

Approved: 2/3/97
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Janice Hardenburger at 1:40 p.m. on January 29, 1997 in Room 529-S of the Capitol.

All members were present.

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

Conferees appearing before the committee: Charlie Smithson, Kansas Commission on Governmental Standards and Conduct
John Rolfe, Kansas Department of Commerce and Housing
Charles Warren, Kansas Inc.

Others attending: See attached list

Chairperson Hardenburger stated that she had a request from Governor Graves for introduction of a bill that would provide legislation on appointments to the position of Lt. Governor. The bill would provide for another elected official to take that position rather than a non-elected official be appointed to it.

Senator Gooch moved to introduce the bill as requested. Senator Becker seconded the motion. The motion carried.

Chairperson Hardenburger continued the hearing on **SB 18**.

SB 18: **An act concerning state governmental ethics; relating to financial disclosures by state employees engaged in economic development activities**

Charlie Smithson, attorney for the Kansas Commission on Governmental Standards and Conduct, testified before the committee stating that the commission does not take an official position on the bill (Attachment 1).

Senator Gooch asked what actually happens to the statement of substantial interest once it is filed. Mr. Smithson stated these reports are filed with the Office of Secretary of State. He reviews each one to see that they are filled out correctly. He currently reviews about 6200 reports but testified that if this legislation passes, the count will be substantially higher as it would include a number of individuals who are not now required to file.

Senator Huelskamp raised questions about some conflicts of interest found by the auditors. He stated there are some very serious issues that needs to be dealt with and it should be made very clear to the public and to the people on the board that these persons should not receive any compensation or any latitude toward directing state resources to a private company. He stated he was very troubled by the audit.

Charlie Smithson clarified what the current law states and how this bill will broaden the range of agencies and employees that will fall under this filing requirement.

John Rolfe, Deputy Secretary, Kansas Department of Commerce and Housing (KDOCH), testified before the committee in support of full disclosure. This bill would expand the requirement to file a statement of substantial interest to all employees, regardless of the nature of their responsibilities and prohibit all employees from having any interest in any business with which the agency does business. He stated the main concern is the language in Section 3 of the bill which could preclude investments by employees, even in mutual funds. He submitted a copy of the KDOCH conflict of interest and disclosure certification policy (Attachment 2). Mr. Rolfe also stated that approximately 30 out of 135 employees of KDOCH are affected by the current statute.

Charles Warren, President, Kansas Inc. testified that his company does not have any employees that fall under this requirement, only members of the Board of Directors are currently required to files statements of substantial interest (Attachment 3). He stated he believes the language is too restrictive. He also testified that

the Kansas, Inc. staff have met the highest standards of ethical conduct.

Senator Becker stated he believes that anyone who deals with state funds should be required to file a report. He also believes that the head of each agency should be responsible for their employees.

Chairperson Hardenburger closed the hearing on **SB 18**.

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

The next meeting is scheduled for February 3, 1997.

SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: 1/29/97

NAME	REPRESENTING
T. J. Lakin	Sen. Hensley
Doug Farmer	DOB
Paul Hinton	Post Audit
JOE BARRON	KBOR
Sherry Brown	KDOCFH
John Rolfe	"
Charles Wame	Kansas, Inc.
Eric Jeter	WSU
Brad Bryant	Sec. of state
Charlie Smithson	KLGSC
Mary Brookstone	KTEC
DANIEL NEUMY	KTEC
Jamie Rutherford	KTEC
John Hanna	AP



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before Senate Committee on Elections and Local Government
Senate Bill 18
By Charlie Smithson
January 22, 1997

Senate Bill 18, which is before you this afternoon, would amend K.S.A. 46-247 and 46-285, which are provisions of the State Governmental Ethics Laws. This bill was recommended by the Joint Committee on Economic Development.

The Commission does not take an official position on this bill, but is here to discuss the bill's effect on current law.

Under current law, it is not clear if officers and employees of Kansas, Inc., and the Kansas Technology Enterprise Corporation should file Statements of Substantial Interests. Prior to 1995, these officers and employees were not part of the state employee classification system. In 1995, these individuals were placed in the unclassified service. However, Kansas, Inc. and KTEC are still considered "public instrumentalities" rather than "state agencies".

