

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

The meeting was called to order by Vice Chairperson Ted Powers in the absence of Chairperson Kent Glasscock at 9:00 a.m. on February 11, 1998, in Room 521-S of the Capitol.

All members were present except: Representative Kent Glasscock, Excused  
Representative Larry Campbell, Excused  
Representative Kenny Wilk, Excused

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

Conferees appearing before the committee: Ms. Carol Williams, Kansas Commission on Governmental Standards and Conduct  
Mr. John Campbell, Senior Deputy Attorney General  
Mr. W. Charles Smithson, Legal Counsel, Kansas Commission on Governmental Standards and Conduct  
Mr. Paul Wilson, Kansas Association of Public Employees (CAPE)  
Mr. Bruce Dimmitt

Others attending: See attached list

Vice Chairperson Powers welcomed Representative Margaret Long to the Committee.

Representative Dillon made a motion to approve the Minutes of February 4, 1998, and February 9, 1998, and Representative Cox seconded. Motion passed.

Vice Chairperson Powers opened the Public Hearing on HB 2656.

**HB 2656 - Commission on Governmental Standards and Conduct; powers and duties**

The Vice Chair welcomed Ms. Carol Williams, Kansas Commission on Governmental Standards and Conduct, who spoke as a proponent of HB 2656. Ms. Williams said that under current law, the Commission is authorized to notify the Attorney General of any apparent violations of criminal law or any other laws not administered by the Commission. She said that this bill would allow the Commission permission to notify any federal or local authorities of violations of laws outside the Commission's jurisdiction which might be discovered during a Commission investigation. (Attachment 1.)

Representative Welshimer asked Ms. Williams to give an example of a candidate and of a city official. Ms. Williams said that in the city of Wichita a candidate or city official cannot accept more than \$200.00 due to their own city ordinance. She also said that this is very confusing to candidates in Wichita because their ordinance is more restrictive than the state's.

Representative Tomlinson explained that HB 2656 merely allows the Commission on Governmental Standards and Conduct to notify the city of Wichita if they find a violation. He said that now they cannot do that because they have to notify the Attorney General and hopefully the Attorney General would notify them, but they are not always sure the Attorney General's office does.

Representative Welshimer asked if the Commission really has no regulatory function whatsoever over a city ordinance. Ms. Williams replied that the city of Wichita is the only first class city in the state that had its own ordinance putting limitations on city candidates prior to the 1990 state law. She said the city of Wichita was just on the forefront.

The Vice Chair recognized Mr. John W. Campbell, Senior Deputy Attorney General, who spoke as a proponent of HB 2656. Mr. Campbell said that Attorney General Carla Stovall directed him to request the Committee to amend HB 2656 so as not to restrict the investigation of crimes detected by the Kansas Commission on Governmental Standards and Conduct. He said that HB 2656 would delete the requirement

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 11, 1998.

of current law for the Commission to notify the Attorney General whenever it becomes aware of apparent violations of criminal law or other laws not administered by the Commission. It would replace the current law with a requirement that the Commission notify, "appropriate federal, state or local authorities" of such violations. He told the Committee that the Commission's staff has indicated that the Commission itself would not oppose this amendment since it was never their intent to exclude the Attorney General from notification. The actual amendment to **HB 2656** is sections 1(d) and 2 (d). (Attachment 2.)

Representative Sharp asked Mr. Campbell if perhaps they might be too busy to handle issues turned over to them. He replied that they are never too busy and that they always handle anything referred to them. Representative Sharp also asked about how many things from the Commission on Governmental Standards and Conduct are referred to the Attorney General's office, and Mr. Campbell said that the number was minimal.

Representative Cox inquired of Ms. Williams if this amendment was agreeable with her, and Ms. Williams said that it was.

Representative Benlon asked Mr. Campbell if the Attorney General's office would be comfortable with only notification by way of a carbon copy, and he responded that a carbon copy would be sufficient.

