

MINUTES OF THE SENATE ELECTIONS, APPORTIONMENT & GOVERNMENTAL STANDARDS COMMITTEE.

The meeting was called to order by Chairperson Sen. Janice Hardenburger at 1:30 p.m. on January 24, 1995 in Room 529-S of the Capitol.

All members were present except: Sen. Bill Wisdom, Excused

Committee staff present: Dennis Hodgins, Legislative Research Department
Arden Ensley, Revisor of Statutes
Stacey Soldan, Committee Secretary

Conferees appearing before the committee: Carol Williams, Executive Director, Commission of Governmental Standards & Conduct
Elizabeth Ensley, Shawnee County Election Commissioner

Others attending: See attached list

Senator Hardenburger requested any new bills to be introduced. Senator Mark Parkinson requested a bill to be introduced to committee, already drafted, that would substantially curtail gifts and hospitality.

Senator Mark Parkinson made a motion to introduce this bill. The motion was seconded by Senator Pat Ranson. The motion carried.

SB 73: Relating to elections; concerning penalties for violation of campaign finance act

Carol Williams, Kansas Commission on Governmental Standards and Conduct, appeared before the committee to address **SB 73**. (Attachment 1) She stated **SB 73** would prevent individuals who failed to pay any civil penalty, or who failed to file required report under the campaign finance act, to become eligible for state or local office, unless such penalty or fine has been waived or is under appeal.

In answer to questions from the committee regarding who the fine is against, the candidate or the treasurer, she stated that the fine is assessed against who ever violated the law, the civil penalties are assessed against the treasurer who failed to file the report. More discussion followed to whether penalty should be against the treasurer or the candidate.

The hearing on **SB 73** was closed.

SB 74: Relating to state governmental ethics; concerning contracts involving state officers and employees

Carol Williams, Kansas Commission on Governmental Standards and Conduct, appeared before the committee to address **SB 74**. (Attachment 2) She briefly explained the bill was to prevent making contracts within the preceding twelve months with any state officer or employee and any person or business with whom the state officer or employee has a substantial interest. To expand the section dealing with contracts, the bill is amended to cover the preceding twelve months, as pertaining to the definition of substantial interest. She explained the commission was involved in an investigation where this situation came up, and no statute exists regarding the issue.

The hearing on **SB 74** was closed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS, APPORTIONMENT & GOVERNMENTAL STANDARDS

SB 75: Relating to elections, concerning write-in votes and candidates

Elizabeth Ensley, Shawnee County Election Commissioner, appeared before the committee to testify on **SB 75**. (attachment 3) **SB 75** would require write in affidavits for all national, state, county and city wide offices. Discussion followed to clarify where filing should occur at government level. There was also discussion concerning assessing fees and whether write-in offices should apply to cities other than first class and school boards.

The hearing on **SB 75** was closed.

The meeting adjourned at 2:10 p.m..

The next meeting is scheduled for January 26, 1995.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before Senate Committee on Elections, Congressional and
Legislative Apportionment and Governmental Standards

Senate Bill 73

January 24, 1995

by Carol Williams

Senate Bill 73, which is before you this afternoon, would amend K.S.A. 25-4181, a provision of the Campaign Finance Act. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1994 Annual Report and Recommendations.

Under current law, any individual who fails to pay any civil fine which is assessed or who fails to file any report required to be filed under the Campaign Finance Act is not eligible to become a candidate for state or local office until such fine has been paid or such report has been filed. Since this provision became law in 1991 there is only one individual who has been assessed a civil fine. Civil fines are levied against individuals who have intentionally violated the Campaign Finance Act. Civil fine amounts can range from \$5000 for the first violation to \$15,000 for the third and each subsequent violations.

The Commission would like to see individuals precluded from filing for state or local office who have not paid civil penalties which have been assessed. Since 1991, 17 individuals have not paid the civil penalties assessed against them for failing to file campaign finance reports in a timely manner. On June 10, 1994, two individuals who had outstanding civil penalties filed for state office. One of these individuals has since failed to file the three reports required to be filed in the 1994 election cycle. He currently has new civil penalties amounting to \$900.

SB73 would amend K.S.A. 25-4181(b) by providing that "no individual who has failed to pay any **civil penalty** or civil fine assessed, or failed to file any report required to be filed, under the campaign finance act, unless such **penalty** or fine has been waived or is under appeal, shall be eligible to become a candidate for state office or local office..."

The Commission believes it was the legislature's intent in 1991 to include civil penalties in this provision.

