/servant setting, and further, since this is a criminal statute which must be strictly construed, that "employment" means those settings where a true employee/employer relationship is established.

Thus, we believe so long as you serve as an independent contractor that it would be permissible for you to do business with entities that contracted with the Department of Transportation during your service as Secretary. Additionally, after the one year grace period you could accept employment with such entities.

Sincerely,



Lowell Abeldt, Chairman

By Direction of the Commission

LA:DDP:dlw

STATE OF KANSAS



KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

December 19, 1990

Opinion No. 90-28

Nicholas B. Roach
2618 SW Arrowhead Road
Topeka, Kansas 66614

Dear Mr. Roach:

This opinion is in response to your letter of November 26, 1990, in which you request an opinion from the Kansas Public Disclosure Commission concerning the Conflict of Interest Laws (K.S.A. 46-215 et seq.).

We understand you request this opinion in your capacity as the Director of Purchases for the Department of Administration. If you move from that position, you are considering becoming a self-employed consultant and would offer your services on an annual subscription basis to provide vendors of the State of Kansas the following services:

1. Review of solicitations in process; and having a copy sent to the client.
2. Representation at Bid Openings.
3. Review of awarded bids, in accordance with the Open Records Act.
4. Advise and assist in bid response preparation.
5. Serve as support/consultant in negotiations.

We assume that these vendors would be persons who in the last two years you have participated in contracting with in your capacity as Director of Purchases.

You ask whether the self-employed consultant position you described would violate K.S.A. 46-215 et seq.

Only K.S.A. 46-233(a) might apply to your question. That subsection states:

"No state officer or employee shall in the capacity as such officer or employee participate in the making of a contract with

Senate Elections
February 25, 1991
Attachment 2

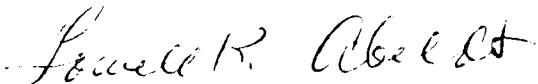
any person or business by which such officer or employee is employed or in whose business such officer or employee has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to or a participant in the making of such contract and is employed by or has a substantial interest in such person or business.

Whenever any individual has, within the preceding two years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one year following termination of employment as a state officer or employee."

The issue is whether being a consultant to a person or business constitutes accepting "employment". Since this is a criminal statute, it must be strictly construed and thus we are constrained to hold that "employment" means an employer - employee relationship. As we understand the factual situation, you will not be in such a relationship. Thus, this subsection does not apply. We understand the Legislature in this session will be reviewing the conflict of interest law, so do not rely on this opinion past this session.

Finding nothing else in K.S.A. 46-215 et seq. that applies, it is our opinion that the situation you describe would not violate that Act.

Sincerely,



Lowell K. Abeldt, Chairman

By Direction of the Commission

LKA:DDP:dlw

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NOV 28 1990

KANSAS PUBLIC
DISCLOSURE
COMMISSION

November 26, 1990

Janet Williams
Kansas Public Disclosure Commission
109 S.W. 9th Street, 5th Floor
Topeka, Kansas 66612

Re: Private Sector Activities

Dear Janet:

In the event I am unable to retain my position as Director of Purchases, one of the possible alternatives I have considered would be to offer my services, on somewhat of an annual "subscription" basis.

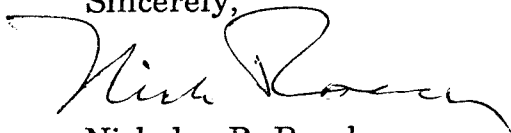
The clientele would be prospective vendors of the State of Kansas, and the services would include the following:

1. Review of solicitations in process; and having a copy sent to the client.
2. Representation at Bid Openings.
3. Review of awarded bids, in accordance with the Open Records Act.
4. Advise and assist in bid response preparation.
5. Serve as support/consultant in negotiations.

I would want to be sure that this activity posed no problem relative to any statutory prohibition on my employment as a self-employed consultant.

Please advise.

Sincerely,



Nicholas B. Roach

STATE OF KANSAS



KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH
TOPEKA, KANSAS 66612
PHONE: (913) 296-4219

February 12, 1991

Opinion No.

Joan S. Lewerenz
1321 Pembroke Lane
Topeka, Kansas 66604

Dear Ms. Lewerenz:

This opinion is in response to your letter of January 22, 1991 in which you request an opinion from the Kansas Public Disclosure Commission concerning a conflict of interest issue.

We note at the outset that our jurisdiction is limited to the application of K.S.A. 46-215 et seq. and K.S.A. 75-4301 et seq. Thus, whether some other statutory system, common law or agency policy relates to your question is not covered by this opinion.

We understand you request this opinion in your capacity as a Policy Consultant and Staff Assistant for Management Services of the Kansas Department of SRS. Prior to this position you worked for the State as a Social Services Administrator for SRS and in that position were involved in contracting with ASK Associates. While the initial contract was let for competitive bid, amendments were not. You no longer have any involvement in or oversight of the ASK contract.

You advise us that ASK has asked you to provide consulting services to it as an independent contractor and not as an employee. Your question is whether that arrangement would be permissible.

K.S.A. 46-233 is the only section of the laws under our jurisdiction which applies to this factual situation. We note, since the

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Attachment 3

amendments to the initial contract were not competitively bid, that the prohibition in subsection (a) does apply. Thus it would be impermissible for you, at this time, to enter into an employer-employee relationship with ASK. You could, however serve, as a consultant on an independent contractual basis.

Sincerely,

Ruth Schrum, Chairman

By Direction of the Commission

RS:DDP:dlw

RECEIVED

1321 Pembroke Lane
Topeka, Kansas 66604
January 22, 1991
JAN 24 1991
KANSAS PUBLIC DISCLOSURE
COMMISSION

Lowell Abeltd, Chairman
Kansas Public Disclosure Commission
109 SW 9th, Room 504
Topeka, Kansas 66612-1287

Dear Mr. Abeltd:

I am writing to request an opinion concerning the propriety of my entering into a consultant contract with A/S/K Associates (hereinafter referred to as ASK). Below, I will attempt to list the facts that have bearing upon this matter:

1. I am employed by the Kansas Department of Social and Rehabilitation Services (hereinafter referred to as SRS) as a Policy Consultant and a Staff Assistant, Management Services.

2. Prior to accepting this position, I worked as a Social Service Administrator for Kansas Rehabilitation Services Division of SRS.

3. My responsibilities in that position included the administration and management of certain contracts. ASK competitively bid for and was awarded a contract which I was responsible for supervising. The contract was awarded to ASK on September 1, 1987 in the amount of \$665,625.

4. There were amendments made to this contract which resulted in additional compensation being added to the total contract. The dates of amendment and the amounts of additional compensation are as follows:

June 15, 1988	\$ 39,965
October 27, 1988	28,035
May 19, 1989	11,000
September 30, 1990	115,000

5. I began my current position effective October 1, 1990 and have had no further involvement or oversight of the ASK contract.

6. ASK has discussed with me their desire to enter into a contract for me to work with them as a part-time consultant.

Is it permissible to enter into a contractual arrangement with ASK or would this be a violation of KSA 46-233 or KSA 75-4304? I appreciate your consideration of this request. Please let me know if you desire further information.

Sincerely,


Joan S. Lewerenz