

Approved: 1-29-98
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 26, 1998 in Room 529-S of the Capitol.

All members were present except: Senator Sandy Praeger

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: Dan Hermes, Director of Governmental Affairs
Bruce Dimmitt, Independent Lobbyist

Others attending: See attached list

Chairman Hardenburger called the meeting to order with continued hearings on **SB 410**. Dan Hermes, Director of Government Affairs from the Governor's office testified in support of the Governor's recommendation for subpoena power to the Kansas Commission on Governmental Standards and Conduct. (Attachment #1)

Chairman Hardenburger advised the Committee that at the last meeting, staff was requested to research the subpoena power of all the agencies in state government. (Attachment #2)

Chairman Hardenburger said **SB 410** would not be worked until possibly tomorrow. The Committee was also provided with copy of an amendment proposed the first day the bill was heard. (Attachment #3)

Chairman Hardenburger introduced Bruce Dimmitt, an independent lobbyist, who appeared as an opponent of **SB 410**. (Attachment #4)

Committee discussions centered on the legality and constitutionality of the bill. Staff said that after doing the review of the different state agencies, the bill gives the commission subpoena powers similar to most state agencies.

The Committee discussed the reporting time an opponent would have after the alleged violation and a court appearance.

Chairman Hardenburger closed hearings on **SB 410**.

Committee discussion was centered on the part of the bill that dealt with self-incrimination.

Chairman Hardenburger asked the Committee to review the handout concerning the subpoena powers that apply to all the other state agencies. The Chairman also advised the Committee **SB 410** probably would be worked tomorrow.

Senator Becker moved that the minutes from January 15 and January 20 be approved, seconded by Senator Huelskamp. Motion carried.

Meeting was adjourned at 2:10 p.m.

Next meeting will be at 1:30 p.m. January 27, 1998.

STATE OF KANSAS

BILL GRAVES, Governor
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590



(913) 296-3232
1-800-748-4408
FAX: (913) 296-7973

OFFICE OF THE GOVERNOR

LEGISLATIVE TESTIMONY

TO: Chairperson Janice Hardenburger and Members of the Senate Committee on Elections and Local Government

FROM: Dan Hermès, ^{DWH} Director of Governmental Affairs

DATE: January 25, 1998

SUBJECTS: SB 410 — Subpoena Power for Governmental Standards and Conduct

Madam Chairman and members of the committee, thank you for the opportunity to appear in support of this portion of the Governor's recommendation for ethics and campaign finance reform for the 1998 Legislative Session.

The need to provide the Commission on Governmental Standards and Conduct immediate subpoena power is perhaps best expressed in the number of groups that have advanced this measure. The Commission, The House Committee on Governmental Organization and Elections, 14 Senate Republicans, all 13 Senate Democrats have introduced identical legislation. The Governor has also endorsed this measure.

As the Governor said in his state of the state address, "To not give the commission this subpoena power is to severely limit their ability to carry out the responsibility the Legislature has given them. Let's empower them to do their job." Subpoena power that cannot be used without 30 days notice is no power at all.

This bill is not a license for the commission to abuse and harass political figures under their jurisdiction. Two-thirds of the commission must vote to approve the issuance of any subpoena and the subpoena must be limited to items reasonably relevant to alleged violations.

On behalf of the Governor, I urge favorable consideration of this measure by the committee. Thank you for the opportunity to appear before you today in support of this measure. I would be happy to answer any questions you may have on the provisions of this bill.

Elec. & Local Gov.
Date: 1-26-98
Attachment: # 1

January 26, 1998

STATE AGENCIES' SUBPOENA POWER

Summary. The following brief description of subpoena power of state agencies is based upon a discussion of this topic in Professor David Ryan's book, *Kansas Administrative Law*, Kansas Bar Association, (1991). The attached tables display state entities that have subpoena power, the purpose for which that power is granted in statute, procedural limitations on the authority, and bills introduced in the 1998 Legislature that would alter subpoena power of some agencies.

A subpoena is a written order to appear at a specific time and place to provide testimony on a particular matter. A *subpoena duces tecum* demands that the recipient make certain books and records or other items available. In Kansas, many administrative agencies in addition to courts and some legislative committees have subpoena powers. An agency only has subpoena power if it is specifically authorized in statute. The *United States Constitution*, the rules of civil procedure, and the Kansas Administrative Procedure Act (KAPA), and some of the authorizing statutes, all place limitations on the use of subpoena power by state agencies.

