

Approved 3-26-92
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 March 5, 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

Conferees appearing before the committee:

Senator Janis Lee
Senator Jerry Moran
Robert Barnum, Acting Director of Work Program, SRS
Mike Lackey, Assistant Secretary/Transportation Engineering, Department of
Transportation
Representative Sheila Hochhauser

Others attending: see attached.

Chairman Jones notified Committee members that there would be no meetings next week as they would be in session all day next week.

Chairman Jones opened the hearing for **SB 533** - Governmental ethics; nepotism.

Senator Janis Lee appeared before the Committee as a proponent. She provided the Committee a balloon of **SB 533** and a copy of proposed revised Personnel regulations pertaining to nepotism (see attachment 1). She stated the Department of Administration's interpretation of **SB 533** has caused alot of problems particularly for rural areas. She gave an example involving an employee at KDOT whose promotion was withdrawn because his brother-in-law would occasionally supervise him. She stated as a result, she wrote a letter to the Kansas Commission on Governmental Standards and Conduct for their opinion of the definition of family member. They wrote to the Attorney General Office asking for their opinion and the Attorney General said because it was not stated in the legislation who was to have oversight the Department of Administration had the authority. Senator Lee proposed two amendments to **SB 533**. Both deals with giving oversight to the Kansas Commission on Governmental Standards and Conduct. She stated that was the intent of the initial legislation.

Chairman Jones opened the floor for questions. There was one question as it related to the change and the language in the proposed amendment.

Senator Moran appeared before the Committee in support of the bill. In his testimony he stated the orginial bill included the supervisory/management language and then **SB 533** limited the scope of that by putting in an except clause that says "except on occasional or on intermittent basis." Now to help resolve the problems that have arisen, they wanted to eliminate the "except" language and also amend out the supervise/manage language from last year that is now law. The bill would suggest with the amendments to prohibit the hiring, firing, promotion, but would not prohibit supervision or management of a family member. He stated he was not promoting nepotism but found it to be amazing to know the number of incidents that have arisen. He cited an incident at Larned State Hospital involving a mother and daughter. He further stated that he supported the statewide applicability and to have the Kansas Commission on Governmental Standards and Conduct to have oversight.

Robert Barnum, Acting Director of Work Program, SRS, appeared before the Committee in support of the bill. In his testimony he stated their agency has experienced difficulty in recruiting qualified personnel for their facilities in rural Kansas. Particularly, difficulty in recruiting nurses, physicians and other clinical staff. He stated that it was not uncommon for members of the same family or household to be employed by their agency as they may be the only viable employment option open to them. In conclusion,

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,
room 521-S, Statehouse, at 9:10 a.m./p.m. on March 5, 1992

he stated his agency needs to have the flexibility in such a situation to choose the most qualified person. He also stated they supported the amendments. (See attachment 2).

Chairman Jones opened the floor for questions. Committee members addressed questions as it related to making nepotism laws "black or white."

Captain Terry J. Scott, Highway Patrol, appeared before the Committee as a proponent. In his testimony he stated the current law restricts occupancy of certain positions of family members and that he supported the amendment of the bill to be statewide applicable. He felt it would correct the problems their agency experience.

Chairman Jones opened the floor for questions. Committee members addressed questions as it related to intermittent supervision of family members. Senator Lee explained the initial bill and the changes made.

Mike Lackey, Assistant Secretary/Transportation Engineer, Department of Transportation, as an opponent. In his testimony he stated the concern of the Department of Transportation was with the current language, specifically the word "manage." He stated the result of the language is such that promotions for either family member are prohibited if either one is in the other's chain of command, even if several supervisory levels separate them. He further stated they believe the inclusion of the word "manage" is overly restrictive and prohibits the promotional advancement of good employees, and therefore they oppose **SB 533** in its current form. (See attachment 3).

Chairman Jones requested the position of the Kansas Commission on Governmental Standards and Conduct from Carol Williams. She stated that it was assumed initially that their agency had the authority of oversight and they would appreciate having it.

Chairman Jones opened the floor for questions. There was a question addressed to Ms. Williams as it related to the definition of family member. With no further questions, Chairman Jones closed the hearing for **SB 533**.

Chairman Jones opened the floor for final action on **SB 533**, **HB 2976**, **HB 2893**, and **HB 2843**.

SB 533 - Governmental ethics; nepotism.

