

*Approved: 2.11.97
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

The meeting was called to order by Chairperson Kent Glasscock at 9:00 a.m. on February 7, 1997, in Room 521-S of the Capitol.

All members were present except: Representative Ted Powers, Excused
Representative Bonnie Sharp, Excused
Representative Deena Horst, Excused
Representative David Haley, Excused
Representative Larry Campbell, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Mike Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Mr. Brent Anderson, Counselor to the Governor
Ms. Carol E. Williams, Executive Director of Kansas
Commission on Governmental Standards & Conduct
Representative Robert Tomlinson

Others attending: See attached list

Representative Herman Dillon moved and Representative David Huff seconded the motion that the Minutes of February 5, 1997, be approved. Motion passed.

Chairperson Glasscock opened the Public Hearing on **HB 2101**.

HB 2101 - An Act concerning certain state officers and employees; relating to the acceptance or solicitation of gifts, loans, and other gratuities.

Chairperson Glasscock welcomed Mr. Brent Anderson, Counselor to the Governor, who spoke as a proponent for **HB 2101**. He stated that the content of **HB 2101** was mentioned by Governor Bill Graves in his State of the State address to the Kansas Legislature. Mr. Anderson said this bill codifies the year-old executive order into statute and extends it to cover not just the Governor's appointees, but also most classified and unclassified employees in the executive branch of state government. **HB 2101** "firmly establishes a climate in which state employees deal professionally and at arm's length with their customers, the people of Kansas." He said that all state employees would know what is expected and required of them. It would provide for discipline, including termination, of those who choose to violate the public trust. **HB 2101** deals only with executive branch employees. He stressed that Governor Graves believes this to be sound personnel policy important enough to be state law. (Attachment 1.)

Chairperson Glasscock asked Ms. Carol Williams, Executive Director of Kansas Commission on Governmental Standards & Conduct, if she had anything to add to Mr. Anderson's testimony. She said that she had not planned to testify, but would be happy to stand for questions.

Representative Gwen Welshimer asked if this would include appointed board members, and if there was a punishment for violation. Ms. Williams said that there is a fine capability just as there is in current law. She said that this bill does not change the law, but rather extends it. Representative Welshimer also asked about a board member going out to lunch with an association lobbyist. Ms. Williams said that since 1991 any employees who work for an agency which licenses and regulates them cannot accept meals in excess of \$40.00.

Representative Ray Cox wanted clarification about the exceptions. He said his first understanding was that it was the same restrictions as for legislators, but then realized it was not. Ms. Williams said that under the present law, there is no limit on hospitality, but under **HB 2101**, hospitality would be prohibited for state employees in the classified service as well as unclassified employees whose salaries are subject to the Governor's approval.

Representative Lisa Benlon remarked that if a person takes you out exclusively because of your position, then it's a violation. Ms. Williams said that she understood correctly, and that it would have to be "dutch."

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 7, 1997.

Representative Ray Cox asked about the \$40.00 in line 26. Ms. Williams said that is for gifts, but excludes a ceremonial-type award such as a plaque.

Representative Ralph Tanner asked if **HB 2101** will be difficult to interpret or if lawmakers are beginning to see clearly some of those issues in which they have been trying to speak? Ms. Williams responded by saying that this statute will be no easier or harder than current law.

Chairperson Glasscock called the Committee's attention to the Subcommittee Report in regard to the two bills being heard today and said that the recommendations are bi-partisan. He also announced that in order to facilitate Subcommittee work that the agenda for next Wednesday, February 12, 1997 has been changed to allow another day for Subcommittee work. The Chair reminded the Subcommittee chairpersons that they are responsible for public disclosure agendas and to notify Janet Jones.

The Chair recognized Representative Robert Tomlinson, Subcommittee Chairperson for Ethics, who thanked Ms. Carol Williams for her gracious input. He said that the Subcommittee title was far greater than the Subcommittee Report which suited him fine. Rep. Tomlinson said that the Subcommittee feels **HB 2101** has the advantage of being a law that has already been tried out, because it is codification of current executive order. (Attachment 2.)

Hearing no further questions, Chairperson Glasscock closed the Public Hearing on **HB 2101**.

The Chair said that since there was a possibility that **HB 2063** might take some time and Session begins at 10:00 a.m., he would like to ask the Committee's pleasure on **HB 2101**.

