

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by the Chair, Carol Dawson, at 9:00 a.m. on March 20, 1995 in Room 521-S of the Capitol.

All members were present:

Committee staff present: Dennis Hodgins, Legislative Research Department
Carolyn Rampey, Legislative Research Department
Russell Mills, Legislative Research Department
Arden Ensley, Revisor of Statutes
Donna Luttjohann, Committee Secretary

Conferees appearing before the committee: Roger Rooker, KS Dept. of Accounts and Reports
Chip Wheelen, KS Society of Association Executives
Randy Tongier, KS Division of Post-Audit

Others attending: See attached list

Chairman Dawson opened the public hearing on SB 278 regarding the access to, fees, and copies of open public records.

Roger Rooker was recognized by the Chairman as a proponent of the bill. Mr. Rooker testified that this legislation would alleviate bureaucracy and would encourage state agencies to recover costs of providing open records from users of these services. See Attachment 1.

The Chairman closed the public hearing on SB 278.

The hearing on SB 290 regarding prohibiting certain contributions during certain period of year.

Chairman Dawson recognized Chip Wheelen as a proponent of the bill. Mr. Wheelen testified the intent of the bill is to eliminate campaign contributions during a legislative session. Mr. Wheelen offered two amendments to SB 290; line 16 by replacing "No registered lobbyist" with "No person", and line 26 by deleting "registered lobbyist" and inserting the paragraph made available on page 2 of his written testimony. See Attachment 2.

The public hearing on SB 290 was closed.

The Chairman drew the Committee's attention to SB 278 regarding the access to, fees, and copies of open public records. Rep. Tanner made a motion to recommend favorable passage of the bill. It was seconded by Rep. Chronister. The motion carried.

Chairman Dawson brought the Committee's attention to SB 290 regarding prohibiting certain contributions during certain periods of time during the year. Rep. Chronister made a motion to accept the amendments by Chip Wheelen. It was seconded by Rep. Benlon. Discussion by the Committee transpired. The motion to amend the bill carried.

Rep. Chronister made a motion to recommend favorable passage of the bill as amended. It was seconded by Rep. Benlon. The motion carried.

The Chairman brought the Committee's attention to SB 232 regarding elections, administration and procedures.

Rep. Benlon made a motion to amend the bill on page 3 by changing 5% of the most recent number of registered voters to 10% of the total that voted in the previous secretary of state's race. It was seconded by Rep. Gilbert. The motion carried.

Rep. Nichols made a motion to amend on page 8, Section 10 by replacing it with Section 1 from HB 2349. Rep. Chronister seconded the motion. The motion carried.

Rep. Benlon made a motion to amend by deleting lines 36 on page 14 through line 2 on page 15. Rep. Chronister seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on March 20, 1995.

Rep. Benlon made a motion to amend by inserting the word "day" after "thirty-five" in line 33 of page 11. It was seconded by Rep. Chronister. The motion carried.

Rep. Toplikar made a motion to amend on page 6 line 11 by adding "or electronic voting machines as ...". Rep. O'Connor seconded the motion. Discussion by the Committee took place. The motion carried.

Rep. Nichols made a motion to recommend favorable passage of SB 232 as amended. It was seconded by Rep. Horst. The motion carried.

Chairman Dawson recognized Randy Tongier who presented the Legislative Post-Audit Review of the Department of Wildlife and Parks to the Committee. He explained how the audit was conducted and reviewed the Department's financial management; the use of restricted moneys. He reviewed general administrative costs and employees salaries and wages. He explained to the Committee how the federal funding is granted for fisheries and the shortfall of expenditures by the Kansas Department. See Attachment 3 for more information.

The Chairman thanked the Committee for their work for this session and announced that this was the last time the Committee was scheduled to meet. Minutes for previous meetings that have not yet been approved will be sent to the representatives' offices.

Chairman Dawson adjourned the meeting at 10:55 a.m.

TESTIMONY REGARDING SENATE BILL 278
HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE
March 20, 1995

Presented by Roger C. Rooker
Acting Director of Accounts and Reports

Madam Chairman, Members of the Committee:

I am appearing today on behalf of the Department of Administration to testify in support of SB 278. SB 278 amends a portion of the Kansas Open Records Act, K.S.A. 45-219, as it relates to fees for accessing open records. The amendments are intended to eliminate bureaucracy and to encourage state agencies to recover costs of providing open records from users of these services.