Representative Macy made a motion to pass the bill favorably. Representative Shallenburger seconded the motion. Representative Macy moved to amend the bill to adopt the balloon with the word "of" and Section d. Representative Bishop seconded the motion and the motion carried. A vote was made on the original motion and the motion carried.

HB 2976 - Election of members of boards of directors in irrigation districts.

Representative Praeger made a motion to pass the bill favorably. Representative Shallenburger seconded the motion. Representative Praeger made a motion to amend the bill on line 7, page 6, to include in the Register instead of statute. Representative Bishop seconded the motion. Representative Shallenburger made a motion to amend the bill to include the language necessary to put **HB 2978** in it. Representative Bishop seconded the motion and the motion carried. Representative Macy moved to include the balloon defining a qualified elector. Representative Scott seconded the motion and the motion carried. A vote was done on the original motion and the motion carried.

HB 2893 - Income tax credits for contributors to candidates and political parties.

Representative Shallenburger made a motion to pass the bill favorably and put on the consent calendar. Representative Bishop seconded the motion and the motion carried.

HB 2843 - Stagger terms of members of township board.

Representative Shallenburger made a motion to pass the bill favorably and put on the consent calendar. Representative Wells seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections

room 521-S, Statehouse, at 9:10 a.m./p.m. on March 5, 1992.

Chairman Jones opened the hearing for **HB 3124** - Requirements of protest petitions.

Arden Ensley, Revisor, appeared before the Committee to explain the balloon (see attachment 4). In his testimony he stated the petitioner submits the petitions to the County Attorney or District Attorney. They in turn advise them in advance as to form. He stated it was suggested that the language in the balloon state the Attorney General have within 14 days rather than the County Attorney shall "promptly" furnish... He stated too, the Committee may want to amend the balloon to provide not only the County Attorney, but the District Attorney. He stated the second balloon requires the County Election Officer to provide copies of the petition statutes, Chapter 25, Article 26, to petitioners and a copy of K.S.A. 25-620. He stated Representative Hochhauser suggested in line 22 to substitute the word "proposition" and change the balloon. He suggested to include a specific reference to K.S.A. 25-620. He stated on page 3, line 7, Representative Hochhauser suggested to state, "I am a resident and a registered elector."

Chairman Jones opened the floor for questions. Committee members addressed questions as it related to continued invalidation, Representative Hochhauser's case, determining substance of petition in advance, Attorney General or Secretary of State reviewing petitions, and authorities drawing up the petitions.

Representative Hochhauser appeared before the Committee. She stated she preferred the petitioner submit the petition at the local level rather than to the Attorney General or Secretary of State Office.

Chairman Jones appointed a subcommittee to review **HB 3124** further and to make a recommendation to the Committee. Subcommittee members are Representatives Macy, Shallenburger, and Stephen.

Chairman Jones closed the hearing of **HB 3124**.

Chairman Jones brought before the Committee the minutes of February 26 and February 27. Representative Shallenburger made a motion to approve the minutes. Representative Bishop seconded the motion and the motion carried.

With no further business, the meeting was adjourned at 10:20 a.m.

SENATE BILL No. 533

By Senators Moran and Lee

1-29

9 AN ACT relating to state governmental ethics; concerning nepotism;
10 amending K.S.A. 1991 Supp. 46-246a and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1991 Supp. 46-246a is hereby amended to read
as follows: 46-246a. (a) From and after the effective date of this act,
17 no state officer or employee shall advocate or cause the employment,
18 appointment, promotion, transfer or advancement to any office or
19 position of the state, or supervise or manage, *except upon a tem-*
20 *porary, occasional or intermittent basis, or manage a member*
21 *of such officer's or employee's household or a family member. The*
22 *provisions of this subsection shall not be construed as prohibiting*
23 *any state officer or employee from supervising a member of such*
24 *officer or employee's household or a family member on an occasional*
or intermittent basis.

25 (b) No state officer or employee shall participate in an action
26 relating to the employment or discipline of a member of the officer's
27 or employee's household or a family member.

28 (c) The provisions of this section shall not apply to appointments
of members of the governor's staff, nor shall it apply to any action
involving the employment, appointment, promotion, transfer or ad-
vancement of any officer or employee occurring prior to the effective
date of this act.

