

Approved: 3/12/97
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 March 10, 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, Kansas Commission on Governmental Standards and Conduct
Ron Smith, General Counsel, Kansas Bar Association

Others attending: See attached list

The minutes of February 25, 1997, and March 5, 1997, were distributed for committee review.

Senator Becker moved to approve the minutes. Senator Steineger seconded the motion. The motion passed.

Chairperson Hardenburger opened the hearing on **HB 2065**.

HB 2065 **Concerning election campaign finance; relating to reports filed by treasurers**

Carol Williams testified in support of the bill. She stated the bill was recommended by the Kansas Commission on Governmental Standards and Conduct in its 1996 Annual Report and Recommendations. It would require a treasurer for a local candidate to file the candidate's receipts and expenditures reports in the office of the county elections officer in the county in which the candidate is on the ballot. Current law states they must file the report in the county in which the candidate is a resident. The Commission believes this bill would facilitate public access to the information and urged the committee to report the bill favorably (Attachment 1).

There was no discussion. Chairperson Hardenburger closed the hearing on the bill.

Senator Becker made a motion to pass the bill. Senator Steineger seconded the motion. The motion passed.

Chairperson Hardenburger opened the hearing on **HB 2064**.

HB 2064 **Concerning state governmental ethics; relating to reports filed by lobbyists**

Carol Williams appeared as a proponent stating the Commission also recommended this bill. She testified the Commission believes it should be able to review all relevant lobbying records in order to perform a complete audit, not just the receipts or bills a lobbyist maintains to substantiate expenditures disclosed on his or her lobbyist employment and expenditures report. This bill would authorize the Commission to do so (Attachment 2).

Ron Smith testified in opposition of the bill. He stated the Kansas Bar Association does not have an official position on this bill and his concerns are of a personal nature. He stated there is no purpose to this bill and of the requirement of filling out the Lobbyist Employment and Expenditures Report form since other government agencies have authority to investigate and regulate corporate, commercial and labor activities. They have no right to investigate individuals, groups or businesses unless they have reasonable suspicion of illegal activity. He testified the federal government has made major changes in its lobbying law, and major record keeping is not part of it (Attachment 3, 4 & 5).

Chairperson Hardenburger closed the hearing on the bill.

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

The next meeting is scheduled for March 11, 1997.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

**Testimony before Senate Elections and Local Government
House Bill 2065
by Carol Williams, Executive Director
March 10, 1997**

House Bill 2065 would amend K.S.A. 25-4148, a provision of the Campaign Finance Act. This bill was recommended by the Kansas Commission on Governmental Standards and Conduct in its 1996 Annual Report and Recommendations.

The amendment to K.S.A. 25-4148 is found on line 23 of the bill. The amendatory language would require a treasurer for a local candidate to file the candidate's receipts and expenditures reports in the office of the county election officer in the county in which the candidate is on the ballot.

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 run 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 should have easy access to information concerning the campaign finance activities of the candidates they will be voting for. Therefore, the Commission supports House Bill 2065 and urges your support and passage of this bill.

SENATE ELECTIONS &
LOCAL GOVERNMENT
3-10-97
ATTACHMENT 1



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before Senate Elections and Local Government on House Bill 2064 by Carol Williams, Executive Director

House Bill 2064 which is before you this afternoon amends K.S.A. 46-269(e), a provision of the State's Lobbying Laws. This bill was recommended by the Commission on Governmental Standards and Conduct.

This bill, titled SB 634 last year, passed both the Senate and House of Representatives. Unfortunately, the bill was amended into HB3000, the massive campaign finance, lobbying, and ethics bill which died on the House floor the last day of wrap-up session.

K.S.A. 46-269(e) currently 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". The Commission interprets this provision to permit an audit to be conducted of a lobbyist's specific records kept to support the report filed by such lobbyist. The Commission believes it should be able to review all relevant lobbying records in order to perform a complete audit, not just the receipts or bills a lobbyist maintains to substantiate expenditures disclosed on his or her lobbyist employment and expenditures report.

The new language on page two beginning on line 10 states "All accounts, records and documents of the lobbyist which relate to every expenditure reported or which should have been reported ...may be inspected under conditions determined by the commission."

Under current law, the Commission has the authority to review all accounts and records maintained by a treasurer for any candidate, party or political action committee to conduct a complete audit.

The Commission believes a thorough audit of a lobbyist's records should be permitted like audits conducted in the campaign finance arena. The Commission urges your support on HB 2064.

