

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS, CONGRESSIONAL & LEGISLATIVE
APPORTIONMENT AND GOVERNMENTAL STANDARDS.

The meeting was called to order by Chairperson Janice Hardenburger at 1:35 p.m. on March 6, 1996 in Room 529-S of the Capitol.

All members were present except: Senator Ranson, Excused

Committee staff present: Dennis Hodgins, Legislative Research Department
Gordon Self, Revisor of Statutes
Bonnie Fritts, Committee Secretary

Conferees appearing before the committee: Ron Smith, Kansas Bar Association
Carol Williams, Kansas Commission on Governmental
Standards and Conduct
Bobbi Mariani, Division of Personnel Services

Others attending: See attached list

HB 2088 **relating to state officers and employees; concerning political activity
by officers and employees in the classified service**

Senator Hardenburger opened the discussion on the bill and asked for a motion to adopt the amendment.

Senator Bond moved to adopt the amendment. Senator Parkinson seconded the motion. The motion failed.

Discussion followed regarding which state jobs are considered classified and which are not. There was more discussion regarding the gamble a person takes when running for an elected office. If that person resigns his/her current position, runs for office and loses, that person then has no form of gainful employment to return to.

Senator Wisdom made a substitute motion that would allow classified state employees to run for an elected office without having to resign that persons present job; stating that the employer must allow a leave of absence if that person wins the election.

There was more discussion on the verbiage of the bill. The committee feels it should make reference to the term of the legislative session, which is four months, rather than stating it as "term of office", which is four years in the senate and two years in the house.

Another amendment to the bill reads that, "Any officer or employee in the state classified service may be placed upon leave without pay during the term of office for which such person was elected". The word "may" should be replaced by the word "shall" (Attachment 1).

A question was called. The motion failed.

Senator Martin seconded the substitute motion on the floor made by Senator Wisdom. That motion also failed.

Senator Bond moved to pass **HB 2088** favorably as amended. Senator Parkinson seconded the motion. The motion carried.

Senator Wisdom made a request that his vote be recorded; his vote was, "No".

HB 2784 **concerning state governmental ethics; relating to contracts involving
state officers and employees**

Senator Hardenburger opened the hearings on this bill and stated that this bill passed the house 114 to 9.

Dennis Hodgins gave an overview.

Ron Smith, representing the Kansas Bar Association, testified as neither a proponent or opponent of the bill. He submitted amendments to the bill recommended by the K.B.A. (Attachment 2).

Carol Williams, appeared as a proponent of the bill and stated that this bill is identical to **SB 610**, which was heard by this committee on February 21, 1996. She testified that due to the closure of two state hospitals, and the layoff of other state employees, the Commission believes the amendments to K.S.A. 46-233 is reasonable and fair, and urged the committee to support this bill (Attachment 3).

Bobbi Mariani, also appeared as a proponent of this bill stating that this proposal provides employees an avenue for transition to jobs in the community without a long-term financial commitment by the state. (Attachment 4).

Senator Hardenburger closed the hearings on this bill.

The meeting adjourned at 2:20 p.m.

The next meeting is scheduled for March 7, 1996.

SENATE ELECTIONS, CONGRESSIONAL &
 LEGISLATIVE APPORTIONMENT AND
 GOVERNMENTAL STANDARDS COMMITTEE GUEST
 LIST

DATE: 3/6/94

NAME	REPRESENTING
Lina Brown	Peterson Public Affairs Group
B. Mariani	Dept of Adm.
Malcolm Forbes	Publisher
Carl Wilbur	KEGSC
Shantle Smithson	KLGSC
Colleen Kruger	Senate
*Kelly Jennings	KAPF
John Hanna	Associated Press

(b) Any officer or employee in the state ~~classified service~~ shall resign from the ~~service upon filing as a candidate for~~ an elective office, unless the elective office ~~filed for~~ is a township elective office, a county elective office, an elective office in the judicial branch of government or is elected on a nonpartisan basis. "Elective office" shall not mean or include the office of precinct committeeman or precinct committeewoman.

