

Approved: 2-24-97
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 21, 1997, in Room 521-S of the Capitol.

All members were present except: Representative David Haley, Excused
Representative Ted Powers, Excused
Representative Herman Dillon, 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: Representative Tom Sloan
Representative Lisa Benlon
Ms. Harriet Lange, President/Executive Director Kansas
Association of Broadcasters

Others attending: See attached list

Chairperson Glasscock opened the Public Hearing on **HB 2128**.

HB 2128 - An act relating to elections; relating to certain campaign practices; amending K.S.A. 25-4119g and 25-4156 and K.S.A. 1996 Supp. 25-4152 and repealing the existing sections.

The Chair welcomed Representative Tom Sloan who spoke as a proponent for **HB 2128**. He complimented the Subcommittee for taking a good idea and making it better before its consideration by the Committee. He said the Subcommittee recommended the following key points: 1) Commission on Governmental Standards and Conduct to establish standards of fair campaign practices; 2) All political advertising to identify the candidate which such advertising is designed to help; 3) All political advertising to include the name and city of residence for the chairperson or treasurer of the organization responsible for the advertisement; and 4) A statement declaring other issues were included in a legislative measure which are not discussed in the advertisement, when appropriate, if an incumbent's voting record on a specific bill is referenced. (Attachment 1.)

Representative Ralph Tanner asked Representative Sloan about the constitutionality, and Rep. Sloan replied that Arden Endsley, Revisor, had been consulted and thought it was constitutional.

The Chair recognized Representative Lisa Benlon, Chairperson of the Subcommittee, who spoke in favor of **HB 2128** and said she views **HB 2128** as a companion bill to **HB 2171** which requires independent individuals who wish to participate in campaigns to file an intent with the Commission. She said that **HB 2128** will complete the cycle because it outlines requirements for written as well as television and radio political advertisements placed by independent individuals. Her testimony outlined the requirements for written materials as follows: 1) to identify the candidate the advertising is designed to assist; 2) the word "advertisement" or "ad."; 3) the chairman or treasurer of the independent group; and 4) the city of residence or city of primary office of the group. Broadcast materials require the following: 1) to identify the candidate the advertising is designed to assist followed by a statement that the preceding was an ad; 3) to identify the chairman or treasurer; and 4) to identify the city of residence or city of primary office of the group. When advertisements are used to report an incumbent's voting record and if the legislative measure involved more than one material issue, a statement that other issues were included in the measure not addressed in the ad is required. (Attachment 2.)

Chairperson Glasscock welcomed Ms. Harriett Lange, President/Executive Director of Kansas Association of Broadcasters who spoke as an opponent for **HB 2128**. She said that the KAB does not take issue with the desire to establish fair campaign practices, but does have concerns about the additional disclosures required in political advertisements. She explained that broadcasters would have one set of rules for state and local and

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 21, 1997.

another set of rules for federal candidates. She said she realized it was not the intent of the bill to discriminate against radio advertising, but the additional disclosure requirements place radio at a disadvantage because of the average thirty second length of its commercials. Ms. Lange also proposed some clarifying language that the sponsor of the ad and **not** the broadcaster is liable for prosecution if the required disclosures are not in the ad. (Attachment 3.)

The Chair recognized Representative Lisa Benlon who explained the balloon for **HB 2128**. She explained that the Subcommittee had worked hard and that she feels the committee has compromised.

Chairperson Glasscock called the Committee's attention to the written testimony of John G. Lewis, Publisher of *Kansas Lawyer*. His testimony indicated a concern about a conflict with the First Amendment to the U.S. Constitution. (Attachment 4.)

Since there were no other conferees, Chairperson Glasscock closed the Public Hearing on **HB 2128**.

Representative Lisa Benlon made a motion to adopt the balloon with the minor change adding the defense issue and striking out new section 3 and 4. Representative Deena Horst seconded, and motion passed.

Representative Deena Horst moved to make a second amendment to **HB 2128** by changing the word incumbent to candidate on page 2, line 27. Representative Lisa Benlon seconded, and motion passed.

Representative Lisa Benlon made a motion to pass **HB 2128** as amended and to recommend favorably. Representative Jonathan Wells seconded, and motion passed.

