

Approved: 1/23/97
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Vice-Chairperson Rich Becker at 1:40 p.m. on January 21, 1997 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Bonnie Fritts, Committee Secretary

Conferees appearing before the committee: Carol Williams, Executive Director, Kansas Commission on Governmental Standards and Conduct

Others attending: See attached list

Senator Becker asked for approval of the minutes from the meetings of January 14, 1997 and January 15, 1997.

Senator Huelskamp moved to approve the minutes. Senator Lawrence seconded the motion. The motion passed.

Senator Becker asked the committee to introduce and sponsor a bill dealing with a legislative code of ethics.

Senator Lawrence made a motion to introduce the bill. Senator Petty seconded the motion. The motion carried.

Carol Williams appeared before the committee and gave an overview of the responsibilities of the Kansas Commission on Governmental Standards and Conduct, and explained several areas of legislative concern. She offered the Commission's Opinion containing examples of permissible and impermissible expenditures from campaign funds (Attachment 1). She also provided copies of the Lobbyist Registration Statement (Attachment 2), and the Kansas Lobbyist Employment and Expenditures Report (Attachment 3). She stated there are 586 lobbyists currently registered with the Commission, representing 1266 organizations. Detailed instructions on who must register, definitions of penalties for late filing, where to report, what to report, and other examples of reportable expenditures are listed on the registration forms. The Commission's 1996 Annual Report was also submitted (Attachment 4) which includes recommendations for campaign finance provisions. She recommended introduction of bills that would require public disclosure, the name of the group or person who is responsible for the mailing of political brochures to be placed on the mailing piece, the name of the individual responsible for a political advertisement, and one that would repeal K.S.A. 25-4119g.

Senator Becker moved to approve introduction of the bills. Senator Praeger seconded the motion. The motion carried.

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for January 22, 1997.

SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: 1/21/97

NAME	REPRESENTING
Ann Buselowski	KS Governmental Consulting
Anne Spiess	Peterson Public Affairs Group
Ed Rowe	League of Women Voters / KS
Craig Grant	HNFA
Charlie Smithson	KCGSC
Paul Walker	KCGSC
Brad Bryant	Sec. of state



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

May 22, 1996

Opinion No. 96-16

TO ALL INTERESTED PERSONS:

Pursuant to K.S.A. 25-4159, the Kansas Commission on Governmental Standards and Conduct takes the opportunity to issue its opinion on the permissible use of campaign funds by candidates and elected office holders who are under the purview of the Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.).

OPINION

K.S.A. 25-4157a(a) states:

"No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no such moneys shall be used by such candidate or the candidate committee of such candidate except for legitimate campaign purposes, for expenses of holding political office or for contributions to the party committees of the political party of which such candidate is a member.

For the purpose of this section, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office."

To be a permissible use of campaign funds, an expenditure must be for a legitimate campaign purpose, an expense of holding political office or a contribution to a party committee. In order to be a "legitimate campaign purpose or an expense of holding political office", the expenditure must have a "direct connection with or effect upon the campaign of the candidate or the holding of public office". All other expenditures are for personal use, and thus are prohibited. The Commission has provided the following examples of expenses to be used as a guide for candidates and office holders when making an expenditure from campaign funds.

SENATE ELECTIONS +
LOCAL GOVERNMENT
1-21-97
ATTACHMENT 1

EXAMPLES OF PERMISSIBLE EXPENDITURES FROM CAMPAIGN FUNDS

Computers, Telefacsimile Machines and Cellular Telephones

While expenditures for these types of items may be necessary for campaign purposes or holding office, they also have the potential to be used for the personal benefit of the candidate. Therefore, the Commission advises all candidates and office holders to refrain from using any items, purchased with campaign funds, for his or her personal use. Items purchased entirely with campaign funds may not be used for personal use.

Advertisements in Publications

The purchase of campaign ads in publications of charitable and civic organizations, yearbooks, school papers, etc., is a permissible expenditure.

Payment of Auto Expenses

One of the following options can be selected for the payment of auto expenses:

1. A candidate or officeholder can be reimbursed from his or her campaign fund for auto expenses up to \$.29 per mile. Any extraordinary maintenance or repairs will be determined on a case-by-case basis.
2. A candidate or officeholder can be reimbursed from his or her campaign fund for gas, oil and normal maintenance for automobiles used on campaign business. Any questions about what constitutes normal maintenance will be decided on a case-by-case basis.

Detailed records of these expenditures must be kept to substantiate any legitimate auto expenses.

Meals for Campaign Workers

Meal expenses may be permissible as a legitimate expense. However, the simple description of "lunch" or "food" on a candidate's receipts and expenditures report will not be sufficient to justify the expense. It will be necessary for the expenses of the meal to be described as for a campaign meeting, a political planning or strategy session, or for a campaign work session to be allowable.

EXAMPLES OF IMPERMISSIBLE EXPENDITURES FROM CAMPAIGN FUNDS

Donation to Charities and Local Fundraising Endeavors

Donations or contributions to charities and local fundraising endeavors, no matter how worthy the cause, are not permissible. This prohibition includes buying livestock at 4-H fairs.

Memberships to Civic and Fraternal Organizations

Dues to these types of organizations are not allowed. This prohibition includes membership dues paid to Chambers of Commerce, Kiwanis and Rotary.

Memberships and Dues to Country Clubs and Private Dinner Clubs

Expenditures for memberships and dues to country clubs and private dinner clubs are considered to be for the personal benefit of the candidate or office holder and thus are prohibited. The Commission does not believe it is necessary to entertain state clients, constituents or campaign workers at private clubs when there are facilities available to the general public that do not require memberships.

Mailing of Christmas cards and purchase of office decorations

These types of expenditures are considered to be for the personal benefit of the candidate or office holder and thus are prohibited.

Purchasing or Renting Formal Wear for Governmental and Political Functions

Expenditures for buying or renting formal wear are considered to be for the personal benefit of the candidate or office holder and thus are prohibited.

In closing, the Commission suggests that candidates and office holders seek guidance from the Commission's staff prior to using any campaign funds for expenses that may be considered questionable.

Nothing in this opinion precludes a candidate or office holder from using his or her own personal funds for the payment of any of these expenses.

Sincerely,

Diane Gaede

Diane Gaede, Chairwoman
By Direction of the Commission

DG:WCS:dlw



Lobbyist Registration Statement

This registration statement is filed for calendar year _____

Please type or print **Lobbyist**

Name	
Business Address (Street, City, State, Zip Code)	
Home Address (Street, City, State, Zip Code)	
Home Phone ()	Business Phone ()

For office use only

Mail should be sent to:	
<input type="checkbox"/> Home	<input type="checkbox"/> Business

Check One:

- | | |
|---|---|
| <input type="checkbox"/> Employed to lobby | <input type="checkbox"/> Spent \$100 for lobbying |
| <input type="checkbox"/> Appointed to lobby | <input type="checkbox"/> Other |

Registration Fee (Check One):

- \$30 fee I anticipate spending \$1000 or less for lobbying in this registration year on behalf of this employer
- \$250 fee I anticipate spending more than \$1000 for lobbying in this registration year on behalf of this employer
- \$300 fee I am an employee of a lobbying group or firm and not an owner or partner (see reverse side for explanation)

If employed or appointed, provide the following information:

Name of Employer or Appointing Authority	Phone ()
Address (Street, City, State, Zip Code)	

Purpose of lobbying (Check one or more in which you are interested):

- Action or non-action by the legislature on any legislative matter
- Adoption or non-adoption of state agency rules and regulations
- Other

Describe subject matter area(s) in which interested and, if lobbying relates to a specific legislative matter, rule and regulation or end, give the appropriate number or title thereof:

If employed, give method of determining compensation for lobbying:

I declare (or verify, certify or state) under penalty of perjury that the foregoing is true or correct.

Executed on _____

Date

Signature

SENATE ELECTIONS +
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ATTACHMENT 2

Instructions

This statement must be completed and filed with the Secretary of State (State House, Topeka, KS 66612) by each person required to do so by K.S.A. 46-265, prior to lobbying in the calendar year the person is registering for. A separate statement must be filed by each lobbyist for each person employing or appointing such lobbyist. Whenever a new lobbying employment or appointment is accepted during a calendar year, a separate statement must be filed. Registrations expire automatically on December 31 of each calendar year. The appropriate registration fee is required with each registration statement.

Who Must Register

The following persons must register as a lobbyist in each year prior to lobbying in that year:

- A. Any person employed in considerable degree for lobbying;
- B. Any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property regardless of whether the person received compensation; or
- C. Any person who makes expenditures in an aggregate amount of \$100 in any calendar year for lobbying.