Representative Tomlinson, Subcommittee Chairperson for Ethics, assured the Committee that the bipartisan subcommittee had approved all three bills being discussed.

Vice Chairperson Powers closed the Public Hearing on **HB 2656**.

The Vice Chair opened the Public Hearing on **HB 2775**.

**HB 2775 - State officers and employees; state governmental ethics**

Vice Chairperson Powers welcomed Mr. Charles Smithson, Legal Counsel, Kansas Commission on Governmental Standards and Conduct, who spoke as a proponent for **HB 2775**. Mr. Smithson said that **HB 2775** amends the governmental ethics laws and is recommended by the Commission. He said that under current law, K.S.A. 46-241 prohibits any state officer or employee from disclosing confidential state information for anyone's economic gain. But, he said that this prohibition does not apply to former state officers or employees and that this amendment would simply extend the prohibition to former state officers or employees. (Attachment 3.)

Representative Welshimer asked about the confidential information and if it means information that is not subject to the Open Records Act. Mr. Smithson said that it pertained to anything that is statutory and required to be confidential.

Representative Dillon questioned if there would be economic gain for the person who won the office, and he was told that there would possibly be some small economic gain.

Representative Cox inquired about the fine. Mr. Smithson said that the civil fine with the Commission would be up to \$5,000.00 and that the criminal statute would be covered by the Attorney General's office.

Representative Ray stated that the bottom line might be that all this information is closed forever. She asked who makes the determination of when information is not confidential. Mr. Smithson said that the Commission would have to check to see if the information was still confidential. If it was not, he said that would be the end of the story, but if it was, an investigation would occur.

Representative Horst wanted to know if there would be a need to add political interests and if this would be considered to be a friendly amendment. Mr. Smithson said that this would be a policy decision and that he would consider it a friendly amendment.

Ms. Theresa Kiernan, Revisor, asked if the Commission would have a problem with adding confidential pursuant to state law. Mr. Smithson said he believed there would be no problem in defining what is meant by confidential.

The Vice Chair closed the Public Hearing on **HB 2775**.

Vice Chairperson Powers opened the Public Hearing on **HB 2776**.

**HB 2776 - Governmental ethics; certain violations; relating to past official acts**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 11, 1998.

The Vice Chair recognized Mr. Charles Smithson again who spoke as a proponent of **HB 2776**. He presented a hypothetical story to illustrate what this amendment does by making it a violation of those laws for compensation to be accepted or given for past official acts. He said that Section 2(a) of the bill prohibits the acceptance of an economic opportunity or gift by any person in return for having given a decision, opinion, recommendation, or vote favorable to the giver of the gift. Also, subsection (b) makes the giving of an economic opportunity or gift, for having received a favorable decision, opinion, recommendation or vote from a state officer or employee, a violation of the ethics laws. Subsection (c) exempts gifts or other benefits given on account of a family, personal, professional or other business relationship independent of the official status of the receiver. Subsection (d) allows the Commission to issue civil fines for violations. Subsection (e) makes compensation for past official acts a class B misdemeanor. Subsection (f) allows the Commission to issue advisory opinions on this section, investigate, file complaints, and conduct hearings. (Attachment 4.)

The Vice Chair said that the Subcommittee spent about twenty minutes discussing the difference between the word person and individual, and that he still had his own opinion on their meanings.

Representative Wells asked Vice Chair Powers if he had anything to do with 22 (b) since he was informed during the Subcommittee meeting.

Representative Tomlinson replied that the word "person" is much more broad than the word "individual," in that a person defined in statutes could refer to a partnership, corporation, etc. Rep. Tomlinson said that the Subcommittee has recommended using the word "individual" for anyone who is receiving the benefits because the individual had to do the acts, but an individual could have done it for a partnership or a corporation, so the word "person" has to be where indicated. He said he knew this was still not very clear, but hoped it helped some. He also said that an individual is one person and is a subset of the word person.

