

MINUTES OF THE SELECT HOUSE COMMITTEE ON ELECTION CONTESTS.

The meeting was called to order by Chairperson David Heinemann at 8:00 a.m. on February 3, 1995 in Room 529-S-of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Victor Miller, Attorney for Joe Shriver
Doug Witteman, Attorney for Danny Jones
Eric Rucker, Attorney for Danny Jones

Others attending: See attached list

Chairman Heinemann commented that the reason for the meeting was to receive written briefs from both parties that stated their proposed findings of fact and issues. The attorney's were told that they would present verbal arguments on Monday, February 6, 1995. The committee would at recess until 1:00 p.m. and would reconvene to consider a request that the committee reopen some issues and discuss compulsory process. (Attachments 1 & 2)

Representative Gross commented that this committee should operate like any other committee. We should hear what the "conferees" have to say, cut the hearings off, and then the rest should be up to the committee. If we don't proceed in this way we'll have rebuttal, rebuttal, rebuttal, etc., and then the committee will get bogged down. Each attorney needs to give it their best shot and then the committee ask questions.

Victor Miller commented that he views this proceeding more like a trial than a legislative hearing. It is highly important that both sides get adequate time to present their case and to respond to the other side, and so forth, until they are satisfied that they've had equal opportunity to present their side to the committee.

Chairman Heinemann stated that he felt there was nothing wrong with both sides presenting their case and being able to respond to the other side. He understood what Representative Gross was saying, that once everyone has had a fair shot at responding, the committee should take the issue under consideration without further comment, just like judges. The Chairman stated that the suggestion by Representative Gross was how the committee would proceed.

Representative Garner stated he was confused as to how the committee would proceed. At the first meeting he thought the committee had decided to recount all the ballots and that this is the perception of many of the legislative members. As a committee, we need to decide if we are going to accept the stipulation of ballots by both parties or if we are going to recount the ballots.

Representative Gross commented that the committee members owe the legislative body the opportunity of making sure that these precinct counts are correct. This way neither side can say that "it's cooked". If a recount is done the committee would know that they came up with the exact count.

Representative Graeber replied that both of the individuals have retained counsel and the counsel for both have stipulated that the total count is the correct count. He asked what the committee would be accomplishing by trying to arrive at that same figure.

Representative Gross answered that counsel could be wrong. The committee has the duty to respond to the House members; that we are the ones who are in control and not counsel.

Representative Garner commented that each of the committee members were going to have to appear before their caucus and be asked if they were comfortable with the result that was reached by the committee. This recount would protect the integrity of the committee with House members.

CONTINUATION SHEET

MINUTES OF THE HOUSE SELECT COMMITTEE ON ELECTION CONTEST, Room -Statehouse, at p.m. on February 3, 1995.

Representative O'Neal stated that he appreciated everything that was being said and that the concern he had was that the caucus' think that they have more of an investment in the 79th Legislative District than Danny Jones and Joe Shriver, which he disagreed with. "No one has a greater investment in the 79th District than these two gentlemen. If Joe Shriver and Danny Jones tell me that they are comfortable with the count and will stipulate to that, I'm not sure what right the committee has doing a recount; it's their race. We are here to facilitate a just result. They are willing to provide the committee with a jumping off point and I'm more concerned with doing what is right, than pleasing the caucus'."

Chairman Heinemann commented that the committee should give this more thought and possibly raise the issue of recounting the ballots at a later date.

The committee recessed at 9:00 a.m. The committee reconvened at 1:00 p.m. in Room 529-S.

Chairman Heinemann explained that the purpose of this meeting was to hear a request from counsel for compulsory process.

Victor Miller stated that there were three witness that he would like the committee to receive testimony from. He requested that the committee issue a subpoena to the Templeton's, who are husband and wife. The Templeton's appeared to vote and signed the voters sheet showing that they were registered and living at 420 N. 3rd. (Attachment 3) The 1994 & 1995 addresses in the phone book show that they lived at a different address. This would put them in the same category as a number of voters who voted challenged ballots and were placed in a brown envelope and never opened or counted. The Templeton's votes were illegal and shouldn't be counted. If these two votes are allowed to be counted it puts people who do not come forth when they vote and give an accurate address, in a better position than those who walk into a polling place and freely admit that they have moved and have their votes challenged and not counted.

Representative Garner asked if this evidence was presented to the District Court. Mr. Miller replied no, that it was not know^{at} the time the court was hearing the case. Representative Garner then asked if any new evidence was considered by the court. Victor Miller replied that all the evidence he considered was new to him at that time.

Representative O'Neal asked how the Templeton's were discovered. Mr. Miller explained that someone brought it to his attention. Most people are honest and disclose the problems surrounding their registration when they vote.

Representative Gross asked if there was new evidence introduced before the committee four years ago. Representative O'Neal replied that he didn't remember the committee taking new evidence. There was a vote that was identified by the court, that needed to be looked at. The difference is that the Templeton's ballots were not known by the district court. Nothing could change the fact that when the committee is done with its work that there could possibly be an unknown voter out there in the same situation. The only thing that makes them different is that they have been discovered between the time the court looked at the case and when the committee received it.

Chairman Heinemann asked whether the committee subpoenaed the Templeton's they would have to say who they voted for. Mr. Miller replied that the law states that a voter is entitled to a privilege of secrecy until the point where they establish an illegal vote. Chairman Heinemann commented that it would be very public as to how they voted and they could possibly decide that one voted for one candidate and one voted for the other as a way out of the situation, and the committee would never know for sure who they voted for.

Representative O'Neal commented that he was still struggling with what the scope of the committee was. He views the committee as an appellate court which reviews *de novo*, either *de novo* on the record or *de novo*. The statute reads that the committee shall consider the files, records and evidence transmitted and hear the contestant and contestee and their counsel. It doesn't say that the committee can or can't hear new evidence. He asked counsel if the committee, pursuant to the statute, was a board that sits as a trial *de novo* on the record, being the record sent from Cowley County. He didn't believe that the committee took evidence that was totally new four years ago. Mr. Miller stated that the committee did look at new evidence on a ballot that the court had raised at the trial.

Doug Witteman commented that the issue that should be defined, was not compulsory process, but where the line was to be drawn. The statute is quite clear that the committee should consider items sent to it by the district court. The statute also gives the committee the power of compulsory process that should be used, in cases where the court looked at an issue and didn't make a decision because further evidence was needed. The time line was drawn at the district court level (see page 299 of the transcript) and should not be changed. If the committee allows new evidence to be presented it will be a never ending process. The trial court has a role

CONTINUATION SHEET

MINUTES OF THE HOUSE SELECT COMMITTEE ON ELECTION CONTEST, Room -Statehouse, at p.m. on February 3, 1995.

to play under the election statutes, which it has done and it's time for the committee to play their role. The committee should be allowed to subpoena to bring forth additional evidence only on the issues that have been raised by the district court.

Chairman Heinemann stated that the committee has the power to subpoena the Templeton's as requested but the issue is one of where the line is to be drawn and he believed that it was done at the district court level. Since the Templeton's were not raised at the district court level they shouldn't be considered by the committee. Doug Witteman stated that they would like to have Moddie Graham appear before the committee because her vote was ruled illegal. The issue is that the judge found her vote to be illegal but could not throw her vote out because it was added to the sack of ballots and it could not be determined who she voted for. At trial she could not remember who she voted for. After the trial it was alleged that she commented that she had voted for Joe Shriver.

Representative Gross made a motion that the committee would not accept any new evidence other than evidence considered by the court. Representative Gilbert seconded the motion. The motion carried.

The committee meeting adjourned at 3:00 p.m. The next meeting is scheduled for February 6, 1995.

February 3, 1995

STATEMENT OF DISPUTED BALLOTS TO BE RAISED
BY CONTESTEE JOE D. SHRIVER BEFORE THE
SELECT COMMITTEE ON THE 79TH DISTRICT ELECTION CONTEST

Mr. Chairman and members of the Committee, Representative Shriver wishes to raise the following ballots as disputed:

- 1) The ballots cast by Michael and Penny Dorrell;
- 2) Any ballots in the ballot sack marked "Challenged" which originate from precinct 3S in Winfield;
- 3) The ballot of Edith Dickerson; and
- 4) The ballots of Daniel and Jimmie Templeton.

Representative Shriver respectfully requests that any of the above mentioned votes cast in the 79th District State Representative race be disallowed and an appropriate adjustment be made in the vote totals.

As to all other ballots put into issue at trial and determined by the Court, we agree with the Court's determination. We would request an opportunity to offer a response to any ballots placed in dispute by the Contestant.

We offer the following brief description of the facts and circumstances surrounding each of the disputed ballots and what we believe to be the controlling law.

Select Election Contests
2-03-95
Attachment 1

The Ballots of Michael and Penny Dorrell and
Any Ballots in the Ballot Sack Marked "Challenged"
Which Originate from Precinct 3S in Winfield

Michael and Penny Dorrell live at 1222 Millington in Winfield, Kansas and have lived there since September 7, 1994. They are residents of the 78th State Representative District, not the 79th State Representative District.

They presented themselves to vote at the Elks Lodge in Winfield which is the voting location for both Ward 3 and Precinct 3S. Ward 3 is in the 78th State Representative District, and Precinct 3S is in the 79th State Representative District.

The Dorrells' votes were challenged by the Election Board. They were given challenged ballots because their names were not listed in either the Ward 3 or the Precinct 3S pollbook. Their names were subsequently handwritten at the end of the pollbook for Precinct 3, where the list of challenged votes is kept.

The Dorrells' votes were later counted by the Board of Canvassers and co-mingled with other challenged ballots for all precincts in the County.

Prior to the trial in district Court, the Dorrells both signed affidavits indicating they had voted for one of the candidates in the 79th District. However, testimony of the Board workers was that no one who voted a challenged ballot at that polling location should have received a 79th District ballot as all the challenged voters were for Ward 3 (in the 78th District), not Precinct 3S.

A check by the Select Committee of the "Challenged" ballot sack will put to rest the issue of whether the Dorrells cast

79th District ballots at this polling location. Since the ballots themselves are identified by the precinct in which they are cast, any challenged ballots marked 3S were improperly given to voters not qualified to vote in the 79th District race and should be deducted from the current vote totals.

The Ballot of Edith Dickerson

On election day, Edith Dickerson was registered to vote at 810 N. 3rd, Arkansas City, Kansas in precinct 4C. She had changed her residence, however, to 1321 N. 4th Street, Arkansas City, Kansas in precinct 4D on October 3, 1994 -- more than 30 days prior to the November 8, 1994 General Election.

K.S.A. 25-2316c requires a voter to reregister if the voter changes residence more than 30 days prior to the election.

Even though she had not reregistered, Ms. Dickerson went to vote at the Presbyterian Manor, her place of employment. She indicated to the Board workers that she had moved but would not have time after work to return to her old precinct to vote.

She did not inform the Board as to when she had changed residence.

Because of the change of residence, her ballot was challenged and placed in a sealed envelope. The ballot was later opened and counted by the Court.

Rep. Shriver believes the Court was in error in counting Ms. Dickerson's vote in that she had changed residence more than 30 days prior to the election and had not reregistered as required by K.S.A. 25-1316c.

