

Approved: 1-26-98
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Janice Hardenburger at 1:30 p.m. on January 20, 1998 in Room 529-S of the Capitol.

All members were present except: Senator Chris Steineger

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

Conferees appearing before the committee: Charlie Smithson, KCGSC
Senator Anthony Hensley, Senate Minority Leader

Others attending: See attached list

Chairman Hardenburger opened the Committee meeting on **SB 410** and introduced the first Conferee, Charlie Smithson, from the Kansas Commission on Governmental Standards and Conduct.

Charlie Smithson said **SB 410** amends K.S.A. 25-4158 and K.S.A. 46-260 and involves subpoena powers of the Commission. The Commission supports the passage of **SB 410**. (Attachment 1)

Senator Lawrence inquired as to how much time would be required to get records in order if someone who was under investigation. In response, the conferee stated that the Commission could not ask for a subpoena and require everything in three days. Senator Lawrence said she would prefer if the ten day period were in the law. Charlie Smithson said that is a policy decision, and five calendar days would not effect what the Commission is trying to do as far as litigation strategy.

Senator Praeger asked, if in step 5 of Smithson's testimony, would the 30 days be changed to five. Would the commission send a letter to the person being investigated informing them of the allegation, and then allow them five days to respond. Charlie Smithson advised after the five days notice, the Commission then has to ask for a subpoena, if that condition existed.

Senator Lawrence said she thought five days to respond is not unreasonable. Charlie Smithson asked if the committee wanted five days notice between the notice being sent out and the subpoena to go out; or, does the Committee want to make sure there is some time between the notice and the subpoena request. The Commission is trying to cut down on the response time. The Commission issues a subpoena, the material cannot be received from the alleged violator the next day.

Chairman Hardenburger introduced Mike Heim, legislative research staff, who advised that the previous Committee last session amended the civil procedures code and changed the ten days action to fourteen days. If the person is commanded to respond quicker than fourteen days, they can go to court and basically object. The alleged violator has fourteen days otherwise to respond.

Senator Becker asked if the Commission had a reasonable suspicion, and they sent a letter to the alleged violator, does the alleged violator have thirty days to respond. Charlie Smithson advised that they had thirty days to respond, and then the Commission can apply for a subpoena. Where the fourteen days comes in, the Commission can apply for a subpoena, and civil procedures allow fourteen days before the court hears the case. Senator Becker understood that the alleged violator had thirty days to respond to the letter sent by the Commission. Then, at that point, the Commission can issue a subpoena, and the violator would have another fourteen days to respond making a total of 44 days. Charlie Smithson advised that this bill would remove the thirty days, and there would not be a letter anymore informing the alleged violator they were under investigation. All allegation would have to be brought to the Commission's attention; whereupon, a preliminary inquiry would be conducted. Often times, the person being investigated would find out right then, not always, but sometimes. Sometimes the alleged violator is contacted and sometimes not. The Commission might not want the person being investigated to know. Under this bill, the alleged violator would have fourteen days to respond to the subpoena request.

Senator Huelskamp said he did not understand what is meant by probable cause, which is not in the bill, alleged violation and reasonable suspicion. Charlie Smithson said reasonable suspicion should probably be added back into the bill. Senator Huelskamp asked what is the difference between destroying evidence in the fourteen days after the issuance of the subpoena and destroying the evidence within the thirty days after a letter

CONTINUATION SHEET
Minutes of the Senate Elections and Local Government Committee, January 20, 1998

is sent. Charlie Smithson said he cannot give a legal interpretation other than just time. Senator Praeger asked if there wasn't a stronger reason for compliance if based on a subpoena versus just a letter being sent out. Fourteen days is after the subpoena has been issued, which is stronger request for information at that point versus a letter being issued.

Senator Huelskamp suggested the Commission presented the idea that alleged violators were destroying evidence. He further asked if the Commission had gone to court in reference to that, not the subpoena but the destroying of evidence. Senator Huelskamp felt the Commission could put some candidates in a very difficult situation. Senator Huelskamp asked if the Commission wanted a list of contributors of PAC's and other groups prior to the reporting period. Charlie Smithson said the only reason the Commission would if there was some type of violation that dealt with that list of contributors. Also, under current audit procedures, the Commission can have access to campaign finance reports. Senator Praeger asked the question of how could an alleged violation occur if nothing had been filed. Senator Petty asked if the Commission would never go against anyone if the evidence had been destroyed whether it was under a subpoena or a letter. Senator Petty stated it was her understanding that the Commission has the support of the law to request information. Charlie Smithson explained that the alleged violator does not have to respond in 30 days, and does not have to do anything with the letter, but after 30 days the Commission can subpoena records. What the Commission wants to do is remove the 30 days.

Chairman Hardenburger introduced the next Conferee, Senator Hensley.

Senator Hensley testified in support of **SB 410**. (Attachment#2)

Senator Hensley further stated that he is satisfied with Section (c) in **SB 410** which states: "The commission may investigate, or cause to be investigated, any matter required to be reported upon by any person under the provisions of the campaign finance act". Senator Hensley said he thought that was sufficient and he further stated the legislators have to trust the Commission to do their job. He said that a three-fourth majority of the Commission which is 7 out of 9 members must approve an investigation. He supported an amendment to reintroduce reasonable suspicion in the bill; although he thought that it was unnecessary.