Representative Gwen Welshimer moved that **HB 2101** be passed out and marked favorable for passage. Representative Ruby Gilbert seconded. Motion passed.

Chairperson Glasscock opened the Public Hearing on **HB 2063**.

HB 2063 - State governmental ethics; relating to solicitation by state officers and employees; relating to gifts and honoraria.

The Chair recognized Representative Robert Tomlinson who said that the Subcommittee had been working hard and has a recommendation to amend **HB 2063** (Attachment 3.)

Representative Robert Tomlinson moved that the Committee accept the amendment on **HB 2063**. Representative Herman Dillon seconded. Motion passed.

Chairman Glasscock again recognized Mr. Brent Anderson, Counsel to the Governor, who spoke in favor of **HB 2063** as amended. He told the Committee that the way the law is currently worded, it would be difficult to hold anyone responsible. He said this was a small change, but it was important to make clear that if you are a public official, you cannot accept anything for the performance or nonperformance of an official duty. He said that the bill does not remove the \$40.00 threshold, and that the same threshold that is in the bill now is still there in subsection e. (See Attachment 1.)

Representative Ralph Tanner helped clear up the meaning of the word presumption. He said it means "one is presumed to have accepted a bribe."

Representative Robert Tomlinson said that with the balloon, the Subcommittee recommends **HB 2063** favorably.

The Chair closed the Public Hearing on **HB 2063**.

Chairperson Glasscock asked for the Committee's pleasure on **HB 2063**.

Representative Robert Tomlinson moved that **HB 2063** be passed and recommended favorably. Representative Lisa Benlon seconded, and motion passed.

Chairperson Glasscock announced that he would like the Subcommittee chairpersons to be prepared to discuss their bills in caucus. He also asked them to be bi-partisan in choosing who will carry the bills.

The meeting adjourned at 9:40 a.m. The next meeting is scheduled for February 11, 1997.

STATE OF KANSAS



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OFFICE OF THE GOVERNOR

TESTIMONY IN SUPPORT OF HB 2063 and HB 2101
HOUSE GOVERNMENTAL ORGANIZATION and ELECTIONS COMMITTEE
FRIDAY, FEBRUARY 7, 1997
BRENT ANDERSON, COUNSEL TO THE GOVERNOR

HB 2063 WOULD MAKE CURRENT ETHICS STATUTES ENFORCEABLE

Governor Graves urges your support of HB 2063, a bill intended to strengthen significantly our current ethics statutes.

The bill would bolster the enforceability of state laws that prohibit the giving of money, gifts and favors to public officials in exchange for the performance or nonperformance of their official duties. The statutes the bill would amend currently are worded in such a way as to make their enforcement difficult if not impossible.

The bill would retain the current \$40 annual gift threshold by creating a presumption that if gifts worth \$40 or more are given in any calendar year, they were given in exchange for the performance or nonperformance of official duty.

Violations of these statutes by public officials are punishable both as criminal violations and civil infractions. A criminal violation of these statutes can be prosecuted as a Class B misdemeanor, which carries a maximum penalty of six months in jail and a \$1000 fine.

Civil penalties include fines up to \$5,000 for a first offense, \$10,000 for a second offense and \$15,000 for a third or subsequent offense.

As he highlighted in his recent message to the Legislature, Governor Graves believes that if we expect to hold public officials and others accountable for improper conduct, and thus build public trust in government, our laws must be understandable and enforceable. Thank you for your support of this bill.

HB 2101 WOULD BAN GIFTS, MEALS AND PERKS TO STATE EMPLOYEES

One year ago, Governor Graves issued an executive order prohibiting the acceptance or solicitation of gifts, meals, travel and entertainment by certain executive branch employees except under a few, specifically defined circumstances. HB 2101 would codify that executive order into statute and extend it to cover not just Governor's appointees, but most classified and unclassified employees in the executive branch of state government.

The purpose of the executive order and this bill is to firmly establish a climate in which state employees deal professionally and at arm's length with their customers, the people of Kansas. In turn, when taxpayers believe that state employees are dealing fairly, honestly and equally with all Kansans, their cynicism about government and government employees diminishes. The result is more productive

state employees and better government.