Further, even if it can be established that the change of residence occurred within 30 days of the election, Article 5 Section 1 of the Kansas Constitution addresses these situations. That section provides for one place, and only one place, to cast a proper ballot, and that place is the voter's former precinct.

Here the voter did not go to the proper polling place. A similar situation arose four years ago when the Select Committee on Election Contest for the 59th District seat reviewed that election. That Committee on a bipartisan vote found as follows:

While the Committee agrees that the voter did not mean to violate the law, the law is clear, and an orderly election process demands, that there be some system to ensure that voters vote in designated areas. Without such a system, the election process becomes chaotic and its integrity is lost. Therefore, the Committee recommends that Ballot 122 not be counted.

The vote of Edith Dickerson should not be counted and should be deducted from the current totals before the Select Committee.

The Ballots of Daniel and Jimmie Templeton

Daniel and Jimmie Templeton are husband and wife and have resided at 125 S. 12th in Arkansas City, Kansas, for about one year. Prior to that time, they lived at 420 N. 3rd in Arkansas City, Kansas.

For the November 8, 1994 General Election they remained registered to vote at their previous address -- 420 N. 3rd. They did not inform the Election Board of their change of residence and consequently voted without being challenged.

Pursuant to K.S.A. 25-2316c these voters were not legally registered to vote. Their votes should not be counted but have thus far been included in the totals.

We ask that the Templetons be compelled to appear before the Committee and that they be required to disclose how they voted in the 79th District State Representative race. Upon sufficient showing of how their votes were cast, we ask that their votes be deducted from the current totals.

In *Lambeth v. Levens*, 237 Kan. 614, 618, 702 P.2d 320 (1985), the Kansas Supreme Court determined that a district court hearing an election contest is authorized to determine the legality of votes that have been cast and counted. "When it has been established that a voter was not qualified to vote, any person having requisite knowledge may testify for whom such voter cast his ballot or the unqualified voter may be compelled to disclose for whom he voted." *Lambeth* at 619 (citing *Campbell v. Ramsey*, 150 Kan. 368, 92 Kan. 2d 819 (1939)). The court noted that "[w]hile a legal voter cannot be compelled to disclose for which candidate he voted, the law does not protect those who violate the election laws." *Lambeth* at 619.

Conclusion

The above is an overview of the ballots Rep. Shriver wishes to place in dispute. For a more complete account of the circumstances surrounding the Dorrells' ballots, the Committee's

attention is directed to the following pages of the trial transcript:

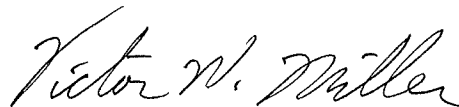
396 - 399
407 - 408
417 - 459
487 - 495

For a more complete account of the circumstances surrounding the ballot of Edith Dickerson, the Committee's attention is directed to the following pages of the trial transcript:

116 - 134
200 - 211

As noted earlier, Rep. Shriver requests the Committee receive testimony concerning the ballots of the Templetons.

Respectfully submitted,



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BEFORE THE KANSAS HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON ELECTIONS

In the matter of the election of)
Joe D. Shriver to the position of)
State Representative, 79th District)
)
DANNY P. JONES,)
)
Contestant,)
)
v.)
)
JOE D. SHRIVER,)
)
Contestee.)
)

Cowley County District
Court Case No. 94-C201-W

Pursuant to K.S.A. 25-1434 et seq.

MEMORANDUM SELECT COMMITTEE HEARING BRIEF

COMES NOW the Contestant, Danny P. Jones, by and through his attorneys Douglas P. Witteman and Eric K. Rucker, and offers this Memorandum Select Committee Hearing Brief in support of his contest to the election of Joe D. Shriver to the Kansas House of Representatives for the 79th District.

STATEMENT OF FACTS

For the purposes of the instant Brief, the Contestant incorporates herein his Amended Notice of Contest filed December 22, 1994, with the Cowley County District Court as a factual

summary. In further support of specific issues to be determined by the Select Committee and specifically addressed herein, the following additional facts are summarized.

On the day of the election, November 8, 1994, there were numerous ballots challenged at the individual precinct polling places, as provided for by Kansas law. Subsequently, election office workers reviewed the challenged ballots, performed a cursory investigation of the challenged ballots and made determinations regarding which challenged ballots should be counted and which should not. After these determinations were made, the Cowley County Board of Canvassers met on Thursday, November 11, 1994, and accepted the determinations made by the Cowley County Clerk's office regarding the challenged ballots. The challenged ballots were then either opened and counted or were not opened and not counted.

At trial both the Contestant and Contestee presented evidence indicating that several of the aforementioned challenged ballots were illegal because that had been cast by individuals not properly registered to vote in the contested election. Accordingly, the court made findings indicating the votes were illegal and subtracted the votes from the appropriate candidate's vote totals after determining how the ballots were cast. (Court's Order, pp. 11-12, attached hereto as Attachment A). Furthermore, the Contestant presented evidence indicating that legal ballots that had been cast had not been counted and the court subsequently opened two of these ballots and added these to the respective candidate's vote totals. (Court's Order, pp. 6-11).

Additionally, there were thirteen (13) ballots identified by the statutory inspection board, convened pursuant to K.S.A. 25-1447, that were presented to the court for further determination. Of these thirteen (13) ballots, nine (9) had not been counted in the certified election result and four (4) had been counted in the certified election results. The court determined that the nine

(9) ballots should remain uncounted as it was impossible to determine the voter's intent. The court further determined to count only three (3) of the four (4) ballots that had previously been counted. In this regard, the three ballots were appropriately counted, two (2) for Jones and one (1) for Shriver. The one (1) ballot which the court did not count remains at issue for determination by the Select Committee. This ballot is identified as Exhibit RB-3 in the court records.

As a result of the election contest hearing the court made specific findings addressing the issues raised therein. The court, consistent with its findings, determined that both Danny P. Jones and Joe D. Shriver received 3031 votes, respectively.

ARGUMENT AND AUTHORITY

I. Ballot RB-3

To determine the validity of the ballot identified in the court records as RB-3, K.S.A. 25-3002 must be considered, which in pertinent part reads as follows:

Rules for canvassers; validity of ballots or parts thereof. (a) The rules prescribed in this section shall apply to:

...

(4) All election contests.

...

(b)(1) No ballot, or any portion thereof, shall be invalidated by any technical error unless it is impossible to determine the voter's intention. Determination of the voter's intention shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest.

...

K.S.A. 25-3002 (1993).

Prior to 1992 the language of K.S.A. 25-3002 tended to invalidate votes when a voter inadvertently erred when marking a ballot. In response to the injustice created by such an interpretation of K.S.A. 25-3002, the Kansas legislature amended the statute in order to make the

intent and spirit of the law clear. Prior to amendment K.S.A. 25-3002 contained the following provisions:

(2) Any ballot upon which an identifying mark has been made shall be wholly void and no vote thereon shall be counted. Determination of whether a mark is an identifying mark shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest. The secretary of state may adopt rules and regulations describing certain types of marks upon ballots which may be considered identifying marks, but such rules shall not be considered as either all inclusive or as conclusive.

(3) Any ballot which has been defaced, mutilated or torn shall be wholly void and no vote thereon shall be counted.

K.S.A. 25-3002 (Supp. 1991)(the 1992 Session Laws, Chap. 291, attached hereto as Attachment B). The legislature clearly intended to insure that a vote would not be voided on the basis of some inadvertent or extraneous marking on a ballot. Therefore, the Select Committee's task is simply to determine the intent of the voter and count the ballot accordingly.

Ballot RB-3, which **had** been counted in the original canvass and the three (3) subsequent recounts (including the count certified by the Secretary of State) prior to the election contest being filed, contained a mark on the ballot in the oval where a write-in vote would be marked. There was no name in the write-in blank and the voter made a heavy "X" through this obviously inadvertent mark. The voter then appropriately darkened the oval (as was done in all other races marked on the ballot) next to the name of Danny Jones. (See Attachment C, Example #4, facsimile of marking on ballot RB-3). The voter's intent is clear; he accidentally marked the write-in box, then crossed the mark out to indicate his error and then marked the candidate of his choice, Danny Jones.

In accordance with the voter's clear intent, the court in considering ballot RB-3 found, as a matter of fact, that it was the voter's intention to vote for Danny Jones, as evidenced by the

ballot itself. (Trial Transcript, pp. 505-06). The court made this finding consistent with K.S.A. 25-3002 which states in pertinent part, "Determination of the voter's intention shall rest in the discretion of . . . the election court in the case of an election contest." Despite its determination the voter intended to vote for Danny Jones, the court then ruled, as a matter of law, the vote was invalidated by the provisions of K.S.A. 25-3002(b)(2)(B) which states:

...

(2) The occurrences listed in this subpart (2) shall not invalidate the whole ballot but shall invalidate that portion, and that portion only, in which the occurrence appears. The votes on such portion of the ballots shall not be counted for any candidate listed or written in such portion, but the remainder of the votes in other portions of the ballot shall be counted. The occurrences to which this subpart (2) shall apply are:

...

(B) Whenever a voting mark is placed in the square at the left of a space where no candidate is listed.

K.S.A. 25-3002(b)(2)(B)(1993)(Court's Order, p. 5). The Contestant believes the court erroneously interpreted K.S.A. 25-3002(b)(2)(B) thereby overriding the clear language of K.S.A. 25-3002(b)(1), quoted above, which indicates that a technical error will not invalidate any portion of a ballot. Furthermore, Contestant believes the court erroneously interpreted the voter's inadvertent mark on ballot RB-3 to be a voting mark when it was not a voting mark as contemplated by the statute.

Initially, it is clear the voter who marked ballot RB-3 made an inadvertent and technical error when he initially marked the oval next to the write-in line. The fact that this was a clearly inadvertent and technical error, and the court was able to determine the voter's intent, brings ballot RB-3 within the clear language of K.S.A. 25-3002(b)(1), which states, "No ballot, or any

portion thereof, shall be invalidated by any technical error unless it is impossible to determine the voter's intention." Pursuant to this statute, ballot RB-3 should be added to Danny Jones' vote total.

In addition to the above analysis, the marking in the oval next to the write-in line does not constitute a "voting mark" as contemplated by K.S.A. 25-3002(b)(2)(B). In Attachment C to this Brief, Contestant has provided Examples #1 and #2 to indicate what he believes are appropriate representations of voting marks contemplated by the statute which would properly invalidate the pertinent portion of the ballot. It was the voter's clear intention in marking ballot RB-3, however, to obliterate any marking in the write-in oval by marking a large X through the inadvertent mark. Surely, if the voter had simply erased the inadvertent mark, as is illustrated by Example #3 on Attachment C, this would not be considered a voting mark. By crossing out the inadvertent mark, as illustrated by Example #4 to Attachment C, the voter effected the mark in a manner analogous to an erasure. If the Select Committee would not consider an erasure as a voting mark, then neither should it consider the marking obliterated by the X to be a voting mark. For this additional reason, ballot RB-3 should be counted and added to the vote total of Danny Jones.

II. Legal Votes Which Were Cast And Counted By The Court

At the election contest hearing, the Contestant presented evidence concerning challenged ballots that were legally cast but which had not been counted in the certified election results. Of the three (3) ballots at issue in this category, the court determined to count two (2) and these ballots were added to the respective candidate's vote totals. These ballots were cast by Donna Schalk f/k/a Donna Lloyd and by Edith Dickerson.

