

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 26, 1991 in room 529-S of the Capitol.

All members were present ~~except~~ 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:

Michael Woolf, Common Cause
Carol Williams, Public Disclosure Commission
Ron Thornburgh
Ron Hein, Hein and Ebert, Chtd.
Craig Grant, KNEA

Others attending: See attached list.

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

Michael Woolf, Common Cause, appeared before the Committee presenting testimony concerning the final report of the Select Commission on Ethical Condu~~t~~. (Attachment 1) Mr. Woolf detailed his organization's position concerning the report's recommendations, emphasizing certain areas in the sections on conflict of interest, campaign finance, lobbying regulations and administration as detailed in his written testimony.

Carol Williams, appeared before the Committee to convey the conceptual endorsement by the members of the Public Disclosure Commission concerning the recommendations of the Select Commission on Ethical Conduct. Ms. Williams addressed four sections of the report which were also recommendations made by her organization in their 1990 Annual Report and Recommendations. (1) Prohibition of any candidate from filing for office if he has an outstanding civil penalty or any unfiled campaign finance reports. (2) The issue of investigative subpoena power for the Kansas Public Disclosure Commission. (3) Establishing a fee fund for the Kansas Public Disclosure Commission. (4) Preventing a candidate from using campaign funds for personal use. (Attachment 2)

Ron Thornburgh appeared before the Committee, not as a representative of the Secretary of State's Office, but as a member of the Select Committee. Mr. Thornburgh commented on the issue of public perception stating that if the public perceives a problem, it automatically becomes a problem. He further noted that government should operate in the open with full disclosure but that imposed regulations must be administratively feasible. There is a need to create a level playing field for all possible candidates. As Kansas has a part-time legislative status it is necessary to permit enough latitude to allow candidates to retain the ability to earn a living.

Ron Hein appeared before the committee presenting testimony. (Attachment 3) Mr. Hein noted he appeared both on his own behalf as well as that of his law firm. He urged close scrutiny in the area of defining gifts and asked that an arbitrary distinction not be drawn between entertainment that is consumed and entertainment in the form of healthy exercise. He recommended that entertainment, such as golf or tennis, not be considered a "gift" but should be subject to reporting in the same manner as food and beverage.

Mr. Hein expressed opposition to a requirement that lobbyists report their salaries, overhead, and any other related information noting the difficulty of determining his salary as a lobbyist. He noted he had no way of

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 ~~xxx~~ p.m. on February 26, 1991
identifying how much of his salary results from any individual client.

Mr. Hein expressed the opinion that PAC contributions should be prohibited, not just those made directly to candidates.

Craig Grant, KNEA, appeared before the committee speaking to several interests of concern. (1) Conflict of interest area-Mr. Grant noted his organization had no difficulty with the intrinsic value of gifts being set at \$20.,00 as was done in the House. (2) Administrative Area-Mr. Grant noted support for full subpoena powers. Fee schedules were also supported but it was noted differences in fees need to be distinguished.

Mr. Grant expressed concern about the reporting of salaries, especially those who contract lobbying services.

It was noted that campaign finance is a real concern. The main complaint comes in the area of prohibiting campaign contributions by PACs and other listed entities. Concern was expressed that this could restrict candidates to only those who were weathy or who know wealthy people. Mr. Grant expressed the opinion that the PACs represented people who made small contributions which, when combined, as in a large organization, enabled them to participate. Therefore, he urged the committee's rejection of the recommendation limiting PACs.

A member asked Mr. Woolf how he would propose to report costs of a reception when often there are more members of the organization present than legislators. Mr. Woolf noted that the Commission Report stated that if the hospitality was extended to all legislators there were no reporting problems. The member expressed the opinion they would like to see the expenses relating to legislators presented separately from what was expended on other guests.

A member questioned Mr. Woolf as to why his organization felt donations from a number of individuals was any different than one large donation from one individual. Mr. Woolf stated that it was his feeling that contributing to a PAC did not indicate personal interest nor participation in the political process whereas an individual has a wide range of interest.

A member questioned whether Mr. Woolf did not think a lot of problems could be solved by increasing legislative pay and going to a full time legislature. Mr. Woolf noted it might solve a lot of problems but it would create many more and his organization has never supported a full time legislature.

