

Approved: 3-10-98
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 March 4, 1998 in Room 529-S of the Capitol.

All members were present:

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

Conferee appearing before the committee: Tom Powell, Oaklawn Improvement District, Sedgwick County Board of County Commissioners

Others attending: See attached list

Chairman Hardenburger opened the meeting by closing the hearing on SB 432 and opened the hearing on SB 677 concerning public improvement districts; relating to certain expenditures from such districts' funds.

Tom Powell representing the Oaklawn Improvement District which is a governmental entity created by the Sedgwick County Board of County Commissioners testified in favor of this bill. This bill would allow the Oaklawn Improvement District to expend approximately \$60,000 that it has on hand to complete remodeling of an existing building. (Attachment #1)

Chairman Hardenburger closed the hearing on SB 677. Senator Gooch moved the bill be passed favorably, seconded by Senator Praeger.

The motion carried.

Chairman Hardenburger opened the hearing on SB 432 concerning elections; relating to campaign finance; requiring the filing and disclosure of certain information.

Senator Oleen, presented amendments to the bill in balloon form. (Attachment #2) (Attachment #3)

Senator Becker moved to accept amendment, seconded by Senator Steineger.

The motion carried.

Senator Petty presented an amendment to SB 432. (Attachment #4) (Attachment #5)

The Committee discussed the proposed amendments.

Chairman Hardenburger advised the Committee that further discussion on SB 432 would be heard at tomorrow's meeting, March 5, 1998.

Chairman Hardenburger asked for approval of the minutes of February 18, 19 and 23, 1998.

Senator Becker moved the minutes of February 18, 19 and 23, 1998, be approved, Seconded by Senator Steineger. Motion carried.

Meeting was adjourned at 2:30 p.m.

Next meeting will be at 1:30 p.m. March 5, 1998.

ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

MARCH 4,
DATE: FEBRUARY 24, 1998

NAME	REPRESENTING
<i>Rob Mundy</i>	<i>Senatt</i>
<i>Bruce Dimmitt</i>	<i>Kansas For Life</i>
<i>Brad</i> <i>Brad Bryant</i>	<i>Sec. of state</i>
<i>Rodri Hocken</i>	<i>Sen. Steineger</i>
<i>Pat Morris</i>	<i>KATA</i>
<i>Brent McCune</i>	<i>Leadership Olathe</i>
<i>Natalie Haag</i>	<i>Governor's office</i>
<i>Jean Garten</i>	<i>Leadership Olathe</i>
<i>Karen Chastain</i>	<i>Leadership Olathe</i>
<i>Michael J. Colman</i>	<i>Leadership Olathe</i>
<i>PEGGY KENNEDY</i>	<i>LEADERSHIP OLATHE</i>
<i>Jessica Fallin</i>	<i>Leadership Olathe</i>
<i>Ed Louitt</i>	<i>Leadership OLATHE</i>
<i>Harrist Lange</i>	<i>KAB</i>
<i>Brie Janice</i>	<i>BOEING</i>

**TESTIMONY BEFORE THE
SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE**

SENATE BILL NO. 677

**Presented by Tom Powell
Hinkle, Eberhart & Elkouri, L.L.C.
On Behalf of Oaklawn Improvement District**

I am here today to testify as a proponent for Senate Bill No. 677. Senate Bill No. 677 is legislation that has been specifically drafted to allow the Oaklawn Improvement District to expend excess moneys on hand in its Bond and Interest Fund for remodeling of a community building for the Oaklawn area. Senate Bill No. 677, if passed, will allow the Oaklawn Improvement District to expend approximately \$60,000 it has on hand in its Bond and Interest Fund to complete Phase III of a remodeling of an existing building that was recently purchased by the Oaklawn Improvement District into a community center.

The Oaklawn Improvement District is a governmental entity that was created in the 1950's by the Sedgwick County Board of County Commissioners under authority of the Improvement District Act (K.S.A. 19-2753, *et seq.*). The homes located within the Oaklawn Improvement District were originally built in the 1950's to provide housing for Boeing workers. These homes that still make up a majority of Oaklawn housing were built on concrete slabs and contain approximately 700 to 900 square feet. The average appraised value of these homes, as set by the Sedgwick County Appraiser, is approximately \$20,000. The Oaklawn Improvement District is located southeast of the City of Wichita and southwest of the Wichita-Boeing Plant.