In addition, any other person may register if they wish.

Penalty Provisions

There are civil penalties for late filing. The intentional failure to file this statement as required by law, or to intentionally make any false material statement herein, is a class B misdemeanor.

Guide to Items on Form

Purpose of Lobbying: These three provisions relate to the definition of lobbying, see K.S.A. 46-225.

Method of Determining Compensation: Indicate whether paid a monthly salary (all or a portion of which is for lobbying), an hourly rate, a fixed amount, or by another method. If space provided is insufficient, use extra sheet of paper. Note that K.S.A. 46-267 prohibits the paying or accepting of compensation for lobbying which is contingent upon the result.

Employee of Lobbying Group or Firm

When a lobbyist is an employee of a lobbying group or firm which contracts to lobby and not an owner or partner of such entity, the lobbyist will pay an annual registration fee of \$300.

Kansas Commission on
Governmental Standards
and Conduct



109 19th Street, Suit
Topeka, KS 66612
(913) 296-4219
(913) 296-2548 (FAX)

Kansas Lobbyist Employment and Expenditures Report

A lobbyist is required to file a separate report for each registration filed with the Secretary of State.

Lobbyist Filing Report

Name of Lobbyist	Date
Address (Street, City, State, Zip Code)	Business Phone ()

Date Report Due and Period Covered, Check One

<input type="checkbox"/>	February 10 (January)	<input type="checkbox"/>	May 10 (April)
<input type="checkbox"/>	March 10 (February)	<input type="checkbox"/>	September 10 (May, June, July, Aug)
<input type="checkbox"/>	April 10 (March)	<input type="checkbox"/>	January 10 (Sept, Oct, Nov, Dec)

Name of Employer or Appointing Authority on Whose Behalf Report is Being Filed

Employer or Appointing Authority	Phone ()
Address (Street, City, State, Zip Code)	

If reportable expenditures for this period were \$100 or less, check here and sign below.

Expenditures (see reverse side for examples)

1. Food and beverage provided as hospitality	\$ _____
2. Entertainment, gifts, honoraria or payments	_____
3. Mass media communications	_____
4. Recreation provided as hospitality	_____
5. Communications for the purpose of influencing legislative or executive action	_____
6. All other reportable expenditures	_____
Total Expenditures	\$ _____

Signature of person filing report:

I understand that there are civil penalties for late filing and that the intentional failure to file this report as required by law or to intentionally make any false material statement herein is a class B misdemeanor.

Date

Signature

SENATE ELECTIONS +
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ATTACHMENT 3

WHERE TO REPORT

A lobbyist must file a report with the Secretary of State, State House, Topeka, Kansas 66612.

WHAT TO REPORT

If the aggregate of all reportable expenditures is in excess of \$100, only expenditures of two dollars (\$2) and over made by the lobbyist and by the lobbyist's employer, organization, or other person on whose behalf the lobbyist is registered, must be reported. If the employer, organization or other person has more than one lobbyist, only the portion of expenditures with which each lobbyist is most directly connected shall be attributable to each specific lobbyist.

EXAMPLES OF REPORTABLE EXPENDITURES

Food and beverage provided as hospitality -- This category is used to report all expenditures for food and beverage when the state officer or employee being entertained is in the presence of the lobbyist.

Entertainment, gifts, honoraria or payments -- Examples of the items to be reported in this category are tickets to events when the lobbyist does not accompany the state officer or employee (\$40 limit per state officer or employee); gifts given to state officers and employees; and honoraria paid to state officers or employees for services rendered.

Mass media communications -- Expenditures made for radio, television and newspaper advertising are examples of expenses to be reported in this category.

Recreation provided as hospitality -- This category is to be used when the lobbyist accompanies the state officer or employee to an event. The \$40 limit does not apply in this instance.

Communications for the purpose of influencing legislative or executive action -- An example of an expense to be reported in this category is a mailing which explicitly promotes or opposes a clearly identified legislative matter, or agency rule and regulation, and which urges or requests the recipient to communicate with state officers or employees regarding that matter.

All other reportable expenditures -- Any reportable lobbying expenditure which has not been reported in the above categories may be reported in this category. Examples of the items to be reported here are the printing and mailing of invitations to legislative functions hosted by organizations, flowers purchased for those functions, entertainment provided at a function, etc.

PREFACE

This annual report and recommendations is submitted to the Governor and the Director of Legislative Administrative Services for transmittal to the Legislature pursuant to K.S.A. 25-4119a and K.S.A. 46-1212c. With some exceptions, the report covers the period from July 1, 1995, through June 30, 1996, the end of Fiscal Year 1996. Occasionally, data for the first quarter of Fiscal Year 1997 is used in order to provide a more complete picture of the Commission's operations.

SENATE ELECTIONS &
LOCAL GOVERNMENT
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COMMISSION'S RESPONSIBILITIES

The Kansas Commission on Governmental Standards and Conduct is charged with administering, interpreting and enforcing the Campaign Finance Act (K.S.A. 25-4142 et seq.) and laws relating to conflict of interests, financial disclosure, and the regulation of lobbying (K.S.A. 46-215 et seq.). These laws establish the public's right to information about the financial affairs of Kansas' public officials, lobbyists, and candidates for state and local office. In addition, the Commission renders advisory opinions and can adopt rules and regulations under a less comprehensive conflict of interests law covering local government officials and employees (K.S.A. 75-4301 et seq.).

THE COMMISSION

The Kansas Commission on Governmental Standards and Conduct is a nine member, bipartisan, citizen commission authorized by K.S.A. 25-4119a. Members serve two year terms with the Commission's Chairman being appointed by the Governor. The Vice-Chairman is appointed by the membership.

The Commission usually meets once a month. The Commission's meetings are open to the public and information prepared by the staff for each meeting is available to the public. During FY 1996, the Commission held 10 meetings. Meetings are scheduled to address a variety of matters including the review of complaints filed, investigations undertaken, audits performed, the issuance of advisory opinions to answer questions involving interpretation of a particular section of the law, making policy decisions, amending or adopting new administrative regulations and handling of administrative matters including personnel, budget preparation, office procedures, etc.

COMMISSION MEMBERS

Diane Gaede, Chairwoman
Republican, Manhattan
Term expires, January 31, 1997

Father Vincent Krische, Vice-Chairman
Democrat, Lawrence
Term expires, January 31, 1998

Chris Anne Hartley
Republican, Baxter Springs
Term expires, January 31, 1997

Janice Huston
Democrat, Americus
Term expires, January 31, 1997

Richard (Pete) Loux
Independent, Wichita
Term expired, January 31, 1994

Rabbi Herbert Mandl
Democrat, Overland Park
Term expired, January 31, 1995

Former Chief Justice Robert Miller
Republican, Topeka
Term expires, January 31, 1998

Michael Norris
Republican, Olathe
Term expires, January 31, 1997

Elon Torrence
Republican, Topeka
Term expires, January 31, 1998

STAFF

The staff of the Commission assume all responsibility for the daily operations of the agency which include administration, legal, investigative, and clerical functions.

The Commission welcomed two new full time employees to its staff. Both Charles Smithson and Karina Renna had been temporary special projects personnel. Mr. Smithson joined the staff as the Commission's Attorney, while Mrs. Renna became a Report Examiner.

FY 1996 COMMISSION STAFF

Executive Director, Carol Williams
Commission & Staff Attorney, Charles Smithson
Investigator, Janet Williams
Local Campaign Finance Supervisor, Jana Atchison
Auditor, Cindy Hermes
Report Examiner, Karina Renna
Office Manager/Secretary, Donna Williams
Lobbyist Coordinator/Secretary, Ruth Pile

BUDGET

In FY 1996, the Commission was appropriated \$293,343 from the State General Fund with a fee fund limitation of \$144,967. The following chart reflects revenue and expenditures for the fiscal year.

Fiscal Year 1996 Budget	Budgeted	Actual
Revenue:		\$293,343
State General Fund Appropriations	\$293,343	122,685
Fee Fund Limitation	144,967	
Total Revenue	435,310	416,028
Expenditures:		328,293
Salaries and Benefits	344,203	73,019
Contractual Services	73,107	3,491
Commodities	5,200	11,225
Capital Outlay	15,800	
Total Expenditures	438,310	416,028

Full-time staff has increased by only four positions in the twenty-two years of the agency's existence. Other operating expenditures have remained relatively constant through this time period.

