

Approved 3-5-92  
Date

MINUTES OF THE House COMMITTEE ON Elections

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

9:11 a.m./p.m. on February 26, 1992 in room 521-S of the Capitol.

All members were present except: Representative McKechnie (excused)  
Representative Cates (excused)

Committee staff present:

Arden Ensley, Revisor  
Pat Mah, Research  
Shirley Lee, Committee Secretary

Conferees appearing before the committee:

Carol Williams, Kansas Commission on Governmental Standards & Conduct  
Sandy Praeger  
Ted Ayres, General Counsel, Kansas Board of Regents  
Sherman Jones  
Michael Woolf, Kansas Common Cause

Others attending: see attached list.

Chairman Jones opened the hearing for **HB 2917** - Governmental ethics; acceptance of honoraria.

Carol Williams, Commission on Governmental Standards and Conduct, appeared before the Committee to explain the bill. In her testimony she indicated the bill amends the honoraria section of K.S.A. 46-237. The new language in K.S.A. 46-237(f) states, "no state officer or employee shall accept any payment of honoraria." The Commission opined that the honoraria prohibition applies only to honoraria paid to a state officer or employee for giving a speech when the primary reason the state officer or employee was invited to give the speech was because of his or her position in state government. Ms. Williams stressed legislators to get an approval prior to accepting honorariums (see attachment 1).

Chairman Jones opened the floor for questions.

The Committee members addressed questions to Ms. Williams relating to the maximum amount of honorariums, the definition of honorarium, and the reporting requirements.

Representative Sandy Praeger appeared before the Committee in favor of **HB 2917**. She stated **HB 2917** incorporates the language of the Commission's (Governmental Standards and Conduct) opinion to make it clear that university faculty at Regent's institutions are exempt from the honoraria ban (see attachment 2).

Chairman Jones opened the floor for questions.

There was one question relating to the need of putting the bill in the statutes.

Ted Ayres, General Counsel, Kansas Board of Regents, appeared before the Committee in support of **HB 2917**. He stated that it is believed that **HB 2917** makes clear that the Legislature did not intend to limit their activities in enacting the amendment to K.S.A. 46-237 (see attachment 3).

Chairman Jones opened the floor for questions.

Committee members addressed questions to Ted Ayres as it related to the rules and regulations of the Board of Regents and conflict of interests.

With no further discussion the hearing for **HB 2917** was closed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections

room 521-S, Statehouse, at 9:11 a.m./p.m. on February 26, 1992.

Chairman Jones relinquished his chair to Vice Chair Macy. Vice Chair Macy opened the hearing for **HB 2868** - Advertising products as gifts under governmental ethics laws.

Chairman Jones appeared before the Committee in support of **HB 2868**. In his testimony he indicated last year in an ethics package there was a \$40 maximum limit placed on gifts from special interests groups. He stated if legislators accepted gifts with logos he considered that as an endorsement of that product or advertisement of the product. Chairman Jones concluded that the bill basically involves making a choice to accept gifts if they advertise a product.

Vice Chair Macy opened the floor for questions.

Committee members addressed questions to Chairman Jones as it related to gifts exceeding \$40, gifts influencing official duties, and the authority determining the value of the gift.

With no further questions Vice Chair Macy opened the floor for other proponents. There were none and the floor was opened for opponents.

Michael Woolf, Kansas Common Cause, appeared before the Committee in opposition to **HB 2868**. He stated **HB 2868** would exempt gifts displaying a company name or insignia from the current \$40 gift limit. In his testimony he indicated they do not see no public policy benefit in allowing an exemption for products used for advertising (see attachment 4).

Vice Chair Macy opened the floor for questions.

Committee members addressed questions to Mr. Woolf as it related to an amendment to eliminate the \$40 gift limit and **HB 2121** prohibiting all gifts.

With no further questions Vice Chair Macy closed the hearing for **HB 2868**, and Chairman Jones resumed the chair.