HB 2101 would eliminate gratuitous freebies, establish a code of conduct in which state employees know what is expected and required of them, and provide for discipline, including termination, of those who choose to violate the public trust. Our experience this past year with the Governor's executive order has been that employees and appointees *prefer* these restrictions because when everyone knows the rules, they can concentrate on their business instead of who's going to pick up the check.

This bill deals only with executive branch employees. It basically is a personnel policy the Governor believes is important enough to be state law. He greatly appreciates and thanks you for your strong support of HB 2101.

House GO and E
Attachment 1
2-7-97

BOL OMLINSON
REPRESENTATIVE 24TH DISTRICT
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TOPEKA, KS 66612-1504
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ECONOMIC DEVELOPMENT
GOVERNMENTAL ORGANIZATION & ELECTIONS
INSURANCE

Sub Committee Report of the Sub Committee on Ethics of the
Governmental Organization and Elections Committee:

The following bills have been discussed and referred for passage:

HB 2063, as amended

HB 2101

House GO and E
Attachment 2
2.7.97

HOUSE BILL No. 2063

By Committee on Governmental Organization and Elections

1-23

9 AN ACT concerning state governmental ethics; relating to solicitation by
10 state officers and employees; relating to gifts and honoraria; amending
11 K.S.A. 46-271 and K.S.A. 1996 Supp. 46-236 and 46-237 and repealing
12 the existing sections; also repealing K.S.A. 46-277.
13

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

15 Section 1. K.S.A. 1996 Supp. 46-236 is hereby amended to read as
16 follows: 46-236. No state officer or employee, candidate for state office
17 or state officer elect shall solicit any economic opportunity, gift, loan,
18 gratuity, special discount, favor, hospitality, or service from any person
19 ~~known to have a special interest, under circumstances where such officer,~~
20 ~~employee, candidate or state officer elect knows or should know that a~~
21 ~~major purpose of the donor in granting the same could be to influence~~
22 ~~in exchange for the performance or nonperformance of the official duties~~
23 ~~or prospective official duties of such officer, employee, candidate or state~~
24 ~~officer elect.~~

25 Except when a particular course of official action is to be followed as
26 a condition thereon, this section shall not apply to: (1) Any contribution
27 reported in compliance with the campaign finance act; (2) a commercially
28 reasonable loan or other commercial transaction in the ordinary course
29 of business; or (3) any solicitation for the benefit of any charitable organ-
30 ization which is required to file a registration statement with the secretary
31 of state pursuant to K.S.A. ~~17-1740~~ 17-1763, and amendments thereto,
32 or which is exempted from filing such statement pursuant to K.S.A. ~~17-~~
33 ~~1741~~ 17-1762, and amendments thereto, or for the benefit of any edu-
34 cational institution or such institution's endowment association, if such
35 association has qualified as a nonprofit organization under paragraph (3)
36 of subsection (c) of section 501 of the internal revenue code of 1986, as
37 amended.

38 Sec. 2. K.S.A. 1996 Supp. 46-237 is hereby amended to read as fol-
39 lows: 46-237. (a) No state officer or employee, candidate for state office
40 or state officer elect shall accept, or agree to accept any economic op-
41 portunity, gift, loan, gratuity, special discount, favor, hospitality, or service
42 ~~having an aggregate value of \$40 or more in any calendar year from any~~
43 ~~one person known to have a special interest, under circumstances where~~

House GO + E
Attachment 3
2.7.97

1 such person knows or should know that a major purpose of the donor is
2 to influence such person in exchange for the performance or nonperform-
3 ance of their official duties or prospective official duties of such officer,
4 employee, candidate or state officer elect.

5 (b) No person with a special interest shall offer, pay, give or make
6 any economic opportunity, gift, loan, gratuity, special discount, favor, hos-
7 pitality or service having an aggregate value of \$40 or more in any calendar
8 year to any state officer or employee, candidate for state office or state
9 officer elect with a major purpose of influencing such officer or employee,
10 candidate for state office or state officer elect in exchange for the per-
11 formance or nonperformance of official duties or prospective official du-
12 ties of such officer, employee, candidate or state officer elect.

13 (c) No person licensed, inspected or regulated by a state agency shall
14 offer, pay, give or make any economic opportunity, gift, loan, gratuity,
15 special discount, favor, hospitality, or service having an aggregate value
16 of \$40 or more in any calendar year to such agency or any state officer
17 or employee, candidate for state office or state officer elect of that agency
18 in exchange for the performance or nonperformance of official duties or
19 prospective duties of such agency, state officer, employee, candidate for
20 state office or state officer elect of such agency.