1. Donna Schalk

Donna Schalk cast here ballot in precinct 2B where she was a registered voter under the name of Donna Lloyd. Because her name had changed, Ms. Schalk's vote was challenged and on the challenged ballot envelope it was noted that Ms. Schalk had changed her name in 1992 as a result of a divorce. Ms. Schalk filled out the appropriate change of name affidavit and cast her ballot.

The statute relevant to determining the validity of Ms. Schalk's ballot is K.S.A. 25-2316c(a). In relevant part this statute reads as follows:

When a registered voter changes name by marriage, divorce or legal proceeding, if such voter is otherwise qualified to vote at such voting place such voter shall be allowed to vote at any election on the condition that such voter first gives an affidavit to the election judges stating the facts relevant to such change of name and authorizes the county election officer to change the voter's registration records to reflect such change. The county election officer shall send, by nonforwardable first-class mail, a new certificate of registration to any voter giving such affidavit.

K.S.A. 25-2316c(a)(1993). Ms. Schalk changed her name pursuant to a divorce, was otherwise qualified to vote and filled out the appropriate affidavit. Although everything necessary to open and count her challenged ballot was, in place, the ballot was overlooked and not counted by the Cowley County Election Board. This vote was properly counted and added to the appropriate candidate's vote total by the court. (Court's Order, pp. 5-7). Contestee stipulated this was a legal vote which should have been counted. (Trial Transcript, p. 351)

2. Edith Dickerson

Edith Dickerson cast her ballot at precinct 4D, at the polling place located at her place of employment. Ms. Dickerson indicated to the poll worker that she had recently moved and asked whether she should vote there or go back to her old polling place to vote. (Trial Transcript, pp.

121, testimony of Edith Dickerson). The poll worker indicated that Ms. Dickerson should vote there at her present precinct polling place (Trial transcript, pp. 128-29, testimony of Edith Dickerson) and offered her a challenged ballot envelope and an in-precinct move registration card, pursuant to K.S.A. 25-2316c(b). At trial the testimony indicated that Ms. Dickerson previously had moved from her residence located in precinct 4C. She commenced her move on October 3, 1994, and actually vacated this residence and completed her move on October 14, 1994, the date when the new owners of the home were to take possession.

Kansas law permits a registered voter to vote without reregistering, if that voter moves within 30 days of the election. K.S.A. 25-3701 states:

For the purposes of this act, a "former precinct resident" shall mean a person who is otherwise qualified elector of the state of Kansas, who has removed from the precinct of his former residence in this state and established residence in another precinct in this state during the thirty (30) days next preceding any election held in the precinct of his former residence. Such person may vote in such election in such precinct of his former residence to the same extent and in the same manner as if he had retained his residence in such precinct, except as otherwise provided in this act.

K.S.A. 25-3701 (1993). Ms. Dickerson completed her move and obtained her new residence within 30 days of the date of the instant election. (Court's Order, pp. 7-11, Order Denying Motion For Reconsideration, pp. 1-5, attached hereto as Attachment D).

Although, at the errant instruction of a poll worker, she voted in the precinct of her new residence, Ms. Dickerson was a qualified elector and should not be disenfranchised because she voted at the wrong polling place. Ms. Dickerson had asked the poll worker if she should vote at her old precinct and she was affirmatively told to instead vote at the new precinct. (Trial Transcript, pp. 121, 128-30, testimony of Edith Dickerson). The records of this election are replete with references to qualified electors who cast their ballots at the wrong precincts, but

which were nevertheless counted in this election. This was consistent with the Cowley County Election Office's policy, "To allow anyone to vote that came in that wanted to vote and to allow no one to leave unless they voted." (Trial Transcript, p. 202, testimony of Dorothy L. Bohrer (the poll worker where Ms. Dickerson voted)). This policy was also stated by other election workers and officials. (See Trial transcript, pp. 44, 194, testimony of Barbara Warren and Doris Madden, respectively).

The court determined that a technical irregularity, attributable to the poll worker, should not disenfranchise this qualified voter. As stated by the court, "the election board did not allow Edith Dickerson to follow the law and go to her original polling place to vote." (Court's Order, p. 10). In making its ruling the court noted that the Kansas Supreme Court had stated that, "they who voted were legal electors. They claimed and sought to exercise their right to vote. They voted at the place the officers designated. They voted in the manner prescribed by law. Why should the mistakes of officers operate to disenfranchise them." Wildman v. Anderson, 17 Kan. 344, 349 (1876). Ms. Dickerson was within the contemplation of the aforementioned statute, and the court appropriately added her vote to the appropriate candidate's vote total.

III. Illegal Votes That Were Cast For The Contestee And Subtracted By The Court

During the election contest hearing in the Cowley County District Court the Contestant presented evidence concerning illegal votes that had been cast and counted during the election. After considering the evidence the court properly determined that illegal ballots were cast by Filomena Garcia, Russell Wayne Keefe, Walter Eugene Simmons, Curtis Richards and Donita Richards. Each of these unqualified electors had cast their ballots for Joe Shriver and the votes were properly subtracted from Mr. Shriver's vote total. (Court's order, pp. 11-12)

Additionally, the court determined the ballot of Moddie G. Graham was also illegally cast (Court's ruling, Trial Transcript, pp. 354-55), however, because Ms. Graham's court testimony indicated she could not remember who she voted for (contrary to her representations both before and after trial)(See Affidavits of Eric Rucker and Carol Kingsley attached hereto as Attachments E and F, respectively), the court was unable to subtract her vote from the appropriate candidate's vote total. The overwhelming weight of the evidence indicates that Ms. Graham cast her vote for Joe Shriver and the Select Committee should therefore subtract this vote from Mr. Shriver's vote total.

1. Filomena Garcia

Filomena Garcia cast her ballot at the polling place designated for precinct 2C. Because Ms. Garcia was not in the 2C poll book, she voted a challenged ballot. Her ballot was later deemed properly cast by the election office and was accepted by the Cowley County Board of Canvassers as such. The ballot was opened and the vote counted. The vote, however, was clearly illegal because Ms. Garcia was not a properly registered voter qualified to vote in the election. Kansas election law indicates that "[v]oting or attempting to vote at any election when not a lawfully registered voter" is illegal. K.S.A. 25-2416(a)(1993).

The election office records indicate that Ms. Garcia's registration was voided and purged because she failed to vote in two (2) consecutive state general elections. (Court's Order, p. 12). This determination is consistent with the provisions of K.S.A. 25-2316d, which indicates that when a voter that fails to vote in two state general elections "the voter registration is hereby declared to be void." Ms. Garcia's voter registration card is marked "NN" which is the election office's notation that a voter failed to vote in two general elections. (Trial Transcript, pp. 143-44,

testimony of Barbara Warren). The poll books indicate that Ms. Garcia did not vote in either the 1988 or 1990 election. (Trial transcript, pp. 141, 143, testimony of Barbara Warren while referring to poll books). Ms. Garcia testified that she had voted for Mr. Shriver and had also indicated the same prior to trial. (Trial Transcript p. 114, 148, testimony of Filomena Garcia and Barbara Warren, respectively). After considering the evidence presented at trial the court determined this ballot was illegally cast for Joe Shriver and was therefore subtracted from Mr. Shriver's vote total. (Court's Order, p. 12). The Contestee also stipulated this was an illegal vote. (Trial Transcript, pp. 350-51).

2. Russell Wayne Keefe

On December 12, 1992, Mr. Keefe registered to vote and listed his residence as 610 N. 8th, Arkansas City, Kansas which is located in precinct 4A. Approximately 1 1/2 years ago Mr. Keefe moved to 911 N. C St., Arkansas City, Kansas which is located in precinct 1B. Despite the move from one precinct to another, Mr. Keefe failed to reregister to vote as required by the clear language of K.S.A. 25-2316c(b), which states that "[w]hen a registered voter changes residence, such voter must reregister in order to be eligible to vote. . . ." Mr. Keefe testified he had voted for Mr. Shriver. (Trial Transcript, pp. 108, 111, testimony of Russell Keefe). Upon consideration of the evidence presented at trial, clearly indicating the illegality of this ballot, the court, in accordance with Mr. Keefe's testimony, subtracted the vote from Mr. Shriver's vote total. (Court's Order, p. 11). The Contestee stipulated this was an illegal vote. (Trial Transcript, pp. 350-51).

IV. Illegal Vote That Should Be Subtracted By The Select Committee

1. Moddie G. Graham

Ms. Graham registered to vote on August 27, 1992, and listed her residence as 614 N. 5th, Arkansas City, Kansas which is located in precinct 4A. In this election Ms. Graham cast a challenged ballot at the polling place for precinct 3A. On her challenged ballot envelope, Ms. Graham gave her residence as 307 S. 1st, Arkansas City, Kansas which is located in precinct 3A. At trial, on December 27, 1994, Ms. Graham indicated that she had in fact moved subsequent to the time of her registration. The court properly determined that Ms. Graham was an unqualified elector whose vote was illegally cast. (Trial Transcript, pp. 354-55). However, because Ms. Graham testified that she could not remember who she voted for, the court determined it was unable to subtract her vote from the appropriate candidate's vote total.

Prior to trial, on or about December 22, 1994, Ms. Graham had clearly stated that she had voted for Joe Shriver. (Affidavit of Eric Rucker attached hereto as Attachment E). On December 28, 1994, the day after testifying at trial that she could not remember how she voted, Ms. Graham again stated, to a completely uninterested witness, that she voted for Joe Shriver. (Affidavit of Carol Kingsley attached hereto as Attachment F).

On the evening of December 22, 1994, while investigating the facts pertinent to the election contest Eric Rucker, counsel for the Contestant, spoke with Moddie Graham by telephone. During the conversation Mr. Rucker was able to determine that Ms. Graham was not a properly registered voter on the day she cast her ballot in the November 8, 1994 election. In the course of the conversation, Ms. Graham spoke in great detail about many matters in her life including the recent death of her sister, her living arrangements and her faith. In specific regard

Graham volunteered the following statement: "I voted for the lesser of two evils. I voted for Joe." (Affidavit of Carol Kingsley, attached hereto as Attachment F).

The weight of the evidence clearly indicates for whom Ms. Graham cast her illegal ballot. She voted for Joe Shriver. The statement made to Carol Kingsley **the day after her trial testimony**, and which is absolutely consistent with Ms. Graham's previous statement to Mr. Rucker, is clear and convincing evidence of this fact. Of course, this evidence was unavailable to the court when it found it could not determine how she voted. This evidence is, however, available to the Select Committee. "When it has been established that a voter was not qualified to vote, any person having requisite knowledge may testify for whom such voter cast his ballot or the unqualified voter may be compelled to disclose for whom she voted." Lambeth v. Levens, 237 Kan. 614, 619, 702 P.2d 320 (1985).

Moddie Graham has, at a minimum, twice expressed for whom she voted in the contested election. The only time she would not indicate for whom she had voted occurred at the contest hearing where the consequences of her disclosure would be harmful to her preferred candidate. Based on all of the available evidence concerning how Ms. Graham cast her vote, particularly the compelling information not available for the court's consideration, Ms. Graham's illegal vote should be subtracted from Mr. Shriver's vote total.