Representative Wells referred to Section 2, line 16 in which it says "no person shall accept.." and in 22 (b) it says, "no person shall offer.."

Representative Tomlinson said that in 22 (b) the person offering could be a corporation. However, Representative Wells wanted an opinion from and the perception of the Commission. Mr. Smithson explained why line 16 and line 18 were changed to "individual" because state officers or employees can only be individuals. They cannot be persons because all sorts of things can be persons. He also said that the reason the word person was left in lines 20 and 22 is because person can be just about anything and that just anything could offer a gift to an individual. He apologized for the ambiguity because he looked at the language in the criminal section when drafting this bill.

Representative Wells thanked Mr. Smithson for his precise explanation and for the opportunity to hear his testimony.

Representative Ray questioned how this was different from bribery. Mr. Smithson said that it would be pretty close to bribery, but that with bribery one would probably have to have a prior agreement. However, he said that this was an "off the cuff" answer because he was not completely familiar with bribery. Representative Ray also wanted to know how many years this would be in effect. Mr. Smithson said that the Commission's statute of limitations is three years from the time the gift or benefit was given. He also said that if someone wanted to amend in a time frame, he would be agreeable.

Representative Haley referred to Representative Wells' point and said that he thought there was a way to get this cleared up. He commented that he could certainly see what Section 2 says about an individual, but then on the flip side, getting to what person in line 22 (b) is saying makes him think there needs to be a broader definition. In lines 23 and 24 where it says "other" he questioned the need for the word "other." Mr. Smithson told him that they had already talked about this, and the word "other" would be removed for clearness.

Ms. Theresa Kiernan, Revisor, said that a definition of person could be inserted at the bottom of the bill.

Representative Horst inquired as to how this would affect campaign donations. Mr. Smithson said that this was a good question and that campaign finances are exempted out of ethics laws. He asked her if she would feel better if under the subsection part under exception if campaign contributions were added. Representative Horst said that she did not want any allegation that might consider campaign contributions as political bribery.

The Vice Chair welcomed Mr. Paul Wilson, Director of Labor Relations, CAPE, who spoke as a proponent for **HB 2776**. Mr. Wilson said that **HB 2776** exhibits a welcome example of good public policy combined with good common sense. He also said that it prohibits influence peddling.. He called attention to Subsection

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 11, 1998.

2(c) which recognizes that not all gifts are given in an effort to influence decisions. He mentioned some of the more obvious examples like the receipt of a testimonial dinner and plaque for service to a community organization or the receipt of a ball point pen from a bank, or even the receipt of a cup of coffee from a neighbor over the back yard fence. (Attachment 5.)

Representative Tomlinson asked if the language was sufficient or if some additional language should be added to make it brutally clear that this is permissible. Mr. Wilson said that obviously the clearer, the better. In response to Mr. Wilson's example using the deferred compensation story and the reference to not being able to accept a calendar, Representative Tomlinson said that one could certainly live with placing association membership on the list.

Representative Haley said that this certainly needed to be referenced and should be cleaned up.

Mr. Wilson said that Subsection (c) is a good step in the right direction.

Representative Wells commented that in looking at this bill he still believed that the average person outside this room who reads this bill would have a difficult time knowing the difference between person and individual. Ms. Kiernan, Revisor, said that the definition certainly could be added.

The Vice Chair recognized Mr. Bruce Dimmitt who said that after hearing the testimony, he had some friendly suggestions. The first concerned qualifying as gift as more than nominal value and then defining nominal value.

Representative Wells asked Mr. Dimmitt how he would define nominal value, and Mr. Dimmitt answered, "about \$10.00." He also said that he would be willing to leave that up to the wisdom of the legislators. Representative Wells commented that he felt it would be better to just say "gift not to exceed \$10.00" rather than use the word nominal. In other words, he said that he wanted precise language. Mr. Dimmitt also suggested that line 18 say "after having given" instead of "before having given." He said that he thought it should be strengthened so that a person could not give or accept a car.