Officers and employees of the Department of Commerce and Housing that are defined as "designees" (K.S.A. 46-282) are currently required to file Statements of Substantial Interests. Similarly, employees of regent's institutions who are involved in economic development activities and are defined as "designees" are required to file.

Section 1 of this bill would require all officers and employees of the Department of Commerce and Housing, Kansas, Inc., KTEC and employees of regent's institutions who are involved in economic development activities to file Statements of Substantial Interests. This would include a number of individuals who are not now required to file.

Section 2 of the bill would require each regent's institution to notify the Commission of employees who are engaged in economic development activities. This list would be provided at the same time these

institutions submit their list of "designees" who will file.

Section 3 of this bill prohibits any officer or employee of the Department of Commerce and Housing, Kansas, Inc., or KTEC from having any financial interest, employment or other similar interest in any business with which such employee's agency does business. This would be a stronger prohibition than what currently applies to these individuals.

Under current law, a state officer or employee could not participate in the making of a contract with any person or business or license, inspect or regulate any organization in which they hold a "substantial interest". There are situations in which an employee could hold a "financial interest", but not have a "substantial interest" as that term is defined in K.S.A. 46-229. Thus, these individuals would be held to a stricter standard than other state officers or employees.

**TESTIMONY BEFORE THE SENATE ELECTIONS AND
LOCAL GOVERNMENT COMMITTEE
THE KANSAS DEPARTMENT OF COMMERCE & HOUSING
JOHN ROLFE, DEPUTY SECRETARY
JANUARY 29, 1997**

Madam Chairperson and Members of the Committee, I am here today to provide comment on Senate Bill 18. This bill would expand the requirement to file a statement of substantial interest to all employees, regardless of the nature of their responsibilities. It also prohibits all employees from having any interest in any business with which the agency does business.

As a Cabinet agency, designated employees of our agency have always been subject to the requirements for filing statements of substantial interest. This means that employees who hold major policy-making positions, who are responsible for contracting or procurement, or who are responsible for awarding grants must file these statements. In addition, we have a written policy (attached) that prohibits employees from involvement in grant awards or other payments to entities in which the employee or his/her family has a direct or indirect financial interest. Our Personnel Manager has been instructed to provide division directors with copies of the statements of substantial interest filed by their respective employees. This allows the division directors to review financial holdings of employees and to avoid situations that could pose a potential conflict of interest.

We believe our policies and current law address the concerns raised in the Post Audit Report and in the report of the Joint Committee on Economic Development. While we are not sure it is necessary to have every employee file a statement of substantial interest, we have no real objections to such a requirement. We are firmly committed to taking whatever steps are necessary to avoid even the appearance of impropriety.

However, we do have concerns about that section of the bill that prohibits employees from having any interest in businesses with which we do business. This language could effectively preclude investments by employees, even in mutual funds. It is our understanding that the restrictive nature of this language was not the intent of the Post Audit recommendation nor of the Joint Committee, and we hope this section will be deleted, or modified as to be practical.

We support disclosure, but the decision as to whether there is conflict should be determined by how direct and significant the benefit is. Thank you for your time, and I would be willing to answer any questions you might have.

*SENATE ELECTIONS + LOCAL GOVERNMENT
1-29-97
ATTACHMENT 2*

KANSAS DEPARTMENT OF COMMERCE & HOUSING
CONFLICT OF INTEREST AND DISCLOSURE CERTIFICATION

It is the policy of the Department of Commerce & Housing not to tolerate impropriety or the appearance of impropriety. Associates providing assistance to business prospects, local governments, or other economic development organizations and individuals are expected to avoid unethical behavior.

Associates are prohibited from:

- ▶ Charging any fees or receiving any compensation from any person or entity for assistance that is a part of their KDOC&H responsibility; or
- ▶ Recommending the purchase of goods, services, or property in which they have direct or indirect financial interest.

Associates are required to notify their Division Director in writing if they are:

- ▶ Participating in any aspect of a review for the granting of funds to any entity in which they are shareholders or in which a family member is a shareholder, or has a financial interest. Family member means persons related by virtue of blood (i.e., grandparents, parents, brothers, sisters, aunts, uncles, cousins and children), marriage, or adoption; or
- ▶ Aware of any activity of the Department that will directly or indirectly financially benefit them.