The Commission urges your support of SB73

SENATE ELECTIONS
Attachment 1
1-24-95



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before Senate Committee on Elections, Congressional and Legislative Apportionment and Governmental Standards

Senate Bill 74

January 24, 1995

Senate Bill 74, which is before you this afternoon, would amend K.S.A. 46-233, a provision of the State Conflict of Interest statutes. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1994 Annual Report and Recommendations.

Under current law, a state employee may contract with a business in which he or she actually holds a substantial interest. Due to the current definition of substantial interest, an individual holds a substantial interest only if he or she received compensation in the preceding calendar year. Therefore, if an individual, or individual's spouse, is receiving compensation during the current year from a business he or she contracts with as a state employee, but the individual did not receive compensation in the preceding calendar year, no substantial interest exists and the action would be permitted. For example, assume a state employee is responsible for purchasing office equipment for various state agencies. The state employee could help a friend set up a small company, with a minimal investment, to sell office equipment. He could arrange for this company to hire members of his family as employees. Once this corporation is established, the state employee could then contract with this corporation to provide office equipment to the state. The state employee would not hold a substantial interest in this corporation, because his spouse did not receive compensation from this corporation in the preceding calendar year. A current Commission proceeding has brought this problem to light.

The Commission recommends K.S.A. 46-233 be amended to include the new language beginning of line 27 of SB74 which states "Substantial interest means 'substantial interest' as defined by K.S.A. 46-229, and amendments thereto, and any such interest held within the preceding twelve months of the act or event of participating in the preparation of making a contract."

The Commission urges your support of SB 74.

Senate Elections
Attachment 2
1-24-95

claimant under K.S.A. 46-907 and 46-912 to 46-919, inclusive, and amendments thereto in proceedings before the joint committee on special claims against the state.

(e) "Lobbying" does not include bona fide personal or business entertaining.

(f) No legislator may be hired as a lobbyist to represent anyone before any state agency.

History: L. 1974, ch. 353, § 11; L. 1975, ch. 272, § 3; L. 1981, ch. 171, § 43; L. 1991, ch. 150, § 24; July 1.

Attorney General's Opinions:

Bribery; privatization pledge; contingent fees for lobbying prohibited. 91-23.

46-226. "Representation case" defined. "Representation case" means the representation of any person, client, principal, or third person, with compensation, in any matter before any state agency where the action or non-action of the state agency involves the exercise of substantial discretion; but representation case does not mean or include (a) any communication initiated by a legislator on behalf of a constituent or other member of the public for which no compensation is received or to be received, or (b) preparation and filing of tax returns or other governmental forms, or (c) participation in tax audit negotiations, or (d) any activity of a state officer or employee in carrying out the duties of his or her office or employment, or (e) a preliminary inquiry by any person into a matter before a state agency.

History: L. 1974, ch. 353, § 12; L. 1975, ch. 272, § 4; July 1.

Law Review and Bar Journal References:

"Ethics and the Government Lawyer," Bruce W. Kent, 62 J.K.B.A. No. 2, 30, 34 (1993).

Governmental Standards and Conduct Comm. Opinions:

State officer or employee who does not appear before a state agency when state employee also represents outside organization need not file a representation case disclosure statement. 88-29.

46-227. "Associated person" defined. "Associated person" means a person associated with a state officer or employee in a partnership, limited partnership, association or professional service corporation as a partner or officer.

History: L. 1974, ch. 353, § 13; L. 1975, ch. 272, § 5; July 1.

46-228. "Special interest" defined. "Special interest" means an interest of any person as herein defined (1) concerning action or non-action by the legislature on any legislative matter affecting such person as distinct from affect upon the people of the state as a whole, or (2)

in the action or non-action of any state agency or state officer or employee upon any matter affecting such person as distinct from affect upon the people of the state as a whole.

History: L. 1974, ch. 353, § 14; March 28.

46-229. "Substantial interest" and "client or customer" defined. "Substantial interest" means any of the following:

(a) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.

(b) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(c) If an individual or an individual's spouse, either individually or collectively, has received directly or indirectly in the preceding 12 months, gifts or honoraria having an aggregate value of \$500 or more from any person, the individual has a substantial interest in that person. If a gift is received for which the value is unknown, the individual shall be deemed to have a substantial interest in the donor. A substantial interest does not exist under this subsection by reason of: (1) A gift or bequest received as the result of the death of the donor; (2) a gift from a spouse, parent, grandparent, sibling, aunt or uncle; or (3) acting as a trustee of a trust for the benefit of another.

(d) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

(e) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collec-

tively, received an aggregate of in the preceding calendar year.

As used in this subsection, "business" means a business or businesses.

History: L. 1974, ch. 353, ch. 172, § 1; L. 1984, ch. 18; ch. 198, § 1; July 1.

Governmental Standards and Conduct Comm. Opinions:

Reporting of substantial interests; spouse. 87-5.