Vice Chair Powers closed the Public Hearing on HB 2776.

The meeting adjourned at 10:10 a.m.

The next meeting is scheduled for February 13, 1998.





## **KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT**

### **Testimony before House Governmental Organizations and Elections in Support of House Bill 2656 by Carol Williams**

House Bill 2656 amends K.S.A. 25-4161 and K.S.A. 46-256 which are provisions in the Campaign Finance Act and the Governmental Ethics Laws. This bill is a recommendation made by the Kansas Commission on Governmental Standards and Conduct in its 1997 Annual Report.

Under current law, the Commission is authorized to notify the Attorney General of any apparent violations of criminal law or other laws not administered by the Commission, which might be discovered during a Commission investigation.

This bill would allow the Commission to be able to notify any federal or local authorities, besides the Attorney General's office, of violations of laws outside the Commission's jurisdiction which are discovered during a Commission investigation.

For a possible violation of federal election law which may be discovered during a Commission investigation, the Commission would like to be able to go directly to the Federal Election Commission with its discovery, rather than having to turn it over to the Attorney General's Office for that office to refer the discovery over to the Federal Election Commission. Eliminating the Attorney General's Office as an intermediary would speed the process of getting necessary information to the agency, either federal or local, that would ultimately be responsible for the violation.

The Commission urges the Committee's support of HB 2656.

House GO and E  
2.11.98  
Attachment 1



State of Kansas

## Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: 296-6296  
TTY: 291-3767

### HOUSE COMMITTEE ON GOVERNMENT ORGANIZATION AND ELECTIONS

HOUSE BILL 2656

Testimony of John W. Campbell  
Senior Deputy Attorney General

February 11, 1998

Mr. Chairman, members of the Committee, my name is John W. Campbell. I am the Senior Deputy Attorney General for the State. Attorney General Carla Stovall has directed me to request the Committee to amend House Bill 2656 so as not to restrict the investigation of crimes detected by the Kansas Commission on Government Standards and Conduct.

Under current law, the Commission is required to notify the Attorney General whenever it becomes aware of apparent violations of criminal law or other laws not administered by the Commission. HB 2656 would delete that requirement and replace it with a requirement that it notify, "*appropriate federal, state or local authorities*" of such violations.

The Attorney General does not object to the inclusion of additional notification requirements. However as the State's Chief Law Enforcement Officer, she feels strongly that she should be notified whenever the Commission detects criminal activities. While the Commission is and should be granted wide discretion in fulfilling its mission, the reporting of possible crimes that fall outside its jurisdiction and expertise is a matter on which the Legislature should direct the Commission to inform the Attorney General, as well as other authorities that may be interested in pursuing evidence of a crime developed by a Commission's investigation.

The Commission's staff has indicated to the Attorney General's Office that the Commission itself would not oppose such an amendment to HB 2656 or its counterpart in the Senate, Senate Bill 451. Staff also told us that it was never the Commission's intention to exclude the Attorney General from notification.

House GO and E  
2.11.98  
Attachment 2

February 11, 1998

Page 2

Based on the above, the Attorney General is asking that HB 2656's sections 1(d) and 2(d) be amended to read:

The commission shall notify the ~~attorney general~~ *attorney general and appropriate federal, state or local authorities* of any apparent violation of criminal law or other laws not administered by the commission, which is discovered during the course of any such investigation.

I thank the Committee for its kind attention and ask that it adopt the suggested amendment.





## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

### TESTIMONY BEFORE THE HOUSE COMMITTEE ON ELECTIONS IN SUPPORT OF HB 2775 By W. Charles Smithson, Legal Counsel

HB 2775, which is before you on this morning, amends the governmental ethics laws and is a recommendation of the Commission.

Under current law, K.S.A. 46-241 prohibits any state officer or employee from disclosing confidential state information for **anyone's** economic gain.