V. Legal Votes Cast For The Contestant And Disallowed By The Court

During the contest hearing, the Contestee presented evidence of several voters which he contended had illegally cast ballots in the contested election and who had cast their ballots for Danny Jones. A few of these votes were clearly illegal and were appropriately subtracted from

Mr. Jones' vote total. However, on three particular ballots, the evidence was ambiguous at best and Contestant contends these votes should be added to the vote count determined by the court.

1. Ruby Schalk

Ruby Schalk cast her ballot in precinct 1D. Because the poll worker did not find Ms. Schalk's name in the poll book, Ms. Schalk voted a challenged ballot. Ms. Schalk's present address, as indicated on the challenged ballot envelope, is 305 E. Windsor Rd., Apt. 410, Arkansas City, Kansas. Ms. Schalk testified that she moved to her present address in September of 1992 and subsequent to her move she reregistered to vote at the Arkansas City, Kansas Water Department, which is located in the City Building. (Trial Transcript, pp. 316-18, testimony of Ruby Schalk). Ms. Schalk's testimony indicated her vivid recollection of registering after she moved and that she filed this registration because of the fact she had moved and wanted to vote in the upcoming presidential election. (Trial Transcript, pp. 316-18, testimony of Ruby Schalk).

During the contest hearing, testimony was received from the Assistant Cowley County Elections Officer indicating that it was not an uncommon occurrence for the election office to receive complaints from electors regarding their registrations filed in Arkansas City. It was further indicated that registration cards were sometimes misplaced, that election office errors occurred in this election, and that the Cowley County Elections Office sometimes utilized untrained 8th grade students to file registration materials! (Trial Transcript, pp. 325, 334, 480-82, testimony of Barbara Warren). Based on the evidence available, Contestant believes the registration materials of Ruby Schalk were inadvertently misplaced or were never forwarded to the election office.

Based on Ms. Schalk's circumstances it is apparent that she registered while she resided at her current address and that she has not moved from that address since the time of her registration. It is equally apparent that her registration card was misplaced or not delivered from the Arkansas City Water Department to the election office in Winfield. Ruby Schalk should not be disenfranchised by the errors of election office workers. Ms. Schalk's challenged ballot should be opened, counted and the vote added to the appropriate candidate's vote total.

2. Gladys Weigand

Contestee presented evidence that Gladys Weigand was not a properly registered elector and that she had voted for Danny Jones. The Court agreed and subtracted her vote from Mr. Jones vote total. (Court's Order, pp. 11-12). The Contestant believes, however, there was substantial testimonial and documentary evidence indicating that Ms. Weigand had, in fact, registered to vote on August 2, 1994, and that her registration materials were either misplaced or lost while in the custody of election officials.

Ms. Weigand testified that she had registered to vote at their polling places during the August primary election (Trial Transcript, pp. 462, 464, testimony of Gladys Weigand). Furthermore, the computer printout (admitted into evidence as Petitioner's Exhibit 13E and available for review by the Select Committee), clearly indicates that Gladys Weigand was listed in the Active Voter files maintained by the Cowley County Election office. This computer printout specifically notes that Gladys Weigand was placed in the Active Voter files effective August 2, 1994, the very day that she testified that she registered.

Assistant Cowley County Elections Officer, Barbara Warren, testified that a voter would not be added to the Active Voter files absent some document (a registration card) coming to the election office which would be used to list the information contained on the computer printout. (Trial Transcript, pp. 476-78, testimony of Barbara Warren). Ms. Warren testified the election office obviously had a registration card for Ms. Weigand and that the office did have it filed in the appropriate place. (Trial Transcript, p. 479, testimony of Barbara Warren). The only reasonable conclusion to be drawn from the available evidence is that the Cowley County Election office simply misplaced Ms. Weigand's registration card. Again, the mistakes of election office workers should be allowed to disenfranchise qualified electors. The Select Committee should add the vote of Gladys Weigand to the vote total of Danny Jones.

CONCLUSION

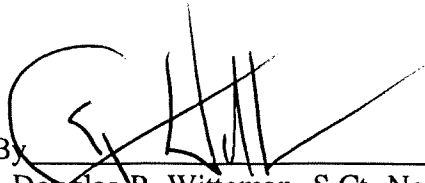
In considering the contested election, the Contestant believes that appropriate consideration and weight should be given to the court's findings and conclusions. Where, however, the court misinterpreted the statutes, contrary to the clear legislative intent to avoid the disenfranchisement of properly registered voters, and where all pertinent information was unavailable to the court, specifically, the post-trial statements of Moddie Graham, the Contestant believes the Select Committee should revisit those issues and make the appropriate findings and recommendations thereon.

WHEREFORE, the Contestant, Danny P. Jones, respectfully requests the Select Committee consider the files, records and evidence transmitted from the court and the additional evidence presented to the Select Committee and report to the full House of Representatives with

appropriate findings and determinations consistent with the foregoing, and with a recommendation that Danny P. Jones be elected as State Representative for the 79th District, and for any other and further relief the Select Committee deems equitable, just and proper.

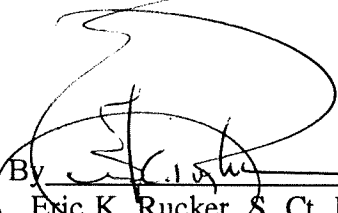
Respectfully submitted,

PATTERSON, NELSON, NOLLA & WITTEMAN, L.C.

By 

Douglas P. Witteman, S.Ct. No. 15023
Attorneys for the Contestant
Danny P. Jones

ERIC K. RUCKER

By 

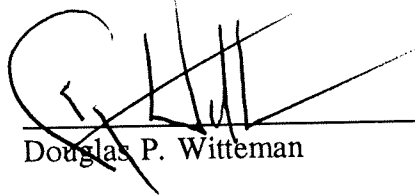
Eric K. Rucker, S. Ct. No. 11109
Attorney for the Contestant
Danny P. Jones

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing MEMORANDUM SELECT COMMITTEE HEARING BRIEF was served on this 3rd day of February, 1995 by hand delivering the same to the following:

Representative David J. Heinemann
Select Committee on Elections, Chairman
Kansas House of Representatives
State Capital Building
Topeka, Kansas 66612

Victor W. Miller
Attorney at Law
700 SW Jackson, Suite 404
Topeka, Kansas 66603



Douglas P. Witteman

EXHIBIT

INDEX

- A. Court's Order
- B. 1992 Session Laws
- C. Ballot Examples
- D. Order Denying Motion for Reconsideration
- E. Affidavit - Rucker
- F. Affidavit - Kingsley

ATTACHMENT A

IN THE DISTRICT COURT OF COWLEY COUNTY, KANSAS

DANNY P. JONES,
Contestant,

vs.

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JOE D. SHRIVER,
Contestee.

ORDER

Now on this 27th and 29th of December 1994, the District Court of Cowley County, Kansas, tries this matter as an election court. The parties appear in person and by their respective counsel as recorded in the file.

After hearing the testimony of the witnesses for both the contestant and the contestee, and after examining all questioned ballots, and hearing the arguments and statements of the attorneys, this election court determines that the number of legal votes cast in the general election of November 8, 1994, for the office of Kansas State Representative for the 79th District is as follows:

Danny P. Jones	3031
Joe D. Shriver	3031

Previously, on December 21, 1994, the court appointed a board of inspectors pursuant to K.S.A. 25-1447(a). Their inspection and recount of the ballots in this contest yielded the

same results as the previous recount upon which the certificate of election was issued. The Kansas Secretary of State issued a certificate of election to Joe D. Shriver.

INSPECTION AND RESOLUTION BALLOTS

The board of inspectors reserved ruling upon nine (9) ballots that they wanted this court to inspect, along with four (4) resolution ballots. At the trial of this matter, the court admitted the nine inspection ballots as exhibits WI 1-9, inclusive. The court admitted the resolution ballots as exhibits RB 1-4, inclusive.

It is the conclusion of this court that none of the nine inspection ballots should be added to the vote totals for either candidate. Three of the nine inspection ballots are votes for Danny Jones cast from the 78th State Representative district. Cowley County, Kansas, contains both the 78th and 79th districts. Votes from the 78th district should not be added to votes cast in the 79th district. The remaining six inspection ballots have the ovals filled next to a blank line provided on the ballot for a write in vote. No names are written in on any of the six ballots. It is impossible to tell the intention of the voters from such ballots and the court did not count them.

Of the four resolution ballots submitted to the court, the

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court counted three and did not count one. The law that pertains to questioned ballots is as follows:

K.S.A. 25-3002(b)(1) No ballot, or any portion thereof, shall be invalidated by any technical error unless it is impossible to determine the voter's intention. Determination of the voter's intention shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest.

One of the resolution ballots has the oval next to the name of Danny Jones filled with a dark pencil mark. On that same ballot there is also a very small pencil mark in the oval next to the name of Joe Shriver. It appears that the intention of this voter is to vote for Jones, and that should be added to the totals.

On another resolution ballot, the voter filled with a dark pencil mark the oval next to the name of Joe Shriver. On that same ballot there is also a light pencil mark in the oval next to the name of Danny Jones. It appears that the intention of this voter is to vote for Shriver and that should be added to the totals.

On a third resolution ballot, the voter filled with a dark pencil mark the oval next to the name of Danny Jones. Also on the ballot the name "J. Mulheim" has been written in on every line provided for write in votes in every election. The voter did not mark the ovals next to the write in lines in any race,

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while in all races where a vote is cast on the ballot, the voter filled the oval with a dark pencil mark next to a candidate, or candidates name(s). It appears to this court that it is the intention of the voter to vote for Danny Jones and that vote should be added to the totals.

At the trial of this matter the contestant offered the testimony of Jacqueline Mulheim, an older lady, stricken with muscular dystrophy and a resident of a nursing home in Arkansas City, Kansas. This court holds the opinion that such testimony is inadmissible at an election contest. When determining a voter's intent, the same rules bind this election court and a board of canvassers. Parole evidence should not be admitted to decide these issues. The election court should determine the intent of the voter from the ballot itself. If the court cannot decide the intent of the voter from the ballot then that vote is invalid. To rule otherwise, would subject every election court to any number of witnesses that would offer testimony concerning their intent when they voted. This would lead to all sorts of uncertainty and possible claims of influence. Elections are to be decided by legal votes that are legally cast and not testimony of witnesses taken weeks after the election.

In the final resolution ballot, the voter filled the oval next to Danny Jones' name with a dark pencil mark. That same ballot has the oval next to the write in line for the 79th State

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Representative race partially filled in with a dark pencil mark along with a large dark "x" penciled through the write in oval. A specific statute deals with this situation.

K.S.A. 25-3002((b) states:

. . . .
(2) The occurrences listed in this subpart (2) shall not invalidate the whole ballot but shall invalidate that portion, and that portion only, in which the occurrence appears. The votes on such portion of the ballot shall not be counted for any candidate listed or written in such portion, but the remainder of the votes in other portions of the ballot shall be counted. The occurrences to which this subpart (2) shall apply are:

. . . .
(B) Whenever a voting mark is placed in the square at the left of a space where no candidate is listed.