A member noted that very few conferees testified before the Commission and most were lobbyists. Mr. Woolf noted many were intimidated by appearing before a commission or committee.

Senators Rock and Sallee tentatively requested a bill which would present the Senate side of the issues related to the Ethics Commission report.

Senator Rock moved that a Senate Bill be introduced as a committee bill. Senator Lee seconded the motion and the motion carried.

The meeting adjourned at 2:20 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE February 26, 1991

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Michael Wolf, Topeka

Common Cause

Teresa Flaerchinger Topeka

Budget

Craig Grant Topeka

K-NEA

Ron Hein Topeka

Hein & Ebert, Chld

Jana Atchison Topeka

KPBC

Carol Williams Topeka

KPDC



COMMON CAUSE / KANSAS

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TESTIMONY TO THE SENATE ELECTIONS COMMITTEE
FINAL REPORT OF THE SELECT COMMISSION ON ETHICAL CONDUCT
BY MICHAEL WOOLF, EXECUTIVE DIRECTOR

CONFLICT OF INTEREST

Common Cause supports all of the Select Commission's recommendations in the conflict of interest section, but I would like to emphasize a few of them.

The first two recommendations would increase the information public officials disclose on the Statement of Substantial Interest (SSI). The first would allow the public to know the approximate percentage of ownership the filer has, over 5%, in a business. The second would require the filer of a SSI to indicate which business interests provide more than 10% of that person's income.

For financial disclosure to be meaningful, the magnitude of an individual's holdings should be revealed to determine the real potential for conflict. Recommendations (1) and (2) accomplish that goal.

Recommendations (4) and (5) concern gifts and honoraria given to public officials. Common Cause believes that both of these practices should be prohibited.

Many people have expressed concern over the personal use of campaign funds. The giving of gifts, honoraria, and other gratuities is virtually the same thing--it allows a special interest group to put money (or something else of value) directly into the pocket of public officials, and currently the amount is unlimited.

Honoraria may not be a current problem in Kansas, but as we close loopholes in the Campaign Finance Act and restrict the amount of money special interest groups give, we will see honoraria increase. Common Cause hopes that the legislature will close this loophole before it becomes a problem.

And finally, in the area of conflict of interest, recommendation (7) proposes a ban on legislators from appearing before state agencies as paid representatives of businesses, groups, or individuals.

Legislators authorize budgets and control legislation concerning the activity of all state agencies. As a result, it is an inherent conflict for them to appear on behalf of or represent someone before a state agency for compensation. It should therefore be prohibited.

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CAMPAIGN FINANCE

The Select Commission made a number of recommendations in the area of Campaign Finance that Common Cause strongly supports, such as a ban on personal use of campaign funds and the transferring of funds between candidates. Recommendation (2), however, is the most sweeping and deserving of further discussion because of its impact on the entire election process.

Recommendation (2) proposes to ban corporations, unions, and PACs from contributing directly to candidates for state office.

Common Cause fully supports the prohibition on direct corporate and direct union contributions. These contributions are involuntarily contributed by consumers and union members. People have no choice but to make these contributions; they are included in the price of the products you buy and the union dues you may pay.

These contributions can be constitutionally prohibited in Kansas as they have been banned for federal candidates as well as for candidates in other states.

The prohibition on PACs, however, may not be constitutional under Buckley v. Valeo (1976), but that is hard to determine since no other state has ever passed a total PAC ban. Last year the U.S. Senate passed a comprehensive campaign finance reform bill which included a PAC ban, but because of the belief that such a ban would be unconstitutional (a belief that Common Cause shared), a fall back position was included in the bill that said if it was ruled unconstitutional, a candidate could only accept 20% of his or her money from PACs.

If recommendation (2) is enacted in its entirety, and it is constitutional, it would cause a drastic change in the way funds are raised for campaigns. During the 1988 campaigns, PACs, corporations, unions, and other organizations contributed 55% of all the money that was available for the House races and 46% for Senate races.

This proposal would benefit candidates who have a great deal of money to put into their own campaign. It would also cause candidates to spend a great deal more time raising money.