Chairman Jones made a point of personal privilege and recognized guests, Mr. John Lee and Mrs. Cindy Lockett from Wyandotte County, and other guests from Marshall County.

Chairman Jones brought before the Committee the minutes dated February 18, 19, 20, and 21. Representative Scott made a request to correct paragraph two of the minutes dated February 18 to read "to strike" or "to be stricken" instead of "to strick." Chairman Jones stated the minutes would not be approved as there were further questions regarding the minutes dated February 20.

Chairman Jones stated there would be hearings and final action taken on bills for the next scheduled meeting.

With no further business, the meeting was adjourned at 10:30 a.m.





## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

### Testimony before House Elections on House Bill 2917

By Carol Williams, Commission on Governmental Standards & Conduct

I am appearing before you this morning as neither a proponent or opponent to House Bill 2917. This bill amends the honoraria section of K.S.A. 46-237. As you may recall, the 1991 Legislature placed a prohibition on the receipt of honoraria by any state officer or employee. A member of the Legislature or a part-time officer or employee of the executive branch of government can receive reimbursement in the preparation for and the making of a presentation at a speaking engagement in an amount fixed by the Commission. Since this provision became effective July 1, 1991, the Commission has received a considerable number of calls from individuals in state government wanting to know if they could accept honoraria for speaking engagements performed outside their duties as state officers or employees.

In reviewing the new language in K.S.A. 46-237(f) "No state officer or employee shall accept any payment of honoraria", the Commission was faced with the decision of interpreting this section strictly, thereby preventing any state officer or employee from accepting honoraria for any type of presentation, work related or not, or coming up with a less restrictive interpretation.

The Commission did not think the Legislature intended this honoraria ban to extend to a speech given by a state employee concerning such topics as the Civil War or stamp collecting.

After several months of discussing the honoraria issue and receiving input from other agencies, the Commission issued Advisory Opinion No. 91-39.

The Commission opined that the honoraria prohibition applies only to honoraria paid to a state officer or employee for giving a speech when the primary reason the state officer or employee was invited to give the speech was because of his or her position in state government. Lines 15-23 on page two of this bill codifies the major provision of Opinion No. 91-39.

House Elections  
2-26-92  
Attachment 1



## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

November 21, 1991

Opinion No. 91-39

TO ALL INTERESTED PERSONS:

This opinion is issued by the Kansas Commission on Governmental Standards and Conduct concerning the issue of the acceptance by state officers and employees of fees for giving speeches. Please note this opinion does not relate to legislators or part-time state employees.

Chapter 150, Section 26(f) of the 1991 Session Laws of Kansas states:

"No state officer or employee shall accept any payment of honoraria for any speaking engagement except that a member of the state legislature or a part-time officer or employee of the executive branch of government shall be allowed to receive reimbursement in the preparation for and the making of a presentation at a speaking engagement in an amount fixed by the Kansas commission on governmental standards and conduct prior to the acceptance of the speaking engagement. Nothing in this section shall be construed to prohibit the reimbursement of state officers and employees for reasonable expenses incurred in attending seminars, conferences and other speaking engagements."

The question is the definition to be given to the word "honoraria".

Historically, an "honoraria" was the fee given to a barrister in England. Since barristers did not charge a fee but rather received a donation from their client, the term came to mean an amount received for a service where no amount was agreed upon in advance.

Obviously this definition cannot be what the Legislature had in mind, since the entire section could be avoided by just agreeing on an amount of compensation up front. Also, we believe the word has historically developed into a well understood meaning in the governmental context and that an "honoraria" is:

Opinion No. 91-39  
November 21, 1991  
Page 2

Any amount paid to a state officer or employee for giving a speech when the primary reason the state officer or employee was invited to give the speech was because of his or her position in state government.