SENATE ELECTIONS +
LOCAL GOVERNMENT
3-10-97
ATTACHMENT 2

Legislative Testimony

TO: Hon. Janice Hardenburger, Chair
Members, Senate Elections and Governmental Organization Committee

FROM: Ron Smith, KBA General Counsel 

SUBJ: HB 2064,

DATE: March 10, 1997

The Bar does not have an official position on this bill. My concerns here are personal.

Other government agencies have authority to investigate and regulate corporate, commercial and labor activities. If political activists attempt to influence policy by throwing bombs and burning buildings, the KBI, FBI, BATF and other agencies leap to enforce laws and curb such lawlessness. Other government agencies have no right to investigate individuals, groups or businesses unless they have a reasonable suspicion that lawlessness is taking place. Then they must get a subpoena. However, as regards lobbyists the CGSC's sole purpose for existence is to regulate the behavior of individuals, corporations and other groups insofar as they *spend money to peacefully influence public policy*.

The background "bill brief" on HB 2064 states the precise nature of what the Commission intends with this bill. The brief states,

"[E]xisting law only allows the Commission to audit records associated with the reports filed by lobbyists. The bill would allow the commission to audit all documents associated with lobbying activities, whether reported or not by the lobbyist."

That sort of change goes beyond the words. The bill states that every "lobbyist" must keep "detailed records" in support of what is reported. [p. 1, line 24.] That is different than "all documents associated with lobbying activities." My contact with our contract lobbyist is not reportable expense, thus it should not have to be kept, or displayed, to any auditor. Yet that is not what the intent of the Commission.

There are two sets of "lobbyists" who are not capable of being part of this bill. They are those persons who spend \$100 on grassroots lobbying, – postage or newspaper ads – or those persons or corporations who contribute large sums to your campaigns and then later ask you for a vote on an issue.

If the commission means what it says, then the grassroots lobbyists – pastors, other activists – with this bill must keep their detailed records for five years. That means membership records, financial records – many more records *whether reported or not by the lobbyist*. What's more, their records are subject to audit by the Commission.

Why do we want a law that allows government agencies to audit churches for political purposes?

Why do we want a law that means everyone who puts a \$100 ad in the newspaper must open up all their records? To substantiate letter writing campaigns, they can look for member records and mailing lists, not just postal records indicating how much they spent on postage or advertising. The only way to "audit" whether a mailing was made and received is to contact some recipients for a "spot" audit.

Further, major political contributors are not defined as a lobbyist – even when they call you up and ask you to vote a certain way on a bill. What is the difference between someone who spends \$100 influencing third parties to contact you, and those who spend \$100 to influence you directly?

Over, please

SENATE ELECTIONS &
LOCAL GOVERNMENT
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ATTACHMENT 3

If the Commission is granted this new power and only uses the auditing power to audit the lobbyists registered with the Secretary of State, *that is selective enforcement of the law*. If the commission is not going to use the audit power for all lobbyist – including churches – then they should not be given the power at all.

The bill is also internally inconsistent. Currently lobbyists keep records to support what we report to the Commission. The new language is much broader:

“All accounts, records, and documents of the lobbyist which relate to every expenditure reported or which should have been reported shall be maintained and preserved . . . for five years . . . and may be inspected under conditions determined by the commission.”

The phrase “all accounts, records and documents” is broad. If I mail or fax a letter to my members asking them to contact lawmakers, this is grassroots lobbying and under KAR 19-60-3(c)(4), I must report the postage and paper costs of each letter sent, or long distance telephone costs. *Not keeping the records and documents is a separate violation of the law*. Even if I have a letter I believe does NOT urge members to contact lawmakers, I must keep it since I must prove every expenditure reported – which means I must be able to show that a letter was NOT subject to a report. This means keeping nearly everything, a huge record keeping operation.

Considering that the reports themselves list no detail other than the amounts reported, this bill does nothing more than create authority for fishing expeditions. The Commission does not know what it is looking for until it gets into an audit. In most other investigations, the government agency at least has probable cause to suspect wrongdoing. Not so with this agency.

Unlawful lobbying is not a crime based on corruption. It is based on failure to report meaningless data to state agencies who do nothing with the data except prepare generic summaries of lobbying expenditures for the press. None of the expenditures listed in lobbying reports involve corruptive activity. Putting ads in the newspaper asking fellow citizens to support or oppose a bill is not corruption. Communicating with members of an association about pending legislation is not a crime.

If I can paraphrase the pickpocket Fagan in the musical *Oliver*, “I think we’d better think this out again!”

The federal government has made major changes in its lobbying law. Major new record keeping is NOT part of their law. I would hope that rather than this sort of detailed nonsense, that you ask the Commission to compare the current Kansas lobbying law and the federal law and report back to you in 1998 on whether we should move in the same direction.

Barring that, HB 2064 needs major amendments or it needs to be allowed to die in this committee.