31 Sec. 2. K.S.A. 1991 Supp. 46-246a is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after
33 its publication in the Kansas register.
34
35

whose official station is located in any
county having a population of more than 15,000

(d) The provisions of this section shall be
subject to interpretation and enforcement by
the Kansas commission on governmental standards
and conduct in the manner provided by K.S.A.
46-253 through 46-263, and amendments thereto.

Jolson Elections
3-5-92
Attachment 1

SENATE BILL No. 533

By Senators Moran and Lee

1-29

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14 as follows: 46-246a. (a) From and after the effective date of this act,
15 no state officer or employee shall advocate or cause the employment,
16 appointment, promotion, transfer or advancement to any office or
17 position of the state, ~~or supervise or manage, except upon a tem-~~
18 ~~porary, occasional or intermittent basis, or manage~~ a member
19 of such officer's or employee's household or a family member. ~~The~~
20 ~~provisions of this subsection shall not be construed as prohibiting~~
21 ~~any state officer or employee from supervising a member of such~~
22 ~~officer or employee's household or a family member on an occasional~~
23 ~~or intermittent basis.~~

of

24 (b) No state officer or employee shall participate in an action
25 relating to the employment or discipline of a member of the officer's
26 or employee's household or a family member.

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28 of members of the governor's staff, nor shall it apply to any action
29 involving the employment, appointment, promotion, transfer or ad-
30 vancement of any officer or employee occurring prior to the effective
31 date of this act.

32 Sec. 2. K.S.A. 1991 Supp. 46-246a is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after
34 its publication in the Kansas register.
35

(d) The provisions of this section shall be subject to interpretation and enforcement by the Kansas commission on governmental standards and conduct in the manner provided by K.S.A. 46-253 through 46-263, and amendments thereto.

1-9-21. Nepotism. ~~(a) Without specific approval by the appointing authority,~~ No person shall be appointed, promoted, transferred, demoted or otherwise employed in, any position in ~~the classified state~~ service when, as a result, ~~he or she the person~~ would supervise, manage, or ~~receive supervision from,~~ be supervised or managed by a member of ~~his or her immediate the person's household or a family member.~~ No employee shall advocate, participate in or cause the appointment, promotion, transfer, demotion or discipline of a member of the person's household or a family member.

(b) The provisions of this regulation shall not be construed to apply to supervising or managing relationships existing on June 30, 1991. However, the appointment, promotion or transfer of any employee working under the supervision of a family member or household member on June 30, 1991, to another position under the same family or household member, is prohibited as of July 1, 1991.

(c) (1) For the purpose of this regulation, ~~immediate~~ "family member" means:

(A) spouse, parent, child, ~~sister, or brother~~ or sibling;

(B) uncle, aunt, cousin or any relative of a preceding generation as denoted by the prefix of grand or great;

(C) step, foster or legally adoptive parents and other relatives of step, foster or adoptive parents as designated in paragraph (A) above; or

(D) parent, child or sibling related by marriage as denoted by the suffix of in-law.

APPROVED
ATTORNEY GENERAL

By JLM Deb.
8-22-91

DEPT. OF ADMINISTRATION

AUG 20 1991

APPROVED BY FDL

(2) "Household member" means a person having legal residence in and living in the employee's place of residence.

(3) "Supervising" or "managing" means having the authority within the agency organizational hierarchy to recommend or approve the individual's appointment, transfer, promotion, demotion, salary, evaluation, suspension, termination, or other similar personnel actions. (Authorized by K.S.A. 75-3747; implementing L. 1991, Chap. 150, Sec. 39; effective May 1, 1979; amended P _____.)

DEPT. OF ADMINISTRATION

APPROVED
ATTORNEY GENERAL

By JHM Dep.
5-22-71

MAY 20 1991

APPROVED BY FDL

STATE OF KANSAS

JANIS K. LEE
SENATE DEMOCRAT CAUCUS CHAIR
STATE SENATOR, 36TH DISTRICT
JEWELL, MITCHELL, NORTON,
OSBORNE, PHILLIPS, REPUBLIC,
ROOKS AND SMITH COUNTIES
RR 1, BOX 145
KENSINGTON, KANSAS 66951
(913) 476-2294 HOME
(913) 296-7366 TOPEKA



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ASSESSMENT AND TAXATION
ELECTIONS
ENERGY AND NATURAL RESOURCES
LEGISLATIVE EDUCATIONAL PLANNING
COMMITTEE
LOCAL GOVERNMENT

January 29, 1992

Kansas Commission on Governmental Standards and Conduct
109 SW 9th, Room 504
Topeka, KS 66612-1287

Dear Commission;

At the 1991 session of the legislature, K.S.A. 1991 Supp. 46-246a was passed relating to nepotism.

