

Approved 2-11-92
Date

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Sherman Jones at
Chairperson

9:10 a.m./p.m. on January 30, 1992 in room 521-S of the Capitol.

All members were present except:

Committee staff present: Arden Ensley, Revisor
Pat Mah, Research
Shirley Lee, Committee Secretary

Others attending: see attached list

Conferees appearing before the committee:

Ron Thornburgh, Assistant Secretary of State
Carol Williams, Executive Director, Kansas Commission on Governmental Standards
and Conduct
Murrel Bland, Editor and Publisher of the Wyandotte West
Barbara Lawrence, Vice Chair Sedgwick Delegation
Tom Sawyer, Majority Leader

Chairman Jones opened the hearing for **SB 486**.

Ron Thornburgh, Assistant Secretary of State, appeared before the Committee in support of **SB 486**. He stated the legislation is greatly needed to save approximately \$100,000 for the Wichita District. He further stated the bill would allow 120 days of the date of the certification of the recall petition, thus allowing continued savings for units of government forced to conduct a recall election (Attachment 1).

Chairman Jones opened the floor for questions. Committee members addressed questions to Ron Thornburgh and he responded.

Chairman Jones informed the Committee that Marilyn Chapman, Commissioner of Elections, provided written testimony in support of the bill (Attachment 2).

Chairman Jones called for other proponents.

Barbara Lawrence, Vice Chair Sedgwick Delegation, appeared before the Committee in support of **SB 486**.

Tom Sawyer, Majority Leader, appeared before the Committee in support of **SB 486**.

With no further discussion, Chairman Jones closed the hearing for **SB 486**.

Representative Bishop moved that the Committee pass favorably on SB 486, Representative Baker seconded the motion, and the motion carried.

Chairman Jones opened the hearing for **HB 2382**.

Carol Williams, Executive Director, Kansas Commission on Governmental Standards and Conduct, appeared before the Committee to explain **HB 2382**. She stated the bill had originated by the formerly known Kansas Public Disclosure Commission in its annual report and recommendation. She stated the bill would require every newspaper which accepts political advertising from a candidate for state or local office to permit all other candidates for the same office to also purchase advertising space (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,
room 521-S, Statehouse, at 9:10 a.m./p.m. on January 30, 1992

Chairman Jones opened the floor for discussion. Following discussion from Committee members, Chairman Jones called for opponents to **HB 2382**.

Murrel Bland, Editor and Publisher of the Wyandotte West, appeared before the Committee in opposition to **HB 2382**. He stated the bill clearly violated the First Amendment right of newspapers to refuse any advertising for any reason (Attachment 4).

Chairman Jones opened the floor for questions. Following the discussion from Committee members, Chairman Jones closed the hearing on **HB 2382**.

Chairman Jones brought before the Committee the approval of the minutes for January 21 and 23, 1992. Representative Bishop moved that the minutes be approved, Representative Love seconded the motion, and the motion carried.

With no further business, Chairman Jones adjourned the meeting at 10:09 a.m.



Ron Thornburgh
Assistant Secretary of State

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

STATE OF KANSAS

TESTIMONY OF RON THORNBURGH HOUSE ELECTIONS COMMITTEE

JANUARY 30, 1992

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

I appear today in support of Senate Bill 486.

This legislation is greatly needed to save approximately \$100,000 for the Wichita School District. However, it has been drafted in such a way as to not be restricted to only the current situation in Wichita. The bill will allow any recall election to be conducted with any special election within 120 days of the date of the certification of the recall petition, thus allowing continued savings for units of government forced to conduct a recall election.

In addition to asking for your approval of SB 486 I am also going one step further and asking for you to move the legislation very quickly. If SB 486 is not passed, the latest date at which the Wichita School District recall election can be conducted is March 10, 1992. Should the Sedgwick County election commissioner have to conduct the election on that day, she must begin preparation early next week.

Thank you Mr. Chairman. I again ask for your favorable and quick consideration of SB 486.

House Elections
1-30-92
Attachment 1



SEDGWICK COUNTY, KANSAS

COMMISSIONER OF ELECTIONS

Marilyn Chapman

COUNTY COURTHOUSE • 510 NORTH MAIN • WICHITA, KANSAS 67203-3798 • TELEPHONE (316) 268-7101

TO: Sherman Jones, Chairman
House Elections Committee

FROM: Marilyn K. Chapman, Commissioner of Elections

DATE: January 30, 1992

SUBJECT: SB 486

Thank you for allowing me to appear before you in support of this bill.