MAJOR ACCOMPLISHMENTS IN FY 1996

In FY 1996, detailed campaign finance data from the 1994 election cycle for legislative and statewide candidates was placed on the Internet via Kansas Information Network of Kansas. For the first time, the public could access and retrieve information on individual donors to Kansas legislative and statewide candidates as well as review the names, dates and dollar amounts of all contributions made to each specific candidate. Condensed information on candidates running against each other which compare contributions received by categories (political action committees, corporations, individuals, etc.) and expenditures made by categories can also be accessed and reviewed. Campaign finance activity occurring during calendar year 1995 was also placed on the Internet.

Until this year, the statistical campaign finance summary reports for legislative and statewide races in 1990, 1992, and 1994 were usually distributed to only the press and media due to budget constraints.

Another accomplishment during FY 1996 was the production of a video titled "It's A Question of Ethics". This video was produced to provide an overview of the State's conflict of interest laws and the role of the Commission. The video is designed to explain the requirements of the conflict of interest law, a law that can seem technical and complicated, to state employees. This video is being used in new state employee orientation sessions. It is a goal of the Commission to have this video viewed eventually by all state employees.

LEGISLATIVE ACTIVITY

Several major pieces of legislation were introduced during the 1996 legislative session. All of the Commission's recommendations to the 1996 Legislature were introduced in either the Senate or House Election Committees. Unfortunately, a majority of these bills were amended into House Bill 3000 which became the "ethics" bill for the 1996 legislative session. Provisions of HB 3000 would have dramatically altered the State's lobbying laws as well as many provisions of the Campaign Finance Act and State Conflict of Interest statutes. Though this bill was still being debated through the last day of the wrap-up session, no ethics bill was passed by the 1996 Kansas Legislature.

ORGANIZATION AND OPERATION

The Commission's efforts focus on full compliance with the Kansas campaign finance,

conflict of interests, and lobbying statutes. Each year the Commission receives thousands of financial disclosure reports filed by candidates, political and party committees, public officials and lobbyists. Staff time is devoted to assuring the accurate and timely disclosure of required financial information about those in state and local government. The processing and evaluation of filed reports and statements and an analysis of the supporting records, where appropriate, are crucial to the Commission's efforts. It is through the initial and comprehensive review of these reports, and the later audit and investigation when necessary, that the Commission can determine compliance with the laws.

The Commission's work program encompass six areas: (1) education and public awareness; (2) advisory opinions; (3) reviews and audits; (4) investigations; (5) enforcement (including the filing of complaints, holding public hearings and assessing civil penalties); and (6) general administrative activities.

Education and Public Awareness

The Commission's goal remains to improve communications regarding the reporting requirements of those subject to one or more of the disclosure laws, and to increase public awareness with respect to the impact and importance of information contained in the reports filed.

The Commission utilizes informational brochures, the news media, and speaking engagements to inform the public about the laws and their meaning. Statistical information is summarized and printed in the areas of campaign finance and lobbying. However, most time in this program area is devoted to informing those directly covered by the laws of their duties and responsibilities. To accomplish this task, the Commission conducts informational seminars, prepares and distributes handouts, campaign finance handbooks, lobbying handbooks, and conflict of interests law brochures. In addition, the telephone is used extensively to provide information and advice.

As mentioned earlier, the Commission has also produced an educational video in its attempt to educate and explain the Kansas Governmental Ethics Laws to State officers and employees. In addition, two new brochures for state employees were printed. The brochures titled "Guidelines Concerning Gifts" and "Conflict of Interest Guidelines for State Travel" were provided to state agencies for distribution to employees.

Advisory Opinions

Advisory opinions are issued by the Commission to clarify the application of the statutes in a particular situation. The Commission can issue these opinions on its own initiative or in response to individual inquiries. If an individual requests an opinion and conducts himself or herself according to the guidelines in the opinion, he or she is presumed to be in compliance

with the law.

Thirty-three advisory opinions were issued in FY 1996. Three of the opinions were issued by the Commission on its own initiative to provide guidance to candidates and office holders. Thirty opinions were issued in response to inquiries by individuals.

FY 1996 ADVISORY OPINIONS	
Campaign Finance --	7
Lobbying --	0
State Conflict of Interests --	18
Local Conflict of Interests --	8

From its inception in 1974 through June 30, 1996, the Commission has issued a total of 798 advisory opinions.

ADVISORY OPINIONS ISSUED IN FY 1996
--

OPINION NO. 95-14 -- ISSUED AUGUST 17, 1995

STATE EMPLOYEE SERVING ON THE BOARD OF DIRECTORS OF ORGANIZATION SEEKING FUNDS FROM EMPLOYEE'S AGENCY

FACTUAL STATEMENT

An Information Writer for the Kansas Arts Commission is also on the board of directors for the Topeka Center for Peace and Justice. The Center has submitted a grant application to the Arts Commission.

QUESTION

Is it permissible for a state employee to serve on the board of directors of an organization which is requesting funding from that employee's agency?

OPINION

K.S.A. 46-233 would prohibit the employee from participating, as a state employee, in the making of contracts or awarding of grants with the Center on behalf of the state. Therefore, so long as the employee did not as part of his state job participate in awarding the grant, he could continue to serve on the board of directors.

* * * * *

OPINION NO. 95-15 -- ISSUED AUGUST 17, 1995

MONETARY DEPOSIT RELATIONSHIPS DO NOT CREATE A "SUBSTANTIAL INTEREST" IN A FINANCIAL INSTITUTION

FACTUAL STATEMENT

The Kansas Development Finance Authority regularly contracts with financial institutions and professionals to provide services for the Authority. A board member of the Authority has personal money deposited in several of these institutions. He has no other relationship with these institutions other than a deposit relationship.

QUESTION

Is it a violation of state level conflict of interest laws if the board member participates in making contracts with a financial institution in which he has a deposit relationship?

OPINION

K.S.A. 46-233 prohibits a state officer or employee from participating, in that capacity, in the making of contracts with any person or business in which a "substantial interest" is held. However, a deposit relationship does not create a "substantial interest" as defined by K.S.A. 46-229. Therefore, the board member could participate in making contracts with financial institutions with which he has only a deposit relationship.

* * * * *

OPINION NO. 95-16 -- ISSUED AUGUST 17, 1995

THE \$40 GIFT LIMITATION DOES NOT APPLY IF AGENCY AUTHORIZES AND IS WILLING TO PAY COSTS OF ATTENDING EVENT

FACTUAL STATEMENT

The Franklin Quest Company, which markets a time management package, offered the Department of Corrections two complimentary tickets to attend a program on time management. The company then wants to sell a time management package to the department. The value of the tickets would be in excess of \$40.

QUESTION

Is it permissible for state employees to attend a training seminar or similar event when the cost of the event is paid for by the host organization?

OPINION

K.S.A. 46-237 generally prohibits a state officer or employee from accepting a gift in excess of \$40 from any person or business having a "special interest". If the officer or employee's agency authorized and would have been willing to pay for the costs of the event, then the agency, and not the employee, would be receiving the benefit of the gift and the \$40 limitation would not apply.

* * * * *

OPINION NO. 95-17 -- ISSUED SEPTEMBER 14, 1995

LOCAL SUBDIVISIONS OF GOVERNMENT ARE NOT "PERSONS" OR "BUSINESSES" FOR PURPOSES OF HOLDING A "SUBSTANTIAL INTEREST"

FACTUAL STATEMENT

The City of Liberal, Kansas, has several local governmental officials who, for various reasons, want to enter into more than one contract with the city.

QUESTION

Is it permissible under the local level conflict of interest laws for local governmental officials to enter into more than one contract with the city?

OPINION

The local level conflict of interest laws, K.S.A. 75-4301a et seq., prohibit a local governmental official, in that capacity, from participating in the making of contracts with any person or business in which a "substantial interest" is held. However, local subdivisions of government are not "persons" or "businesses". Therefore, a city commissioner could also be the attorney for the local housing authority, and the city attorney could be on the city planning commission. In addition, the Mayor, as a private individual, could enter into a lease agreement with the county, and the county could then contract with the city concerning the property. However, the Mayor could not, in that capacity, participate in the contract between the city and himself as a private businessman.

* * * * *

OPINION NO. 95-18 -- ISSUED DECEMBER 7, 1995

INDIVIDUAL SERVING ON ADVISORY COUNCIL ON AGING AND DEPARTMENT OF AGING SUB-CONTRACTEE CONTROLLING BOARD

FACTUAL STATEMENT

A member of the Kansas State Advisory Council on Aging, which provides advisory assistance to the Department on Aging, is also a member of a Department of Aging sub-contractee controlling board.