The main argument in support of this proposal is that it would decrease the reliance on special interest money. But I do not believe that this will occur, especially to the degree argued by proponents.

Since these contributions comprise half of all the money that is available, I don't believe that candidates can run competitive campaigns without it. Instead of simply abandoning this source of funding, candidates will ask leaders of special interest groups to get

their members to contribute individually, or the leader of the special interest group will send past PAC contributors a list of influential candidates that they should contribute to instead of to the PAC. Another strong possibility is that wealthy special interest groups will make "independent expenditures" to benefit or negatively affect candidates. These "independent expenditures" cannot be limited under our current law. I also believe that political parties would be used as funnels for PACs and the only thing really eliminated would be full public disclosure. Either way, special interest groups will still control large sums of campaign money that they will use to try to help their friends and influence public officials.

For these reasons and several others, Common Cause/Kansas is supporting HB 2169, which would set 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.

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 the limits, a qualifying candidate, with a viable opponent, would receive partial public funding for their campaign. This money would be derived from an income tax check-off on Kansas income tax forms similar to that on federal forms for the presidential campaigns.

A system such as this would not only reduce the reliance on special interest groups for campaign money, but it would also allow us to control the escalating cost of campaigns. This system would also level the playing field between incumbents and challengers and between wealthy candidates and candidates of more moderate means; it would reduce the amount of time that is spent raising money, and encourage the participation of small, individual, in-district contributions. It would provide clean, untainted campaign funds, reduce the influence of out-of-state organizations and open up the system to more individuals who wish to serve.

Recommendation (2) does not have the ability to correct all of these problems. I believe that it is a "quick fix" which will not accomplish what it claims, even if it is constitutional.

LOBBYING REGULATIONS

Common Cause/Kansas is most interested in recommendations number (1) and (4) under the lobbying category.

Recommendation (1) would require that all rules and regulations that pertain to lobbying the legislature would also pertain to lobbying the executive branch of government as well as state agencies. Listed below are two examples of why this change from current law is necessary:

1) Interest group ABC lobbies the legislature on a particular bill. They fully report their expenditures for hospitality, mass media, etc. But when the bill goes to the Governor, ABC would not be required to report money spent wining and dining the Governor or the Governor's staff, nor would ABC be required to report a newspaper ad urging the Governor to sign the particular bill.

2) Company XYZ wants to sell their particular brand of widgets to a state agency. Under current law, XYZ would not be required to report money that was spent to lobby agency employees to purchase XYZ's product.

Recommendation (4) would require a lobbyist's principle (employer) to file expenditure reports rather than the lobbyist. It would also require all lobbying expenditures to be reported, and require lobbyists to list the recipients of their hospitality except when the hospitality is extended to all legislators.

On the first issue--Who should report?--we feel that lobbyists should continue to be responsible for filing reports. Many of the groups that lobby the Kansas legislature are from outside the state, and it would be difficult to penalize them for not complying with the requirements. Another problem with requiring the principle to file is: Who is the principle? One person must ultimately be responsible. Would that be the Director, Chairman, CEO, President, Manager, etc?

On the second issue--What should be reported?--Common Cause has long believed that the public has a right to know the total amount of money that is spent by organized lobbying groups to influence governmental decisions that affect us all. That would include expenditures to retain lobbyists and support personnel as well as money spent for office rent, equipment, supplies, travel, direct mail expenditures, and other expenditures to directly or indirectly influence legislation.

Because of our belief in total public disclosure, Common Cause reports its entire budget in the lobbying expenditure report. Like many organizations, the sole reason for our existence is to have an

impact on governmental decisions. Expenditures for office support, salaries, membership and fundraising would not occur if it were not for our activity on legislative and executive branch issues. The public is able to look at our lobbying report and tell that Common Cause/Kansas spent \$36,069.56 in 1990 to influence legislation. The public is unable to determine how much other special interest groups spend to shape Kansas law.

Common Cause realizes that many interest groups have activities outside of legislation. For interest groups that hire a lobbyist or lobbying firm on contract, the amount of the contract plus any reimbursed expenses relating to lobbying should be reported. For lobbyists who have responsibilities other than lobbying, they would need to prorate their time, office expenses, etc., to indicate the approximate percentage that was spent on lobbying.