Senator Huelskamp asked if the Commission could investigate or subpoena individuals or companies in other states--money crossing state lines or out of state PAC's or national party organizations. Senator Hensley stated it says "by any person under provision of the campaign finance act" and it does not say whether located in this state or not. If out of state organizations were involved in any way and participated in Kansas' campaign finance system either as a contributor or spent money under the system, the Commission should be allowed to investigate those individuals regardless whether they were out of state contributors or not.

Chairman Hardenburger said the Committee would schedule the opponents for **SB 410** on Monday and also possible action.

Meeting was adjourned at 2:30 pm.

Next meeting scheduled for Wednesday, January 21, 1998.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before Senate Elections & Local Government in Support of SB 410 by W. Charles Smithson, Legal Counsel

SB 410, which is before you this afternoon, amends K.S.A. 25-4158 and K.S.A. 46-260. Both of these laws concern the Commission's ability to issue investigative subpoenas and would amend the procedures used in issuing subpoenas in both the campaign finance act and ethics laws. The Commission supports the passage of this bill.

Under current law, a subpoena may only be issued after the following statutory steps have been taken:

1. an alleged violation of law brought before the Commission's staff;
2. a preliminary inquiry conducted by Commission' staff concerning the alleged violation;
3. if it is shown that the allegation has merit, the Commission's staff submits a report and explanation to the Commission and requests an investigation to be authorized;
4. if the Commission concurs that there is a reasonable suspicion that a violation has occurred, it votes to authorize the investigation;
5. the Commission then sends a letter to the person being investigated informing them of the allegation and allowing them 30 days to respond;
6. after reviewing the response or after the lapse of the 30 days, I then file a praecipe (application) with the Commission for subpoenas;
7. if the Commission, after reviewing the response, still believes that a reasonable suspicion of a violation exists, votes to issue the subpoenas & 7 out of the 9 Commissioners must vote in favor of issuing the subpoenas.

This bill would remove the 30 notification and response period before a subpoena could be issued. All of the other statutory protections would remain in place. This bill would greatly aid in the Commission's ability to investigate violations under its jurisdiction.

Elec. & Local Gov.

Date: 1-20-98

Attachment: # 1

Senate Bill 410 - Full subpoena power for the Ethics Commission

January 20, 1998

Anthony Hensley, Senate Democratic Leader

Senator Hardenburger and committee members: I testify today in support of Senate Bill 410, a bill that would grant the Kansas Commission on Governmental Standards and Conduct full subpoena power in conducting its investigations.

On November 5, 1997, I announced on behalf of the Senate Democratic caucus a three-part reform package to restore public confidence in our damaged campaign finance system. The first and most important part of our package was pre-filed that same day by the thirteen Senate Democrats in the form of Senate Bill 390 which is in this committee.

Senate Bill 390 is identical to Senate Bill 410, and would take a significant step toward reforming our damaged campaign finance system by putting teeth into our state's ethics commission.

Under current law, any person or committee issued a subpoena has 30 days in which to respond. Within this 30-day "window of opportunity" records can be destroyed or created, witnesses can change their story, and many other kinds of deception can occur. Senate Bills 390 and 410 will effectively eliminate the 30-day rule from the law.

No one can argue against the need for this bill. When the state agency that regulates pest control in our state has full subpoena power and the ethics commission does not, we are not serious about campaign finance reform. It is time this changed. (Attached to my testimony is a list of those state agency's which have subpoena power.)

However, providing full subpoena power is not enough. We must also make certain that the commission has adequate funding for more investigators and support staff so it can do its work without any constraints.

Elec. & Local Gov.

Date: 1-20-98

Attachment: # 2

Subpoenas--Selected Statutes:

Credit Union Administration (17-2206)
Kansas Parole Board (22-3720)
State Child Death Review Board (22a-244)
Workers Compensation Director (44-549)
Administrative Law Judges, Worker Compensation (44-557)
Dental Board (65-1452)
Barber Board (65-1824)
Healing Arts Board (65-2839a)
Disciplinary Council, Healing Arts (65-2840a)
Board of Adult Care Home Administrators (65-3503)
Emergency Medical Services Board (65-6130)
Professional Practice Commission, on approval of State Board of
Education (72-8507)
Board of Nursing (74-1106)
Board of Examiners in Optometry (74-1504)
Board of Mortuary Arts (74-1704)
Abstracters' Board of Examiners (74-3902)
Behavioral Sciences Regulatory Board (74-7508)
Board of Accountancy, Chairperson (75-1119)
State Board of Education--(KPR Board) (76-3106)
Public Employee Relations Board (75-4323, 75-4332)
Secretary of Agriculture, Pest Control (2-2463)
Secretary of Agriculture, Chemigation Safety (2-3316)
Secretary of Health and Environment, Food Service (36-509)
Secretary of Revenue, Intoxicating Liquors Licensing (41-322)
Secretary of Human Resources, (44-611, 44-635)
Secretary of Human Resources, Employment Security (44-714)
Secretary of Health and Environment, Food and Drug Regulation
(65-673, 65-2305)
Secretary of Human Resources, Teachers' Contracts (72-5432)
Secretary of Social and Rehabilitation Services (75-3306)
Secretary of Corrections (75-5251)
Secretary of Aging (75-5945)
Secretary of Revenue (79-3233, 79-4705a)
Director of Taxation (79-908, 79-3419, 79-4224, 79-5207)
State Corporation Commission (66-150)
Consumer Credit Administrator (16a-2,305, 16a-6,106)
Securities Commissioner (17-1265)
Commission on Governmental Standards and Conduct (25-4158, 46-
260)
State Fire Marshal (31-141)
Commissioner of Insurance (40-281)