QUESTION

Is it a violation of the state level conflict of interest laws for a member of the Kansas State Advisory Council on Aging to also serve on a Department of Aging sub-contractee controlling board?

OPINION

The state level conflict of interest laws would not prohibit an individual from serving on both the Advisory Council on Aging and a Department on Aging sub-contractee controlling board. However, the individual could not participate in the making of contracts on behalf of the Advisory Council with the sub-contractee controlling board.

* * * * *

OPINION NO. 95-19 -- ISSUED DECEMBER 7, 1995

THE LEVEL OF "PARTICIPATING IN THE MAKING OF A CONTRACT" THAT TRIGGERS PROHIBITION ON LATER ACCEPTING EMPLOYMENT

FACTUAL STATEMENT

The Department of Social and Rehabilitation Services awarded a contract to Blue Cross/Blue Shield. During the negotiated bid process, an employee of SRS assisted the review bid teams, but did not participate in any bid evaluations or negotiations. Upon termination of state employment, the employee would like to accept employment with Blue Cross/Blue Shield.

QUESTION

Is it a violation of the state level conflict of interest laws for a state employee, upon terminating state employment, to accept employment with a business after the business was awarded a contract by the employee's agency?

OPINION

K.S.A. 46-233 prohibits any individual who has, within the preceding two years, participated in the making of a contract with a person or business from accepting employment with that

person or business for one year. There is an exception for contracts that were entered into after competitive bidding. Because this particular contract was a "negotiated bid" rather than a "competitive bid", this exception would not apply. However, because the employee's participation in the making of this contract was minimal, and he did not participate in the evaluations or negotiations of the bids, he could accept employment with Blue Cross/Blue Shield upon terminating state employment.

* * * * *

OPINION NO. 95-20 -- ISSUED DECEMBER 7, 1995

SENTENCING COMMISSION ATTORNEY SPEAKING AT PROGRAM SPONSORED BY WASHBURN UNIVERSITY SCHOOL OF LAW

FACTUAL STATEMENT

An attorney with the Kansas Sentencing Commission has been asked to serve as a speaker by the Washburn University School of Law in a series of Continuing Legal Education Programs. She would not receive any honorarium for speaking, nor would the Sentencing Commission receive any of the fees collected for the programs.

QUESTION

Do the state level conflict of interest laws prohibit a Kansas Sentencing Commission attorney from being a speaker at a program sponsored by the Washburn University School of Law?

OPINION

The state level conflict of interest laws would not prohibit this situation, so long as the attorney did not receive any honorarium for speaking at the programs.

* * * * *

OPINION NO. 95-21 -- ISSUED DECEMBER 7, 1995

STATE EMPLOYEE RECEIVING DOOR PRIZE FROM BUSINESS WITHOUT A "SPECIAL INTEREST"

FACTUAL STATEMENT

An employee OF the Kansas Department of Transportation attended a meeting hosted by the Greater Kansas City Chamber of Commerce. The employee won a randomly drawn door prize for two airline tickets from TWA Airlines.

QUESTION

Is it a violation of the state level conflict of interest laws for an employee of the Department of Transportation to receive a prize donated by TWA Airlines to a chamber of commerce?

OPINION

K.S.A. 46-237 generally prohibits a state officer or employee from accepting a gift in excess of \$40 from any person or business having a "special interest". In this situation, the state employee's duties did not have any effect on TWA Airlines. Therefore, TWA Airlines did not have a "special interest", as defined by K.S.A. 46-228, in the employee. Thus, the employee could receive the door prize.

* * * * *

OPINION NO. 95-22 -- ISSUED DECEMBER 7, 1995

EMPLOYEES OF COUNTY TREASURER'S OFFICE OWNING PRIVATE TITLE SERVICE COMPANY

FACTUAL SITUATION

Three employees of the Shawnee County Treasurer's Office want to open a private title service company.

QUESTION

Is it a violation of the local level conflict of interest laws for employees of the Shawnee County Treasurers Office to own and manage a private title service company?

OPINION

This situation would not violate the local level conflict of interest laws so long as the employees did not participate, as local governmental officials, in the making of contracts between the treasurer's office and their private business.

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OPINION NO. 95-23 -- ISSUED DECEMBER 7, 1995

DEPARTMENT OF CORRECTIONS CO-SPONSORING EVENT WITH NON-GOVERNMENTAL ORGANIZATIONS

FACTUAL STATEMENT

The Kansas Department of Corrections is interested in co-sponsoring a professional conference with various non-governmental organizations. The non-governmental co-sponsor would solicit vendors to set up display booths at the conference, and would keep all fees generated by the conference.

QUESTION

Is it a violation of the state level conflict of interest laws for the Department of Corrections to co-sponsor a professional conference with non-governmental organizations?

OPINION

This situation would not be a violation of the state level conflict of interest laws so long as the non-governmental co-sponsor does not have a "special interest", as defined by K.S.A. 46-228, in the Department of Corrections.

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OPINION NO. 96-1 -- ISSUED JANUARY 23, 1996

STATE VOCATIONAL REHABILITATION COUNSELOR SETTING UP PRIVATE REHABILITATION SERVICES BUSINESS

FACTUAL SITUATION

An employee of the Kansas Vocational Rehabilitation Center wants to set up a private business to provide rehabilitation services during off-duty hours. The employee's private business would focus on obtaining medical information for clients, while her state duties focused on vocational rehabilitation. The employee would not refer any state clients to the private business, or handle any of her private clients who were referred to the state.

QUESTION

Is it a violation of the state level conflict of interest laws for a state rehabilitation counselor to provide rehabilitation in the private sector?

OPINION

This situation would not violate the state level conflict of interest laws so long as the state employee, in that capacity, did not participate in the making of contracts between the state and her private business. Also, the employee's private sector services must be separate, and apart from, any official duties with the state.

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OPINION NO. 96-2 -- ISSUED JANUARY 23, 1996

COUNTY EMPLOYEE SERVING AS CHAIRPERSON OF COUNTY POLITICAL PARTY

FACTUAL STATEMENT

A county employee is also the chairperson for a county political party.

QUESTION

Is it a violation of the local level conflict of interest laws for a county employee to also serve as chairperson of a county political party?

OPINION

Nothing in the local level conflict of interest laws prohibits an individual from serving as both a county employee and as chairperson of a county political party.

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OPINION NO. 96-3 -- ISSUED JANUARY 23, 1996

REPRESENTATION OF A CLIENT BEFORE CLAIMS COMMITTEE DOES NOT CONSTITUTE LOBBYING

FACTUAL STATEMENT

A law firm represents a client in an action against the state. Any settlement negotiations would involve the firm discussing the appropriation of state funds with legislators and/or administrative officials. The lobbying provisions of the state level conflict of interest laws (K.S.A. 46-215 et seq.) exempt from the definition of "lobbying" the representation of a claimant in proceedings before the legislative committee on claims against the state.

QUESTION

Is an attorney representing a client in a lawsuit against the state "lobbying" if, as part of that representation, the attorney contacts governmental officials regarding the lawsuit?

OPINION

An attorney representing a claimant against the state is not automatically engaged in "lobbying". However, the lobbying provisions will be triggered when the representation extends to "lobbying" as defined by K.S.A. 46-225. In this situation, discussions with

governmental officials regarding the appropriation of state funds would be "lobbying". However, the exemption from the definition of lobbying for representation of a claimant before the committee on claims would apply, so long as the only governmental officials contacted were either parties to the claim or served on the claims committee. If the representation involved discussions with governmental officials who were not either parties to the claim or on the claims committee, those discussions would constitute "lobbying".

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OPINION NO. 96-4 -- ISSUED JANUARY 23, 1996

DEPARTMENT OF COMMERCE AND HOUSING EMPLOYEE WORKING FOR DOWNTOWN DEVELOPMENT ASSOCIATION DURING OFF-DUTY HOURS

FACTUAL STATEMENT

An employee with the Kansas Department of Commerce and Housing has been asked by the Kansas Downtown Development Association, a non-profit organization, to provide quasi-staff functions during off-duty hours.

QUESTION

Is it a violation of the state level conflict of interest laws for an employee of the Department of Commerce and Housing to be employed by the Kansas Downtown Development Association during off-duty hours?

OPINION

This situation would not violate the state level conflict of interest laws so long as the state employee, in that capacity, did not participate in the making of contracts between the state and the Association, and did not license, inspect or regulate the Association.