Briefly, one must satisfy three elements for relevancy of subpoenas:

1. The agency must be authorized to make the inquiry.
2. The demand must be specific.
3. The information sought must be reasonably relevant.

Statutes granting power of subpoena are generally liberally construed to permit inquiry. The trial court has discretion to:

1. modify subpoenas,
2. quash subpoenas,
3. weigh reasonableness, and
4. require showing of relevancy.

United States Constitution. The Fourth Amendment to the *United States Constitution* provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated." This amendment is not limited to law enforcement officers. It also provides protection from searches and seizures by

Elec. & Local Gov.

Date: 1-26-98

Attachment: # 2

administrative agencies. Furthermore, the Fourth Amendment does not require a criminal investigation or arrest relative to searches or inspections for administrative or fact gathering purposes by agency inspectors or regulatory control officers. In short, no exceptions are stated in the amendment except that the search must be reasonable. "Reasonableness" has generally come to mean the presence of a warrant for inspections, and a protection against unreasonable subpoena requests.

The Fifth Amendment protection against self-incrimination also limits agency subpoena powers. However, the self-incrimination defense is subject to significant limitations. The defense is *not* available to a corporation or a union. Additionally, the custodian of records for a corporation or a union may not refuse to produce documents. But the custodian may have his or her own privilege to refuse to answer specific questions. In an appropriate case an agency may compel testimony by granting immunity from prosecutions.

Statutory Authority. The basic method of satisfying the government's need for information where an individual or business will not voluntarily comply is the use of the subpoena to compel the production of documentary evidence, witnesses, or materials. The subpoena power is generally not implied. If the enabling act is silent on subpoena, no subpoena power exists. There is currently no indication Kansas common law is any different for state-level and local agencies not covered under KAPA. (*Yellow Freight v. KCCR*, 214 Kan. 120, 519 P. 2d 1092 (1974); *Kansas Department of Revenue v. Coca Cola Company*, 240 Kan. 548, 731 P. 2d 273 (1987); See also, *Olathe Community Hosp. v. Kansas Corporation Commission*, 652 P.2d 726, 232 Kan. 161 (1982); *Woods v. Midwest Conveyor Co., Inc.*, 648 P.2d 234, 231 Kan. 763, appeal after remand 697 P.2d 52, 236 Kan. 734 (1982); and more recently, *Patel v. Kansas State Board of Healing Arts*, 920 P. 2d 477, 22 Kan. App. 2d 712 (1996), review denied; *Appeal of Alex R. Masson, Inc.*, 909 P. 2d 673, 21 Kan. App. 2d 863 (1995); *Cline v Meas.*, 905 P. 2d 1072, 21 Kan.App2d 622 (1995), review denied.)

Subpoenas are authorized for all agencies that are covered by KAPA at K.S.A. 77-522. A number of state-level agencies have statutory subpoena power which the attached table reflects. In addition to procedures that may be articulated in authorizing statutes, subpoenas generally must be issued in accordance with the Rules of Civil Procedure (K.S.A. 60-245 and 60-245a).

Reasonableness. Kansas common law does not require the agency to know of wrongdoing before a subpoena is issued. Basically, the test is one of "reasonableness" and not "probable cause." Kansas courts apply the test used in *Yellow Freight* for judicial review of agency subpoena issuance. That is, if there is a possibility of relevancy in documents subpoenaed and there is no showing that the subpoena is unreasonable or oppressive, then the statutes granting subpoena power will be liberally construed to permit inquiry.

Three questions should be asked in reference to the issuance of subpoenas by state agencies:

1. Is the subpoena authorized?
2. Is the subpoena within the agency's scope of authority?
3. Is the subpoena "reasonable"?

Enforcement. While the agency issues the subpoena, a court must enforce it. Enforcement is generally considered to require such interference with liberty or property as to be a purely judicial type power, constitutionally limited to the judiciary in most jurisdictions. Consequently, courts must enforce agency subpoenas.

The standard of "reasonableness" incorporates "seizure" and "due process," constitutional limitations on agency power. The scope of the request may not be unreasonable which means among other things, that the agency cannot impose an undue burden for production of documents.

A subpoena that is so vague that the respondent does not know what document or material is requested will not be enforced by a court. Subpoenas are frequently challenged because of vagueness. If the court feels that the burden of compliance is too great, it may compel the agency to reduce its request. The court may also request the agency to treat information received as confidential, or require the agency to inspect documents where they are located.