Conflict of interest; substantial interest; spouse's employment; Behavioral sciences regulatory board who is also board member of association; health centers cannot represent with that association. 88-19.

Interim youth center director who is store manager where youth center program may not participate in contracting work. 90-11.

Legislator holding a stock option exceeding \$5,000 is required to report such option interest. 91-36.

Deputy warden whose spouse directed treatment program at warden's facility; program's compliance but not in renews. 22.

46-230. "Business" defined. "Business" means any corporation, association, partnership, proprietorship, trust, joint governmental agency unit, or subdivision and every other entity including ownership or use of property.

History: L. 1974, ch. 353, ch. 218, § 1; July 1.

46-231. "Contract" defined. "Contract" means any agreement including sales and conveyances of real property and agreements for the performance of services.

History: L. 1974, ch. 353.

Attorney General's Opinions:

Conflicts of interest; district court clerk; county sheriff; qualifications. 91-23.

46-232. Lobbying by state officer or employee; prohibited acts; exceptions. A state officer or employee shall engage in lobbying for his or her own state agency, if he or she is specifically attributable to such agency than that provided for the performance of official duties. Nothing in this subsection prohibits a state officer or employee without compensation other than he is entitled to receive for the performance of official duties.

History: L. 1974, ch. 353.

Governmental Standards and Conduct Comm. Opinions: State employee; lobbying prohibited.

action of any state agency employee upon any matter as distinct from affect the state as a whole. ch. 353, § 14; March 28.

"substantial interest" and "client interest" defined. "Substantial interest" defined.

For an individual's spouse, or collectively, has owned for 12 months a legal or equitable interest in any business worth \$5,000 or 5% of any other business, the individual has a substantial interest in that business.

For an individual's spouse, or collectively, has owned for 12 months a legal or equitable interest in any business worth \$5,000 or 5% of any other business, the individual has a substantial interest in that business.

For an individual's spouse, or collectively, has received for 12 months an aggregate amount of compensation exceeding \$5,000 or 5% of any other business, the individual has a substantial interest in that business.

For an individual's spouse, or collectively, has received for 12 months an aggregate amount of compensation exceeding \$5,000 or 5% of any other business, the individual has a substantial interest in that business.

any, received an aggregate of \$2,000 or more during the preceding calendar year.

As used in this subsection, "client or customer" means a business or combination of businesses.

History: L. 1974, ch. 353, § 15; L. 1983, ch. 172, § 1; L. 1984, ch. 189, § 1; L. 1987, ch. 198, § 1; July 1.

Governmental Standards and Conduct Comm. Opinions: Reporting of substantial interests; substantial interest of spouse. 87-5.

Conflict of interest; substantial interest. 87-8.

Substantial interest; spouse's employment. 87-10.

Behavioral sciences regulatory board (BSRB) member is also board member of association of Kansas community health centers cannot represent BSRB in dealing with that association. 88-19.

Interim youth center director whose spouse is retail store manager where youth center purchases merchandise may not participate in contracting with such retail store. 90-11.

Legislator holding a stock option worth minimum of \$5,000 is required to report such option as a substantial interest. 91-36.

Deputy warden whose spouse directs alcohol and drug treatment program at warden's facility may participate in program's compliance but not in renewal of contract. 92-22.

46-230. "Business" defined. "Business" means any corporation, association, partnership, proprietorship, trust, joint venture, or a governmental agency unit, or a governmental subdivision and every other business interest, including ownership or use of land for income.

History: L. 1974, ch. 353, § 16; L. 1982, ch. 218, § 1; July 1.

46-231. "Contract" defined. "Contract" means any agreement including but not limited to sales and conveyances of real and personal property and agreements for the performance of services.

History: L. 1974, ch. 353, § 17; March 28.

Attorney General's Opinions:

Conflicts of interest; district court clerk who is spouse of county sheriff; qualifications. 91-32.

46-232. Lobbying by state officer or employee; prohibited acts; exception. No state officer or employee shall engage in lobbying his own state agency, if he accepts compensation specifically attributable to such lobbying, other than that provided for the performance of his official duties. Nothing in this section shall prohibit a state officer or employee from lobbying without compensation other than that which he is entitled to receive for performance of his official duties.

History: L. 1974, ch. 353, § 18; March 28.

Governmental Standards and Conduct Comm. Opinions: State employee; lobbying prohibitions. 87-6.