In determining the primary purpose, factors to be considered include:

- (1) The importance of position in state government of the state officer or employee. Thus, if a person is in a major policy making position, it is likely that the acceptance of honoraria is prohibited;
- (2) Whether the grantor of the honoraria has a special interest concerning the duties of the state officer or employee;
- (3) Whether the speech deals with scientific or technical data within the area of expertise of the state officer or employee's knowledge, as opposed to whether the speech deals with aspects of the duties of the state officer or employee.

Sincerely,

  
Richard C. Loux, Chairman

By Direction of the Commission

RCL:DDP:dlw

SANDY PRAEGER  
REPRESENTATIVE, 44TH DISTRICT  
3601 QUAIL CREEK COURT  
LAWRENCE, KANSAS 66047  
(913) 841-3554



TOPEKA

HOUSE OF  
REPRESENTATIVES

**TESTIMONY ON HB 2917**  
**HOUSE ELECTIONS COMMITTEE**  
**February 26, 1992**

Thank you Mr. Chairman and fellow committee members for allowing me this opportunity to speak in favor of HB 2917. As you all remember we passed a comprehensive "ethics reform" package last session. Included in the package was a ban on honoraria for state officers and state employees.

University faculty at our state institutions of higher education are considered state employees and therefore were included in this ban. We did not discuss the inclusion of university faculty in this ban and that information was conveyed to the Commission on Governmental Ethics and Standards this summer. They issued an opinion that it was not the legislature's intent to include faculty in the ban on honoraria.

HB2917 incorporates the language of the Commission's opinion to make it clear that university faculty at our Regent's institutions are exempt from the honoraria ban. University faculty are governed by codes of conduct established by the Board of Regents and by the individual institutions. I've included a copy of the portion of Kansas University's faculty handbook that relates to the issue of consulting and compensation for outside work. The universities have strict policies to govern the activities of faculty in this area. I have copies of similar guidelines from the other Regent's schools if you are interested in seeing them.

Since the Board of Regents and the individual institutions address the issue of honoraria, including when it is appropriate for faculty to accept such payments, and since we did not discuss inclusion of faculty last year when the bill passed, I encourage you to pass HB 2917 favorably. As I stated earlier, this puts into statute the opinion of the Commission on Governmental Ethics and Standards and exempts faculty at our Regents' institutions from the ban on honoraria.

Thank you, Mr. Chairman. I would be happy to answer any questions.

*House Elections*  
*2-26-92*  
*Attachment 2*

are required by the sponsor. All staff members concerned in such projects must submit the required reports promptly and regularly in a form and on a schedule specified by the Research Accounting Office.

#### Reporting of inventions.

Inventions made by University staff members usually involve contributions by, and consequent interests of, the inventor, the University and perhaps an outside research sponsor. To protect the rights of all three parties, and to avoid possible conflict of interest in a patent situation, prompt reporting and action are necessary. Any staff member who conceives an invention in the course of research conducted at the University shall promptly report the invention to the Vice Chancellor for Research, Graduate Studies and Public Service. The Vice Chancellor will appoint an Advisory Committee to determine the relative interests of all parties concerned. The allocation of patent rights and division of proceeds, if any, shall be consistent with the Patent Policy of the Board of Regents and the terms of any relevant research grant or contract. (See Patent Policy.)

#### Advice and consultation.

The University provides advice and guidance on a limited basis, through the Offices of Research Support and Grants Administration and the University General Counsel, to its staff members for advance consultation on questions they wish to raise concerning the problems that may or do develop as a result of their outside financial or consulting interests, or as they relate to their participation in government-sponsored research.

#### **d. State Regulations**

All employees of the University are subject to the provisions of state law on Conflict of Interest embodied in K.S.A. 46-215 et seq. These provisions proscribe certain kinds of conduct by state employees, require public disclosure of certain outside interests, and circumscribe political activity if the person engaged in such activity is not registered as a lobbyist. The statute, K.S.A. 46-233, prohibits public officials and employees from making or participating in the making of contracts 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..." This policy also applies if one's spouse owns or has a substantial interest in the business with which the contract would be made. Any questions concerning this law should be directed to the Office of the General Counsel.