This statute is controlling in this instance. The voter placed a voting mark in the oval at the left of a space where no candidate is listed. This election court did not count this vote as a legal vote.

VOTES CHALLENGED AND NOT COUNTED

There are three votes in this category. Donna Schalk f/k/a Donna Lloyd, Ruby Schalk, and Edith Dickerson all cast votes in this election for the 79th District State Representative. None of their challenged votes were counted in any vote count made

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prior to this election court being convened. Such cases are different and are listed separately.

Donna Schalk, f/k/a Donna Lloyd. Because of a divorce Donna Lloyd, a qualified elector of the 79th State Representative district, had her former name of Schalk restored. She registered to vote under her former name of Lloyd. On election day she voted and filled out an affidavit as required by law and the election board sealed her ballot as a challenged vote. The Board of Canvassers did not count her vote since the affidavit concerning her name change was inadvertently not forwarded with her challenged ballot. That affidavit has since been found and is an exhibit in this trial.

The law permits her to vote and this court counted her vote. K.S.A. 25-2316c(a) provides that:

"When a registered voter changes name by marriage, divorce or legal proceeding, if such voter is otherwise qualified to vote at such voting place such voter shall be allowed to vote at any election on the condition that such voter first gives an affidavit to the election judges stating the facts relevant to such change of name and authorizes the county election officer to change the voter's registration records to reflect such change.
. . . "

Donna Schalk is a qualified elector able to vote at her

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polling place. She filled out the appropriate affidavit and voted. The court counted her vote in the totals. (Her vote has been counted by this election court in camera in order to preserve the anonymity of her vote.)

Ruby Schalk. In this instance, Ruby Schalk's voter registration record revealed her address as 1420 S. C Street, Arkansas City, Kansas. Unfortunately, Ruby Schalk had moved from that residence into her new residence at 305 E. Windsor Road, Arkansas City, Kansas, in September 1992. Those two addresses are in different voting precincts and she moved prior to 30 days next proceeding the election. Although she claims to be registered at the new address no such registration can be found or presented as evidence to this court. Ruby Schalk is not a registered voter eligible to vote in this election and her vote should not be counted in these totals. K.S.A. 25-2316c(b) states "When a registered voter changes residence, such voter must reregister in order to be eligible to vote . . . "

Edith Dickerson. In this case, Edith Dickerson, a qualified elector of the 79th State Representative District moved her residence within 30 days next proceeding this election. For twenty years she resided at 810 N Third Street in Arkansas City.

As a result of a divorce on April 28, 1994, she was forced to sell her home at 810 N. Third Street, Arkansas City, Kansas,

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and gave up possession of her house at five p.m. on October 14, 1994. The closing of the sale occurred on October 11, 1994. Ms. Dickerson rented an apartment on October 1, 1994, at 1321 N. Fourth Street, Arkansas City, Kansas, and finished moving her belongings to that address on October 14. Edith Dickerson emphatically and unequivocally stated that if the sale had fallen through she would have returned to her home of twenty years on Third Street. These two addresses are in different voting precincts.

Although Ms. Dickerson testified that she considered both addresses as her residence, legally, a person can have but one legal residence but can have many domiciles. Residency is a matter of intent. " . . . one does not lose one's residence by mere physical presence elsewhere unless that presence is accompanied by an intention to abandon the old residence and adopt the new." PERRY v. PERRY, 5 Kan. App. 2d 636 (1981). "Once a residency is established, it is presumed to continue until a new residency is established. . . . To effect a change of residence, there must be a transfer of bodily presence to the new location coupled with the intention to abide therein either permanently or indefinitely." IN RE ESTATE OF PHILLIPS, 4 Kan. App. 2d 256 (1980).

Edith Dickerson intended her residence to be her home of

twenty years and only changed when forced to give up possession of the dwelling. This means she legally moved her residence on October 14, 1994, which is within thirty days of the election held November 8, 1994.

The statutes contained in K.S.A. 25-3701, et seq. permit a qualified voter who moves within thirty days of the election to

" . . . vote in such election in such precinct of his former residence to the same extent and in the same manner as if he had retained his residence in such precinct, except as otherwise provided in this act."

This statute displays a legislative intent not to disfranchise a voter who moves just prior to an election. The law in K.S.A. 25-3702 goes on to provide the form of an affidavit that a voter must execute in order to vote in this fashion. This affidavit is then used by the election officer to update the voter registration lists.

In the case of Edith Dickerson, she appeared at her new polling place and informed the election board of her predicament. She voted and the election board challenged the ballot. Edith Dickerson filled out a change of address affidavit but it was the type of affidavit used when a voter moves within the same precinct, not to a new precinct. The court further notes that both parties presented a large amount of testimony at the trial

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of this contest to the effect that it is the avowed policy of the Cowley County election office not to turn away any elector from the polls. Election board workers received explicit instructions to allow everyone to vote and to challenge those ballots of the people whose names were not on that precinct's lists. Later, then, the board of canvassers would decide the fate of all challenged ballots.

In following the policy of the election office, the election board did not allow Edith Dickerson to follow the law and go to her original polling place to vote. Edith Dickerson did as she was instructed, voted at the new polling place and filled in the affidavit she was given. Edith Dickerson is a legally qualified elector that should have been permitted to vote at her original polling place. Due to the policy of the Cowley County election office she was not permitted to follow the law. Her vote was counted by the court and included in the totals. (This has been accomplished by an *in camera* inspection in order to preserve the anonymity of her vote.)

As it has been stated by the Kansas Supreme Court, "They who voted were legal electors. They claimed and sought to exercise their right to vote. They voted at the place the officers designated. They voted in the manner prescribed by law. Why should the mistakes of any officers operate to disfranchise them?" *WILDMAN v. ANDERSON*, 17 Kan. 344, 349, (1876).

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Similarly, why should the mistakes of the election officers in allowing Edith Dickerson to vote in the wrong precinct disfranchise an otherwise legally qualified elector?

ILLEGAL VOTES CAST

In order to be a qualified elector a voter must register. Their registration must list the address of their residence. (See K.S.A. 25-2302 et seq. and 25-2305). An examination of the voters, the registration rolls in the Cowley County election office, and all other appropriate documents, revealed that several voters illegally voted in this election.

Walter Eugene Simmons. Curtis Richards. Donita Richards. Russel Wayne Keefe. All four of these voters have changed their residences to new voting precincts without registering in the new precinct. Furthermore, their change of residences occurred prior to thirty days next preceding the November 1994 election. All four voted for Shriver and the court deducted their votes from the totals.

Kirk Branscom, Phillip Coplen, Mary J. Lenix, Gladys Weigand, and Norman Weigand. All of these individuals have moved their residences to another voting precinct prior to the election and had not reregistered to vote. Their change of residences occurred more than thirty days next preceding the election of

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November 8, 1994. All voted for Jones. Since they were not qualified electors, this court did not count their votes and deducted them from the totals.

Filomena Garcia. Ms. Garcia resided at 1424 S. C Street in Arkansas City, Kansas. Because of her failure to vote in two November elections (for the years 1988 and 1990), her name was placed on the "inactive list" of voters by the Cowley County election office. This means the Cowley County election office purged her name from the voter registration lists as provided by the law K.S.A. 25-2316d. Nonetheless, she voted illegally, without registering, in the general election held in November 1992. Furthermore, she voted in November 1994, also without registering. Her vote was counted. She voted for Shriver. Ms. Garcia was not a legally qualified elector since she was not registered to vote. The court did not count her vote and deducted it from the totals.

It is therefore by the court ordered, adjudged and decreed, that:

1. The clerk of this court shall, upon receipt of this order, file the same and transmit a copy of the same along with all the files and records of these proceedings, along with all of the evidence taken at this election court to the Speaker of the House of Representatives of the State of Kansas.

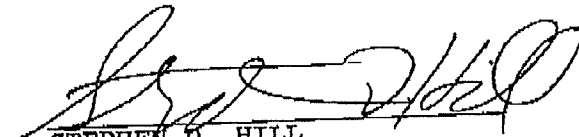
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2. The clerk of this court shall forward a copy of this order to the Secretary of State of the State of Kansas.

3. In the interests of justice, the costs of this contest are hereby waived and should therefore be paid by the State of Kansas in a special appropriation made therefore, pursuant to K.S.A. 25-1452. It is the specific recommendation of this court that the costs of this case include a reasonable sum for attorney fees for both parties. There are many complex questions of law, including election law, evidence, and civil procedure that the parties to this contest had to overcome in an extremely short period of time, namely twenty days.

LET THIS ORDER ISSUE.


STEPHEN D. HILL
Judge of the District Court,
assigned.

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ATTACHMENT B

county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. A process server or an authorized attorney may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and such other fees and costs as the court shall allow. All persons authorized under this subsection to serve, levy and execute process shall be considered an "officer" as used in K.S.A. 60-706 and 60-2401 and amendments thereto.

(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and the refusal, shall be a sufficient service of the process.

(d) *Acknowledgment or appearance.* An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance.

Sec. 4. K.S.A. 60-2401 and K.S.A. 1991 Supp. 60-303 and 61-1803 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 1992.

CHAPTER 291

House Bill No. 2876

AN ACT relating to elections; amending K.S.A. 25-601, 25-605, 25-615, 25-618, 25-620, 25-621 and 25-2902 and K.S.A. 1991 Supp. 25-305, 25-616, 25-617 and 25-3002 and repealing the existing sections.

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

Section 1. K.S.A. 25-601 is hereby amended to read as follows: 25-601. *The secretary of state shall prescribe the ballot format but ballots shall contain the information required by this section and be substantially in the form set out in this section.* The official general ballot for national and state offices shall be printed upon one

~~ballot, and the official general ballot for~~, county and township offices shall ~~may~~ be printed upon ~~another one~~ ballot. All official general ballots shall be printed in black ink on paper through which the printing or writing cannot be read. Such ballots shall be printed on white paper or paper colored as authorized by rules and regulations adopted by the secretary of state.

On the back or outside of each official general ballot, so as to appear when folded, shall be printed the words "official general ballot," followed by the words "national and state offices" or "county and township offices," followed by the voting place for which the ballot is prepared and the date of the election. No person's name shall appear on the back or outside of a ballot. All nominations made and certified as provided by law, and none other, shall be printed on ~~either the~~ official general ballot. The names of candidates for every office to be voted for at the general election shall be arranged under the office to which each has been nominated.

Sec. 2. K.S.A. 25-605 is hereby amended to read as follows: 25-605. When a constitutional amendment is to be submitted to the voters of the state, a separate ballot shall ~~may~~ be provided by the county election officers; ~~or the proposition may be combined with the official general ballot provided for in K.S.A. 25-601 and amendments thereto.~~ If such propositions are printed on a separate ballot, such ballot shall comply with the requirements for ballots for election of officers insofar as such requirements are applicable. *The secretary of state shall prescribe the ballot format but a ballot shall include the information required by this section and be substantially in the form specified in this section.* The constitutional amendment as a whole followed by the prescribed statement of intent or purpose of the proposition with explanation of the effect of voting for or against it shall be printed on the ballot. Each proposition to amend the constitution shall be preceded by the words, "Shall the following be adopted?" If there is more than one constitutional amendment to be voted upon, the different amendments shall be separately numbered and printed, and be separated by a broad solid line 1/8th inch wide or by double lines approximately 1/8th inch apart.

