

Approved: 2-9-98
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairman Janice Hardenburger at 1:30 p.m. on February 5, 1998 in Room 529-S of the Capitol.

All members were present except: Senator Barbara Lawrence

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

Conferee appearing before the committee: Charlie Smithson, Legal Counsel, KCGSC

Others attending: See attached list

Chairman Hardenburger opened the meeting on **SB 452** and **SB 453**. These bills are similar except one pertains to the campaign finance act and the other pertains to the governmental ethics act, however, the printing and passage of these bills, makes it easier to separate them in the beginning rather than trying to reconcile them at the end.

Charlie Smithson, Legal Counsel, KCGSC introduced **SB 452**, which is recommended by the Commission, making it a violation for two or more persons to enter into a conspiracy to violate the campaign finance laws. (Attachment #1)

The Committee discussed at length the definition of "conspiracy" relating to **SB 452**. The bill would allow the Commission to enforce a violation which is not included in the campaign finance act at the present time.

Chairman Hardenburger closed the hearing on **SB 452** and opened the hearing on **SB 453**. Charlie Smithson introduced **SB 453** advising this bill is recommended by the Commission. The bill would amend the governmental ethics laws by making it a violation for two or more persons to enter into a conspiracy to violate those laws. (Attachment #2)

The Committee further discussed making a conspiracy to violate the ethics law a class B misdemeanor. Chairman Hardenburger closed the hearing on **SB 453** and advised the Committee possible action would take place on both bills at the next meeting.

Meeting was adjourned at 2:30 p.m.

Next meeting will be at 1:30 p.m. February 9, 1998.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

TESTIMONY BEFORE SENATE ELECTIONS & LOCAL GOVERNMENT IN SUPPORT OF SB 452

By W. Charles Smithson, Legal Counsel

SB 452, which is a recommendation by the Commission, amends the campaign finance act by making it a violation for two or more persons to enter into a conspiracy to violate the campaign finance laws. This bill is based on K.S.A. 21-3302 which is the conspiracy statute in the criminal section (see attached).

Section 2 (a) defines conspiracy. To be a "conspiracy", there must be an agreement between two or more persons to commit an underlying violation of the campaign finance laws. In addition to this agreement, there must be an overt act in furtherance of such conspiracy.

Subsection (b) provides a defense to anyone who voluntarily withdraws from the conspiracy and communicates this fact to a co-conspirator before any overt act in furtherance of the conspiracy is committed.

Subsection (c) makes a conspiracy a class A misdemeanor. Subsection (d) allows the Commission to issue opinions, investigate, file complaints and conduct hearings concerning possible violations of this bill.

This bill allows the Commission to properly investigate alleged campaign finance violations, and possibly "prosecute" persons who current law does not, but should, cover. As the laws are currently drafted, persons directly committing a violation are covered, but persons who may have been part of the violation are able to avoid "prosecution".

This bill does not create any more reporting requirements or any additional burdens on candidates or treasurers. There is not any memorization of laws required such as not accepting anonymous contributions in excess of \$10.00 or cash in excess of \$100.00. This bill simply allows the Commission to enforce a violation that should have been part of the campaign finance act since its very inception. This is not a new grant of some great power, but is giving the Commission the tools it needs to fully do its statutory duty.

Elec. & Local Gov.

Date: 2-5-98

Attachment: #1

94. Cited; whether state may try juvenile prosecuted as adult on charges not previously raised in juvenile proceeding examined. *State v. Randolph*, 19 K.A.2d 730, 731, 876 P.2d 177 (1994).

95. Whether court erred by converting attempt to engage in indecent liberties with a child to severity level 5 examined. *State v. Ward*, 20 K.A.2d 238, 241, 886 P.2d 890 (1994).

96. Whether defendant's attempted bank robbery conviction may be used to increase sentence under habitual criminal act examined. *State v. Brinkley*, 256 K. 808, 821, 888 P.2d 819 (1995).

97. Whether judge erred by failing to instruct jury on attempted second-degree murder as lesser included offense of attempted murder examined. *State v. Gibbons*, 256 K. 951, 956, 889 P.2d 772 (1995).

98. The crime of attempted involuntary manslaughter not recognized in Kansas. *State v. Collins*, 257 K. 408, 413, 419, 893 P.2d 217 (1995).

99. Whether defendant sentenced after KSCA (21-4701 et seq.) enactment for crimes committed before enactment is denied equal protection by preclusion of sentencing guideline retroactivity examined. *State v. Fierro*, 257 K. 639, 656, 895 P.2d 186 (1995).

100. Whether defendant's conviction for attempted aggravated assault must be reversed because no such crime existed at time examined. *State v. Martinez*, 20 K.A.2d 824, 829, 893 P.2d 267 (1995).

21-3301a.

History: L. 1992, ch. 239, § 292; Repealed, L. 1994, ch. 21, § 3; March 24.

21-3302. Conspiracy. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be level 10.

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

History: L. 1969, ch. 180, § 21-3302; L. 1992, ch. 239, § 35; L. 1993, ch. 291, § 278; July 1.

Law Review and Bar Journal References:

"Kansas' New Conspiracy Law," Larry R. O'Neal, 19 K.L.R. 799 (1971).

"A Procuring Agent May Not be Convicted of Narcotics Sale," 22 K.L.R. 272 (1974).