Attorney General's Opinions:

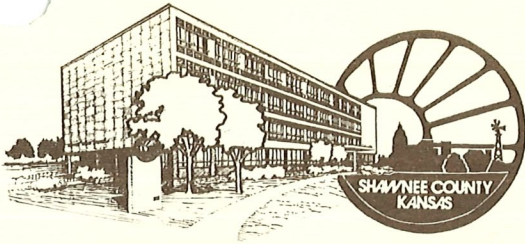
Bribery; privatization pledge; contingent fees for lobbying prohibited. 91-23.

46-233. Contracts involving state officer or employee or legislator; prohibited acts, exceptions; challenging constitutionality of legislative action or enactment by legislator; prohibited acts. (a) No state officer or employee shall in the capacity as such officer or employee be substantially involved in the preparation of or participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee or any member of such officer's or employee's immediate family has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to, has been substantially involved in the preparation of or is a participant in the making of such contract and is employed by such person or business or such officer or employee or any member of such officer's or employee's immediate family has a substantial interest in such person or business.

Whenever any individual has, within the preceding two years participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business for one year following termination of employment as a state officer or employee.

(b) No individual shall, while a legislator or within one year after the expiration of a term as legislator, be interested pecuniarily, either directly or indirectly, in any contract with the state, which contract is funded in whole or in part by any appropriation or is authorized by any law passed during such term, except that the prohibition of this subsection (b) shall not apply to any contract interest in relation to which a disclosure statement is filed as provided by K.S.A. 46-239, and amendments thereto.

(c) No individual, while a legislator or within one year after the expiration of a term as a legislator, shall represent any person in a court proceeding attacking any legislative action taken or enactment made during any term such individual served as a legislator as being unconstitutional because of error in the legislative process with respect to such action or enactment unless such legislator voted no upon the enactment of the measure and declared on the record, during such term, that such leg-



Shawnee County Commissioner of Elections

Elizabeth Ensley
Election Commissioner
Norine Staab
Asst. Election Commissioner

911 S.W. 37th, Suite A
Topeka, Kansas 66611-2378
(913) 266-0285

DATE: January 24, 1995

TO: The Honorable Janice Hardenburger, Chairman and
Committee Members of the Elections, Congressional and
Legislative Apportionment and Governmental Standards

FROM: Elizabeth Ensley, Elections Committee Chairman
Kansas County Clerks' Association *Elizabeth Ensley*

RE: WRITE-IN CANDIDACY AFFIDAVITS

Thank you for the introduction of SB No. 75. Write-in
affidavits have currently proven to be a practical way of
handling all state-wide races. The other major races would
likewise benefit from the same legislation.

WRITE-IN CANDIDATES would receive required filing papers for
the Kansas Commission on Governmental Standards and Conduct
and would benefit from more extensive press coverage.

PUBLIC would be informed on all the races.

BALLOT CANDIDATES would also be informed about the scope of
the race.

ELECTION OFFICIALS do not have to waste time recording extra-
neous write-ins such as for Donald Duck.

KCGSC would be able to know all the candidates who need to
file with them.

*Senate Elections
Attachment 3
1-24-95*

Ballot access in Kansas is ruled sufficient

Associated Press

TOPEKA — A U.S. Supreme Court ruling reaffirms that it is easy in Kansas for small parties to gain access to the election ballot for their candidates, Secretary of State Ron Thornburgh said Monday.

The Supreme Court, without comment, refused to hear arguments that the system discriminates against such candidates by imposing unfair filing deadlines.

Under Kansas law, a party can become officially recognized by filing an affidavit with the secretary of state's office by the June before the November general election. Then, it must have at least one candidate for a statewide office receive at least 1 percent of the vote in the next election.

If a party is not recognized in Kansas, its candidates must run as independents. Then, candidates for statewide office must file petitions bearing 5,000 valid signatures with the secretary of state's office on the day before the major party primaries.

"I think it upholds what we've been doing," Thornburgh said. "Ballot access is available in the state of Kansas."

The decision came in a lawsuit filed by John Hagelin, a Natural Law Party presidential candidate in 1992; Jessie Nichols, the party's U.S. Senate candidate from Kansas; congressional candidate Patricia Robinson; and voter Wanda Fern Kelly.

Because the Natural Law Party had missed the deadline for re-

ceiving official party recognition in Kansas in 1992, Hagelin, Nichols and Robinson were required to submit separate petitions with the names of 5,000 voters on each.

The petitions they filed in August 1992 did not have 5,000 signatures, but the candidates tried to file additional petitions 11 days later. Those petitions were rejected because of the missed deadline.

The three candidates and Kelly then sued, contending that the Kansas system unlawfully discriminated against them because Democratic and Republican candidates faced no deadline for getting on the state ballot.

The lawsuit was rejected by a federal judge and the 10th U.S. Circuit Court of Appeals.

Senate Elections
Attachment 3-2
1-24-95