However, this prohibition does not apply to former state officers or employees. Therefore, a state officer or employee may have access to confidential state information, terminate state employment, and then disclose the confidential state information for their own, or others, economic gain.

This bill would simply extend the prohibition on disclosing confidential state information for the economic gain of **anyone** to former state officers or employees.

This bill protects the sanctity of confidential state information regardless of who is the guardian of such information. The bill is limited in that it only prohibits such disclosure when done for the economic gain of the former state officer or employee, or any other person.

House GO and E  
2-11-98  
Attachment 3



## KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

### TESTIMONY BEFORE HOUSE SUBCOMMITTEE ON ETHICS IN SUPPORT OF HB 2776

By W. Charles Smithson, Legal Counsel

HB 2776, which is before you this morning, would amend the governmental ethics laws by making it a violation of those laws for compensation to be accepted or given for past official acts. This bill is based on K.S.A. 21-3903 in the criminal code (see attached). This bill is a recommendation of the Commission.

Section 2 (a) of the bill prohibits the acceptance of an economic opportunity or gift by any person **in return for** having given a decision, opinion, recommendation or vote favorable to the person offering to give the gift. The decision, opinion, recommendation or vote must have been done in the person's official capacity as a state officer or employee.

Subsection (b) makes the giving of an economic opportunity or gift, **for having received** a favorable decision, opinion, recommendation or vote from a state officer or employee, a violation of the ethics laws.

Subsection (c) exempts gifts or other benefits given on account of a family, personal, professional or other business relationship independent of the official status of the receiver of such gifts or benefits.

Subsection (d) allows the Commission to issue civil fines for violations of this section. Subsection (e) makes compensation for past official acts a class B misdemeanor. Subsection (f) allows the Commission to issue advisory opinions on this section, investigate, file complaints and conduct hearings concerning possible violations of this bill.

This bill is limited in its application in that due to the current restrictions on gifts, it probably would only apply to former state officers or employees who receive gifts or economic opportunities shortly after leaving government, or those current officers or employees who are given "bogus" employment in the private sector in return for official acts.

This bill would allow the Commission to investigate such situations that, on their face, raise a reasonable suspicion and do fall under the exceptions in subsection (c).

House GO and E  
2.11.98  
Attachment 4

it to K.S.A. 45-221, and amendments

Except as authorized by law, knowingly, and with the intent to reduce or eliminate competition among bidders or prospective bidders, any contract or proposed contract: (A) disclosing confidential information regarding bids or communications from bidders or prospective bidders on any contract or proposed contract; (B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or (C) altering a bid or proposal submitted by a bidder on a contract or proposed contract.

Except as authorized by law, knowingly tampering with or concealing evidence of a crime.

Knowingly and willfully submitting to a governmental entity a claim for expenses which are duplicated expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

The provisions of subsection (a)(1) shall apply to any use of persons or property which:

(a) At the time of the use, is authorized by a formal written policy of the governmental entity; or

(b) constitutes misuse of public funds, as defined in K.S.A. 21-3910 and amendments thereto.

(1) Official misconduct as defined in subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor.

Official misconduct as defined in subsection (a)(5) is: (A) A severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and (B) a class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor.

Official misconduct as defined in subsection (a)(6) is: (A) A severity level 7, nonperson felony if the claim is for \$25,000 or more; (B) a severity level 9, nonperson felony if the claim is at least \$500 but less than \$25,000; and (C) a class A nonperson misdemeanor for a claim of less than \$500.

Upon conviction of official misconduct a public officer or employee shall forfeit such officer's or employee's office or employment.

**History:** L. 1969, ch. 180, § 21-3902; L. 1992, ch. 98, § 62; L. 1993, ch. 291, § 127; L. 1995, ch. 29, § 2; Apr. 27.

**Source or prior law:**

21-713, 21-741, 21-742, 21-743, 21-807, 21-808, 21-809, 21-810, 21-811, 21-812, 21-813, 21-1607.