of
such office or employment
being elected to and taking the oath of office
of

Any officer or employee in the state classified service may be placed upon leave without pay during the term of office for which such person was elected.

shall

HOUSE BILL No. 2088

By Representatives Sloan, Ballard, Bradley, Findley, Flora, Glasscock, Grant, Helgerson, Hochhauser, Hutchins, Kirk, Mays, McKechnie, R. Nichols, Packer, Sawyer, Tanner and Toelkes

1-17

11 AN ACT relating to state officers and employees; concerning political
12 activity by state officers and employees in the classified service; amend-
13 ing K.S.A. 1994 Supp. 75-2953 and repealing the existing section.
14

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

16 Section 1. K.S.A. 1994 Supp. 75-2953 is hereby amended to read as
17 follows: 75-2953. (a) No officer, agent, clerk or employee of this state
18 shall directly or indirectly use their authority or official influence to com-
19 pel any officer or employee in the unclassified and the classified services
20 to apply for membership in or become a member of any organization, or
21 to pay or promise to pay any assessment, subscription or contribution, or
22 to take part in any political activity. Any person who violates any provisions
23 of this section shall be guilty of a class C misdemeanor, and, upon con-
24 viction, shall be punished accordingly. If any officer or employee in the
25 classified service is found guilty of violating any provision of this section,
26 such officer or employee shall be automatically separated from the serv-
27 ice.

28 (b) ~~Any officer or employee in the state classified service shall resign~~
29 ~~from the service upon filing as a candidate for an elective office, unless~~
30 ~~the elective office filed for is a township elective office, a county elective~~
31 ~~office, an elective office in the judicial branch of government or is elected~~
32 ~~on a nonpartisan basis. "Elective office" shall not mean or include the~~
33 ~~office of precinct committeeman or precinct committeewoman.~~

34 Sec. 2. K.S.A. 1994 Supp. 75-2953 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the ~~statute book.~~

state
(b) Any officer or employee in the state classified service shall resign
from the service ~~upon filing as a candidate prior to taking the oath of~~
~~office for an elective office, unless the such elective office filed for is a~~
~~township elective office, a county elective office, an elective office in the~~
~~judicial branch of government or is elected on a nonpartisan basis. "Elec-~~
~~tive office" shall not mean or include the office of precinct committeeman~~
~~or precinct committeewoman.~~

register.

SENATE ELECTIONS
3-6-96
ATTACHMENT 2

KBA recommendations for amendments

3

As Amended by House Committee

Session of 1996

HOUSE BILL No. 2784

By Committee on Governmental Organization and Elections

1-30

AN ACT concerning state governmental ethics; relating to contracts involving state officers and employees; prohibition on accepting certain private employment; exception for agency closures and budget reductions; amending K.S.A. 1995 Supp. 46-233 and repealing the existing section.

**Recommended Amendments,
Kansas Bar Association, March 6, 1996**

Be It Enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1995 Supp. 46-233 is hereby amended to read as follows: 46-233.

(a) (1) No state officer or employee shall in the capacity as such officer or employee be substantially involved in the preparation of or participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee or any member of such officer's or employee's immediate family has a substantial interest and no such person or business shall enter into any contract where any state officer or employee, acting in such capacity, is a signatory to, has been substantially involved in the preparation of or is a participant in the making of such contract