Opposite and after each amendment, submitted shall be printed two squares, one above the other. To the ~~left right~~ of the upper one of the squares shall be printed the word "Yes," and to the ~~left right~~ of the lower one of the squares shall be printed the word "No." Across the entire width of the ballot, ~~at the top~~ preceding such proposition or propositions, shall be printed the following instructions: "To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the ~~right left~~ of the word 'Yes'; to vote against it, make a cross or check mark in

the square to the ~~right~~ left of the word 'No'." On the back of each ballot shall be printed, in addition to other required matters, the words "questions submitted." *If such propositions are printed on a separate ballot*, county election officers may cause to be printed on the outside of ~~question submitted~~ such ballots "Ballot No. _____" with the blank filled with a number to aid in distinguishing such ballots when more than one question submitted ballot is voted upon at a voting place.

Sec. 3. K.S.A. 25-615 is hereby amended to read as follows: 25-615. The surnames of the candidates of each political party for the offices of president and vice-president, with the political designation thereof placed at the right of the surnames, shall be in one line. ~~There shall be a square placed at the right of such political designation in which each voter may designate by a cross or check mark such voter's choice for presidential electors. The secretary of state shall prescribe the ballot format but~~ the foregoing shall be *substantially* as shown in the sample form of the official general ballot in K.S.A. 25-616 and amendments thereto.

Sec. 4. K.S.A. 1991 Supp. 25-616 is hereby amended to read as follows: 25-616. *The secretary of state shall prescribe the ballot format but* the national offices part of the official general ballot for national and state offices shall be *substantially* in the form shown in this section and the state offices part of such ballot shall be *substantially* in the form shown in K.S.A. 25-617, and amendments thereto.

STATE OF KANSAS
 OFFICIAL GENERAL BALLOT
 National and State Offices
 County of _____
 November _____, 19____

NATIONAL OFFICES

To vote for presidential electors for candidates for president and vice-president make a cross or check mark in the square at the ~~right~~ left of the names of the candidates. To vote for presidential electors to be selected by candidates for president and vice-president whose names are not printed on the ballot, write the persons' names in the appropriate blank spaces and make a cross or check mark in the square at the ~~right~~ left of the names of the candidates.

- FOR PRESIDENTIAL ELECTORS FOR PRESIDENT AND VICE-PRESIDENT JONESTERN AND DOE Republican
 - FOR PRESIDENTIAL ELECTORS FOR PRESIDENT AND VICE-PRESIDENT ROEHEAD AND RICHARDBY Democrat
 - FOR PRESIDENTIAL ELECTORS FOR PRESIDENT AND VICE-PRESIDENT JANEBRAND AND JOHNBERG Independent
- Nominations

- FOR PRESIDENTIAL ELECTORS FOR PRESIDENT AND VICE-PRESIDENT _____ and _____

To vote for a person make a cross or check mark in the square at the ~~right~~ left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the ~~right~~ left.

- FOR UNITED STATES SENATOR Vote for One
- Vote for One
- DAN BOBING, Brussell Republican
 - ROBERTA SMITH, Salina Democrat

- FOR UNITED STATES REPRESENTATIVE _____ DISTRICT Vote for One
- Vote for One
- ELMER O'BRIEN, Wichita Democrat
 - WM. T. MILLER, Maple City Republican

When any office is not to be elected, it shall be omitted from the ballot.

Sec. 5. K.S.A. 1991 Supp. 25-617 is hereby amended to read as follows: 25-617. *The secretary of state shall prescribe the ballot format but* the state offices part of the official general ballot for national and state offices shall follow the national offices part *substantially* as is shown in this section.

STATE OFFICES

To vote for the pair of candidates, make a cross or check mark in the square at the ~~right~~ left of the names of the candidates for governor and lieutenant governor. To vote for persons for governor and lieutenant governor whose names are not printed on the ballot, write the names of such persons in the blank spaces and make a cross or check mark in the square to the ~~right~~ left.

- FOR GOVERNOR AND LIEUTENANT GOVERNOR Vote for One Pair
- Vote for One Pair
- Sam Jones, Wichita Republican
and Bob Smith, Arkansas City Republican
 - Carol Johnson, Mahaska Democrat
and Roger Wright, Penalosa Democrat
- and

To vote for a person, make a cross or check mark in the square at the ~~right~~ left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the ~~right~~ left.

FOR SECRETARY OF STATE

Vote for One Vote for One

ELIZABETH JUANITA MOORE, Zoomer Republican

RUSSEL ADAM, Topeka Democrat

JOAN SAYLOR, Goodland Prohibition

CHARLES (CHUCK) BROWNING, Kansas City Independent

_____ Nomination

FOR ATTORNEY GENERAL

Vote for One Vote for One

(and continuing in like manner for any other officers elected from the state as a whole)

FOR STATE SENATOR

_____ DISTRICT Vote for One

Vote for One

FOR STATE REPRESENTATIVE

_____ DISTRICT Vote for One

Vote for One

FOR DISTRICT JUDGE

_____ DISTRICT Vote for One

Vote for One

FOR DISTRICT MAGISTRATE JUDGE

_____ DISTRICT Vote for One

Vote for One

FOR DISTRICT ATTORNEY

_____ JUDICIAL DISTRICT Vote for One

Vote for One

FOR STATE BOARD OF EDUCATION MEMBER

_____ DISTRICT Vote for One

Vote for One

When any office is not to be elected, it shall be omitted from the ballot.

When a voting machine does not provide sufficient space to accommodate the full names of the candidates for governor and lieutenant governor, only the surname of such candidates shall be required to be printed on the ballot label unless surnames of one or more of the candidates are the same.

Sec. 6. K.S.A. 25-618 is hereby amended to read as follows: 25-618. The official general ballot for county and township offices shall may be separate from the official general ballot for national and state offices and or may be combined with the official general ballot provided for in K.S.A. 25-601 and amendments thereto. The secretary of state shall prescribe the ballot format but the ballot shall be substantially in the form shown in this section and K.S.A. 25-611, as amended and amendments thereto.

STATE OF KANSAS OFFICIAL GENERAL BALLOT

County and Township Offices
 County of _____, City (or Township) of _____
 November _____, 19____

To vote for a person, make a cross or check mark in the square at the right left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the right left.

FOR COUNTY COMMISSIONER

_____ DISTRICT Vote for One

Vote for One

FOR COUNTY CLERK

_____ DISTRICT Vote for One

Vote for One

FOR COUNTY TREASURER

_____ DISTRICT Vote for One

Vote for One

And continuing in like manner for all county and township offices to be elected.

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Sec. 7. K.S.A. 25-620 is hereby amended to read as follows: 25-620. Except for propositions to amend the constitution, when a proposition or question is to be submitted to the voters of the state or any part thereof, a separate ballot shall be provided by the county election officers: *except that when such proposition or question is to be submitted at an election conducted at the time of the holding of an election of officers such proposition may be printed on the ballot for the election of such officers. The secretary of state shall prescribe the ballot format but the ballot shall substantially comply with the requirements for ballots for election of officers insofar as such requirements are applicable and the provisions of this section.* On the ballot there shall be printed the proposition or question to be voted on. Each proposition or question shall be preceded by the words, "Shall the following be adopted?" If there is more than one proposition or question to be voted on, the different propositions or questions shall be separately numbered and printed, and be separated by a broad solid line $\frac{1}{8}$ th inch wide or by double lines approximately $\frac{1}{8}$ th inch apart.

Opposite and after each proposition and question shall be printed two squares, one above the other. To the ~~left~~ *right* of the upper one of the squares shall be printed the word "Yes," and to the ~~left~~ *right* of the lower one of the squares shall be printed the word "No." Across the entire width of the ballot, at the top, shall be printed the following instructions: "To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the ~~right~~ *left* of the word 'Yes'; to vote against it, make a cross or check mark in the square to the ~~right~~ *left* of the word 'No'." On the back of each such ballot shall be printed, in addition to other required matters, the words "questions submitted." County election officers shall cause to be printed on the outside of question submitted ballots "Ballot No. _____" with the blank filled with a number to aid in distinguishing such ballots when more than one question submitted ballot is voted upon at a voting place.

Sec. 8. K.S.A. 25-621 is hereby amended to read as follows: 25-621. (a) *The secretary of state shall prescribe the ballot format but whenever the proposition of the method of selection of judge of the district court is submitted to the voters, the form of the ballot shall substantially be as provided in K.S.A. 20-2901 and amendments thereto and may be combined with the official general ballot provided for in K.S.A. 25-601 and amendments thereto.*

(b) This section shall be part of and supplemental to chapter 25 of the Kansas Statutes Annotated.

Sec. 9. K.S.A. 1991 Supp. 25-3002 is hereby amended to read as follows: 25-3002. (a) The rules prescribed in this section shall apply to:

- (1) The original canvass by election boards.
- (2) Intermediate and final canvasses by county boards of canvassers.
- (3) Final canvass by the state board of canvassers.
- (4) All election contests.
- (5) All other officers canvassing or having a part in the canvass of any election.

(b) Rules for canvassers:

- (1) No ballot, or any portion thereof, shall be invalidated by any technical error unless it is impossible to determine the voter's intention. Determination of the voter's intention shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest.

~~(2) Any ballot upon which an identifying mark has been made shall be wholly void and no vote thereon shall be counted. Determination of whether a mark is an identifying mark shall rest in the discretion of the board canvassing in the case of a canvass and in the election court in the case of an election contest. The secretary of state may adopt rules and regulations describing certain types of marks upon ballots which may be considered identifying marks, but such rules shall not be considered as either all inclusive or as conclusive.~~

~~(3) Any ballot which has been defaced, mutilated or torn shall be wholly void and no vote thereon shall be counted.~~

~~(4) (2)~~ (2) The occurrences listed in this subpart ~~(4) (2)~~ shall not invalidate the whole ballot but shall invalidate that portion, and that portion only, in which the occurrence appears. The votes on such portion of the ballot shall not be counted for any candidate listed or written in ~~said~~ *such* portion, but the remainder of the votes in other portions of the ballot shall be counted. The occurrences to which this subpart ~~(4) (2)~~ shall apply are:

(A) Whenever a voting mark shall be made in the square at the ~~right~~ *left* of the name of more than one candidate for the same office, except when the ballot instructs that more than one candidate is to be voted.

(B) Whenever a voting mark is placed in the square at the ~~right~~ *left* of a space where no candidate is listed.

(c) A write-in vote for those candidates for the offices of governor and lieutenant governor shall not be counted unless the pair of candidates have filed an affidavit of candidacy pursuant to K.S.A. 25-305 and amendments thereto, and:

- (1) Both candidates' names are written on the ballot; or
 (2) only the name of the candidate for governor is written on the ballot.

(d) A write-in vote for those candidates for the offices of president and vice-president shall not be counted unless the pair of candidates have filed an affidavit of candidacy pursuant to K.S.A. 25-305 and amendments thereto, and:

- (1) Both candidates' names are written on the ballot; or
 (2) only the name of the candidate for president is written on the ballot.