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OPINION NO. 96-5 -- ISSUED JANUARY 23, 1996

WHEN A CIVIL PENALTY IS "IMPOSED" FOR PURPOSES OF A CANDIDATE REMOVING THE CAMPAIGN'S TREASURER

FACTUAL STATEMENT

The Kansas Campaign Finance Act (K.S.A. 26-4142 et seq.) requires a candidate to remove his or her campaign treasurer against whom a civil penalty has been imposed.

QUESTION

When is a civil penalty "imposed" which would require a candidate to remove his or her campaign treasurer?

OPINION

A civil penalty is not "imposed" until all final action is taken concerning the penalty. Thus, for a candidate not seeking a waiver, the treasurer would have to be removed immediately. A candidate seeking a waiver would not have to remove the treasurer until the waiver request was denied. The removal requirement would not apply to any treasurer who has his or her penalty waived for good cause by the Commission.

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OPINION NO. 96-6 -- ISSUED MARCH 7, 1996

COUNTY COMMISSIONER OWNING PROPERTY WITH RURAL WATER DISTRICT WATER METERS, MAKING DECISIONS AFFECTING DISTRICT

FACTUAL STATEMENT

A Trego County Commissioner owns a business and some development property, both of which have water meters that were purchased from the Rural Water District Board serving the county. The meters were purchased by the individual prior to becoming a Commissioner.

QUESTION

Is it a conflict of interest if questions concerning the Rural Water District were to come before the County Commission?

OPINION

The local level conflict of interest laws prohibit an individual from participating in the making of contracts with any "person" or "business" in which a "substantial interest" is held. In this situation, the Commissioner does not hold a "substantial interest" as defined by K.S.A. 75-4301a in the water district. Therefore, it would not be a conflict of interest for the Commissioner to act on matters concerning the water district that came before the Commission.

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OPINION NO. 96-7 -- ISSUED MARCH 7, 1996

MAYOR OF WICHITA PROHIBITED FROM USING CAMPAIGN FUNDS TO ATTEND NATIONAL PARTY CONVENTION

FACTUAL STATEMENT

The Mayor of Wichita was appointed by the National League of Cities to co-chair the "Election '96 Task Force". As such, the Mayor has been invited to attend the Republican National Convention.

QUESTION

Is it permissible, under the Kansas Campaign Finance Act, for the Mayor to use campaign funds to pay for the expenses of attending the National Convention?

OPINION

K.S.A. 25-4157a prohibits the use of campaign funds except for legitimate campaign purposes, expenses of holding political office or contributions to party committees. To be a legitimate campaign purpose or expense of holding political office the expenditures must have a "direct connection with or effect upon the campaign of the candidate or the holding of public office". Since attending a national party convention does not have a "direct connection with or effect upon" being the mayor, the costs of attending the convention could not be paid for with campaign funds.

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OPINION NO. 96-8 -- ISSUED MARCH 7, 1996

STATE EMPLOYEE, DURING OFF-DUTY HOURS, DEVELOPING PRODUCT THAT COMPETES WITH AGENCY'S PRODUCT IN PRIVATE SECTOR

FACTUAL STATEMENT

An employee with the Department of Administration developed, during off-duty hours, computer software to be sold in municipalities to assist in budget preparation. The Department of Administration also has software that it sells to municipalities to aid in budget preparation. The employee's job duties did not include designing computer software.

QUESTION

Is it a violation of the state level conflict of interest laws for a state employee, during off-duty hours, to develop and market a product that would be in competition with a product sold by the employee's agency?

OPINION

Nothing in the State level conflict of interest laws would prohibit this situation. However, under K.S.A. 46-241, the employee could not use any confidential information acquired during his state duties to further the private business.

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OPINION NO. 96-9 -- ISSUED MARCH 7, 1996

STATE EMPLOYEE PROVIDING CONSULTING WORK AS INDEPENDENT CONTRACTOR TO PRIVATE SECTOR

FACTUAL STATEMENT

An employee of the Department of Housing and Commerce has been asked to perform some consulting work for a non-profit economic development corporation during off-duty hours with the state.

QUESTION

Is it a violation of the state level conflict of interest laws for an employee of Housing and Commerce to work as a consultant for a non-profit economic development corporation during off-duty hours?

OPINION

K.S.A. 46-233 prohibits any state officer or employee, who has participated in the making of a contract with an entity, from accepting employment with that entity for one year. However, this section applies only to those individuals who accept "employment" with the entity. Therefore, this section would not apply to an independent contractor doing consulting work. K.S.A. 46-241 would prohibit the individual from using confidential information obtained as a state employee from furthering his private consulting work.

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OPINION NO. 96-10 -- ISSUED MARCH 7, 1996

HALLMARK CARDS CORPORATION GIVING GREETING CARDS CONCERNING CHILD IMMUNIZATION TO DEPARTMENT OF HEALTH AND ENVIRONMENT

FACTUAL STATEMENT

The Hallmark Cards Corporation wants to assist the State of Kansas in encouraging parents to immunize their children by donating greeting cards to the Kansas Department of Health and Environment. The cards would have the signatures of the Governor and First Lady and would include a detachable immunization record.

QUESTION

Is it permissible for the Hallmark Cards Corporation to give the greeting cards to the Department of Health & Environment, and what reporting requirements would exist?

OPINION

K.S.A. 46-237 generally prohibits any person licensed, inspected or regulated by a state agency from giving that agency a gift in excess of \$40.00 in a calendar year. In this situation, the Department of Health and Environment does not license, inspect or regulate Hallmark, thus the \$40.00 gift limitation would not apply. Hallmark would not be required to report the gifts as lobbying expenditures since the cards were not given to "promote or oppose" any rule and regulation of the Department of Health and Environment.

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OPINION NO. 96-11 -- ISSUED MARCH 7, 1996

MAYOR'S PRIVATE BUSINESS CONTRACTING WITH THE COUNTY

FACTUAL STATEMENT

The Mayor of Galena, who is also running for sheriff, has proposed, as a private businessman, a business idea to the county. This proposal, to improve jail conditions in the county, would involve a contract between the county and a management company in which the mayor has a minority interest.

QUESTION

Is it a violation of the local level conflict of interest laws for a mayor, who is also a candidate for sheriff, to contract as a private business person with the county?

OPINION

The local level conflict of interest laws prohibit a local governmental official, in that capacity, from participating in contracts between his or her local subdivision of government and any

"person" or "business" in which a "substantial interest" is held. In this situation, the contract is not with the city, but the county. The mayor's management company could contract with the county without violating the conflict of interest laws. These laws apply only to local governmental officials, and not to candidates for local office. The fact the mayor is running, but not yet seated as sheriff, does not change this opinion.

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OPINION NO. 96-12 -- ISSUED APRIL 11, 1996

CITY AND COUNTY OFFICIALS VOTING ON FUNDING AIRPORT PROJECTS WHILE SERVING ON THE AIRPORT COMMITTEE

FACTUAL STATEMENT

The City of Hoxie, and Sheridan County, have entered into a joint agreement in order to govern the local airport. The committee that oversees the airport is comprised of city and county officials. The Airport Committee is seeking funding from both the city and county for airport projects.

QUESTION

Is it a violation of the local level conflict of interest laws for city and county officials, who also serve on the Airport Committee, to vote on funding airport projects?

OPINION

The local level conflict of interest laws prohibit a local governmental official, in that capacity, from participating in the making of contracts with any "person" or "business" in which a "substantial interest" is held. Local subdivisions of government such as city and county commissions, and local airport committees are not "persons" or "businesses" for purposes of holding a "substantial interest". Therefore, city and county officials, who serve on the Airport Committee, may vote on using city and county funds to support airport projects.

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OPINION NO. 96-13 -- ISSUED APRIL 11, 1996

CANDIDATE FILING FEE APPLIES TO INCUMBENT RETENTION JUDGES

FACTUAL STATEMENT

Individuals filing for office, including the office of district court judge, are required by K.S.A. 25-4119(f) to pay a \$30.00 candidate filing fee.

QUESTION

Does the \$30.00 candidate filing fee apply to incumbent retention judges?

OPINION

K.S.A. 20-2908, a statute concerning retention judges, states that the election laws applicable to other state officers apply to retention judges. Therefore, since K.S.A. 25-4119 is an election law that applies to other state officers, it should also apply to retention judges. Thus, incumbent retention judges filing for office are required to pay the \$30 candidate filing fee.