**CASE ANNOTATIONS**

1. Evidence insufficient to support conviction under subsection (a); reversed. *State v. Coburn*, 220 K. 743, 748, 556 P.2d 376.

2. No abuse of discretion in denying motion to dismiss for failure to supply bill of particulars before trial; conviction affirmed. *State v. Coburn*, 220 K. 743, 556 P.2d 376.

3. Whether to prosecute hereunder or to proceed under 60-1201 et seq., or both, for ouster of public official discretionary. *State ex rel. Miller v. Richardson*, 229 K. 234, 239, 623 P.2d 1317.

4. Official misconduct statute unconstitutionally vague in violation of due process. *State v. Adams*, 254 K. 436, 437, 438, 441, 444, 866 P.2d 1017 (1994).

**21-3903. Compensation for past official acts.** (a) Compensation for past official acts is giving or offering to give to any public officer or employee any benefit, reward or consideration for having given, in such official capacity as public officer or employee, a decision, opinion, recommendation or vote favorable to the person giving or offering such benefit, reward or consideration, or for having performed an act of official misconduct.

(b) Subsection (a) shall not apply to the following:

(1) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationships independent of the official status of the receiver; or

(2) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Compensation for past official acts is a class B nonperson misdemeanor.

**History:** L. 1969, ch. 180, § 21-3903; L. 1992, ch. 239, § 178; L. 1993, ch. 291, § 128; July 1.

**21-3904. Presenting a false claim.** (a) Presenting a false claim is knowingly and with intent to defraud presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

(b) (1) Presenting a false claim for \$25,000 or more is a severity level 7, nonperson felony.

(2) Presenting a false claim for at least \$500 but less than \$25,000 is a severity level 9, nonperson felony.

(3) Presenting a false claim for less than \$500 is a class A nonperson misdemeanor.



# The Kansas Association of Public Employees

1300 SW Topeka Blvd., Topeka, KS 66612

(785)-235-0262 or (800) 232-KAPE

Fax (785)-232-3920

Testimony of Paul K. Wilson  
Director of Labor Relations  
Kansas Association of Public Employees before  
The House Committee on Governmental Organization and Elections  
on House Bill 2776

Members of the committee, good afternoon and thank you for allowing me to come before you to offer testimony in support of House Bill 2776. My name is Paul Wilson and I am the Director of Labor Relations for the Kansas Association of Public Employees.

The bill under consideration here exhibits a welcome example of good public policy combined with good common sense. By way of explanation, it is KAPE's position that subsections 2 (a) and (b) seek to prohibit the acceptance and/or solicitation of gifts in exchange for advantageous treatment on any issue affecting the giver or receiver of the gift. Very simply, the bill prohibits influence peddling, and that is good public policy.

Subsection 2 (c), then recognizes that not all gifts are given in an effort to influence decisions. Some of the more obvious examples are the receipt of a testimonial dinner and plaque for service to a community organization; the receipt of a gift in recognition of 100% attendance at your fraternal club; receipt of a road atlas from your insurance agent; receipt of a ball point pen from your bank; and even the receipt of a cup of coffee from your neighbor over the back yard fence.

While some of these examples may seem ridiculous, a strict reading of the bill would preclude each and every one of those "gifts" without the language provided within subsection 2 (c). In the case of KAPE, I speak from experience in as much as some of our members have been advised by officials of state agencies that they could face immediate termination if they accept even a key chain from our agents in the field. And please remember, in our case, KAPE agents are providing KAPE members with items which were purchased with money provided by those same members.

Naturally, the original law was not intended to prohibit state employees from receiving a pocket calendar from their bank, but in practice it does just that. Now that the law is being considered for application to members of the legislature, KAPE encourages passage of the good public policy and good sense provisions contained within House Bill 2776.

Thank you for your attention to my comments and I will attempt to answer any questions you may have.

House GO and E  
2-11-98

QUALITY Government Doesn't Just Happen! • It Depends on QUALITY Public Employees!

Attachment 5