Under the **existing** provisions of K.S.A. 45-219, public agencies are permitted to charge reasonable fees for access to open records or for copies of the records. The fees charged by state agencies are currently subject to approval by the director of accounts and reports, except that no approval is required if the fee for a copy is equal to or less than \$.25 per page. In order to obtain approval of the director, the agency must provide an analysis of the actual costs of furnishing copies. This approval process is a rather cumbersome process which must be repeated regularly as costs change from year to year.

In order to reduce the bureaucracy associated with this aspect of the Open Records Act, SB 278 removes the requirement that the director of accounts and reports approve fees and permits the agency head to establish reasonable fees. This amendment also includes a safety mechanism to ensure that the fees for open records are reasonable. Any person requesting records may appeal to the Secretary of Administration the reasonableness of the fee established by an agency head.

A second amendment to K.S.A. 45-219 is intended to encourage state agencies to recover their costs for providing open records from those individuals or organizations requesting records. Currently, under provisions of K.S.A. 75-3036, moneys collected by state agencies must be deposited to the state general fund unless otherwise specified by law. The amendment would permit agencies to deposit fees collected under the Open Records Act to the fund that incurred the expense of providing the requested records. The amendment would not effect those agencies required by other statutes to deposit the fees in the state general fund. However, for other state agencies, the ability to select the fund into which fees will be deposited may provide an incentive to collect fees from those persons **using** their services, rather than subsidizing those costs from the agencies' budgets.

Thank you for the opportunity to appear on behalf of Senate Bill 278. I would be happy to answer any questions the Committee may have.

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Testimony to the House Committee on Elections
March 20, 1995

Regarding 1995 Senate Bill 290

By *C.M.J.* Wheelen on behalf of the KSAE

Thank you for the opportunity to testify in support of SB290. We agree that campaign contributions should not be made during a Legislative Session. Even though a contribution may not be intended to influence public policy decisions, it is implied that such is the case and certainly creates the appearance of impropriety.

The members of the Kansas Society of Association Executives believe strongly that Kansas should continue to be a model state with only the highest standards of ethical conduct. We also believe that while KSAE members and Kansas Legislators adhere to ethical standards we can all be proud of, there may be others who would not. It is for that reason that we respectfully request a couple of minor amendments which would improve the law and another that would close a potential loophole.

Currently, the only person who is prohibited from making a contribution during the Session is a registered lobbyist. In addition, political action committees are proscribed from making contributions during the Session. This means that a registered lobbyist who represents a group of 1,000 members could not make the inappropriate contribution, but 1,000 members with the same interest in influencing public policy each could. Similarly, a registered lobbyist representing a large corporation could not make the contribution, but the corporation could; perhaps several contributions.

Furthermore, while current law prohibits contributions by lobbyists or political action committees to legislators and SB290 would prohibit contributions by lobbyists and PACs to state officers, nothing in current law nor in SB290 would prohibit a political action committee from contributing to another PAC for the benefit of a legislator or state officer. We believe this type of activity should be prohibited as well.

We respectfully request adoption of our proposed amendments and favorable action on SB290. Thank you for your consideration.

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KANSAS SOCIETY OF ASSOCIATION EXECUTIVES

4301 Huntoon, Suite 9 • Topeka, Kansas 66604 • (913) 272-0083

SENATE BILL No. 290

By Committee on Elections, Congressional and Legislative Apportionment and Governmental Standards

2-13

Amendments requested by
Chip Wheelen on behalf of
Kansas Society of Association Executives

10 AN ACT relating to election campaign finance; prohibiting the accep-
11 tance of contributions during certain periods of the year; amending
12 K.S.A. 25-4153a and repealing the existing section.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 25-4153a is hereby amended to read as follows: 25-
16 4153a. ~~No registered lobbyist~~ or political committee shall make a contri-
17 bution as defined by subsection (d) of K.S.A. 25-4143 and amendments
18 thereto to any legislator, candidate for membership in the senate or house
19 of representatives or, candidate committee for any such legislator or can-
20 didate, *state officer elected on a state-wide basis, candidate for state office*
21 *elected on a state-wide basis or candidate committee for any such officer*
22 *or candidate*, after January 1 and prior to May 15 of any year or at any
23 other time in which the legislature is in session and no such legislator,
24 officer, candidate or committee shall accept any contribution as defined
25 by subsection (d) of K.S.A. 25-4143 and amendments thereto from any
26 ~~registered lobbyist~~ or political committee during such period.

(a) No person

person

¶(b) No political committee shall make a contribution or otherwise transfer funds to another political committee after January 1 and prior to May 15 of any year or at any other time in which the legislature is in session.