Subsection (a) states that no state officer or employee shall advocate or cause the "employment, appointment, promotion, transfer or advancement to any office or position of the state, or supervise or manage of such officer's or employee's household or a family member."

I would ask two questions, in your opinion, does the definition of family member include brother-in-law or sister-in-law? And secondly should the provisions of this subsection be construed to prohibit one member of a family from being placed only temporarily or on occasions under the supervision of another member of such family. For example, would it be a violation of this subsection for an employee of government to be placed on a temporary basis under the supervision of a family member when the regular supervisor of the division was not available?

Your prompt assistance in this matter will certainly be appreciated.

With Best Regards,

Janis K. Lee
State Senator
36th District

Kansas Department of Social and Rehabilitation Services
Legislative Testimony on Senate Bill 533

House Elections Committee
March 5, 1992

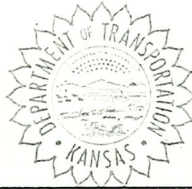
Robert C. Barnum

SRS supports the modification to K.S.A. 1991 Supp. 46-246a proposed by Senate Bill No. 533. Historically, our agency has experienced difficulty in recruiting qualified personnel for our facilities in rural Kansas. We have particular difficulty recruiting nurses, physicians and other clinical staff. If we are able to find a professional who is willing to relocate to the community, their spouse may seek employment with us also because we may be the only viable employment option open to them. Likewise, because of the relatively small population in these communities, it is not uncommon for members of the same family or household to be employed by the same SRS facility.

The legislation passed last session has twice now limited our capability to efficiently and effectively manage operations. Recently, one of our mental health facilities needed to appoint an acting Superintendent following the retirement of the current superintendent. This appointment was to be for a short term only until such time as the recruitment and selection process could be completed for hiring a new Superintendent. In deciding who to appoint on an acting basis, most of the top managers at the facility could not be considered because they had household or family members working at the facility in different departments. That circumstance dramatically limited our appointment options. SRS is committed to having the best people we can get to manage the critical programs and services provided by our facilities. Our agency needs to have the flexibility in such a situation to choose the most qualified person. We had a similar circumstance in appointing an interim clinical director for that same facility.

The change proposed by S.B. 533 provides the flexibility we need. We will appreciate your favorable action on that bill.

House Elections
3-5-92
Attachment 2



KANSAS DEPARTMENT OF TRANSPORTATION

Michael L. Johnston
Secretary of Transportation

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
FAX - (913) 296-1095

Joan Finney
Governor of Kansas

**TESTIMONY BEFORE
HOUSE ELECTIONS COMMITTEE
REGARDING S.B. 533:
NEPOTISM
MARCH 5, 1992**

Mr. Chairman and Committee Members:

The following information is being provided to address concerns of the Kansas Department of Transportation about S.B. 533.

The Kansas Department of Transportation has employees in every county of the state. It is not unusual to have more than one employee from the same family working for KDOT.

Our concern with the current language in the existing statute and S.B. 533 is, specifically, the word "manage". It states "no state officer or employee shall...supervise or manage a member of such officer's or employee's household or a family member." Manage has been defined by regulation to include all levels of the agency chain of command.

The result of this language is such that promotions for either family member are prohibited if either one is in the other's "chain of command", even if several supervisory levels separate them. It could be possible that one relative is in Garden City and the other relative is in Topeka.

KDOT clearly understands the nepotism concerns in a direct supervision situation. We, however, believe the inclusion of the word "manage" is overly restrictive and will prohibit the promotional advancement of good employees, and therefore, we oppose S.B. 533 in its current form.

This concludes my testimony. I am available to answer questions.

House Elections
3-5-92
Attachment 3

HOUSE BILL No. 3124

By Committee on Judiciary

2-25

8 AN ACT concerning elections; relating to petitions; amending K.S.A.
9 1991 Supp. 25-3602 and repealing the existing section.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 1991 Supp. 25-3601
is hereby amended to read as follows:

25-3601. Application to all state and local elections; determination of sufficiency of petition signatures. [See Revisor's Note] When under the laws of this state a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition. The sufficiency of each signature and the number

thereof on any such petition shall be determined in accordance with the provisions of K.S.A. 25-3601 to 25-3607, inclusive, and amendments thereto by the county election officer or such other official as designated in the applicable statute. When any statute makes specific provisions concerning matters that K.S.A. 25-3601 *et seq.* and amendments thereto also has requirements which are different therefrom, the provisions of the specific statute shall control.