Chairperson Glasscock directed the Committee's attention back to **HB 2079**. Theresa Kiernan, Revisor, explained the word change in the balloon that was distributed on Thursday, February 19, 1997.

Representative Ralph Tanner made a motion to adopt the balloon for **HB 2079** and Representative Deena Horst seconded. Motion passed.

Representative Jonathan Wells moved to pass **HB 2079** as amended and to mark it favorable for passage. Representative Lisa Benlon seconded. Discussion followed.

Representative Gwen Welshimer made a Substitute motion to amend **HB 2079** to include the restriction that Insurance Commissioner candidates cannot solicit or accept contributions from persons regulated by the Insurance Commission. Representative Ruby Gilbert seconded, and motion passed.

Representative Gwen Welshimer moved to offer another amendment which would allow the provisions of **HB 2101** having to do with nepotism laws whereas a relative would not have to resign to be included in **HB 2079**. Representative Ruby Gilbert seconded. Discussion followed.

Representative Ralph Tanner said he had a certain uneasiness about this in that the nepotism law was passed for a real purpose. He said that he felt to remedy this would open up the whole issue, and that even though it seems like an innocent remedy on the one hand, it has great consequences. He stated that he would definitely oppose this.

Representative Deena Horst said that she also had some problems with the distinction between whether the relative is holding the job before the election or not. She said that she was of a similar consensus as Representative Tanner.

Mike Heim, Research Department, explained that because it is a non uniform statute which applies only to cities and counties that home rule power could be exercised.

A vote was taken, and the motion failed.

Representative Bob Tomlinson made a motion to amend **HB 2079** to eliminate PAC contributions from Political Action Committees. Representative Larry Campbell seconded Discussion followed.

Representative Deena Horst wanted a detailed explanation as to who would fall under this law. Representative Tomlinson said that he did not know if it would work, but that it appeared to him that political action committees are formed around a special interest. Representative Horst wanted to know if this was constitutional? Representative Tomlinson replied that it does not prohibit any individual contribution.

Representative Ralph Tanner brought to the Committee's attention that not all organizations are members of

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PACs, such as the AAUW, League of Women Voters, etc. He made a point that he feels it is better to keep individuals under view and not to chase them underground.

Representative Ray Cox said that PACs are part of the reform and that he would vote against this amendment.

Representative Gerry Ray said that she thought that PACs were good in that they afforded people an opportunity to join a group with similar concerns and interests.

Representative David Huff stated that if PACs were eliminated, then anyone would have to be filthy rich to run for office; therefore, he would have to vote against the amendment.

Representative Jim Long said that PAC was not a dirty word and that everyone has an opportunity to say "no" and just not take the money.

Representative Deena Horst said that she felt PACs allowed individuals who do not have much money to pool their money collectively and make a statement and show some power like the wealthy people.

Representative Ruby Gilbert said that she, too, had the same sentiment as those already expressed.

Since there was no additional discussion, the Chair called for the question. The motion failed for the Tomlinson amendment to **HB 2070**.

Representative Larry Campbell made a motion to reconsider the Welshimer amendment regarding the Insurance Commission. Representative David Huff seconded, and motion failed.

Representative Gwen Welshimer made a motion to pass **HB 2079** as amended. Representative Jonathan Wells seconded, and the motion passed. Representative Tomlinson wanted to be recorded as a "no" vote.

The meeting adjourned at 10:55 a.m.

The next meeting is scheduled for February 24, 1997.

TOM SLOAN
REPRESENTATIVE, 45TH DISTRICT
DOUGLAS COUNTY

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TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: ENVIRONMENT
UTILITIES

HOUSE OF
REPRESENTATIVES

**TESTIMONY ON HB 2128
AS REVISED BY THE SUBCOMMITTEE**

February 21, 1997

Thank you Mr. Chairman, members of the Committee. The Subcommittee hearing process worked because the members took a good idea and made it better for consideration by the Full Committee.

As recommended by the Subcommittee, HB 2128 requires:

1. The Commission on Governmental Standards to establish standards of fair campaign practices.
2. All political advertising to identify the candidate which such advertising is designed to help.
3. All political advertising to include the name and city of residence for the chairperson or treasurer of the organization responsible for the advertisement.
4. A statement declaring other issues were included in a legislative measure which are not discussed in the advertisement, when appropriate, if an incumbent's voting record on a specific bill is referenced.