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70 (A) *A state officer or employee who participated in*
71 *making a contract while employed by a state*
72 *institution or other state agency that is*
73 *subsequently closed or abolished or otherwise ceases*
74 *operations or that has budget reductions imposed and*
75 *who is laid off under K.S.A. 75-2948, and amendments*
76 *thereto, from employment with such state institution*
77 *or other state agency for the reason of such closure,*
78 *abolition or cessation of operations or such*
79 *imposition of budget reductions; or (B) a*
80 *state officer or employee who participated in making a*
81 *contract while employed by a state institution or*
82 *other state agency that is scheduled to be closed or*
83 *abolished or to cease operations, who is scheduled to*
84 *be laid off under K.S.A. 75-2948, and amendments*
85 *thereto, from employment with such state institution*
86 *or other state agency for the reason of the scheduled*
87 *closure, abolition or cessation of operations, and*
88 *who voluntarily terminates such employment after*
89 *receiving notice of the scheduled layoff. As used in*
90 **this subsection (a)(2), "laid off" and "layoff" mean,**
91 **in the case of a state officer or employee in the**
92 **classified service under the Kansas civil service**
93 **act, being laid off under K.S.A. 75-2948, and**
94 **amendments thereto, and, in the case of a state**
95 **officer or employee in the unclassified service under**
96 **the Kansas civil service act, being terminated from**
97 **employment with the state agency by the appointing**
98 **authority, except that "laid off" and "layoff" shall**
99 **not include any separation from employment pursuant**
100 **to a budget reduction or expenditure authority**
101 **reduction and a reduction of F.T.E. positions under**

102 **K.S.A. 1995 Supp. 75-6801, and amendments thereto.**

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

114 (c) No individual, while a
115 legislator or within one year after the expiration of
116 a term as a legislator, shall represent any person in
117 a court proceeding attacking any legislative action
118 taken or enactment made during any term such
119 individual served as a legislator as being
120 unconstitutional because of error in the legislative
121 process with respect to such action or enactment
122 unless such legislator voted no upon the enactment of
123 the measure and declared on the record, during such
124 term, that such legislation was unconstitutional. The
125 prohibition of this subsection (c) shall not apply to
126 a current or former legislator charged with a
127 violation of such legislative action or enactment.

128 (d) Subsection (a) and (b) shall not apply to the
129 following:

- 130 (1) Contracts let after competitive bidding has been
- 131 advertised for by published notice; and (2) Contracts
- 132 for property or services for which the price or rate
- 133 is fixed by law.

134 Sec. 2. K.S.A. 1995 Supp. 46-233 is hereby repealed.

[COMMENT: All citizens have the right to file lawsuits, any kind of lawsuit. The First Amendment protects such rights. Subsection (c) creates a single class – former legislators while a legislator or within a year after being a legislator if they voted “YES” on a bill – and denies to them the right to file declaratory judgment lawsuits allowed by KSA 60-1901 *et seq* to test the validity of the law. There must be a compelling state interest for this kind of prohibition and regulation. I don’t see the reasoning. Recommend (c) be deleted. It neither adds nor subtracts from the bill.]

135 Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Model Rule 1.11

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

- (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before Elections Congressional & Legislative Apportionment & Governmental Standards

House Bill 2784

March 6, 1996

by Carol Williams

House Bill 2784, which is before you this afternoon, is identical to SB 610, which was heard by your committee on February 21, 1996. This bill 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.

SENATE ELECTIONS
3-6-96
ATTACHMENT 3

Testimony To The

SENATE ELECTIONS, CONGRESSIONAL & LEGISLATIVE
APPORTIONMENT AND GOVERNMENTAL STANDARDS COMMITTEE

By
Bobbi Mariani, Assistant Director
Division of Personnel Services

Wednesday, March 6, 1996
RE: HB 2784

Ms. Chairperson and members of the committee, thank you for the opportunity to appear before you today in support of House Bill 2784. I recently spoke before you on behalf of SB 610, which is the same as the bill before you.

HB 2784 eliminates the restrictions on state employees from accepting employment with private sector companies that contract with the state. By eliminating this restriction, employees are permitted an additional opportunity to gain employment. This proposal provides employees an avenue for transition to jobs in the community without a long-term financial commitment by the state.

Because all state agencies are exploring ways to reduce spending and decrease counts, we believe any bill benefiting laid off state employees should apply uniformly to all laid off state employees, and not just employees of institutions that close.

The Division of Personnel Services appreciates your concern in this matter. I would be happy to respond to any questions you may have.