On the third issue in recommendation (4)--Should the recipients of hospitality be listed?--Common Cause ultimately believes that special interest groups should not be allowed to buy access to public officials by wining and dining them. But if this practice of providing hospitality is to continue, we believe the public has a right to know which public officials these special interest groups are spending their money on.

ADIMISTRATION

Common Cause strongly supports recommendation (1), which would provide full investigative subpoena power to the Kansas Public Disclosure Commission. The House of Representatives did pass a subpoena provision which we strongly supported last year, but it was removed by the Senate and the conference committee did not make any substantial change.

As the law currently stands, the PDC must show probable cause that a violation exists before they can subpoena the information they need to show probable cause. It is a catch-22 situation that should be eliminated.

There was a great deal of concern raised over granting full subpoena power to the Commission last year. The first concern I heard was that this would give the Commission the ability to look at a candidate's campaign bank records, which could hurt his or her campaign because of possible rumors or "whisper campaigns".

The Commission, however, already has the ability to look at campaign bank records without a subpoena. They have had this ability for a number of years and I am not aware of any abuses of this power or any damage caused to a campaign because of it. Granting the PDC full subpoena power will have no impact on this concern.

The next concern was that the Commission could give the information gained by the subpoena to the press and public, once again hurting a candidate's campaign.

This concern is also not valid because all information gathered by the Commission during an investigation is confidential until after a complaint has been filed, probable cause has been determined, a hearing is scheduled, and a decision is made by the Commission that the information is necessary to prove the case.

The third concern that was mentioned deals with the subpoena power of other state agencies and what they are required to show before the subpoena can be issued.

Last year I picked out 10 state regulatory agencies that have subpoena power whose responsibilities vary widely. They include: the Securities Commissioner, Lottery Commission, Racing Commission, Corporation Commission, Board of Tax Appeals, Polygramists, Optometrists, Dental Board, Barber Board, and Mortuary Board.

In examining the statutes concerning subpoena power for these agencies, I found that they were not required to show "probable cause" before a subpoena could be issued.

A strong enforcement agency is a necessity if ethics laws are going to be more than just "window dressing", and full subpoena power is essential to a strong enforcement agency.

Common Cause/Kansas has a number of concerns that I have not mentioned here. But these proposals, along with others recommended by the Select Commission, would represent major reform if enacted into law and would have a very positive impact on the public image of Kansas government.



KANSAS PUBLIC DISCLOSURE COMMISSION

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**Testimony before Senate Elections on the First Report of the
Kansas Select Commission on Ethical Conduct**

By Carol Williams, Kansas Public Disclosure Commission

Mr. Chairman and members of the committee. The members of the Kansas Public Disclosure Commission ask that I convey to you their conceptual endorsement of the recommendations of the Select Commission on Ethical Conduct.

I would like to specifically address four of these sections since these were also recommendations made by the Kansas Public Disclosure Commission in its 1990 Annual Report and Recommendations. Section 6 on page 7 of this report would prohibit any candidate from filing for office if he has an outstanding civil penalty or any unfiled campaign finance reports. The Commission, in 1990 and in prior years, has been faced with occasions where an individual files for office who has not filed reports due in prior election years or owes the State money for prior assessed civil penalties. Once an individual files any past due reports or pays the state any past due fines, the Commission feels the individual should be allowed to seek office.

Section 1 on page 9 deals with the issue of investigative subpoena power for the Kansas Public Disclosure Commission. The Commission recommends that it be empowered to issue subpoenas once an investigation is authorized in the area of Campaign Finance, Conflict of Interest or Lobbying.

The Commission urges support of Section 3 on page 9 which would set up a fee fund for the Kansas Public Disclosure Commission. The Commission would like to publish informational material in the areas of campaign finance and lobbying. Budgetary constraints prevent the agency from

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Attachment 2

printing sufficient copies to satisfy the needs of the public. If the agency could sell these publications, the agency could print sufficient copies of its publications.

Finally, the Commission supports adoption of Section 3 on page 1. This section would prevent a candidate from using campaign funds for personal use. The Commission believes campaign funds should be used only for campaign purposes or for expenses of holding political office and not inure to the benefit of the candidate.