#### **D.28 CONSULTING AND OUTSIDE WORK**

The University has adopted the following policy on consulting and outside work, which incorporates and provides additional clarification and procedural guidelines for the Board of Regents policy on consulting and outside work adopted in September 1974.

The University expects members of the University community (faculty, staff and students) employed by the University to give full professional effort to their assignments of teaching, research and service. It is, therefore, considered inappropriate to engage in gainful employment outside



the University that is incompatible with University commitments. Moreover, it is considered inappropriate to transact substantial personal business unrelated to the University from one's University office, when it might interfere with commitments to the University.

The University also expects members of its faculty<sup>1</sup> to pursue continual scholarly development and renewal, and to share their professional capabilities for the common interest; the University recognizes that consulting activities may provide good opportunities toward these ends. For members of the faculty, therefore, the University permits and, indeed, encourages a reasonable amount of personal professional activity<sup>2</sup> outside the faculty member's reasonably construed total, professional responsibilities of his or her employment by and for the University, provided such activity: (a) further develops the faculty member in a professional sense or serves the community, state, or nation in a professional capacity; (b) does not interfere with the faculty member's teaching, research and service to the University; and (c) is consistent with the objectives of the University. Regular instructional service<sup>3</sup> to other educational institutions is regarded as an inappropriate personal professional activity, but such shared instructional service may be negotiated by the faculty member and the chief academic administrative officers of the two institutions.

Within these limits, the University shall govern the allowable amount of such outside professional activity.

The faculty member must inform his or her respective Executive Vice Chancellor, through the department chairperson, the dean or director and the appropriate vice chancellor, who shall add their endorsement and/or such other comments to the report, of all personal professional activities. For all such activities except those single-occasion activities specified below, the faculty member must report in writing the proposed arrangements and secure approval prior to engaging in the activities.<sup>4</sup> Those activities which involve only a single occasion,<sup>5</sup> are clearly of a scholarly, professional or technical nature, rather than commercial, and in which compensation is not the primary consideration, must be reported annually in writing by the faculty members. For all activities concerned, the report should indicate the extent and nature of the activities, the amount of time to be spent in the activities, and the total amount of time spent or expected to be spent on all such outside activities during that current academic year.

In the event that outside personal professional activities require the use of customarily priceable University materials, facilities, or services, the faculty member is expected to make arrangements for reimbursement.

University policies on conflict of interest must be observed in arranging and conducting outside personal professional activities.

During periods when a faculty member is not on the University payroll (e.g., in summer or when on leave without pay), University limitations on the amount of outside professional activity do not apply, nor do University regulations on reporting such activity. Regulations on the use of University offices, materials, facilities and services, and conflict of interest policies

are applicable during such periods. It is expected that in these circumstances the same criteria of acceptability of outside activity will be applied by the faculty member as by the University otherwise.

Additional rules and procedures for personal professional activity may be established by the several schools and divisions of the University. Such additional rules and procedures shall be reported through channels and filed in the Office of the Executive Vice Chancellor on each campus.

<sup>1</sup>Faculty is here interpreted as teaching faculty and faculty-equivalent persons.

<sup>2</sup>Personal professional activity here means such outside activity closely related in nature to those professional activities which constitute the faculty member's normal employment responsibility. Thus would be included consulting on the preparation of contract legislation by a professor of contract law, but not his after-hours folksinging; psychological, professional, institutional, industrial and similar consulting or review of related manuscripts by a research associate in the Bureau of Child Research, but not his outside activity as a photographer of wild plants and author of essays about them; or consulting on the preservation, interpretation and publication of archival materials by a professor of history, but not his consulting, as an independent, experienced expert, on the financial management of retail stores. The University does not wish to intrude on the personal and private affairs of its faculty whose rights are those of all citizens, but rather to protect them and itself from abuses and charges of abuse of the employment relationships of responsible scholars and professionals.