Kansas Case Law. Kansas opinions have generally held that the agency is free to use its investigative powers, subject to the standard court review test for enforcement.

- In *Kansas Commission on Civil Rights v. Carlton*, 216 Kan. 735 (1975) and *Atchison, Topeka & S.F. Railway v. Lopez*, 216 Kan. 108 (1975), the court recognized that if the KCCR subpoena was "oppressive or unreasonable" it was subject to modification or quashing by the district court.
- *KCCR v. Sedgwick County Mental Health Clinic*, 220 Kan. 653 (1976) held the limits of subpoena power are subject to the sound discretion of the court.
- *Cessna Aircraft Co. v. KCCR*, 229 Kan. 15 (1981) found that in determining whether the subpoena is oppressive or unreasonable, the court must apply the statute liberally. Some showing of relevancy must be made. Due process places limitations upon the agency powers and "it cannot exercise unbridled power based purely on whim and speculation."
- *Matter of Collingwood Grain Inc.*, 891 P.2d 422, 257 Kan. 237(1995) found that the Board of Tax Appeals (a quasi-judicial entity) has discretion in the enforcement of a subpoena filed by the Department of Revenue. Such subpoenas are subject to the Rules of Civil Procedure, must be relevant, and not unreasonable or oppressive.

Enforcement of many state-level agency subpoenas is under the Judicial Review and Civil Enforcement of Agency Action Act (K.S.A. 77-624). That Act allows a private party to a proceeding to bring a subpoena, discovery order, or protective order enforcement by bringing a Petition for Civil Enforcement in district court. For agencies outside the Judicial Review Act, most subpoena enforcement is by court issuance of its own subpoena when requested by the agency, thereby utilizing the standard court enforcement and judicial subpoena procedures.

AGENCIES WITH SUBPOENA POWER

Agency/Official	Purpose	Special Procedures ¹
Any agency head or designee serving as a presiding officer in accordance with the Kansas Administrative Procedure Act (KAPA)	Conduct of hearings governed by KAPA (K.S.A. 77-522)	None
Kansas Commission on Governmental Standards and Conduct	Investigations under campaign finance laws (K.S.A. 25-4158)	Must be authorized by affirmative vote of at least three-fourths of the Commission after the subject has had 30 days to respond to written allegations
	Investigations under ethics laws (K.S.A. 46-260)	
	At the request of any party to a campaign finance or ethics hearing (K.S.A. 25-4163, 46-257)	None
Healing Arts Board	Enforcement of laws under its jurisdiction (K.S.A. 65-2839a)	Within five days of service recipient may petition the board to revoke, limit, or modify the subpoena
Healing Arts Board—Disciplinary Counsel	Investigation of matters that may result in action against a licensee (K.S.A. 65-2840a)	Must apply to court for issuance of subpoena
Professional Practices Commission (appointed by the State Board of Education)	Investigating cases related to the State Board's rules and regulations governing certification of teachers and school administrators (K.S.A. 72-8507)	In accordance with an order of the State Board of Education
Interstate Grain Marketing Commission	Enforcement of compact under K.S.A. 2-3101	Majority vote of Commission and then application to any state or federal court for a subpoena
Child Death Review Board	Investigations of certain child deaths (K.S.A. 22a-243)	Apply to district court for subpoena.

4-2

7-11

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Agency/Official	Purpose	Special Procedures ¹
District Judges	Summoning witnesses under Uniform Act to Secure Attendance of Witnesses From Without State (K.S.A. 22-4202)	Hearing required
	Inquisitions in certain criminal cases (K.S.A. 22-3101)	Action initiated by filing of application by Attorney General, County or District Attorney
Secretary of SRS or law enforcement officer	Child abuse or neglect investigations—request for disclosure of child abuse documents under K.S.A. 38-1523	Application to the district court for a subpoena or order
	Child in need of care hearing—interested party entitled to subpoena for witnesses' attendance (K.S.A. 38-1537)	None
	Juvenile offender hearing—party entitled to subpoena for witnesses (K.S.A. 38-1633)	None
Secretary of SRS	In any Title IV-D (child support enforcement) case in order to obtain information about a parent's whereabouts or finances (K.S.A. 39-7,144)	Respondent has 14 days to comply; served only by personal service; subject to an administrative hearing or a <i>de novo</i> review by court
	In connection with investigations of claims and vouchers and persons and businesses who provide services to the Department or to its clients, and eligibility of clients and vendors (K.S.A. 75-3306)	None
Legislative Investigating Committees	Investigations of authorized subjects of inquiry (K.S.A. 46-1001, <i>et seq.</i>)	If to compel attendance at a hearing, must be served at least three days prior to the hearing
Secretary of Health and Environment	Hearings under the food and drug law (K.S.A. 65-673)	None

