

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by the Chair, Rep. Carol Dawson, at 9:00 a.m. on February 8, 1996 in Room 521-S of the Capitol.

All members were present except: Rep. David Haley, Excused

Committee staff present: Dennis Hodgins, Legislative Research Department  
Carolyn Rampey, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Donna Lutjohann, Committee Secretary

Conferees appearing before the committee: Carol Williams, Governmental Standards and Conduct  
Rep. Nancy Kirk  
Janet Schalansky, Deputy Secretary, SRS  
Kelly Jennings, KAPE

Others attending: See attached list

Hearing on:

**HB 2780: Concerning campaign election finance; relating to corrupt political advertising**

Madam Chairman Dawson recognized Carol Williams as a proponent of the bill. She testified that changing the word "person" to "individual" would require all ads in a political advertisement to disclose the name of the individual responsible for placing the advertisement. See Attachment 1.

The Chair recognized Ron Smith to speak to the bill. He testified that a current Supreme Court case, *McIntyre v. Ohio Election Commission*, 1995, may moot the attempt to regulate political advertising in any way. See Attachment 2.

Committee discussion followed which Carol Williams called upon Charles Smithson, attorney for the Commission of Governmental Standards and Conduct to state that this legislation is in regard to candidates and is not a blanket law for all individuals.

**Madam Chair Dawson closed the hearing on HB 2780.**

Hearing on:

**HB 2784: Concerning state officers and employees; prohibition on accepting certain private employment; exception for agency closures and budget reductions**

Madam Chairman Dawson requested Jim Wilson explain the bill to the Committee. He made note that the bill covers both classified and unclassified employees of the State.

Chairman Dawson recognized Rep. Nancy Kirk to speak to the bill. She testified that this bill does nearly the same thing that HB 2928 does in which she authored. She testified that she was in favor of this version and asked for favorable passage.

Carol Williams was recognized by the Chair as a proponent of the bill. She testified that due to the fact of the impending closure of two state hospitals and layoff of state employees because of budget cuts was the intent behind the bill. See Attachment 3.

Janet Schalansky was recognized by the Chair as a proponent of the bill. She testified that it is an opportunity for state officers or employees who have training, experience or knowledge in a particular field to move from state service, set up their own business, maintain their skills or work in similar fields in a non-governmental arena. See Attachment 4.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, ROOM 521-S Statehouse at 9:00 a.m. on February 8, 1996.

Madam Chairman Dawson recognized Kelly Jennings as a proponent of the bill. She testified that it is unreasonable to place prohibitions on employees experiencing lay off or face the abolishment of their state position. See Attachment 5.

The minutes for January 25 and 31, 1996 were brought to the Committee's attention by the Chair. On a motion by Rep. O'Connor and seconded by Rep. Gilbert the motion carried to approve the minutes.

The Madam Chair adjourned the meeting at 9:37 a.m. and announced that the next meeting would be February 9, 1996, in Room 521-S of the Capitol on adjournment of the House.





## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

**Testimony before House Governmental Organization and Elections  
HB 2780  
February 8, 1996  
by Carol Williams**

House Bill 2780, which is before you this morning amends K.S.A. 25-4156, a provision of the Campaign Finance Act. This bill is a recommendation made by the Commission in its 1995 Annual Report.

Currently, K.S.A. 25-4156 requires any political advertisement which is published in a newspaper or other periodical or broadcast on television or radio to be followed by the word "advertisement: in an separate line together with the name of the chairperson of the political or other organization inserting the ad or the name of the person who is responsible for placing the ad. Person is defined in the Campaign Finance Act to mean any individual, committee, corporation, partnership, trust, organization or association. Since person can be an organization or association of individuals, the actual name of an individual responsible for the advertisement is not required to be disclosed.