Allowing flexibility in setting election dates is very important. This bill allows flexibility. The statutes are very restrictive in stating that recall elections must be held within a certain length of time. But if voters are going to the polls only a few days later for another election, this bill would allow the two to be combined. It gives the county election officer the option of deciding whether a special election should be held, or whether it would be prudent to combine two elections on the same date.

Taxpayers have just awakened to the fact that elections cost money. This bill provides an effective method of reducing election costs, if combining two elections does not jeopardize the integrity of either election. It only makes sense to be able to schedule elections on a single date if other considerations might make them fall thirty days or less apart.

In a time when costs continue to rise, and more demand is being put on each tax dollar, it is imperative that we look at every means available to us to spend our money prudently. Senate Bill 486 gives us one of those means.

I urge you to pass this bill favorably and expediently.

H. Elections
1-30-92
Attachment 2

**KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT****Testimony before House Elections on House Bill 2382****By Carol Williams, KS Commission on Governmental Standards & Conduct**

House Bill 2382 which is before you this morning would amend K.S.A. 25-4156, which is a provision of the Campaign Finance Act. This bill was recommended by the Kansas Public Disclosure Commission in its 1990 Annual Report and Recommendations. HB 2382 would require every newspaper which accepts political advertising from a candidate for state or local office to permit all other candidates for the same office to also purchase advertising space. The newspaper would have the right to determine whether the copy was responsible, and could refuse to accept the advertisement if it wasn't.

Currently, a newspaper may accept advertising from one candidate and not his or her opponent. It came to the attention of the Commission during the 1990 election that a candidate for state office was denied the opportunity to place paid advertising in a newspaper. The former Commission felt all candidates should have equal access to advertising in the print media. The current Commission on Governmental Standards and Conduct has not reviewed this bill; therefore, I cannot comment on their position.

L. Elections
1-30-92
Attachment 3

TESTIMONY
before the House Elections Committee
Jan. 30, 1992
on
HB 2382

Good morning. I am Murrel Bland, editor and publisher of the Wyandotte West, a weekly newspaper in suburban Kansas City. Today I am appearing before the committee not only as an individual publisher but as a representative of the Kansas Press Association, an association of the 250 daily and weekly newspapers in Kansas.

HB 2382 is a clear violation of the First Amendment right of newspapers to refuse any advertising for any reason. Even after hearing testimony to that effect last year, the House Election Committee has again scheduled hearings this session. I have attached a copy of a letter from our legal counsel explaining the clear constitutional violation this bill suggests.

The discussion of the bill ought to end right there, but there are some other reasons this bill is faulty.

The bill would expose newspapers to significant liability. If a newspaper questions the content of an ad to protect itself against libel, the newspaper can be sued for violation of the proposed legislation. If they feel they must run the ad, then the newspaper is at risk for libel.

The bill could actually hurt candidates. Most newspapers have policies preventing "new" issues from being introduced in the last days before the election. This allows time for accusations to be refuted. Under the proposed legislation, a newspaper would be required to run ads by opposing candidates, perhaps the day of an election, which would raise spurious issues which could not be refuted.

Apparently this legislation arose from an issue in Lawrence. I have attached a letter from Ralph Gage, General Manager of the Lawrence Journal-World, which explains what occurred and how HB 2382 could have a negative impact on responsible newspapers.

Again, on behalf of the members of the Kansas Press Association, I would ask the committee just let this bill die. I am available to answer any questions. Thank you.

H. Elections
1-30-92
Attachment 4

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LES E. DIEHL
DAVID E. BRUNS

January 28, 1992

Mr. David Furnas
Kansas Press Association
5423 S.W. 7th Street
Topeka, KS 66606

In re: House Bill 2382

Dear Dave:

As you know, we presented oral opposition to this bill last year. From a legal perspective, this legislation is wholly unsupportable, and would surely be struck as unconstitutional if it should be enacted, even under the guise of governmental ethics.

The issue is presented by proponents as only equivalent to the field already regulated in the broadcast industry. Congress imposed the equal access rule decades ago, on the strength of the theory that the radio spectrum was a limited resource to which it could govern access under the Commerce Clause. Only this theory, now being eroded through advances in technology, enabled the government to compel public use of private property protected by the First Amendment. The analogy does not hold when it comes to newspapers and the print media.