Sec. 10. K.S.A. 25-2902 is hereby amended to read as follows: 25-2902. (a) It shall be unlawful to make any mark upon a ballot except a cross or check mark in a voting square opposite the name of a person for whom the voter desires to vote. It shall be unlawful to deface or tear a ballot or to erase any printed figure or letter thereon. It shall be unlawful for any person other than the voter to erase any mark or name written on a ballot by a voter.

(b) If a voter tears, defaces or wrongfully marks a ballot, the voter shall return it to the election board and receive a new ballot or set of ballots. The voter may successively obtain additional ballots or sets of ballots (but not more than one ballot or set of ballots at a time), but no voter shall be provided more than three sets in all.

(c) In all elections in which printed paper ballots are utilized, there shall be printed on the ballot and posted in each polling place a notice containing the following information and in substantially the following form:

Notice

If you tear, deface or make a mistake and wrongfully mark any ballot, you must return it to the election board and receive a new ballot or set of ballots.

Sec. 11. K.S.A. 1991 Supp. 25-305 is hereby amended to read as follows: 25-305. (a) Certificates of nomination by convention or caucus for the nomination of candidates for national, state, county and township offices shall be filed with the secretary of state, or the county election officer, not later than 12:00 noon, June 10, preceding the national, state, county and township general election, except when such date falls on Saturday, Sunday or a holiday, and then not later than 12:00 noon the following day that is not a Saturday, Sunday or a holiday.

(b) Independent nomination petitions for the nomination of candidates for national, state, county and township offices shall be filed with the secretary of state or the county election officer no later than 12:00 noon on the Monday preceding the first Tuesday of August preceding a national, state, county or township general election.

(c) An affidavit of write-in candidacy for the offices of governor and lieutenant governor shall be filed with the secretary of state no later than 12:00 noon on the 2nd Monday preceding the general election for those offices.

(d) An affidavit of write-in candidacy for the offices of president and vice-president shall be filed with the secretary of state no later than 12:00 noon on the second Monday preceding the general election for those offices.

Pres. Sec. 12. Persons who desire to be write-in candidates for president and vice-president of the United States or governor and lieutenant governor shall file an affidavit of write-in candidacy with the secretary of state no later than 12:00 noon on the second Monday preceding the general election for those offices.

Sec. 13. K.S.A. 25-601, 25-605, 25-615, 25-618, 25-620, 25-621 and 25-2902 and K.S.A. 1991 Supp. 25-305, 25-616, 25-617 and 25-3002 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 21, 1992.

CHAPTER 292

House Bill No. 3115

AN ACT relating to the regulation of commercial guide services; amending K.S.A. 1991 Supp. 32-964 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 32-964 is hereby amended to read as follows: 32-964. (a) As used in this section:

(1) "Commercial guide services" means providing, offering to provide, arranging for or assisting with hunting or fishing activities for others on a commercial basis, including but not limited to providing any one or more of the following when used in conjunction with or for hunting or fishing activities: Pack or riding livestock, transportation other than by commercial carrier, equipment or facilities.

(2) Terms defined in K.S.A. ~~1989~~ 1991 Supp. 32-701 and amendments thereto have the meanings provided by that section.

(b) ~~On and after January 1, 1991,~~ A valid commercial guide permit is required to provide commercial guide services in this state.

(c) The provisions of subsection (b) do not apply to a person who:

(1) Possesses a controlled shooting area license and commercial guide services performed by the person are confined to the licensed controlled shooting area;

ATTACHMENT C

EXAMPLE #1 (K.S.A. 25-3002 (b)(2)(B))

- Danny P. Jones
- Joe D. Shriver
-

EXAMPLE #2 (K.S.A. 25-3002 (b)(2)(B))

- Danny P. Jones
- Joe D. Shriver
-

EXAMPLE #3 (K.S.A. 25-3002 (b)(1))

- Danny P. Jones
- Joe D. Shriver
-

EXAMPLE #4 (K.S.A. 25-3002 (b)(1))

- Danny P. Jones
- Joe D. Shriver
-

ATTACHMENT D

IN THE DISTRICT COURT OF COWLEY COUNTY, KANSAS

DANNY P. JONES,
Contestant,

vs.

94 C 201-W

JOB D. SHRIVER,
Contestee.

ORDER DENYING MOTION FOR RECONSIDERATION

This court held a teleconference hearing upon the Contestee's motion for reconsideration on January 5, 1995. The Contestant was represented by Mr. Douglas P. Witteman and Eric K. Rucker. The Contestee was represented by Mr. Victor W. Miller.

In his motion for reconsideration Shriver, the Contestee, seeks to persuade the court to change its' ruling where the vote of Edith Dickerson was included in the totals in this case. He advances three arguments. Shriver argues that the statute requiring voters who have moved within thirty days preceding an election to vote in the precinct of their former residence is mandatory and therefore a voter must comply strictly with the letter of the law, K.S.A. 25-3701 and 25-3702. He states that these statutes are a legislative expression of a provision from the Kansas Constitution, Article 5, Sec. 1. Shriver also argues that it was Ms. Dickerson's own desire to vote at her new polling place that led to this predicament and not some error of the election board. And finally, he argues that the court is

inconsistent in its' rulings if it permits Dickerson's vote to count.

There is no doubt that K.S.A. 25-3701 and 3702 require a voter who has moved out of the precinct within 30 days of the election to vote in their former precinct and fill out an appropriate affidavit. Edith Dickerson went to her new polling place, which also happens to be her place of employment, and asked about voting. She was informed that she could vote there and they would challenge her ballot. She was given an affidavit to fill out. It was the affidavit for a voter who has moved within the precinct and not from outside the district. She filled out the affidavit, voted, and submitted the documents to the election board. There is no evidence that she was informed by the election board that she should vote in her former precinct.

Contestant argues that mandatory election laws must be followed and cites *Hooper v. McNaughton*, 113 Kan. 405, (1923). That case states at page 407:

The distinction between mandatory and directory provisions of a statute lies in consequence of nonobservance. An act done in disobedience of a mandatory provision is void. While a directory provision should be obeyed, an act done in disobedience of it may still be valid. Even although the doing of an act contrary to a directory provision be punishable criminally, still the act itself may not be nugatory. Deviations from instructions contained in directory provisions are usually termed irregularities.

The primary object of an election law, which transcends all other objects in importance, is to provide means for effective exercise of suffrage.

A reasonable interpretation of the law and the constitution concerning voters who have recently moved is that they should be permitted to vote. They are qualified electors. The constitutional provision preserves their status. The statute gives life to the constitution. Edith Dickerson was a qualified elector in the November 1994 election.

As the Kansas Supreme Court stated "[A]n election irregularity will not vitiate an election unless it is shown to have frustrated or to have tended to prevent the free expression of the electors' intentions, or otherwise to have misled them." *Kinsey v. Board of Education*, 211 Kan. 619, Syl. 11 (1973).

This court holds the opinion that the failure to count Edith Dickerson's vote was such an irregularity as contemplated by the caselaw of Kansas.

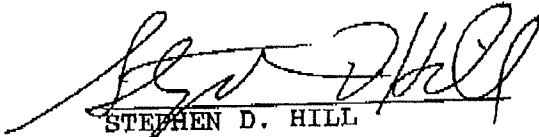
Edith Dickerson, according to her testimony, wanted to know if she could vote at her new polling place. She was told she could. She filled out a change of address affidavit and voted. She was incorrectly given by the election board an affidavit for a voter who moves within the district. She was never told to vote at her former precinct. To say, as the Contestee avers, that Edith Dickerson was the only person to make a mistake in

that situation is inaccurate.

In Shriver's last argument he states that the court is inconsistent in its' rulings concerning votes if it permits Edith Dickerson's vote to be counted. This is not true. The court is attempting to be consistent in all of its rulings. Legally qualified voters should have their votes counted. Mistakes of election officers should not disfranchise an otherwise qualified voter. Voters who are not legally registered should not have their votes counted. Edith Dickerson was a legally qualified voter and her vote should count.

The motion of the Contestee to reconsider is denied.

LET THIS ORDER ISSUE.



STEPHEN D. HILL
District Judge,
assigned.

ATTACHMENT E

PATTERSON, NELSON, NOLLA
& WITTEMAN, L.C.
8100 E. 22nd Street North
Building 800, Suite 102
Wichita, Kansas 67226
Telephone: (316) 687-2400
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Fax: (913) 258-3238

**IN THE SELECT COMMITTEE FOR ELECTIONS
KANSAS HOUSE OF REPRESENTATIVES**

In the Matter of the election of
Joe D. Shriver to the position of
State Representative, 79th District

DANNY P. JONES,
Contestant,

v.

JOE D. SHRIVER,
Contestee

_____)
Pursuant to K.S.A. 25-1434 et. seq.

AFFADAVIT

I, Eric K. Rucker, reside at 403 West 7th Street, Woodbine, Dickinson County, Kansas. I am a member of the Kansas Bar, Supreme Court No. 11109, and I am retained legal co-counsel for Mr. Danny Jones, Republican Candidate for election to the 79th District, Kansas House of Representatives.

In preparation for the contest of election hearing before the Cowley Court District Court, I personally interviewed Ms. Moddie Graham by telephone on or about December 22, 1994. Ms. Graham's eligibility to participate in this election was challenged by poll workers as she presented herself to vote on election day, November 8, 1994.

During this telephone interview, I identified myself as an attorney who was involved in the election contest between Mr. Shriver and Mr. Jones. I asked Ms. Graham whether she would mind answering a few questions. She stated that she would speak to me.

During this interview, Ms. Graham stated that her former residence was located at 316 South 1st Street, Arkansas City, Kansas. Ms. Graham then stated that several years ago she moved to 307 South 1st Street, Arkansas City, Kansas. Ms. Graham stated that since moving to her new address, she never re-registered to vote..

Ms. Graham also stated that she voted for Joe Shriver, the Democrat candidate for the Kansas House of Representatives/79th District. Specifically, I asked Ms. Graham, "Moddie, who did you vote for in the Kansas House of Representatives Race?" She replied, "I voted for the lesser of two evils." I then stated, "Well Moddie, who was the lesser of two evils?" She replied, "I voted for Shriver."

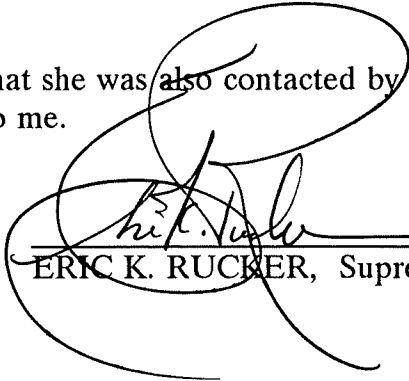
Ms. Graham also spoke to me about other aspects of her life. Ms. Graham told me about her family, her new apartment in Arkansas City, the family difficulties she had recently experienced with her deceased sister's family, the transportation problems she had experienced, as well as her religious faith.

I specifically, remember Ms. Graham being upset with her deceased sister's family failure to provide transportation for her as she attempted to nurse her sister. Ms. Graham related that she had spoken to another sister about the way she had been treated by her sister's family during her stay with them. During this conversation her sister had stated to her that she (Moddie), "Had to put her faith in God." To which Moddie replied, "I told her, God doesn't expect anyone to get walked on".