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OPINION NO. 96-14 -- ISSUED APRIL 22, 1996

CANDIDATES AND STATE OFFICEHOLDERS PROHIBITED FROM USING CAMPAIGN FUNDS TO ATTEND NATIONAL POLITICAL PARTY CONVENTIONS

FACTUAL STATEMENT

Several state officeholders and candidates for state office want to use campaign funds to attend their national political party conventions.

QUESTION

Is it a permissible use of campaign funds for an elected state officeholder or candidate for state office to attend his or her national political party convention?

OPINION

To be a legitimate use of campaign funds, an expenditure must be for a legitimate campaign purpose, expense of holding political office, or a contribution to a party committee. All other expenditures are for the "personal use" of the candidate and are prohibited. The costs of attending a national party convention do not have a "direct connection with or effect upon the campaign of the candidate or the holding of public office". Therefore, campaign funds could not be used to pay for the cost of attending a national political party convention. However, a candidate or officeholder could use his or her personal funds to attend.

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OPINION NO. 96-15 -- ISSUED APRIL 22, 1996

EMPLOYEE OF EDUCATIONAL SERVICE CENTER SERVING AS AN ALTERNATE ON CENTER'S BOARD OF DIRECTORS

FACTUAL STATEMENT

An employee of the Northwest Kansas Educational Service Center could serve as an alternate on the Center's board. The employee is also a member of the teacher negotiating team that would be involved in contractual negotiations between the Center's employees and the board.

QUESTION

Is it a violation of the local level conflict of interest laws for an employee of the Center, who serves on the negotiating team on behalf of the Center's employees, to be an alternate on the Center's board?

OPINION

The local level conflict of interest laws prohibit a local governmental official, in that capacity, from participating in the making of contracts with a "person" or "business" in which a "substantial interest" is held. Local subdivisions of government such as the Center are not "persons" or "businesses" for purposes of holding a "substantial interest". Therefore, the employee could serve on the negotiating team and the board.

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OPINION NO. 96-16 -- ISSUED MAY 22, 1996

EXAMPLES OF PERMISSIBLE AND IMPERMISSIBLE USES OF CAMPAIGN FUNDS

FACTUAL STATEMENT

The Kansas Campaign Finance Act (K.S.A. 25-4142 et seq.) prohibits the use of campaign funds for the "personal use" of the candidate or officeholder. To be a permissible use of campaign funds, the expenditure must be for a legitimate campaign purpose, an expense of holding political office, or a contribution to a party committee. To be a "legitimate campaign purpose or expense of holding political office", the expenditure must have a "direct connection with or effect upon the campaign of the candidate or the holding of public office."

QUESTION

What examples of expenditures would and would not be a permissible use of campaign funds?

OPINION

Expenditures for computers, telefacsimile machines and cellular telephones used for campaign or office holding purposes are permissible. The purchase of campaign advertisements in publications would be permissible. The reimbursement of automobile expenses related to holding office or campaigning is permissible. Meals for campaign workers would be permissible. Donations to charities and local fundraising endeavors would not be permissible. Memberships to civic and fraternal organizations, country clubs and private dinner clubs would be prohibited. The mailing of Christmas cards and the purchase of office decorations would not be permitted. The purchasing or renting of formal wear for governmental and political functions would be prohibited. A candidate or officeholder could always use his or her personal funds to pay for these expenses.

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OPINION NO. 96-17 -- ISSUED MAY 22, 1996

STATE EMPLOYEE INVOLVED IN "NEGOTIATED BID" WITH COMPANY, THEN SEEKING EMPLOYMENT WITH THE COMPANY

FACTUAL STATEMENT

An employee of the Department of Administration participated in a negotiated bid with Andersen Consulting for the purposes of providing a service to the State. Several amendments have been made to that initial contract. Andersen Consulting subcontracted some of the work to People Soft. After terminating state employment, the employee would like to seek employment with either Andersen Consulting or People Soft.

QUESTION

Is it a violation of the state level conflict of interest laws for a state employee to participate in a negotiated bid with an entity, and then accept employment with that entity after terminating state employment?

OPINION

K.S.A. 46-233 prohibits any state officer or employee who, in that capacity, has within the preceding two years participated in the making of a contract with a person or business, from accepting employment with that person or business for one year. There is an exception for contracts awarded after competitive bidding. In this situation, the contract was awarded after a "negotiated" rather than "competitive" bid. Therefore, the exception would not apply. Thus, if the employee participated in the original contract, or the amendments to the

contract, he could not accept employment with Andersen Consulting for one year. Since People Soft was merely a subcontractor for Andersen, the employee could accept employment with People Soft without waiting for one year.

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OPINION NO. 96-18 -- ISSUED MAY 22, 1996

STATE EMPLOYEE'S PRIVATE BUSINESS SOLICITING BUSINESSES LICENSED, INSPECTED OR REGULATED BY THE EMPLOYEE'S AGENCY

FACTUAL STATEMENT

An employee of the State Bank Commissioner's Office wants to participate in a private business that markets long distance telephone services. Businesses, including state-chartered banks, are potential customers. The employee would not directly solicit the banks, but individuals on the employee's marketing team potentially would solicit the banks. The employee would not identify any banks to be solicited, nor would the employee's name be used during the marketing process.

QUESTION

Does the solicitation of a bank by the employee's marketing team member constitute a violation of the state level conflict of interest laws?

OPINION

This situation would not violate the state level conflict of interest laws so long as the employee did not solicit any state chartered banks. The employee would also be prohibited from holding any position with a state chartered bank.

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OPINION NO. 96-19 -- ISSUED MAY 22, 1996

STATE AGENCY HIRING INDIVIDUAL AS AN INDEPENDENT CONTRACTOR AND LATER CONTRACTING WITH THE INDIVIDUAL'S PRIVATE BUSINESS

FACTUAL STATEMENT

The Pooled Money Investment Board wants to enter into a short-term contract with an

individual employed by Paine Webber. The individual would provide the Board with consulting services. The Board may contract with Paine Webber in the future.

QUESTION

Is it permissible under the state level conflict of interest laws for the Pooled Money Investment Board to contract with an individual as a private consultant, and later contract with that individual's private business?

OPINION

This situation would be permissible so long as the individual was hired as an independent contractor doing consulting work rather than as a state employee.

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OPINION NO. 96-20 -- ISSUED JUNE 20, 1996

EXAMPLES OF EXPENDITURES WHICH ARE, AND ARE NOT, PERMISSIBLE FROM CAMPAIGN FUNDS

FACTUAL STATEMENT

A current Kansas State Representative is a candidate for State Senate. In light of KCGSC Opinion No. 96-16, which provided examples of expenditures from campaign funds that would be permissible and impermissible, the candidate is concerned about the legality of several expenditures.

QUESTION

What expenditures are, and are not, permissible from campaign funds?

OPINION

Costs associated with being in a city parade in order to campaign would be a legitimate use of campaign funds. However, donations to help sponsor an award to the winning float would not be permitted. The costs of a luncheon at a meeting at which the candidate or officeholder has been asked to speak would be permitted. Subscriptions to newspapers, political newsletters and political magazines would be permitted. The costs associated in answering PAC questionnaires, placing campaign ads, mailings to supporters and donors outside the district, campaign information mailings, constituent meetings and campaign balloons would all be permissible expenditures. Campaign funds could also be used for costs associated with providing refreshments for campaign workers. The costs to attend a charity event would not be permissible from campaign funds. The purchase of a personalized license plate that says "Your Rep" or "Senator 9" would be for the "personal use" of the candidate and could not be purchased with campaign funds.

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OPINION NO. 96-21 -- ISSUED JUNE 20, 1996

DONATING FLAGS PURCHASED WITH CAMPAIGN FUNDS TO CHARITIES IMPERMISSIBLE USE OF SUCH FUNDS

FACTUAL STATEMENT

A Kansas State Representative receives solicitations from various charities and fundraising organizations to donate a Kansas flag. In the past, the Representative used campaign funds to purchase flags to donate to various groups.

QUESTION

Is it permissible to donate flags purchased with campaign funds to charities and fundraising endeavors?

OPINION

While donations to charities and other local fundraising endeavors may have an indirect effect upon a campaign or holding office, to be a permissible use of campaign funds the expenditure must have a "direct connection with or effect upon" the campaign or holding office. Thus, it would be an impermissible use of campaign funds to purchase a flag and then donate it to a charity or fundraising endeavor.

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OPINION NO. 96-22 -- ISSUED JUNE 20, 1996

CITY COUNCIL MEMBERS VOTING ON CONTRACT AND ORDINANCE AFFECTING SCHOOL DISTRICT BY WHICH THEY ARE EMPLOYED

FACTUAL STATEMENT

Two of the three city council members of Maize, Kansas, are employed by the local school district. A new sewer rate contract and a city ordinance will come before the council, both of which affect the school district.