"Mental Capacity-Specific Intent of Conspiracy," 14 W.L.J. 679, 680, 682, 683 (1975).

Effects of Mandatory Sentencing Act (21-4618), 26 K.L.R. 277, 286, 287 (1978).

"The Law of Criminal Conspiracy in Kansas," David S. Jeans, 26 K.L.R. 571 (1978).

"Juvenile Law: Juvenile Involuntarily Absent from a Waiver Hearing Is Not Denied Due Process [State v. Muhammad, 237 Kan. 850, 703 P.2d 835 (1985)]," Daniel J. Gronniger, 25 W.L.J. 598, 604 (1986).

"Co-Conspirator Hearsay in Federal and Kansas Jurisdictions After *Bourjaily v. United States*," Brian Burris and Gary Nelson, 27 W.L.J. 528, 550, 560, 565, 568 (1988).

CASE ANNOTATIONS

1. Mentioned in interlocutory appeal questioning order suppressing evidence. *State v. Boyle*, 207 K. 833, 836, 486 P.2d 849.

2. Conviction hereunder; procuring agent for purchaser not guilty of sale. *State v. Osburn*, 211 K. 248, 249, 505 P.2d 742.

3. Conviction hereunder reversed; defenses of entrapment and procuring agent against charge of selling narcotics not inconsistent. *State v. Fitzgibbon*, 211 K. 553, 554, 507 P.2d 313.

4. Referred to; conviction under 65-2502 upheld; amendment of information after new trial ordered allowed. *State v. Osburn*, 216 K. 638, 533 P.2d 1229.

5. Statute not unconstitutionally invalid; no plurality of subjects; not vague; title sufficient. *State v. Campbell*, 217 K. 756, 768, 539 P.2d 329.

6. Defendant charged hereunder; order suppressing evidence obtained by electronic search warrants upheld. *State v. Farha*, 218 K. 394, 395, 544 P.2d 341.

7. Prosecution for burglary and felony theft; failure to instruct hereunder not error. *State v. Burnett*, 221 K. 40, 45, 558 P.2d 1087.

8. Evidence sufficient to warrant submission to jury; conviction affirmed. *State v. Colbert*, 221 K. 203, 204, 208, 557 P.2d 1235.

9. In prosecution for conspiracy it is not necessary that conspirator be shown to have financial stake in the conspiracy. *State v. Daugherty*, 221 K. 612, 613, 619, 562 P.2d 42.

10. Conviction hereunder reviewed; no reversible error. *State v. Marshall & Brown-Sidorowicz*, 2 K.A.2d 182, 186, 577 P.2d 803.

11. Record examined on appeal from conviction hereunder and of other crimes; no reversible error. *State v. Smallwood*, 223 K. 320, 321, 574 P.2d 1361.

12. Conviction hereunder and for aggravated robbery affirmed as to two defendants; reversed as to another. *State v. Watie, Heard and Heard*, 223 K. 337, 338, 574 P.2d 1368.

13. Conviction of conspiracy to deliver cocaine affirmed. *State v. Glazer*, 223 K. 351, 352, 356, 574 P.2d 942.

14. Conviction hereunder and of other crimes affirmed; instructions proper; counts not duplicious. *State v. Branch and Bussey*, 223 K. 381, 573 P.2d 1041.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

TESTIMONY BEFORE SENATE ELECTIONS & LOCAL GOVERNMENT IN SUPPORT OF SB 453

By **W. Charles Smithson, Legal Counsel**

SB 453, which is a recommendation by the Commission, amends the governmental ethics laws by making it a violation for two or more persons to enter into a conspiracy to violate those laws. This bill is based on K.S.A. 21-3302 which is the conspiracy statute in the criminal section (see attached).

Section 2 (a) defines conspiracy. To be a "conspiracy", there must be an agreement between two or more persons to commit an underlying violation of the governmental ethics laws. In addition to this agreement, there must be an overt act in furtherance of such conspiracy.

Subsection (b) provides a defense to anyone who voluntarily withdraws from the conspiracy and communicates this fact to a co-conspirator before any overt act in furtherance of the conspiracy is committed.

Subsection (c) allows the Commission to issue civil fines for violations of this section. Subsection (d) makes a conspiracy to violate the ethics laws a class B misdemeanor. Subsection (e) allows the Commission to issue opinions, investigate, file complaints and conduct hearings concerning possible violations of this section.

This bill allows the Commission to properly investigate alleged governmental ethics laws violations, and possibly "prosecute" persons who current law does not, but should, cover. As the laws are currently drafted, persons directly committing a violation are covered, but persons who may have been part of the violation are able to avoid "prosecution".

This bill does not create more ethics restrictions or more statutes to memorize. This bill simply allows the Ethics Commission to enforce a violation of the ethics laws that should have been part of the governmental ethics laws in the first place. This is not a new grant of some great power, but it is giving the Commission the tools it needs to fully to its statutory duty.

Elec. & Local Gov.

Date: 2-5-98

Attachment: # 2

94. Cited; whether state may try juvenile prosecuted as adult on charges not previously raised in juvenile proceeding examined. *State v. Randolph*, 19 K.A.2d 730, 731, 876 P.2d 177 (1994).

95. Whether court erred by converting attempt to engage in indecent liberties with a child to severity level 5 examined. *State v. Ward*, 20 K.A.2d 238, 241, 886 P.2d 890 (1994).

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