2-5

2-5

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Agency/Official	Purpose	Special Procedures ¹
	Hearings regarding enrichment of flour and bread (K.S.A. 65-2305)	None
	Food and lodging licensee hearings (K.S.A.36-509)	None
	Hearings and investigations under the mined land conservation laws (K.S.A. 49-405)	None
Dairy Commissioner	Enforcement of milk and dairy product laws (K.S.A. 65-702)	None
Dental Board	Enforcement of dental regulatory laws (K.S.A. 65-1452)	None
Barber Board	Enforcement of barber regulatory law (K.S.A. 65-1824)	None
Board of Adult Care Home Administrators	Enforcement of laws under its jurisdiction (K.S.A. 65-3503)	None
Emergency Medical Services Board	Enforcement of laws under its jurisdiction (K.S.A. 65-6130)	None
Corporation Commission	Hearings of complaints about municipal utilities (K.S.A. 66-133)	None
	Hearings under laws governing the production and sale of oil and gas (K.S.A. 55-605, 55-706, 55-1310)	None
State Board of Education and any state facility providing special education services	In connection with a hearing or review under the special education laws (K.S.A. 72-975)	None
Board of Nursing	Investigations and proceedings under its jurisdiction (K.S.A. 74-1106)	None
Board of Examiners in Optometry	Enforcement of laws under its jurisdiction (K.S.A. 74-1504)	None

2-6

9-2

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Agency/Official	Purpose	Special Procedures ¹
Board of Mortuary Arts	Enforcement of laws under its jurisdiction (K.S.A. 74-1704)	None
Board of Tax Appeals	Enforcement of laws under its jurisdiction (K.S.A. 74-2437a)	None
Abstracters' Board of Examiners	Enforcement of laws under its jurisdiction (K.S.A. 74-3902)	None
Law Enforcement Training Commission	Enforcement of laws under its jurisdiction (K.S.A. 74-5607)	None
Crime Victims Compensation Board	Enforcement of laws under its jurisdiction (K.S.A. 74-7304)	None
Behavioral Sciences Regulatory Board	Enforcement of laws under its jurisdiction (K.S.A. 74-7508)	None
Lottery	Enforcement of laws under its jurisdiction (K.S.A. 74-8704)	None
Racing and Gaming Commission	Enforcement of laws under its jurisdiction (K.S.A. 74-8804)	None
State Gaming Agency	Enforcement of laws under its jurisdiction (K.S.A. 74-9805)	None
Board of Accountancy	Enforcement of laws governing licensed municipal accountants (K.S.A. 75-1119)	None
Public Employee Relations Board	Enforcement of laws under its jurisdiction (K.S.A. 75-4323, 75-4332)	None
Secretary of Corrections	Investigations of alleged improper conduct of department employees (K.S.A. 75-5251)	None

2-7

2-7

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Agency/Official	Purpose	Special Procedures ¹
Secretary on Aging (Long-Term Care Program)	In connection with investigations of claims and vouchers and persons and entities providing services to the department or to its clients and eligibility of clients and vendors (K.S.A. 75-5945)	None
Director of Taxation	Enforcement of tax laws under the director's jurisdiction (K.S.A. 79-908, 79-3419, 79-4224, 79-5207)	None
Secretary of Revenue	Enforcement of tax income laws (K.S.A. 79-3233)	None
	Enforcement of bingo laws (K.S.A. 79-4705a)	None
Director of Division of Motor Vehicles	Suspension of driving privileges under K.S.A. 8-255	None
	Commercial motor vehicle licensee may request director to issue subpoena for witnesses on his or her behalf in license suspension hearing under K.S.A. 8-2,145	None
	Alcohol or drug test refusal or failure hearing under K.S.A. 8-1002 where licensee requests subpoena of witnesses	None
Secretary of Agriculture	Hearings regarding pest control licensure (K.S.A. 2-2463)	None
	Enforcement of Kansas Chemigation Safety Law (K.S.A. 2-3316)	None
Consumer Credit Commissioner	Investigation of certain licensees' business practices under K.S.A. 16a-2-305	None
	Investigation of prohibited acts under K.S.A. 16a-6-106	None
Kansas Securities Commissioner	Kansas Securities Act investigations (K.S.A. 17-1265)	None