27 Sec. 2. K.S.A. 25-4153a is hereby repealed.
28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.

25-4137.

History: L. 1975, ch. 209, § 10; L. 1978, ch. 146, § 2; Repealed, L. 1981, ch. 171, § 51; July 1.

25-4138.

History: L. 1975, ch. 209, § 11; Repealed, L. 1981, ch. 171, § 51; July 1.

25-4139, 25-4140.

History: L. 1975, ch. 209, §§ 12, 13; L. 1979, ch. 111, §§ 4, 5; Repealed, L. 1981, ch. 171, § 51; July 1.

25-4141.

History: L. 1975, ch. 209, § 19; L. 1979, ch. 111, § 6; Repealed, L. 1981, ch. 171, § 51; July 1.

25-4142. Citation of act. K.S.A. 25-4142 to 25-4179, inclusive, and amendments thereto and 25-4119e, 25-4119f, 25-4119g, 25-4148a, 25-4153a, 25-4157a, 25-4169a, 25-4180 to 25-4185, inclusive, and amendments thereto shall constitute and may be cited as the "campaign finance act."

History: L. 1981, ch. 171, § 1; L. 1989, ch. 111, § 7; L. 1991, ch. 150, § 5; July 1.

Source or prior law:
25-4101.

Revisor's Note:

At time of enactment, this act contained a repealer which would have sunset the act on July 1, 1987 (L. 1981, ch. 172, § 49). This repealer was repealed by L. 1986, ch. 143, § 3.

Law Review and Bar Journal References:

"Treatment of the Separation of Powers Doctrine in Kansas," Marc E. Elkins, 29 K.L.R. 243, 262 (1981).

CASE ANNOTATIONS

1. Violations of act involving theft, conspiracy, false writing, criminal solicitation, and acts necessary to constitute concealment examined. *State v. Palmer*, 248 K. 851, 652 S.W.2d 734 (1991).

25-4143. Campaign finance; definitions.

As used in the campaign finance act, unless the context otherwise requires:

(a) "Candidate" means an individual who:

(1) Appoints a treasurer or a candidate committee,

(2) makes a public announcement of intention to seek nomination or election to state or local office,

(3) makes any expenditure or accepts any contribution for the purpose of influencing such person's nomination or election to any state or local office, or

(4) files a declaration or petition to become a candidate for state or local office.

(b) "Candidate committee" means a committee appointed by a candidate to receive contributions and make expenditures for the candidate.

(c) "Commission" means the Kansas commission on governmental standards and conduct created by K.S.A. 25-4119a and amendments thereto.

(d) (1) "Contribution" means: (A) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made for the purpose of influencing the nomination or election of any individual to state or local office;

(B) a transfer of funds between any two or more candidate committees, party committees or political committees;

(C) the payment, by any person other than a candidate, candidate committee, party committee or political committee, of compensation to an individual for the personal services rendered without charge to or for a candidate's campaign or to or for any such committee;

(D) the purchase of tickets or admissions to, or advertisements in journals or programs for, testimonial events.

(2) "Contribution" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer related to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149 and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding a fair market value of \$50 per event.

(e) "Election" means: (1) A primary or general election for state or local office and (2) a convention or caucus of a political party held to nominate a candidate for state or local office.

(f) (1) "Expenditure" means: (A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made for the purpose of influencing the nomination or election of any individual to state or local office;

(B) any contract to make an expenditure;

(C) a transfer of funds between any two or more candidate committees, party committees or political committees;

DEPARTMENT OF WILDLIFE AND PARKS
Presentation to the
House Governmental Organization and Elections Committee
March 20, 1995

The Legislative Division of Post Audit has done two recent performance audits of the Department of Wildlife and Parks. The first was done mainly to identify the amount of federally restricted moneys spent by the Department for unauthorized purposes during fiscal years 1989 through 1992. The second was a more comprehensive audit of the Department done as part of the K-GOAL review of that agency. Both audits taken together addressed the financial management and other aspects of the Department.

Financial Management

In the area of financial management, the audits dealt primarily with the Department's handling of restricted moneys, but also with other financial management issues.

Use of Restricted Moneys

Both State and federal law limit the use of a large portion of the Department's moneys to certain purposes. For example, State law limits spending of any moneys in the Department's Wildlife Fee Fund to wildlife purposes. Similarly, federal regulations restrict spending of the hunting and fishing licenses fees the Department collects to wildlife purposes.