<sup>3</sup>Regular instructional service here would not include occasional short courses, workshops, lecture series, and the like, but would include courses, or contributions to courses, regularly scheduled in an institution's program, normally over a full semester or term.

<sup>4</sup>Faculty members may presume their proposed activities are approved if they are not explicitly informed to the contrary within fifteen days after submission of the report to the chairperson.

<sup>5</sup>A single occasion might be, for example, a single visit, telephone conversation, manuscript for review, or written response to a request for assistance. An arrangement for a series of consulting visits, or for a two-week block of consulting, or to review manuscripts regularly (or irregularly) submitted by a publisher, would not be considered a single occasion.

If consulting is for another state agency, a statement that the activity will not interfere with the duties of the individual is required. This statement is provided by the Board of Regents upon the recommendation of the Chancellor under the following Board of Regents Policy:

Consulting by faculty members and employees of institutions under the jurisdiction of the Board of Regents for another institution under the jurisdiction of the Board as well as consultation for other state agencies, shall be approved in advance by the institution or agency seeking these services and approved by the faculty member's home

institution. The home institution shall effect payment to the faculty member through the regular payroll process and shall receive reimbursement through the interfund transfer process.

#### D.29 EMPLOYMENT AFTER RETIREMENT

A retired faculty or staff member may be reemployed for limited service. There is no University restriction on the amount that may be earned during the reemployment period. However, Social Security benefits will be decreased if the amount earned is greater than the limit set by the Social Security Administration.

A retired faculty member may apply through the Office of Research Support and Grants Administration for an externally supported research grant or contract. As a part of the agreement, salary may be requested for the retired faculty member, provided that the individual is not receiving retirement benefits from the Kansas Public Employees Retirement System. The level of salary will be arranged with the Office of Research Support and Grants Administration but will not exceed the level last paid to the faculty member as a regular employee at the full-time equivalent rate. Any exception to this policy must be approved by the Chancellor.

#### D.30 RESEARCH WORK BY EMERITUS STAFF

The University considers retirement from active service as terminating all teaching duties, both on the undergraduate and the graduate levels, and other assignments and responsibilities of active service. However, it encourages professors emeriti to continue their personal research activities, and supplies them with the needed facilities if these are not required by students or other staff members of the department for their teaching and research; and it aids them, through the Office of Research Support and Grants Administration, to obtain sponsored research grants and to carry out these activities.

Should a retired professor's research work call for or permit the assistance of graduate students, such students may be appointed to work with that professor, provided that the department and the Graduate School feel the professor is qualified to carry on the research and that the nature of the project justifies such help both by its desirability and by the type of experience to be gained by the students. A student thus employed may be given graduate credit for such work only if the arrangement has been approved by the student's department and the Graduate School and if the student has been enrolled with an active member of the department who has accepted the responsibility for evaluating the work and determining the student's grade.

The Testimony of

Ted D. Ayres  
General Counsel  
Kansas Board of Regents

before  
THE HOUSE COMMITTEE ON ELECTIONS  
1992 Legislative Session

in re  
House Bill 2917

9:00 a.m.  
February 26, 1992  
Room 521-S  
Kansas Statehouse

House Elections  
2-26-92  
Attachment 3

Chairperson <sup>JONES</sup> ~~Sawyer~~ and Members of the Committee:

My name is Ted D. Ayres and I am General Counsel to the Kansas Board of Regents. I am here this morning representing the Board of Regents.

I appear in support of House Bill 2917. I appreciate this opportunity to provide information and share discussion with members of the Committee.