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

8-8

2-8

Agency/Official	Purpose	Special Procedures ¹
Attorney General	Investigations of Medicaid fraud and abuse (K.S.A. 21-3852)	None
	Investigations of suspected violations of laws regarding unfair trade practices (K.S.A. 50-153)	None
	Investigations of suspected violations of consumer protection or odometer fraud laws (K.S.A. 50-631, 50-653a)	None
	Enforcement of laws governing private investigators (K.S.A. 75-7b15)	None
Attorney General or County or District Attorney	Investigation of violations of the Charitable Organizations and Solicitations Act under K.S.A. 17-1767	None
	Investigations under the Kansas Standard Asset Seizure and Forfeiture Act (K.S.A. 60-4118)	None
	Inquisitions in certain criminal cases (K.S.A. 22-3101)	None
Prosecutor and Person Charged	To obtain attendance of witnesses in accordance with criminal procedure (K.S.A. 22-3214)	None
Credit Union Administrator	investigation of credit union business under K.S.A. 17-2206	None
Kansas Parole Board	Hearings under K.S.A. 22-3720	None
Coroner	Inquest under K.S.A. 22a-230	None
Court Trustee	Child support enforcement under K.S.A. 23-496	None
State Fire Marshal	Hearings regarding orders of the Fire Marshal under K.S.A. 31-141	None
Secretary of Kansas State Grain Inspection Department	Examine licensee books and records under K.S.A. 34-230a	None

2-9

6-9

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Agency/Official	Purpose	Special Procedures ¹
Secretary of Senate	Impeachment proceedings under K.S.A. 37-106	None
Insurance Commissioner	Hearings related to insurance under K.S.A. 40-281	None
	Liquidation of insurance company under K.S.A. 40-3625	None
Director of Division of Alcohol Beverage Control	Licensure hearings under K.S.A. 41-209	None
Secretary of Department of Revenue	Licensure appeal under liquor laws (K.S.A. 41-322)	None
Director of Workers Compensation and the Board	Hearings under K.S.A. 44-549	None
Workers Compensation Administrative Law Judges	Powers listed under K.S.A. 44-551	None
Secretary of Human Resources	Investigations of employer-worker disputes under K.S.A. 44-611 and 44-635	None
	Enforcement of laws governing teacher contracts (K.S.A. 72-5432, 72-5442)	None
Secretary of Human Resources, Chairs of Appeal Tribunals, or Appeal Referees	Hearings under the unemployment law (K.S.A. 44-714)	None
Agricultural Labor Relations Board	Implementation of the law under its jurisdiction (K.S.A. 44-820)	None
Human Rights Commission	Implementation of the law under its jurisdiction (K.S.A. 44-1004)	None
Secretary of State	Enforcement of the Kansas Athlete Agent Act (K.S.A. 44-1514)	None
Adjutant General	Gathering information under the emergency preparedness laws (K.S.A. 48-912)	None

2-10

71-8

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Agency/Official	Purpose	Special Procedures ¹
Military Judge of a Court Martial or a Summary Court Officer, Military Courts	In connection with proceedings under the Kansas Code of Military Justice (K.S.A. 48-2711, 48-3107)	None
Securities Commissioner	Hearings and investigations under the securities laws (K.S.A. 50-1009)	None
	Hearings and investigations under the Uniform Land Sales Practices Act (K.S.A. 58-3311)	None

2-11

#22756.01(1/26/98{10:34AM})

1-8

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

SENATE BILL No. 410

By Senators Hardenburger, Bond, Emert, Brownlee, Donovan, Harrington, Jordan, Kerr, Morris, Praeger, Ranson, Salisbury, Tyson and Umbarger

11 AN ACT concerning the commission on governmental standards and con-
12 duct; relating to powers and duties thereof; amending K.S.A. 25-4158
13 and 46-260 and repealing the existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 25-4158 is hereby amended to read as follows:
17 25-4158. (a) The secretary of state shall: (1) Furnish forms prescribed
18 and provided by the commission for making reports and statements re-
19 quired to be filed in the office of the secretary of state by the campaign
20 finance act; and

21 (2) make such reports and statements available for public inspection
22 and copying during regular office hours.