About a year or so ago, the U. S. Fish and Wildlife Service concluded that the Department had spent some of its federally restricted moneys for unauthorized purposes. As a result, the Service cut off wildlife federal grant moneys coming to the Department until the restricted moneys spent for unauthorized purposes were restored. One of the purposes of our first audit was to identify the amount of moneys that needed to be restored to the Wildlife Fee Fund.

We found that during fiscal years 1989 through 1992 the Department had spent about \$1.7 million of federally restricted moneys for unauthorized purposes. That happened mostly in the areas of general administrative costs and employee salaries and wages as follows:

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1. *General Administrative Costs.* The Department administers not only wildlife programs, but also parks and boating programs. Thus, the Department's general administrative costs (such as budgeting and accounting) benefit not only wildlife programs but also parks and boating programs. To meet the federal requirement that hunting and fishing license moneys be spent only on wildlife programs, those license moneys can pay only for the wildlife programs' share of general administrative costs. Our audit found that those license moneys had paid for more than their share of the general administrative costs. That was an unallowed use of federally restricted moneys.
2. *Employee Salaries and Wages.* During the audit period, many of the Department's employees worked on both wildlife and non-wildlife activities. To meet the federal requirement that hunting and fishing license moneys be spent only on wildlife programs, those license moneys can pay only for the wildlife programs' share of employee salaries and wages. Our audit found that, on balance, those license moneys had paid for more than their share of employee salaries and wages. That also was an unallowed use of federally restricted moneys.

The federal granting agency reviewed our audit, and concluded that it was done properly. As a result, the State is restoring the misspent moneys in the amount of \$1.9 million (\$1.7 million identified by our audit, plus \$200,000 of additional unallowed spending that was identified by the federal review but was outside the scope of our audit work). Further, the Department once again is receiving wildlife federal grant moneys.

The U. S. Department of the Interior's Office of Inspector General is currently auditing this same issue for fiscal years 1993 and 1994. It is possible that the federal audit will identify additional unauthorized use of federally restricted moneys. In that event, the State will have to restore additional moneys.

Although most of this discussion relates to federal restrictions, similar State restrictions also apply. In fact, the State restrictions are more severe than the federal restrictions. Our audit work found that the Department also did not adhere to State restrictions. During fiscal years 1989 through 1992, the Department improperly spent about \$3 million of wildlife moneys and about \$1 million in parks moneys.

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Our first audit made several recommendations to the Department for improving its financial management practices. Our second audit reviewed this same financial management area, and found that the Department has made some progress. The second audit made recommendations for further improvements by the Department.

Other Financial Management Issues

Our two audits identified several other financial management areas where improvements are needed. The most significant of those areas are summarized below:

1. *State Spending on Fisheries.* As a condition for receiving any federal fisheries moneys, the Department needs to spend at least \$1.9 million of State moneys on fisheries each fiscal year. During fiscal years 1986 through 1992, the Department fell short of that requirement by a total of \$3.5 million. The State has agreed to make up that shortfall, and keep current with that requirement.
2. *Managing Cash Flows and Fund Balances.* We make main three points in this area. First, the Department has accumulated more than \$3 million in lifetime hunting and fishing licenses fees, with no plans to spend more than the interest earned on these moneys. We think the Department should plan to spend that money over some reasonable period of time. Second, in spite of an apparent need to improve the State's boat docks and boating programs, the Department is maintaining large unspent balances in the Boating Fee Fund, and it has lost some of the federal boating grant moneys available to help make needed improvements. Third, because the Department has not claimed federal reimbursements on a timely basis, State moneys have been tied up longer than necessary, and the Department has lost interest income. Finally, the Department may not be receiving all the federal reimbursements it could for certain programs.
3. *Meeting Financial Obligations.* In 1972, the Park and Resources Authority, one of the Department's predecessor agencies, agreed to pay for 50% of certain costs incurred by the Corps of Engineers in constructing El Dorado State Park. In 1991, the Corps of Engineers began attempts to collect payment on amounts due--about \$430,000 a year. Although the Department has been negotiating with the Corps to resolve this issue, no payments have been made to date.

The K-GOAL audit made recommendations to the Department for addressing each of these areas.

Other Aspects

In addition to certain financial management areas, our K-GOAL audit looked at whether savings and efficiencies resulted from the merger of the Park and Resources Authority and the Fish and Game Commission, whether the Department has met its primary goals and objectives, and whether the Department can be structured more efficiently.