Simultaneous with the passage of H.B. 2454 (L. 1991, ch. 150) by the 1991 Legislature, questions arose about the effect of Section 26 of the bill which added the following language to K.S.A. 46-237 as a new subparagraph (f):

"No state officer or employee shall accept any payment of honoraria for any speaking engagement except that a member of the state legislature or a part-time officer or employee of the executive branch of government shall be allowed to receive reimbursement in the preparation for and the making of a presentation at a speaking engagement in an amount fixed by the Kansas commission on governmental standards and conduct prior to the acceptance of the speaking engagement. Nothing in this section shall be construed to prohibit the reimbursement of state officers and employees for reasonable expenses incurred in attending seminars, conferences and other speaking engagements."

Faculty at our Regents Institutions were concerned about the intended impact of this new language on their consulting, research and speaking opportunities and obligations.

We consulted with members of the Kansas Select Commission on Ethical Conduct, the Legislative Research Department, and a representative of the Kansas Commission on Governmental Standards and Conduct for assistance and guidance. It was our conclusion that the Select Commission, or the Legislature, did not intend to prohibit or address these faculty activities. We subsequently worked very closely

with the Commission on Governmental Standards and Conduct to develop some appropriate interpretations.

House Bill 2917 specifies and clarifies legislative intent that the prohibition or acceptance of honoraria does not apply to "unclassified personnel under the jurisdiction of the state board of regents" (page 2, lines 6-8). It also seeks to incorporate the interpretation of the Commission which was previously expressed in its November 21, 1992, **Opinion No. 91-39** (page 2, lines 15-23).

Faculty members at Regents Institutions are encouraged to engage in consulting. These individuals represent the state and our Regents Institutions. I think we should encourage and applaud these efforts as a method to showcase our brightest and most energetic faculty.

Secondly, in order for persons in the tenure track to hope to achieve tenure, they must be able to provide evidence of accomplishments in teaching, research and service. Typically, they undertake consulting activities in connection with their research and service obligations. To prevent them from being reimbursed if they speak in the course of these activities will make it difficult for them to pursue those actions which they are advised are important in order to be favorably evaluated for tenure. These activities are also pertinent to promotions in rank and salary.

Next, faculty members at Regents institutions have traditionally been permitted and expected to engage in research activities which may often include or conclude with the presentation of papers, information or research conclusions at workshops or conferences (thus "speaking engagements"). These presentations are often done for reimbursement

because of the time which is required to prepare for the presentation and because of the technical expertise which is communicated.

Finally, I would submit that this sharing of information and expertise benefits us all. We expect faculty to develop expertise in their particular discipline. We should not limit or restrict their ability to share the benefits of their knowledge.

We believe that H.B. 2917 makes clear that the Legislature did not intend to limit these activities in enacting the amendment to K.S.A. 46-237. I would be happy to stand for questions.



**COMMON CAUSE / KANSAS**

701 Jackson, Room B-6 • Topeka, Kansas 66603 • (913) 235-3022

TESTIMONY IN OPPOSITION TO HOUSE BILL 2868  
by Michael Woolf, Executive Director  
February 26, 1992

Thank you Mr. Chairman, Members of the Committee, for allowing me to testify today in opposition to House Bill 2868 which would exempt gifts displaying a company name or insignia from the current \$40 gift limit.

Last year Common Cause supported the Legislature's lowering of the limit on gifts from \$100 to \$40, in fact we would like to see it lowered again. We see no public policy benefit in allowing an exemption for products used for advertising.

The bill, as currently written, contains no dollar limit on the value of such a gift. In addition the language determining what qualifies as an advertising gift could be interpreted very broadly. This combination could produce a huge loophole in the current law.

Even if a dollar limit is added and an advertising gift is more specifically defined, we do not believe that this legislation is necessary. Current law allows \$40 worth of gifts to be given to state officers and employees from any one person known to have a special interest. This should be more than sufficient to cover gifts that may have advertising value.

*J. Election*  
*2-26-92*  
*Attachment 4*