23 (b) The county election officer shall: (1) Furnish forms prescribed
24 and provided by the commission for making reports and statements re-
25 quired to be filed in the office of the county election officer by the cam-
26 paign finance act; and

27 (2) make such reports and statements available for public inspection
28 and copying during regular office hours.

29 (c) The commission may investigate, or cause to be investigated, any
30 matter required to be reported upon by any person under the provisions
31 of the campaign finance act, or any matter to which the campaign finance
32 act applies irrespective of whether a complaint has been filed in relation
33 thereto.

34 ~~(d) (1) For the purpose of any investigation or proceeding under this~~
35 ~~act, the commission or any officer designated by the commission may,~~
36 ~~after having complied with the requirements of part (2) of this subsection,~~
37 ~~administer oaths and affirmations, subpoena witnesses, compel their at-~~
38 ~~tendance, take evidence, and require the production of any books, papers,~~
39 ~~correspondence, memoranda, agreements, or other documents or records~~
40 ~~which the commission deems relevant or material to the inquiry investi-~~
41 ~~gation. The commission shall reimburse the reasonable costs of produc-~~
~~tion of documents subject to subpoena. All subpoenas and subpoenas~~
~~duces tecum issued under this section shall be authorized by the affir-~~

After a preliminary investigation of any matter reported to the commission pursuant to subsection (c), and upon written findings by the commission that there is a reasonable suspicion that a violation of the campaign finance act has occurred

Elec. & Local Gov.
Date: 1-26-98
Attachment: # 3

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
mative vote of not less than 3/4 of the members of the commission. *Subpoenas duces tecum shall be limited to items reasonably relevant to such alleged violations.*

Any vote authorizing the issuance of a subpoena or subpoena duces tecum shall be taken at a meeting where the commissioners are in physical presence.

(2) If the commission finds there is reasonable suspicion that a violation of the act has occurred, the commission shall communicate, by a signed writing specifically stating such alleged violations, with the persons being investigated and allow them 30 days to respond. After receiving the information from such respondent, and a determination is made that further investigation is required, the commission may issue a subpoena by a 3/4 vote of the commission members. Subpoenas duces tecum shall be limited to items reasonably relevant to such alleged violations.

(3) (2) In case of contumacy by, or refusal to obey a subpoena issued to any person, the district court of Shawnee county, upon application by the commission, or any officer designated by the commission, may issue to that person an order requiring the person to appear before the commission or any officer designated by the commission, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending or testifying or from producing any document or record before the commission, or obedience to the subpoena of the commission or any officer designated by the commission, or in any proceeding instituted by the commission, on the ground that the testimony or evidence (documentary or otherwise) required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 2. K.S.A. 46-260 is hereby amended to read as follows: 46-260.

the state governmental ethics

(a) The commission may investigate, or cause to be investigated, any matter required to be reported upon by any person under the provisions of this act, or any matter to which this act applies, irrespective of whether a complaint has been filed in relation thereto.

After a preliminary investigation of any matter reported to the commission pursuant to subsection (a), and upon written findings by the commission that there is a reasonable suspicion that a violation of the state governmental ethics act has occurred

(b) (1) For the purpose of any investigation or proceeding under this act, the commission or any officer designated by the commission may, after having complied with the requirements of part (2) of this subsection, administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commission deems relevant or material to the inquiry investi-

3-2

1 gation. The commission shall reimburse the reasonable costs of produc-
 2 tion of documents subject to subpoena. All subpoenas *and subpoenas*
 3 *duces tecum* issued under this section shall be authorized by the affir-
 4 mative vote of not less than $\frac{3}{4}$ of the members of the commission. *Sub-*
 5 *poenas duces tecum shall be limited to items reasonably relevant to such*
 6 *alleged violations.*

7 (2) If the commission finds there is reasonable suspicion that a vio-
 8 lation of the act has occurred, the commission shall communicate, by a
 9 signed writing specifically stating such alleged violations, with the persons
 10 being investigated and allow them 30 days to respond. After reviewing
 11 the information from such respondent, and a determination is made that
 12 further investigation is required, the commission may issue a subpoena
 13 by a $\frac{3}{4}$ vote of the commission members. Subpoenas *duces tecum* shall
 14 be limited to items reasonably relevant to such alleged violations.