The requirement to include the name of the chairperson or treasurer of the group advertising is essentially the same as current state law.

Requiring a city be specified provides a means for interested citizens and members of the Governmental Standards Commission, hearing or seeing the ad, to contact the appropriate person.

Requiring the identification of the candidate being supported permits voters to know what issues are important to each candidate and prevents blind "educational campaigns" by stealth organizations.

Every incumbent candidate should be held accountable for his/her voting record. However, voters are not well served when a challenger can pick one part of a 50+ section comprehensive appropriations bill and claim one agency's budget increase or decrease reflects that legislator's position on anything. We do not vote on agencies in isolation, but accept or reject the entire state budget. Discussion on proposed amendments would still be permitted without the disclaimer. Requiring a statement that "other issues were included" is not onerous and is fair to voters.

The attorney for the Kansas Commission of Governmental Standards has assured legislators that no federal law or regulation precludes Kansas from enacting any public notice requirements desired in radio, TV, newspaper, brochures, or other medium.

Mr. Chairman, I commend your subcommittee members for their commitment to the voting public of Kansas, for desiring a more open and fair political discussion between candidates about issues, and for their fairness during the hearing process.

House GO and E
Attachment 1
2-21-97



TOPEKA

HOUSE OF
REPRESENTATIVES

LISA L. BENLON
REPRESENTATIVE, 17TH DISTRICT
REPRESENTING PORTIONS OF
SHAWNEE AND LENEXA
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TOPEKA: (913) 296-7652
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COMMITTEE ASSIGNMENTS
ECONOMIC DEVELOPMENT
GOVERNMENTAL ORGANIZATION AND ELECTIONS
TOURISM

Testimony on HB 2128
February 21, 1997

I view HB 2128 as a companion bill to HB 2171 which passed out of this committee on February 13. HB 2171 requires independent individuals who wish to participate in campaigns to file an intent with the commission.

HB 2128 will complete that cycle. It outlines requirements for written as well as TV and radio political advertisements which are placed by independent individuals.

Written materials will require:

- . to identify the candidate the advertising is designed to assist
- . the word "advertisement" or "adv."
- . the chairman or treasurer of the independent group
- . the city of residence or city of primary office of the group

Broadcast materials will require:

- . to identify the candidate the advertising is designed to assist
- . followed by a statement that the preceding was an ad
- . the chairman or treasurer
- . city of residence or city of primary office of the group

When ads are used to report an incumbent's voting record and the legislative measure involved more than 1 material issue, a statement that other issues were included in the measure not addressed in the ad is required.

House GO and E
Attachment 2
2.21.97



Kansas Association of Broadcasters

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E-mail kab@ink.org

Testimony before the House Governmental Organization and Elections Committee
By Harriet Lange, President/Executive Director
Kansas Association of Broadcasters
February 21, 1997
RE: HB 2128

Thank you Mr. Chairman and Members of the Committee. I am Harriet Lange, president and executive director of the Kansas Association of Broadcasters (KAB). The KAB serves a membership of radio and television stations in Kansas. We appreciate the opportunity to appear before you on HB 2128.

The KAB does not take issue with your desire to establish "fair campaign practices". However, we do have concerns with the provisions in HB 2128 which call for additional disclosures in political ads.

The disclosure requirements in the bill are more onerous than the Federal Communications Commission (FCC) requires, further complicating for broadcasters, an already complex area. The FCC requires in the sponsor ID the words "Paid for" or "Sponsored by" followed by the sponsoring organization/committee. Broadcasters would have two different sets of rules to police. One set for federal candidates and another for state and local.

Although not the intent of the bill, it does discriminate against radio as an advertising

House GO and E
Attachment 3

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medium. The additional disclosure requirements place radio at a disadvantage because of the time-bound nature of the medium. The preferred length of radio commercials is thirty (30) seconds.

Newspapers can easily accommodate the additional disclosure requirements by adding a line or two of copy; television can accommodate the additional disclosure requirements by scrolling the information at the bottom of the screen; and the additional disclosures easily could be included in campaign brochures. Radio, however, can not as easily accommodate the additional disclosures.

Current law for state and local candidates and political ads requires these disclosures:

- 1) A statement that the preceding was an advertisement;
- 2) The name of the sponsoring organization or committee; and
- 3) The name of the chairperson or treasurer or individual responsible for the ad.