On December 27, 1994, Ms. Graham was served a subpoena to appear in the Cowley County District Court, Winfield, Kansas, for testimony regarding the Shriver/Jones election contest. Ms. Graham failed to appear and indicated she would not come to court. The Cowley County Sheriff was dispatched to bring Ms. Graham to the Courthouse.

Ms. Graham, testified under oath before the District Court. During my direct examination of Ms. Graham, she stated that she was 78 years old and that she had been a Democrat since she was 22 years old. Ms. Graham also remembered my telephone conversation with her and the various subjects discussed during this telephone call. Ms. Graham stated further that she remembered telling me that she voted for Mr. Shriver. However, Ms. Graham stated that now, she could not remember for whom she had voted in the Jones/Shriver contest.

Ms. Graham, admitted under oath that she was also contacted by Mr. Miller, (counsel for Mr. Shriver) after she had spoken to me.

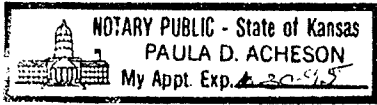

ERIC K. RUCKER, Supreme Ct. No. 11109

Page 3

Affadavit of Eric K. Rucker

State of Kansas)
) ss:
County of Dickinson)

Subscribed to and sworn before me this 31st day of January, 1994, in Woodbine,,
Dickinson County, Kansas.



Paula D. Acheson
Notary Public

My Commission Expires: 10-30-95

ATTACHMENT F

AFFIDAVIT

STATE OF KANSAS)
) SS:
COWLEY COUNTY)

CAROL KINGSLEY, of lawful age, being first duly sworn, on oath deposes and states as follows:

1. The following facts are known to me to be true, of my own knowledge. I am competent to testify to such facts, and would so testify if I appeared either in Court or before the Legislature as a witness.

2. I am a resident of Arkansas City, Cowley County, Kansas.

3. On the afternoon of December 28, 1994, I was shopping at Grave's Self Service Drug Store which is located in Arkansas City, Kansas.

4. While shopping at Grave's Self Service Drug Store, I had occasion to speak with an older African-American woman named "Moddie," who I knew from previous acquaintance when she and I were both employed at a day care facility located in Arkansas City, Kansas.

5. During the aforementioned conversation, Moddie told me that she had appeared in court to testify in regard to the election contest. Moddie said that she did not have a way to get to court and that the Sheriff had come to her house and picked her up and had taken her to court to testify.

AFFIDAVIT OF CAROL KINGSLEY
Jones v. Shriver
Page Two

6. I did not question Moddie in regard to how she had voted in the 79th District Representative race, however, during our conversation Moddie volunteered the following statement: "I voted for the lesser of two evils. I voted for Joe."

FURTHER AFFIANT SAITH NOT.

Dated this 30th day of January, 1995.

Carol Kingsley
CAROL KINGSLEY

SUBSCRIBED AND SWORN TO before me,
the undersigned authority, on this
30th day of January, 1995.



Phyllis Britton
Notary Public

My Appointment Expires:

1-25-98

11/02/94

COWLEY COUNTY, KANSAS -- VOTER REGISTRATION LIST (AGENCY)

PAGE 203

VOTER NO.	S	X LAST NAME	FIRST NAME	M SFX	MAIL ADDRESS	MAIL CITY	USD	CITY/TOWNSHIP	WARD	SIGNATURE
NO.				I	RES. ADDRESS	RES. CITY	MRD	CITY/RES	PRCT	
16553	F	STOY	TRISHA		224 N 3RD 224 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	
30609	F	STRECKER	RITA		209 W VINE 209 W VINE	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	
68828	F	STROBEL	CARISILIA		216 N 3RD 216 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	
25945	F	STROBEL	REGINNA	L	102 N 5TH ST 102 N 5TH ST	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Reginna Strobel</i>
54637	M	STROBEL	STEPHEN	V	102 N 5TH ST 102 N 5TH ST	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Stephen Strobel</i>
16624	F	STULTZ	DOROTHY	M	615 N 1ST 615 N 1ST	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	
16691	M	SWAIM	LAWRENCE	JR	122 N 3RD 122 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Larry Swaim</i>
16692	M	SWAIM	LAWRENCE	R SR	122 N 3RD 122 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Larry Swaim</i>
16688	F	SWAIM	LORENE	L	122 N 3RD 122 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Loraine Swaim</i>
00375	M	SWOPES	DARREN	L	515 N 5TH ST 515 N 5TH ST	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Darren Swopes</i>
16814	M	TARRANT	LEON		501 N 3RD 501 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Leon Tarrant</i>
23445	F	TAYLOR	MILDRED	M	602 N 2ND 602 N 2ND	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Mildred Taylor</i>
19351	F	TEMPLAR	HELEN		PO BOX 32 207 N 2ND	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Helen Templar</i>
08206	M	TEMPLETON	DANIEL	L	420 N 3RD 420 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Daniel Templeton</i>
68386	M	TEMPLETON	JIMMIE	F	420 N 3RD 420 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Jimmie Templeton</i>
02290	M	TERNES	ROBERT	L	211 N 3RD 211 N 3RD	ARKANSAS CITY ARKANSAS CITY	470 1	ARKANSAS CITY	4 A	<i>Robert S. Ternes</i>
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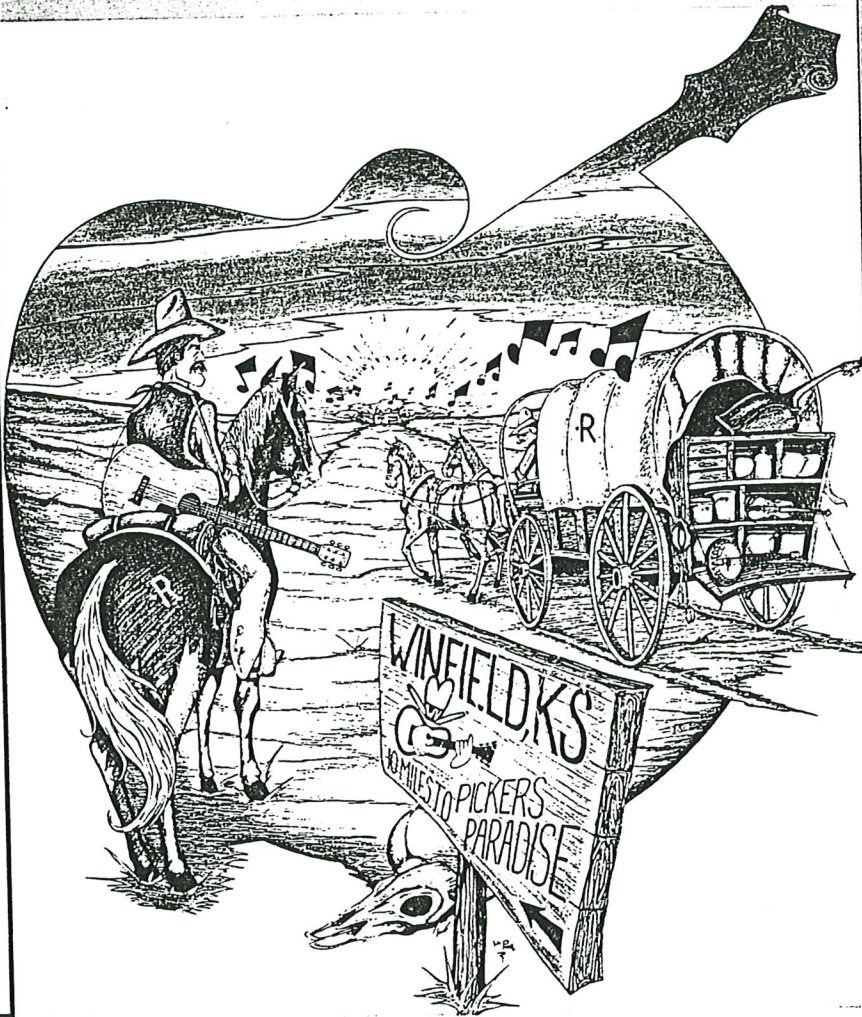


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Tarp Dale Rt 1 Box 98	442-3410
Tarrant Leon 501 N 3rd	442-0242
Tart B B Rt 5	442-2962
Tate D 1506 S H	442-7666
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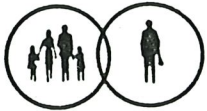
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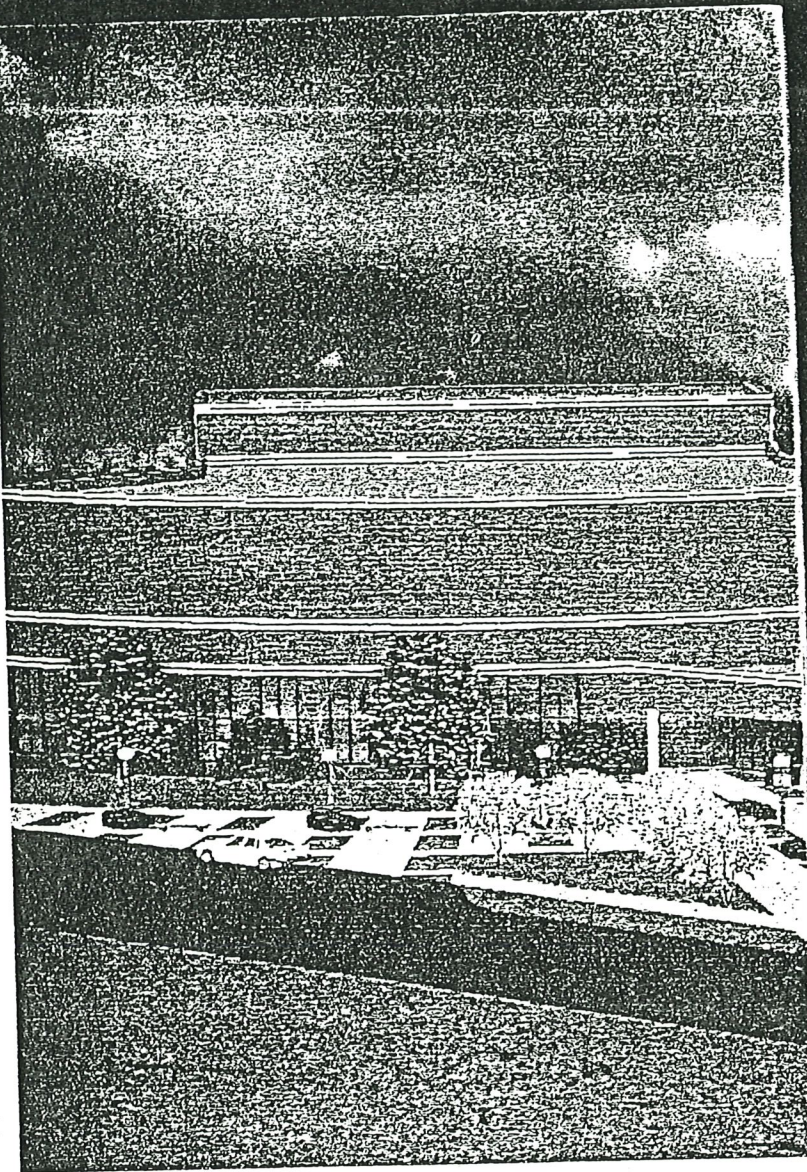
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