15 (3) (2) In case of contumacy by, or refusal to obey a subpoena issued
 16 to any person, the district court of Shawnee county, upon application by
 17 the commission, or any officer designated by the commission, may issue
 18 to that person an order requiring the person to appear before the com-
 19 mission or any officer designated by the commission, there to produce
 20 documentary evidence if so ordered or to give evidence touching the
 21 matter under investigation or in question. Any failure to obey the order
 22 of the court may be punished by the court as a contempt of court.

23 (4) No person is excused from attending or testifying or from pro-
 24 ducing any document or record before the commission, or obedience to
 25 the subpoena of the commission or any officer designated by the com-
 26 mission, or in any proceeding instituted by the commission, on the ground
 27 that the testimony or evidence (documentary or otherwise) required of
 28 the person may tend to incriminate the person or subject the person to
 29 a penalty or forfeiture. No individual may be prosecuted or subjected to
 30 any penalty or forfeiture for or on account of any transaction, matter or
 31 thing concerning which such person is compelled, after claiming privilege
 32 against self-incrimination, to testify or produce evidence (documentary
 33 or otherwise), except that the individual so testifying shall not be exempt
 34 from prosecution and punishment for perjury committed in so testifying.

35 Sec. 1.4 K.S.A. 25-4158 and 46-260 are hereby repealed.

36 Sec. 4.5 This act shall take effect and be in force from and after its
 37 publication in the statute book.

New Sec. 3. K.S.A. 46-215 through 46-293
 and K.S.A. 1997 Supp. 46-237a, and amendments
 thereto, shall be known and may be cited as the
 state governmental ethics act.

**STATEMENT OF BRUCE DIMMITT
TO SENATE ELECTIONS AND LOCAL GOVERNMENT
COMMITTEE
REGARDING
SB 410 - SUBPOENA POWER FOR
COMMISSION ON GOVERNMENTAL
STANDARDS AND CONDUCT
January 20, 1998**

Madam Chairman and members of the Committee, I am pleased to have the opportunity to speak to you concerning the above matter. I am a registered lobbyist.

I must confess that I have not had the opportunity to study this bill as much as I would like. Therefore, I merely have some questions and general remarks.

Let us remember that when our nation was founded, the founding fathers had a strong fear of government. This is understandable, given the oppression they had experienced from the hands of the government of King George. They wanted to substantially limit government powers and controls. They were careful to build into the constitution many checks and balances, protections of citizen freedoms and other restraints on government. Today, we need to be ever-vigilant to protect and preserve the freedoms that George Washington and his men fought for, not to mention the men and women who have fought in other wars in our nation's history.

One of the protections the founding fathers provided was freedom of speech. The US Supreme Court in *Buckley v. Valeo* said that political expenditures constituted speech as protected by the First Amendment.

The purpose of regulation of campaigns is to foster and encourage full expression of political opinions in a debate concerning candidates and issues, even though the debate may be vigorous, competitive and adversarial, even hostile.

The Supreme Court has said that it is legitimate to limit contributions to a political candidate. The public has a right to know who contributes to candidates. Also, who lobbies and how much each legislator accepts from each lobbyist.

But excessive regulation and control of campaigns and lobbying is a disincentive and counterproductive to citizen participation in political matters and therefore the democratic process itself.

Elec. & Local Gov.
Date: 1-26-98
Attachment: # 4

So, my questions are:

1. Is there a compelling state interest in granting the power that is proposed for the Commission on Governmental Standards and Conduct?
2. Does that state interest outweigh loss of freedom guaranteed by the Constitution?
3. Is the power proposed sufficiently restrained and narrowly drawn to resolve the state interest with minimal, justified and necessary loss of guaranteed rights and freedoms?
4. Can the power proposed be abused; are there sufficient safeguards against abuse; are there adequate provisions for due process? Is there reason to be consistently confident that if the new powers are granted, they will be executed evenhandedly and in a non-partisan fashion?
5. Do other agencies have comparable power? If not, why not?

Based on the above, I suggest that it might be appropriate that this bill be referred to the judiciary committee for review before action by this committee. This is a matter that deserves very careful and deliberate legal analysis and consideration.

BRUCE DIMMITT
(913) 381-9413 (HOME)
(816) 807-0971 (CELL PHONE)
(913) 649-9316 (FAX)
E-MAIL: bdimmit@ix.netcom.com
8444 GRANT AVE
OVERLAND PARK, KS 66212