At the county and city level over the past few years, the Commission has had a difficult, if not impossible time identifying the individual or individuals responsible for placing political newspaper advertisements. The advertisements have had the necessary attribution statement and have listed the name of the organization as the responsible person without providing the name of any individual. Commission staff discovered in several instances, that the organizations listed on the advertisements were in fact not a group of people but one individual. Persons making independent expenditures either supporting or opposing a candidate for state or local office are required by law to file a report similar to candidate and committee campaign finance reports. Without an individual's name being listed on an ad, it is difficult for Commission staff to get the necessary reporting form to the responsible individual to obtain compliance with this reporting provision.

The Commission recommends amending K.S.A.25-4156(b)(1) to change the word "person" to "individual". This change would require all ads to disclose the name of the individual responsible for placing the advertisement.

The Commission urges your support and passage of HB 2780.

HOUSE GOVT ORG & ELECTIONS  
February 8, 1996  
Attachment 1



**KANSAS BAR  
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## Memorandum

TO: Members, House Governmental Organizations Committee  
FROM: Ron Smith, General Counsel  
SUBJ: HB 2780, corrupt political advertising  
DATE: February 8, 1996

KBA has no position on this bill. However, I have been working on a law review article regarding grassroots lobbying and ran across a February, 1995, U.S. Supreme Court case which may moot any attempt to regulate political advertising in any way.

That case is *McIntyre v. Ohio Election Commission*, \_\_ US \_\_, 115 S. Ct. 1511, 131 L. Ed. 2d 426, 63 USLW 4279 (1995). The facts are similar to situations you are attempting to regulate with HB 2780. Margaret McIntyre, an Ohio taxpayer, stood outside her local school board office distributing unsigned handbills entitled "Concerned Parents and Taxpayers." Inside the office, patrons were deciding a local bond issue. Mrs. McIntyre used the leaflet to express her opposition to the proposed levy, and passed out the handbills to prospective voters. She ignored warnings by school officials that Ohio law required political messages to be signed. When the bond election failed, the school board filed charges against Mrs. McIntyre under an Ohio Statute making it a misdemeanor to promote the adoption or defeat "of any issue, or to influence the voters in any election" or make "any expenditure for the purpose of financing political communications through newspapers, ... direct mailings or other similar types of general public political advertising ... unless there appears on such form of publication in a conspicuous place ... the name and residence or business address of the chairman ..."

The Supreme Court ruled the fine and the Ohio law unconstitutional, holding that under the First Amendment there was a *constitutionally protected right to publish political thought anonymously*. The holding is an extension of *Talley v. California*, 362 U.S. 60 (1960) where the Court invalidated a city ordinance invalidating all anonymous leafletting.

The Court ruled that anonymous pamphlets, leaflets, brochures and books have played an important role in the progress of mankind. Among the most well known were the *Federalist Papers*, which are the foundation documents written by Hamilton, Madison and John Jay, but published under the pseudonym "Publico." Other anonymous publishers in our history have included Abraham Lincoln. Given this history, the Court held "The freedom to publish anonymously" extends beyond the literary realm and that "[T]he First Amendment protects the distribution of unsigned handbills urging readers" to engage in a boycott of merchants who were engaging in allegedly discriminatory employment practices (the fact situation in *Talley*).

"On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudice the message simply because they do not like the proponent. *Thus even in the field of political rhetoric, where 'the identity of the speaker is an important component of many attempts to persuade (\*\*Cases cited\*\*) the most effective advocates have sometimes opted for anonymity. The specific holding in Talley relates to advocacy of an economic boycott, but the Court's reasoning embraced a respected tradition of anonymity in the advocacy of political causes. (emphasis added)*

Justice Scalia, in dissent, argues that the majority opinion overturns a variety of laws regulating political speech. Among his list are the political advertising laws like K.S.A. 25-4156. The First Amendment is applicable to state government regulation of political speech. Thus if Ohio cannot regulate Mrs. McIntyre's anonymous advertising, Kansas government cannot regulate the political speech and advertising of Kansans. An advertiser and newspaper or radio station would still be liable if it publishes libelous material. It is the libel law that our Kansas founders felt should regulate corrupt political advertising. K.S.A. 25-4156 appears to be mooted by *McIntyre*. Instead of enacting an amendment to the law, repeal would appear to be in order.



## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

### Testimony before House Governmental Organization and Elections House Bill 2784 February 8, 1996 by Carol Williams

House Bill 2784, which is before you this morning, would amend K.S.A. 46-233, a provision in the Kansas Governmental Ethics Laws. This bill is a recommendation made by the Commission in its 1995 Annual Report and Recommendations.

Current law prohibits a state employee from accepting employment from a person or business for one year when the state employee has participated in the making of a contract with that person or business within the preceding two years.

The impending closure of two state hospitals, as well as the layoff of state employees due to budget cuts, is the basis for the Commission recommending K.S.A. 46-233 be amended. Lines 37 through 43 on page one and lines 1 through 9 on page two of the bill will permit a state employee who participated in making a contract while employed by a state institution or agency that is subsequently closed or abolished or who is laid off, to accept employment with a person or business he or she participated in a contract with. Due to their educational and/or work background, many of these state employees will be working in the same profession, whether they work for the state or in the private sector. Since circumstances beyond the state employee's control will cause the termination of his or her employment with the state, the Commission does not believe a state employee should be further penalized by not being permitted to accept employment with any person or business because the employee may have participated in the making of a contract with that entity within the preceding two years. The Commission believes the amendatory language to K.S.A. 46-233 is reasonable and fair.

The Commission urges your support and passage of HB 2784.

**Kansas Department of Social and Rehabilitation Services  
Rochelle Chronister, Secretary**

**House Committee on Governmental Organization and Elections  
Testimony on HB 2784 Concerning state officers and employees;  
prohibition on accepting certain private employment; exception for  
agency closures and budget.**

February 8, 1996

Madam Chairman and Members of the Committee, my name is Janet Schalansky, Deputy Secretary for the Department of Social and Rehabilitation Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today concerning HB 2784.

The Department of Social and Rehabilitation Services supports this legislation as it is an opportunity for state officers or employees who have experience, training, and knowledge in a particular field to move from state service, set up their own businesses, maintain their skills or work in similar fields in a non government arena.

This opportunity could come about as a result of privatization of a service or program layoff due to downsizing as well as closure of a facility or institution.

Many of our staff have very specific skills or professional credentials which could make finding other employment very difficult if the changes proposed in HB 2784 are not enacted. We believe HB 2784 still contains appropriate safeguards to prevent employees from unethical conduct.

Again we thank the committee for the opportunity to testify in support of the revisions in governing standards policy as proposed in HB 2784.



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**TESTIMONY OF KELLY JENNINGS  
KANSAS ASSOCIATION OF PUBLIC EMPLOYEES**

**Before the House Governmental Organization and Elections Committee  
in support of House Bill 2784**

Members of the committee, good morning. My name is Kelly Jennings, I represent the Kansas Association of Public Employees. I appreciate the opportunity to appear before you in support of House Bill 2784.

HB 2784 is a relatively simple bill which will require no fiscal note to the state. The bill will correct an inequity that is beginning to affect displaced state workers. Currently state workers are prohibited from accepting employment from any person or business for one year if they had any participation in making any contract with the person or business while acting in their capacity as a state employee. HB 2784 will waive this prohibition for any employee who is laid off or faces the abolishment of their state position.

Hundreds of state workers are now facing the loss of their jobs due to down sizing and layoff, privatization, and the closure of institutions. With so many of these state workers facing the loss of their jobs through no fault of the own, it is unreasonable to place any prohibitions on these persons on finding outside employment from the state.

KAPE urges you to report favorably on HB 2784. Thank you for your consideration. I will happy to answer any questions you may have.

HOUSE GOVT ORG & ELECTIONS  
February 8, 1996  
Attachment 5

*Affiliated with the Federation of Public Employees / AFT / AFL-CIO*