Associates are responsible for recognizing the potential for conflict of interest. When the potential for conflict is identified or if there are doubts as to whether there is a conflict, associates must notify their Division Director with all relevant information. The Division Director shall consult with the Secretary or the Secretary's designee to determine whether a conflict exists. After such consultation, associates will be notified of the Department's ruling regarding the conflict. In evaluating whether a conflict exists, the Secretary or the Secretary's designee may consult with other governmental agencies.

Failure to comply with this policy may result in disciplinary action, including termination. This policy supplements and is in addition to existing ethics statutes and regulations.

Affirmation of Policy

As an associate of the Department of Commerce & Housing, I affirm that I have read and understand the meaning of the Conflict of Interest and Disclosure Certification. I am aware that I must abide by the provisions of this policy and that violation of this policy may result in disciplinary action as stated above.

Name of Associate: _____

Associate's Signature: _____ Date _____

January 22, 1997

**Testimony of
Charles R. Warren, President, Kansas, Inc.
Senate Committee on Elections and Local Government
Senate Bill No. 18**

Thank you for this opportunity to testify on Senate Bill 18. I have no objections to the requirement of filing a statement of substantial interest. This bill would also require all employees of Kansas, Inc. to file such a statement. I would ask whether it would be more appropriate to have only the *exempt* employees file. Should this requirement extend to administrative and clerical employees? Including myself, there are three exempt employees who are considered in the professional category on the staff. The other two are non-exempt employees. Currently, members of the Kansas, Inc. Board of Directors are required to file statements of substantial interest.

At its October 18, 1996 meeting, the Board of Directors adopted a conflict of interest policy. A copy of the policy is attached. The Board has also adopted the Governor's executive order on gifts and gratuities.

Kansas, Inc. does not provide grants or loans to businesses, make equity investments, or provide technical assistance. We provide information and advisory services. Kansas, Inc. staff are not in a position to engage in activities that could lead to their direct and individual financial gain. The Post Audit report does not cite any examples or make any suggestions that Kansas, Inc. Board members or staff have engaged in activities that would involve a conflict of interest. During the past ten years, there has not been a single instance reported or identified where employees of Kansas, Inc. have been involved in a potential or actual conflict of interest. To my knowledge, Kansas, Inc. staff have met the highest standards of ethical conduct.

I would be pleased to answer any questions.

SENATE ELECTIONS + LOCAL GOVERNMENT
1-29-97
ATTACHMENT 3

Kansas, Inc.
Conflict of Interest and Disclosure Certification

It is the policy of Kansas, Inc. to ensure that its employees avoid financial conflicts of interest. Employees providing assistance to businesses, local governments, or other economic development organizations and individuals are expected to maintain ethical standards of conduct.

Examples of conflicts of interest include knowingly:

- Charging fees or receiving compensation from any person or entity for assistance that is a part of the assigned responsibilities of Kansas, Inc. employees; or
- Recommending the purchase of goods, services, or property in which they or a member of their family have direct or indirect financial interest. Family member means persons related by virtue of blood (i.e., grandparents, parents, brothers, sisters, aunts, uncles, cousins and children), marriage, or adoption, or
- Participate in any aspect of a review for the granting of funds to any entity in which they are shareholders or in which a family member is a shareholder, or has a financial interest.

Board members shall not participate in any activity or vote on matters that directly benefit them financially.

Employees are responsible for recognizing the potential for conflict of interest. When the potential for conflict is identified or if there are doubts as to whether there is a conflict, employees must notify the President with all relevant information. The President shall consult with the Private Sector Co-Chairperson to determine whether a conflict exists. After such consultation, employees will be notified of the ruling regarding the conflict. In evaluating whether a conflict exists, the President may consult with other governmental agencies.

Failure to comply with this policy may result in disciplinary action, including termination. This policy supplements and is in addition to existing ethics statutes and regulations.

Affirmation of Policy

As an employee of Kansas, Inc., I affirm that I have read and understand the meaning of the Conflict of Interest and Disclosure Certification. I am aware that I must abide by the provisions of this policy and that violation of this policy may result in disciplinary action as stated above.

Employee Name _____

Employee Signature _____ Date _____