The provisions in HB 2128 would require these additional disclosures:

- 1) The identification of the candidate which the ad is designed to assist;
- 2) The city of residence of the individual responsible for the ad, or the city in which the sponsoring organization is located; and
- 3) When an incumbent's voting record (on a multi-issue measure) is mentioned in the ad, a statement would be required that other issues were included in the measure that are not mentioned in the ad.

The net effect for radio is an additional 5 to 10 seconds in disclosures. That's a substantial chunk of time in a 30-second commercial. This would result in discouraging

the use of radio to our competitors' advantage, or going to 60-second commercials.

Forcing 60-second commercials would increase the cost of campaigns, and also cause inventory problems for stations because of the limited amount of commercial time available in an hour.

We also ask your consideration of language (attached) clarifying that the sponsor of the ad and NOT the broadcaster or other medium, is liable for prosecution if the required disclosures are not in the ad.

Thank you for your consideration. I would be happy to respond to your questions.

RE: HB 2128

Sample disclosures (for radio commercials) to meet the requirements in Section 2 (b) and (c) -

Bold underline indicates FCC disclosure requirements

Bold indicates current state disclosure requirements

Italics indicate proposed new disclosures

Example 1) If commercial is sponsored by a candidate's own committee:

Total time for disclosures is 10 seconds or 1/3 of the ad.

"Legislative measures mentioned in this ad included other issues not mentioned."

In candidate's voice: "This is Hilary Riley Wentworth. I'll work hard for you in Topeka. **Advertisement sponsored by the Committee to Elect Hilary Riley Wentworth, Linn, KS; Erna Uffman, Chairman.**

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Example 2) If sponsored by an independent organization - Kansans for Less

Government. Total time for disclosures is 15 seconds - 1/2 of a 30-second ad.

"Legislative measures mentioned in this ad included other issues not mentioned."

*"This advertisement is designed to get Hilary Riley Wentworth elected to represent the 126th district in the Kansas House of Representatives. **Sponsored by Kansans for Less Government; Billie Bliss, Topeka, KS, chairman.***

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Suggested language - to amend HB 2128 - concerning compliance

Insert at end of Section 2, Page 2, after line 33:

(d) The responsibility for compliance with this section shall rest with the sponsor of the political advertising and not with the broadcasting station or other medium.

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JOHN G. LEWIS
PUBLISHER

February 21, 1997

Rep. Kent Glasscock
Kansas House of Representatives
Topeka, Kansas

Dear Representative Glasscock:

House Bill 2128 has come to our attention due to its apparent conflict with the First Amendment to the U.S. Constitution, and we are preparing an article for *Kansas Lawyer* in this regard.

We are compelled, in the meantime, to offer your committee the following brief testimony based on our research.

On October 19, 1995, the U.S. Supreme Court held in *McIntyre v. Ohio Elections Commission* that a state's "prohibition of the distribution of anonymous campaign literature abridges the freedom of speech in violation of the First Amendment . . . The freedom to publish anonymously is protected by the First Amendment and . . . extends beyond the literary realm to the advocacy of political causes."

Referencing the anonymous distribution of political leaflets, the Supreme Court said, "No form of speech is entitled to greater constitutional protection...."

"Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority."

HB 2128 provides for a \$100 expenditure floor for disclosure of a name, but the Supreme Court absolutely made no such exception. The Court did acknowledge that a law requiring a campaign committee to report aggregate expenditures to an agency (such as the Federal Elections Commission) might pass Constitutional muster, but it made positively no provision for allowing a state to require that a name be placed upon the political literature, itself.

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Representative Glasscock
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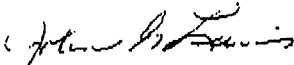
We have comments from both a prominent Kansas First Amendment attorney and a former Kansas Supreme Court justice which support the opinion that HB 2128 is clearly unconstitutional. These comments, which will appear in our news article, contain the following remarks:

"Obviously the proposed legislation in the Kansas Senate in S.B. No. 115 Section B (which is virtually identical to the House bill) violates the First Amendment of the U.S. Constitution."

"The McIntyre decision does stand for the proposition that this type of legislation will not be upheld."

We offer this information in the interest of legislative compliance with the Constitution.

Sincerely,



John G. Lewis