History: L. 1970, ch. 147, § 1; L. 1989, ch. 107, § 4; July 1.

Before any petition requesting an election in any political or taxing subdivision of the state is circulated, a copy thereof containing the proposition to be submitted shall be filed in the office of the county attorney of the county in which all or the greater portion of the political or taxing subdivision is located for an opinion as to the legality of the form of such proposition. The county attorney shall promptly furnish an opinion as to the legality of the form of the proposition submitted.

The county election officer or such other official as designated in the applicable statute shall give to a person or persons requesting information on filing such petitions a copy of article 36 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto.

House Elections
3-5-92
Attachment 4

12 Section 1. K.S.A. 1991 Supp. 25-3602 is hereby amended to read
 13 as follows: 25-3602. (a) Each petition shall consist of one or more
 14 documents pertaining to a single issue or proposition under one
 15 distinctive title. The documents shall be filed with the county elec-
 16 tion officer or other official, if another official is designated in the
 17 applicable statutes. The filing shall be made at one time all in one
 18 group. Later or successive filings of documents relating to the same
 19 issue or proposition shall be deemed to be separate petitions and
 20 not a part of any earlier or later filing.

21 (b) Each petition shall, unless otherwise specifically required: (1)
 22 ~~Clearly state the question which petitioners seek to bring to an~~
 23 election ~~and~~ *an explanation of the effect of voting for or against*
such question;

24 (2) name the taxing subdivision or other political subdivision in
 25 which an election is sought to be held; ~~and~~

26 (3) contain the following recital above the spaces provided for
 27 signatures: "I have personally signed this petition. I am a registered
 28 elector of the state of Kansas and of
 29 _____
 30 _____

31 (here insert name of political or taxing subdivision)
 32 and my residence address is: correctly written after my name."

33 The recital shall be followed by blank spaces for the signature,
 34 residence address and date of signing for each person signing the
 35 petition.

36 When petitioners are required by law to possess qualifications in
 addition to being registered electors, the form of the petition shall
 be amended to contain a recital specifying the additional qualifica-
 37 tions required and stating that the petitioners possess the qualifi-
 38 cations; *and*

39 (e) ~~Every petition shall~~ (4) *contain the following recital, at the*
 40 ~~end of each set of documents carried by each circulator, a verifi-~~
 41 ~~cation, signed by the circulator, to the effect that the circulator~~
 42 _____
 43 _____

in the form of a proposition as it would
 appear upon the ballot in accordance with
 the requirements of K.S.A. 25-620 and
 amendments thereto, together with

1 personally witnessed the signing of the petition by each person
 2 whose name appears thereon. The circulator of a petition shall
 3 be duly registered to vote and a resident of the political or
 4 taxing subdivision in which the election is sought to be
 5 held: "I am the circulator of this petition. I have personally wit-
 6 nessed the signing of the petition by each person whose name appears
 7 thereon. I am a registered elector of the state of Kansas and of

, the political or taxing subdivision in
 which the election is sought to be held.

8 _____
 9 (here insert name of political or taxing subdivision)

10 _____
 11 (Signature of circulator)

12 _____
 13 (Circulator's residence address)

14 (d) (c) Any person who has signed a petition who desires to
 15 withdraw such person's name may do so by giving written notice to
 16 the county election officer or other designated official not later than
 17 the third day following the date upon which the petition is filed.

18 (e) (d) Any petition shall be null and void unless submitted to
 19 the county election officer or other designated official within 180
 20 days of the date of the first signature on the petition.

21 (f) (e) Unless the governing body of the political or taxing sub-
 22 division in which the election is sought to be held authorizes a special
 23 election, all elections which are called as a result of the filing of a
 24 sufficient petition shall be held at the next succeeding primary or
 25 general election as defined by K.S.A. 25-2502, and amendments
 26 thereto, in which the political or taxing subdivision is participating.

25-3601 and 25-3602 are

3. 27 ~~Sec. 2:~~ K.S.A. 1991 Supp. ~~25-3602~~ is hereby repealed.

4. 28 ~~Sec. 3:~~ This act shall take effect and be in force from and after
 29 its publication in the statute book.