QUESTION

Is it a violation of the local level conflict of interest laws for a city council member to vote

on a contract and ordinance that affects the school district by which he or she is employed?

OPINION

The local level conflict of interest laws (K.S.A. 75-4301 et seq.) prohibit a governmental official from participating in the making of contracts as a governmental official with any "person" or "business" in which a "substantial interest" is held. Since local subdivisions of government are not "persons" or "businesses", the city council members could vote on a contract and ordinance that affects the school district by which they were employed.

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OPINION NO. 96-23 -- ISSUED JUNE 20, 1996

STATE EMPLOYEE BEING REIMBURSED BY PRIVATE COMPANY FOR EXPENSES IN ATTENDING CONFERENCE

FACTUAL STATEMENT

An employee of the Kansas Department of Health and Environment has been invited by Merck and Company, Inc. to participate at a conference concerning the chicken pox vaccine. Merck wants to reimburse the employee for all expenses, plus provide a \$500 consulting fee which the employee will not accept.

QUESTION

Is it a violation of the state level conflict of interest laws for an employee of the Department of Health and Environment to be reimbursed for expenses for participating in a conference hosted by Merck & Company, Inc.?

OPINION

The state level conflict of interest laws generally prohibit a state officer or employee from receiving a gift in excess of \$40 from any "person" or "business" who has a "special interest" in the officer or employee. However, when the officer or employee's agency would have authorized and been willing to pay for the costs of the trip, the state, and not the employee, is accepting the benefit of the gift. Thus, if the Department of Health and Environment would have been willing to pay for the trip, the \$40 gift limitation would not apply and Merck could pay for the costs of attending the conference.

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OPINION NO. 96-24 -- ISSUED JUNE 20, 1996

FORMER STATE EMPLOYEE PROVIDING LEGAL REPRESENTATION TO CLIENTS BEFORE HER FORMER STATE AGENCY

FACTUAL STATEMENT

A former employee of the Department of Agriculture is currently employed by the Kansas Supreme Court. After the next term ends, she would like to enter the water law consulting business, which would involve litigation before the Department of Agriculture.

QUESTION

Is it a violation of the state level conflict of interest laws for a former state employee to provide legal representation to clients before his or her former state agency?

OPINION

Nothing in the state level conflict of interest laws prohibits a former state employee from providing legal representation to clients before his or her former state agency.

Review and Audit Program

Complete, accurate and timely disclosure of certain kinds of financial information by candidates, elected officials, state employee and lobbyists is the key requirement of the legislation. It has been and is the Commission's position that active review and auditing of reports is essential for the proper administration of the law.

CAMPAIGN FINANCE

In the area of campaign finance, the Commission's procedures include a preliminary review and post-election comprehensive desk review of all receipts and expenditures reports filed under the Campaign Finance Act. In addition, a certain number of reports are selected for comprehensive audit.

1996 Campaign Finance Statistics

Candidates Filing for State Senate -- 102
Candidates Filing for House of Representatives -- 262
Candidates Filing for Judge -- 132
Candidates Filing for Retention Judge -- 60
Candidates Filing for State Board of Education -- 16
Candidates Filing for County Office -- 1380
1996 First Class City Candidates -- 20
Political Action Committees -- 254
Party Committees -- 195
Campaign Finance Reports filed on 1/10/96 -- 997
Failure to File Notices Issued for the 1/10/96 Report -- 29

Candidates and political committees filed a total of 997 receipts and expenditures reports on January 10, 1996. This was the only report required to be filed by state and local candidates in FY 1996.

Audits of the records of candidates and political committees are conducted using generally accepted auditing standards and are conducted on a priority basis. Accorded first priority are situations involving formal complaints. The next priority is assigned to situations in which it is necessary to clarify problems identified during the desk reviews. A general investigation may also be authorized at this point. Finally, a random sample of candidates and committees is audited. If a candidate is selected for a random audit, his or her opponent is also examined. In FY 1996, 44 audits were conducted. This compares to twelve audits completed in FY 1995 and 10 audits completed in FY 1994. The increased number of audits conducted in FY 1996 was due to the increase in the size of the Commission's staff. For the number of candidates and political committees filing reports in the 1994 election cycle, the Commission believes that a minimum of 10% or 105 candidates and 45 political committees should have been audited.

The most prevalent discrepancies discovered during these audits were: 1) failure to disclose all monetary contributions received by the campaign or political committee; 2) failure to disclose all expenditures made by the campaign or political committee; 3) the mismanagement of cash; 4) failure to maintain adequate campaign records; 5) failure to report in-kind contributions; 6) failure to open a campaign bank account.

CONFLICT OF INTERESTS

The Kansas conflict of interests statutes provide for (1) the filing of statements of substantial interests; (2) a code of conduct making it illegal for state officials and employees

to be involved in certain conflicts; and (3) the issuance of advisory opinions.

Each year, on average, Commission staff process financial disclosure statements for 6000 state officers and employees. Computer systems are used to create and maintain lists of state officers and employees subject to the disclosure requirements. Throughout the year, staff update computer databases as appointments are made, terms end, officials resign, and new positions are created. Financial disclosure forms and instructions are mailed to new appointees and candidates as the Commission receives official notice of their appointment or eligibility. Thereafter, forms and instructions are mailed on an annual basis to all person subject to filing requirements. All financial disclosure statements are public records and may be reviewed during regular business hours in the Secretary of State's office.

Those required to file Statements of Substantial Interests are elected state officials and candidates for such office, individuals whose appointments are subject to confirmation by the Senate, general counsels for state agencies and state officers, employees, and members of boards, councils or commissions meeting the definition of a "designee" and so listed by the head of their agency. There were 6396 individuals required to file statements in FY 1996.

1996 STATEMENTS OF SUBSTANTIAL INTERESTS FILINGS

Employees listed as Designees -- 5470
Elected officials -- 186
Candidates for State Office -- 252
Appointees subject to Senate Confirmation -- 152
Board members listed as designees -- 287
General Counsels -- 38
Executive Directors of Compacts -- 3
KS High School Activities Association -- 7
Number of Past Due Notices Mailed -- 338
Number of Failure to File Notices Issued -- 80

Many state officials and employees are in a position to make or influence decisions which could directly affect their personal interests. The state conflict of interests laws prohibit such activity. To assist these individuals, the Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies. In FY 1996, the Commission issued 18 opinions to state officers and employees concerning their positions, personal interests and how the conflict laws applied to them.

The Commission has found that the conflict statutes are not widely understood either by state officers, state employees or the public at large, yet these laws are of fundamental importance to the workings of state government. They draw the line between private interests and public trust which must be guarded carefully. Efforts to clarify and enforce the line are increasingly important as public concern mounts over abuses of the public trust.

REPRESENTATION CASE DISCLOSURE

There were 21 Representation Case Disclosure Statements filed in FY 1996. It is possible that other individuals required to file such statements have not done so. However, given the structure of the statutory requirements, there is no way of knowing who should file such statements.

DISCLOSURE OF STATE AGENCY CONTRACTUAL SERVICES WITH LEGISLATORS AND THEIR FIRMS

Any state agency which contracts with a legislator or a legislator's firm to perform services for a state agency for compensation must file a disclosure statement. In FY 1996, there were 55 State Agency Statements of Contractual Services filed with the Secretary of State's office.

LOBBYING PROVISIONS

There are 579 lobbyists registered for 1996 as of November 1, 1996, which figure compares with the total of 612 registered lobbyists in 1995. Of the 579 registered, some are registered on behalf of more than one person or organization. To date, 1250 persons or organizations have been represented this year. The Commission's statistical analysis of the lobbyist employment and expenditures reports shows that a least \$520,168 has been spent on lobbying activities to date during 1996. Registered lobbyists are required to file a lobbyist employment and expenditures report six times a year. FY 1996 was the first year a lobbyist was permitted to file an Affidavit of Exemption from filing a Lobbyist Employment and Expenditures Report. A lobbyist can file an affidavit if he or she does not expend in excess of \$100 per reporting period. These reports show expenditures if the lobbyist spends more than \$100 in a reporting period. To date this calendar year, 4696 Lobbyist Employment and Expenditures Reports have been filed.