ACTUAL REPORTED CAMPAIGN EXPENDITURES
BY KANSAS CANDIDATES

175 meals for birthday party (\$735)
Christmas cards & presents (\$350)
Thanksgiving cards & mailing (\$1,650)
KU basketball season tickets (\$458)
consulting fee for hazardous waste (\$300)
yard service (\$1,527)
press Christmas party & misc. parties (\$498)
purchased peacock at fair (\$100)
photo session for Christmas cards (\$1,982)
paid fee to take bar exam (\$502)
liquor for Christmas party (\$844)
purchased livestock from 4-H for advertising (\$180)
staff & press Christmas parties (\$550)
sponsored basketball team (\$300)
liquor for holiday open house (\$545)
oil change, lube, & repairs to car (\$708)
framing items from national party convention (\$228)
paid hospital bills (\$2,709)
Christmas postage (\$1,000)
reimbursed candidate for mileage expense (\$4,000)
gifts for China trip (\$79)
35mm camera (\$230)
postage for Thanksgiving cards (\$1,255)
gave out-of-state PAC money to charity (\$100)
prints of Maureen Reagan reception (\$260)
hearing aid repair (\$75)
food & flowers for Secretaries Day (\$39)
paid wife as campaign worker (\$300)
Kansas books & cloth sunflower for trip to foreign country (\$120)
repair campaign car & buy tires (\$1,288)
gifts for foreign government (\$23)
purchased 4-H animal (\$851)
make-up, professional fees (\$650)
process 2 hogs (\$116)
flowers for receptions, open house, inaugural & Kansas Day (\$768)
purchased 4-H animal (\$375)
pictures at Christmas party, inaugural & KS Day & reprints (\$430)
turned remaining funds over to candidate (\$359)
The Toy Store (items for fundraiser) (\$848)
fair premiums over three year period (\$2,516)
liquor store over 3 year period (\$5,770)
purchased 1 sheep (\$178)
1 staff member's travel over 3 year period (\$13,156)
paid country club dues and fees (\$4,886)
golf & tournament prizes & fundraiser at country club over 3 year period (\$14,649)
food, lodging and entertainment over two year period (\$8,445)

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SENATE ELECTIONS COMMITTEE
PRESENTED BY RONALD R. HEIN
RE: ETHICS REFORM
February 26, 1991

Mr. Chairman, members of the committee:

My name is Ron Hein, and I am employed by Hein and Ebert, Chtd. I am appearing today on behalf of myself personally and on behalf of my law firm.

I would recommend that the Legislature look at the section defining gifts more closely, and not draw an arbitrary distinction between entertainment which is consumed in the stomach, and entertainment in the form of healthy exercise, and either draw appropriate limits on both, or at least amend the statute to make more clear the dividing line between legal and illegal conduct. I strongly recommend that entertainment, such as golf or tennis, not be a "gift" but be subject to reporting in the same manner as food and beverage.

I strongly oppose a requirement that lobbyists report their salaries, overhead, and any other related information. I have no way of determining my salary as a result of lobbying, as I am in a professional corporation involving three lawyers, and we take draws based upon the firm's cash flow, profits, and other factors. There is no direct correlation between my salary and my lobbying activity, and especially with regards to any individual client. The same would be true about our overhead.

I would have no way of identifying how much of my salary results from any individual client. Also, being an attorney, I am concerned about the same issue of confidentiality with which legislators who are attorneys are concerned. I would note for the record that the Legislature has never imposed a similar requirement on themselves. I believe that the public would have more interest in knowing that information about the legislators than they would about lobbyists.

As to campaign finance, I think that if you prohibit PAC contributions, you should prohibit all PAC contributions, not just those directly to candidates. When I was in law school, we learned the rule that the law does not permit you to do indirectly that which you can not do directly. To permit PAC contributions to party committees or other non-candidate PACs, which then can be contributed to candidates just waters down the issue.

I also endorse the position statement adopted by the KSAE Board of Directors.

Thank you very much for permitting me to testify today, and I would be happy to yield for any questions.

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Attachment 3