2. Enforcement and Penalty Assessment

One major reason why the existing lobbying disclosure laws have not been enforced is that these laws rely almost exclusively upon minimal sanctions. Many violations of disclosure laws are technical in nature; in such cases, criminal sanctions are disproportionate to such offenses. For this reason, juries are unlikely to convict, and

prosecutors are reluctant to incur the time and expense necessary to enforce the laws. Moreover, the threat of criminal sanctions for non-compliance greatly increases the potential burden imposed on a citizen's constitutional right to petition the government.

For these reasons, the Lobbying Disclosure Act would rely exclusively upon civil penalties, in lieu of criminal penalties, for non-compliance.

A second reason for the non-enforcement of the existing lobbying disclosure laws is that they contain no effective means short of criminal prosecution to examine the activities of a lobbyist and determine whether he or she is complying with the Statute. For example, the Lobbying Regulation Act does not contain any audit or inspection authority at all. In the case of FARA, the Justice Department has the authority to inspect lobbyists who register under FARA, but has little if any authority to investigate or examine those who fail to register, in the absence of evidence sufficient to initiate a criminal prosecution.

On the other hand, an intrusive audit provision would impose heavy burdens on lobbyists and raise substantial first amendment concerns. The FARA inspection provision, for example, gives the Justice Department an almost unlimited authority to review the files of registered foreign agents.

These reviews can take weeks and involve thousands of pages of documents. If this provision were generally applicable to all lobbyists, there is reason to believe that audits and inspections might continue for years. Such reviews would not only be extremely burdensome, they would also raise the specter of federal investigators rooting through the files of interest groups who seek to participate in public policy debates, and perhaps even targeting disfavored groups for audit investigation. *

The Lobbying Disclosure Act seeks to reconcile these competing concerns by establishing an informal dispute resolution process, which would start with requests for explanations of apparent discrepancies, rather than audits or inspections. If the explanation is adequate, or if the non-compliance is admitted and corrected, the case would be closed.⁴⁶ Where a non-compliance is not admitted, and the information or explanation provided is not adequate to conclude whether statute was violated, legally binding requests for information would be permitted, provided that they are specifically and narrowly structured.

In cases where a violation is found, S. 349 would establish a formal procedure for assessing penalties, subject to both administrative and judicial review. The bill would set up a two-track system to address minor noncompliances and significant noncompliances. Significant noncompliances are intended to include knowing failures to register and any other knowing noncompliances that are extensive or repeated. Minor noncompliances would include technical violations, isolated errors, and cases in which there is a good faith dispute about the applicability of the new law to a particular practice. Late filings and failures to comply with formal information re-

⁴⁶When a minor noncompliance is admitted and corrected, there is no penalty. When a significant noncompliance is admitted and corrected, the maximum penalty is \$10,000.

quests would be treated in the same manner as minor non-compliances and would be subject to the same range of penalties.

In determining the amount of a penalty to be assessed, the Director would be required to take into account the totality of the circumstances, including the extent and gravity of the noncompliance and such other matters as justice may require. The bill prohibits the imposition of a penalty without an express finding that the person knew or should have known of the violation. This system would provide a clear path for enforcement in cases where there is reason to believe that a lobbyist may have violated the requirements of the Act, while emphasizing informal dispute resolution and avoiding intrusive audits or inspections.

The intrusiveness of an audit on the right to petition government is not far-fetched. Kansas lobbying laws are patterned after FARA, the federal act which was repealed in 1995 by the Lobbying Registration Act of 1995, signed into law by President Clinton in December, 1995.

Senate Bill Report, S. 339, 1993.

*Senate Election
+ Local Government*
3-10-97
Attachment 4



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 <i>Ron Smith</i>	Date <i>3-10-97</i>
Address (Street, City, State, Zip Code) <i>1200 Harrison Topeka KS 66614</i>	Business Phone <i>() 2345696</i>

Date Report Due and Period Covered, Check One

<input type="checkbox"/>	February 10 (January)	<input type="checkbox"/>	May 10 (April)
<input checked="" 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 <i>Ks Bar Assoc</i>	Phone <i>() Same</i>
Address (Street, City, State, Zip Code) <i>Same</i>	

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	\$ <u><i>904²⁶</i></u>
2. Entertainment, gifts, honoraria or payments	<u> </u>
3. Mass media communications	<u>10150</u>
4. Recreation provided as hospitality	<u> </u>
5. Communications for the purpose of influencing legislative or executive action	<u><i>10150</i></u>
6. All other reportable expenditures	<u> </u>
Total Expenditures	\$ <u><i>1005⁷⁶</i></u>

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.

3-10-97

Date Signature