Lobbyist Registrations and Expenditures to date for Calendar Year 1996

Number of Registered Lobbyists -- 579
Number of Lobbyist Registration Statements Filed -- 1250
Number of Reports Filed by Lobbyists -- 4696
Number of Affidavits of Exemption Filed -- 472
Total Expenditures Reported for the Year -- \$520,168
Number of Past Due Notices Sent -- 342
Number of Failure to File Notices Issued -- 144

Investigations

In FY 1996, the Commission initiated two investigations, with two complaints being filed as a result of the investigations. In addition to investigations conducted prior to complaints being filed, investigations are conducted following the filing of complaints.

Investigations remain confidential until a complaint has been filed and a probable cause determination has been made regarding the complaint. Whenever an investigation does not disclose facts sufficient to warrant further action, the Commission may issue a report concerning the findings of the Commission to the person or persons investigated. This report can be made public by the person or person investigated. Due to the confidentiality provisions set by statute, the Commission cannot publicly discuss the investigation or even confirm or deny that any investigation has taken place.

Enforcement Program

COMPLAINTS

There were 5 complaints filed in FY 1996. Of the 5 complaints filed, 3 complaints were filed for campaign finance violations and 2 for conflict of interests violations. Three complaints were dismissed on the basis that there was insufficient evidence to support a probable cause determination and in two cases, the Commission entered into consent decrees with the respondents. It should be understood that after an investigation, if the Commission concludes that there is no evidence to establish probable cause that there was an intentional violation, a complaint is dismissed and no public hearing is held. Anyone who suspects that any of the provisions administered by the Commission have been violated may file a complaint in writing with the Commission.

CIVIL PENALTIES AND FINES

The statutes enforced by the Commission provide for the assessment of civil penalties for failure to file certain reports or statements under the campaign finance, lobbying and state conflict of interests statutes. Individuals can be subject to a \$10 per day penalty for each day the report or statement remains unfiled up to a maximum of \$300. The Commission is authorized to waive any imposed civil penalty, upon a finding of good cause.

In addition to any other penalty prescribed under the campaign finance, lobbying or state conflict of interests statutes, the Commission can assess a civil fine not to exceed \$5000 for the first violation, \$10,000 for the second violation and \$15,000 for the third and each subsequent violation. Before a civil fine can be assessed, the person must be given proper

notice and an opportunity to be heard.

FY 1996 Civil Penalties and Fines

Civil Penalties Assessed

Campaign Finance -- \$1770

Lobbying Reports -- \$320

Statements of Substantial

Interests -- \$610

Total Civil Penalties -- \$2700

Total Civil Fines -- \$750

There were \$2700 in civil penalties assessed in FY 1996 against individuals who failed to file their reports in a timely manner.

CONCLUSION

As the Commission has repeated on a number of occasions, its success or failure will depend on its ability to guarantee the Governor, the Legislature and above all, the people of the State, that individuals subject to the campaign finance, conflict of interests and lobbying provisions are complying with the laws. To a great extent, this means the ability to insure that the financial information reported periodically is timely, accurate and complete. The Commission believes that while the past several years have shown significant improvement in the timeliness of the filings and the quality of the reports submitted, too many still contain errors and/or omissions. Much remains to be done through education and assistance to upgrade the quality of the reports, and at the same time, to identify and proceed against those who intentionally violate the law. In the same vein, much remains to be done to alert the people of their rights and responsibilities under the law. The Commission recognizes that the strongest safeguard against unethical conduct by public officials and employees is an informed and active public.

COMMISSION RECOMMENDATIONS

The Commission is directed by statute to make recommendations to the Governor and Legislature. It recognizes that any major piece of legislation periodically needs revision, modification, and in some cases, major changes. To that end, the Commission makes the following recommendations:

CAMPAIGN FINANCE PROVISIONS

1. Last year, the Commission recommended that political brochure that are mailed or distributed during an election should disclose the name of the person paying to have the information printed and distributed. Staff encountered numerous instances during the 1994 as well as the 1996 election years where it was impossible to determine who has paid for mailings which were intended to aid or defeat candidates for state or local office. Many candidates have called the Commission to inquire who had paid for mailings that came out on their behalf or in opposition to their campaigns. When a mailing is not paid from the campaign funds of a candidate and the cost of the mailing is in excess of \$100, the person paying for the mailing has a responsibility to file a report under K.S.A. 25-4150. Amending K.S.A. 25-4156 to require the same "paid for by" disclaimer on brochures would dramatically cut down on the time staff has to spend determining who paid for these independent mailings. The added advantage would be that the public would know who is paying for political brochures and fact sheets they receive at home.
2. 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 a separate line together with the name of the chairperson of the political or other organization inserting the same or the name of the person who is responsible therefor. 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 a responsible individual is not required to be disclosed. 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. At the county and city level, 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.
3. Under current law, only candidates for county commission and county sheriff must reside in the county in which they are running for office. Candidates for other county offices do not have to reside in the county in which they are running for office. K.S.A. 25-4148 requires a candidate for county office to file his or her campaign finance receipts and

expenditures reports in the office of the county election officer of the county in which the candidate is a resident. Therefore, a candidate who runs for office in another county files his or her receipts and expenditures reports only in the candidate's home county, not the county where the candidate is seeking office. Voters in the county in which the candidate is running do not have access to the candidate's pre-primary and pre-general election reports without going to the office of the candidate's home county election officer.

The Commission believes that citizens have a right to review the campaign finance activities of the candidates they will be voting for. Therefore, the Commission recommends that K.S.A. 25-4148(a) be amended to read "Every treasurer shall file a report prescribed by this section. Reports filed by treasurers for candidate for state office, other than officers elected on a state-wide basis, shall be filed in both the office of the secretary of state and in the office of the county election officer of the county in which the candidate is a resident. Reports filed by treasurers for state-wide office shall be filed only with the secretary of state. Reports filed by the treasurers for candidates for local office shall be filed in the office of the county election officer of the county in which the candidate ~~is a resident~~ is on the ballot."

4. Campaign funds are frequently expended to acquire material assets like computers, printers, and facsimile machines during the course of a campaign or holding political office. When a candidate or office holder terminates his or her campaign, the Campaign Finance Act provides four alternatives for disposing of residual funds. The Act is silent on the disposition of material assets. Campaigns have become more sophisticated and expensive since the inception of the Campaign Finance Act in 1974. Today computers, color printers, facsimile machines, and similar assets are common purchases made by candidates and office holders. Currently, this equipment becomes the personal property of the candidate or elected official when the campaign fund is terminated. Because of the increasing value of these assets, the Commission believes the disposition of assets must be addressed. The Commission recommends that a candidate or office holder be given the alternative of selling the assets and then disposing of the funds as currently set out in the Act, or donating the actual asset to a charitable organization. The Commission believes these assets should not be permitted to become the personal property of the candidate or office holder.

5. K.S.A. 25-4119g states: "The commission shall prepare a statement of fair campaign practices to assist candidates in the proper conduct of election campaigns. A copy of such statement shall be mailed by the commission to each candidate at the time of the receipt of notice of appointment of treasurer or candidate committee by such candidate." There is no requirement for any candidate to sign and file the statement. In addition, even if the candidate does sign the statement, nothing in the statute requires him or her to abide by the pledges in the statement.

Since the enactment of this provision in 1991, the Commission has mailed every candidate a Fair Campaign Practices Statement for his or her review, and encouraged each candidate to sign the statement. During this election year, we have received numerous calls from candidates and citizens complaining that candidates who had signed a Fair Campaign

Practices Statement, were violating one or more of the pledges in the statement. These people believe that by signing the statement, the candidate is legally required to abide by each pledge in the statement. Once these individuals are informed that there is no enforcement provision for this statute, they become angry and disillusioned.

Currently, the statement is misunderstood and misused. Due to this confusion, the Commission believes a penalty provision should be added or in the alternative, this statute should be repealed.

LOBBYING PROVISIONS

K.S.A. 46-269(e) states "Records in support of every report or statement filed shall be maintained and preserved by the lobbyist for a period of five years from the date of the filing of such report or statement and may be inspected under conditions determined by the Commission". This provision permits the Commission to audit any lobbyist's records that support any report filed by the lobbyist. The Commission would like to be able to review all relevant lobbying records in order to perform a complete audit. Current language only permits the review of those specific bills and receipts that the lobbyist chooses to disclose as expenditures on his or her lobbyist employment and expenditures report. The Commission would propose adopting the language found in the Campaign Finance Act which permits the Commission to conduct comprehensive audits of all candidates and political committees. The language found in K.S.A. 25-4147(b) states "Accounts of any treasurer may be inspected under conditions determined by the Commission". The Commission believes it must have access to a lobbyist's entire account to perform a complete audit. All audits conducted by the Commission are confidential.