The Oaklawn Improvement District Bond and Interest Fund exists for the purpose of paying principal and interest payments on general obligation bonds of the Oaklawn Improvement District. General obligation bonds were issued in 1990 to pay for a sewer reconstruction project. The sewer reconstruction project repaired and reconstructed sewer lines that were built to serve the Oaklawn community in the 1950's. This Bond and Interest Fund contains approximately \$65,000 more than is needed to pay this years bond and interest payments. The Oaklawn Improvement District purchased a building located within the Oaklawn area in 1996. The Oaklawn Improvement District Board has authorized the expenditure of approximately \$68,000 of funds on hand in its general fund account on a Phase I and Phase II remodel of this building. Approximately \$60,000 more is needed to complete the remodel project. Upon completion of the remodel project the building will be used as a community facility for the Oaklawn community. It will, in this capacity, be the headquarters and meeting place for the Oaklawn community senior citizens. Other Oaklawn community groups such as baseball leagues and boys and girls clubs will also use the facility. The facility will, in addition, be used by the Oaklawn Improvement District Board as a meeting place for its Board of Director meetings.

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Attachment: # 1

The excess moneys in the Oaklawn Improvement District Bond and Interest Fund are the result of a double payment of taxes that occurred in the tax year of 1993. In 1992 the Boeing Company was the owner of real property and improvements including personal property that was located within the Oaklawn Improvement District boundaries. A tax was levied against the Boeing property to pay principal and interest due on general obligation bonds for the year 1993. A levy for the 1993 taxes was not initially made against the property owned by Boeing. The reason the levy was not made was because a Sedgwick County District Court, in a lawsuit brought by the Boeing Company against the Oaklawn Improvement District, enjoined the Oaklawn Improvement District and Sedgwick County from levying the taxes against Boeing. The Kansas Supreme Court, in a case entitled The Boeing Company v. Oaklawn Improvement District, 255 Kan. 847 (1994), reversed the Sedgwick County District Court ruling. After the Kansas Supreme Court rendered its decision, Boeing paid its share of the 1993 taxes under protest. The Boeing payment of the 1993 taxes was thereafter held by the Oaklawn Improvement District in its Bond and Interest Fund pending final resolution of Boeing's protest of the 1993 taxes. In December of 1996, the Kansas Supreme Court in a case entitled In Re Tax Appeals of The Boeing Company, 261 Kan. 508 (1997), ruled that the taxes levied against Boeing for the 1993 tax year and for several years in connection with the payment of principal and interest payments on the general obligation bonds issued to finance the sewer project were lawfully levied.

During 1997 the Oaklawn Improvement District, with the assistance of the Sedgwick County Appraiser's Office, notified all of its taxpayers regarding the filing of applications by taxpayers to seek a refund of the double tax under K.S.A. 79-1702. As a result, over 800 Oaklawn Improvement District taxpayers filed for refunds. The Board of Sedgwick County Commissioners unanimously recommended that refunds of taxes be made to the Oaklawn Improvement District taxpayers who filed for refunds. These applications are now pending before the Board of Tax Appeals. The total amount of refunds that the Oaklawn taxpayers are seeking equals \$84,245.90. The leaves approximately \$65,000 in excess taxes resulting from the double payment of taxes in 1993. Under current law Oaklawn can not expend this money for any purpose other than paying principal and interest due on Oaklawn Improvement District Bonds.

In closing, Senate Bill No. 677 is a bill that narrowly addresses a situation that has arisen for the Oaklawn Improvement District. The bill allows Oaklawn to expend funds from its Bond and Interest Fund that it would otherwise, under State statute, not be allowed to expend during 1998. These funds, as stated above, are excess funds that arise from a unique situation. The community center building project that the excess funds will be used to pay for if Senate Bill No. 677 is passed is a very important project to the Oaklawn community. The Oaklawn community is a community of modest means who has, with the help of many of its citizens and the help of the Sedgwick County Board of County Commissioners, County Staff and the Sedgwick County Sheriff's Department, in recent years made great strides towards improvement. The community building project will be another building block towards overall improvement to the Oaklawn community.

cc: Oaklawn Improvement District

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STATE OF KANSAS

LANA OLEEN
SENATOR, 22ND DISTRICT
RILEY AND GEARY COUNTIES



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIR: FEDERAL AND STATE AFFAIRS
CHAIR: LEGISLATIVE EDUCATIONAL PLANNING
VICE-CHAIR: LEGISLATIVE POST AUDIT
COMMITTEE MEMBER: EDUCATION
JUDICIARY
CONTRACT AUDIT
COMMISSIONER: MIDWESTERN HIGHER
EDUCATION COMMISSION

LEGISLATIVE HOTLINE
1-800-432-3924

**TESTIMONY ON SB 432
BEFORE THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE
March 4, 1998
by
Senator Lana Oleen**

Chairman Hardenburger and Members of the Committee:

Thanks for the opportunity to testify on SB 432 today. I support provisions of the bill and offer an amendment.