If it does nothing else, the First Amendment protects the editorial privilege: anyone may publish whatever they wish and may express their own points of view, free from government dictates. When presented with a similar statute, the United States Supreme Court, in Miami Herald v. Tornillo (1974), said the First Amendment forbade forcing anyone to publish anything based upon its content:

"A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to the limitations on the size and content of the paper, and the treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment."

Mr. David Furnas
Page 2
January 28, 1992

HB 2382 is plainly a law governing publication based upon content and will most certainly violate the law if enacted.

Very truly yours,



Michael W. Merriam

MWM:ah



THE LAWRENCE DAILY

JOURNAL-WORLD

DOLPH C. SIMONS, JR.

EDITOR and PUBLISHER

913-843-1000

Jan. 29, 1992

Mr. David Furnas, Executive Director
Kansas Press Association
5423 S.W. Seventh St.
Topeka, Kan. 66606

Dear David:

I'm writing to let you know of our concerns about a bill that will be considered Thursday by the House Elections Committee. This is HB 2382, incorporating an amendment to existing election law that is being touted as some kind of "equal access" political advertising proposal. I understand that you'll be testifying and I hope that you will convey our thoughts to the committee.

It may well be that this bill grew from a situation involving the Journal-World during the last election. At one point in the campaign, we held up publication of a Paul Feliciano ad, requesting documentation of charges made in it against Ron Todd. (When the substantiation of the claims was provided, the ad ran.)

We have several concerns about this bill, not the least of which is that it is unconstitutional, in violation of the First Amendment. Newspapers do not have to accept any advertising for publication and are not regulated like radio and television because we do not use assigned frequencies of public airwaves.

Newspapers are responsible for what they publish. The J-W, during my experience here, has been sued over a letter to the editor, and as you know there is a major body of libel law relating to suits over matter published in advertisements. We have a responsibility to ourselves, as well as to our public, to question and screen advertising. The amendment seems to recognize this but still appears to make publishers liable for prosecution if they exercise that responsibility. And, any state statute mandating that we publish advertisements exposes us to the risk of libel. Does the state actually want to get involved in forcing the publication of libelous material, or forcing publishers to choose between risking a libel suit or prosecution under state statute?

As Lawrence-area legislators such as Rep. Sandra Praeger, who sits on the elections committee, know from their experience, the Journal-World has a period at the end of each campaign when no new issues can be raised by

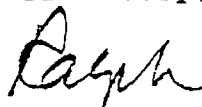
candidates in their ads. (We have a cutoff on letters to the editor, too.) This prevents anyone from using us to trumpet unfounded charges when no time exists for rebuttal. The bill in question would open the door to even dirtier campaigns than we already have experienced by forcing newspapers to run any ad at any time-- even on election day. How do you think elected officials would feel if, during a campaign, their opponents were allowed to manipulate the voters through such tactics? That's exactly what this amendment would permit.

We believe this bill handicaps responsible publishers. It is seen in many quarters as a vindictive piece of legislation, put forth by individuals with a personal ax to grind against the media.

It may be particularly ironic if this legislation is in response to the Journal-World's actions during the Todd-Feliciano campaign. In my estimation, we did exactly what the amendment purportedly would have every publisher do: exercise responsibility by assuring the veracity of political advertising. And because we acted responsibly, an unnecessary and unconstitutional piece of legislation is being directed at all newspapers.

Thank you for representing our concerns before the committee.

Sincerely,



Ralph Gage
General Manager

The Winfield Daily

Courier

FREDERICK D. SEATON, Publisher

Established 1872

201 E. 9th, P.O. Box 543, Winfield, KS 67156 - (316) 221-1050

201-5501

January 29, 1992

Mr. Murrel Bland, Publisher
Wyandotte West
7735 Washington
Kansas City, Kan. 66112

Dear Murrel,

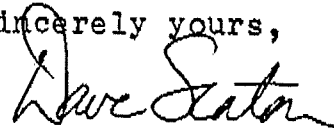
Thank you for testifying before the House
Elections Committee on HB 2382.

I join you in opposition to this measure,
which in my opinion is an unconstitutional curb on
a free press.

I would appreciate it if you would pass on
to the committee my opposition to the action of the
Commission on Standards and Conduct last year in
referring to the Legislature the matter that gave
rise to this proposal. I was not serving on the
Commission at that time.

Please give my regards to the chairman
and members of the committee.

Sincerely yours,



Frederick D. Seaton, Pres.
Kansas Press Assn.

cc Carol Williams
David Furnas