In doing this audit work, we interviewed Department officials at both office locations and in the field, and we reviewed agency records and documents. We also interviewed officials of similar departments in selected other states. In addition, we surveyed all current Department employees and a sample of former employees. In doing so, we sent out 436 surveys, and heard back from more than 80% of those surveyed. Finally, we surveyed a sample of almost 1,600 hunters, campers, boaters, and fishermen. We heard back from about 40% of that group.

Savings and Efficiencies Resulting From the Merger

The merger of the Park and Resources Authority and Fish and Game Commission was done to improve the efficiency and effectiveness of the agencies' programs. The two major ways this was to happen was through establishment of "one-stop shopping" for permits and licenses and through cross-training of employees and sharing of responsibilities. In general, both those things have happened. In this area, our audit makes the following major points:

1. *Sharing of responsibilities in the Parks and Public Lands Division achieved significant efficiencies.* The Department could take advantage of wildlife and parks employees stationed at the same location to share the workload. In doing that, the Department could do a better job with the same resources.
2. *The merger resulted in no overall cost savings.* Although cost saving was not a stated goal of the merger, opportunities for such saving may have been expected. However, reclassification and upgrading of employee positions after the merger, together with some increase in the number of employees, actually increased costs.

3. *The increase in number of employees was essentially all in the support area.* In looking at this issue, we classified Department employees as either management, support, or field staff. Between 1986 and 1995, the number of support staff increased by 16, field staff increased by three, and management staff decreased by one.
4. *Field employees had more supervisory and management layers to deal with after the merger.* These layers were the field unit supervisors and the Assistant Secretary of Operations.
5. *To deal with the problem of unauthorized spending of restricted moneys for salaries and wages, the Department recently stopped sharing wildlife and park responsibilities among employees.* This eliminated a significant portion of the efficiencies gained from the merger. Our audit suggests that, with certain improvements in its financial management practices, the Department could go back to sharing responsibilities with the resulting efficiencies, and still adhere to the existing restrictions on the use of moneys.
6. *The employee survey indicated a general morale problem among the Department's employees.* Individual responses generally pointed to concerns about the upper-level management of the Department. Our audit recommends that the Department attempt to address this area.

Meeting Primary Goals and Objectives

Based on the its statutory charge, mission statement, and strategic plan, we identified the Department's primary goals and objectives. Then, using information in the Department's records and comments by employees and users of the Department's services, we attempted to measure the Department's accomplishment of those goals and objectives. Our major findings are as follows:

1. The Department generally has increased outdoor recreational opportunities at State parks and fishing lakes, but has not done as well with its wildlife areas. The Department had established wildlife land acquisition targets, but has not been on target to meet these goals. Further, the Department's "customers" generally are satisfied with the State's outdoor recreational opportunities.

2. The Department generally has not done as good a job of maintaining the facilities it has developed. User surveys cited boat docks, public restrooms, and campsites as areas of concern. Unrepaired flood damage in some parks was also an area of concern. The Department cited lack of funding as a problem, both in repairing damaged facilities and in providing regular maintenance. A particular problem involved lack of funding for seasonal employees.
3. The Department has done a good job of ensuring safe and legal use of the State's recreational resources.
4. The Department's long-range planning process is inadequate. The Department's strategic plan document could be a very useful tool if fully employed. However, the Department does not use that plan to prioritize its needs for budgeting purposes, nor does it monitor its progress to see whether the plan's goals have been met.

Our audit addresses several recommendations to the Department for addressing the concerns identified above.

Structuring More Efficiently

An organization can be structured more efficiently if it can be restructured to do the same work with fewer resources, or if it can be restructured to do more work with the same resources. We looked at this issue from three different viewpoints--organizing into divisions, organizing into management levels, and organizing into management, support, and field staff. As part of this work, we compared the Department to similar agencies in selected other states. Our major findings are presented below:

1. The Department's divisional structure is different from most other states with combined parks and wildlife responsibility. Most other states have a separate division for their parks operations, but the Department does not. However, the Department has achieved some efficiencies with that structure.
2. In general, the Department has fewer program management layers than comparable agencies in Nebraska and South Dakota. However, it does have an additional general management layer--the Assistant Secretary of Operations.
3. The Department devotes fewer of its employee resources to field activities than do comparable agencies in Nebraska and South

Dakota. If the Department allocated its employee resources between support and field activities in the same proportion as those other two states, it would have 32 more field staff and 32 fewer support staff.

Our audit recommends that the Department review each of the areas above for opportunities to restructure itself more efficiently.