21 (d) Hospitality in the form of recreation, food and beverages are pre-
22 sumed not to be given to influence a state officer or employee, candidate
23 for state office or state officer elect in the performance of official duties
24 or prospective official duties, except when a particular course of official
25 action is to be followed as a condition thereon. For the purposes of this
26 subsection, the term recreation shall not include the providing or the
27 payment of the cost of transportation or lodging.

exchange for
or nonperformance

(f) 28 ~~(e)~~ Except when a particular course of official action is to be followed
29 as a condition thereon, this section shall not apply to: (1) Any contribution
30 reported in compliance with the campaign finance act; or (2) a commer-
31 cially reasonable loan or other commercial transaction in the ordinary
32 course of business.

(e) The making or giving of any economic opportunity, gift, loan, gratuity, special discount, favor or service having an aggregate value of \$40 or more in any calendar year from any person known to have a special interest shall be presumed to have been given in exchange for the performance or nonperformance of official duties or prospective official duties.

(g) 33 ~~(f)~~ No state officer or employee shall accept any payment of honoraria
34 for any speaking engagement except that a member of the state legislature
35 or a part-time officer or employee of the executive branch of government
36 shall be allowed to receive reimbursement in the preparation for and the
37 making of a presentation at a speaking engagement in an amount fixed
38 by the Kansas commission on governmental standards and conduct prior
39 to the acceptance of the speaking engagement. Nothing in this section
40 shall be construed to prohibit the reimbursement of state officers and
41 employees for reasonable expenses incurred in attending seminars, con-
42 ferences and other speaking engagements.

(h) 43 ~~(g)~~ The provisions of this section shall not be applicable to or prohibit

1 the acceptance of gifts from governmental agencies of foreign nations
2 except that any gift accepted from such foreign governmental agency,
3 having an aggregate value of \$100 or more, shall be accepted on behalf
4 of the state of Kansas.

(i) 5 ~~(h)~~ No legislator shall solicit any contribution to be made to any or-
6 ganization for the purpose of paying for travel, subsistence and other
7 expenses incurred by such legislator or other members of the legislature
8 in attending and participating in meetings, programs and activities of such
9 organization or those conducted or sponsored by such organization, but
10 nothing in this act or the act of which this act is amendatory shall be
11 construed to prohibit any legislator from accepting reimbursement for
12 actual expenses for travel, subsistence, hospitality, entertainment and
13 other expenses incurred in attending and participating in meetings, pro-
14 grams and activities sponsored by the government of any foreign nation,
15 or any organization organized under the laws of such foreign nation or
16 any international organization or any national, nonprofit, nonpartisan or-
17 ganization established for the purpose of serving, informing, educating
18 and strengthening state legislatures in all states of the nation, when paid
19 from funds of such organization and nothing shall be construed to limit
20 or prohibit the expenditure of funds of and by any such organization for
21 such purposes.

22 Sec. 3. K.S.A. 46-271 is hereby amended to read as follows: 46-271.
23 No lobbyist shall offer, pay, give or make any economic opportunity, gift,
24 loan, gratuity, special discount, favor, hospitality, or service ~~having an~~
25 ~~aggregate value of \$40 or more in any calendar year~~ to any state officer
26 ~~or, state officer elect,~~ employee or candidate for state office ~~with a major~~
27 ~~purpose of influencing such officer or employee in exchange for the per-~~
28 ~~formance or nonperformance of official duties or prospective official du-~~
29 ~~ties of such officer, employee, candidate or state officer elect.~~ Hospitality
30 in the form of recreation, food and beverages are presumed not to be
31 given ~~to influence a state officer or, state officer elect,~~ employee or candi-
32 ~~date for state office] in the performance of official duties, except when~~
33 a particular course of official action is to be followed as a condition
34 thereon.

exchange for
or nonperformance

35 Except when a particular course of official action is to be followed as
36 a condition thereon, this section shall not apply to (1) any contribution
37 reported in compliance with the campaign finance act as amended, or (2)
38 a commercially reasonable loan or other commercial transaction in the
39 ordinary course of business.

40 Sec. 4. K.S.A. 46-271 and 46-277 and K.S.A. 1996 Supp. 46-236 and
41 46-237 are hereby repealed.

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