There have been interpretations by the Commission on Governmental Standards and Conduct regarding expenditures from legislators' campaign accounts. As we are aware, there are additional demands placed on elected officials to participate in civic and community service organizations.

We have reporting standards/procedures and the proposed amendment clearly indicates that the expenses/donations must be made in the name of the candidate or candidate committee. This provision allows candidates to make decisions which are open to scrutiny by the constituents he/she serves.

I request your favorable consideration of the amendment when you work SB 432 before sending the bill to the floor for full Senate consideration.

**Elec. & Local Gov.
Date: 3-4-98
Attachment: # 2**

HOME
3000 STAGG HILL ROAD
MANHATTAN, KANSAS 66502
(913) 537-3300

DISTRICT OFFICE
1619 POYNTZ AVENUE
MANHATTAN, KANSAS 66502
(913) 537-9194—PHONE
(913) 537-9198—FAX

STATE OFFICE
STATE CAPITOL, ROOM 136-N
TOPEKA, KANSAS 66612
(913) 296-7360 PHONE
(913) 296-6718 FAX

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend SB 430, as amended by Senate Committee, on page 6, following line 20, by inserting:

"Sec. 3. K.S.A. 1997 Supp. 25-4157a is hereby amended to read as follows: 25-4157a. (a) No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no such moneys shall be used by such candidate or the candidate committee of such candidate except for:

- (1) Legitimate campaign purposes~~7-for~~i
- (2) expenses of holding political office ~~or-for~~i
- (3) contributions to the party committees of the political party of which such candidate is a member_i
- (4) any membership dues paid to a community service or civic organization in the name of the candidate or candidate committee of such candidate;
- (5) donations to a community service or civic organization which donations are made in the name of the candidate or candidate committee of such candidate; or
- (6) expenses incurred in the purchase of tickets to meals and special events sponsored by any organization the major purpose of which is to promote or facilitate the social, business, commercial or economic well being of the local community.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no

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Attachment: # 3

direct connection with or effect upon the campaign of the candidate or the holding of public office.

(b) No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution. The provisions of this subsection shall not be construed to prohibit a candidate or candidate committee from accepting moneys from another candidate or candidate committee if such moneys constitute a reimbursement for one candidate's proportional share of the cost of any campaign activity participated in by both candidates involved. Such reimbursement shall not exceed an amount equal to the proportional share of the cost directly benefiting and attributable to the personal campaign of the candidate making such reimbursement.

(c) At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds not otherwise not obligated for the payment of expenses incurred in such campaign or the holding of office shall be contributed to a charitable organization, as defined by the laws of the state, contributed to a party committee or returned as a refund in whole or in part to any contributor or contributors from whom received or paid into the general fund of the state.";

by renumbering sections 3 and 4 as sections 4 and 5;

Also on page 6, in line 21, by striking "and 25-4148" and inserting ", 25-4148 and 25-4157a";

In the title, in line 11, by striking "and 25-4148" and inserting ", 25-4148 and 25-4157a"

Senator _____

SENATE BILL No. 432

By Committee on Elections and Local Government

1-14

9 AN ACT concerning elections; relating to campaign finance; requiring
10 the filing and disclosure of certain information; amending K.S.A. 25-
11 4150 and K.S.A. 1997 Supp. 25-4152 and repealing the existing
12 sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Sec. 1. K.S.A. 25-4150 is hereby amended to read as follows: 25-
16 4150. (a) *Except as specifically provided by this section, the words and*
17 *phrases used in this section shall have the same meaning ascribed thereto*
18 *by K.S.A. 25-4143, and amendments thereto.*

19 (b) *When used in this section:*

20 (1) "Person" means a person other than a candidate, candidate com-
21 mittee, party committee or political committee who makes contributions
22 or expenditures in an aggregate amount of ~~[\$2500 or more]~~ within the time
23 period beginning 60 days prior to a primary election and ending on the
24 day of the general election following such primary election.

\$1000 or more for a candidate for a local office or \$2500 or more for a candidate for a state office

25 ~~[(2) "Expenditure" means: (A) Any purchase, payment, distribution,~~
26 ~~loan, advance, deposit or gift of money or any other thing of value made~~
27 ~~for the purpose of directly or indirectly influencing the nomination or~~
28 ~~election of any individual to state or local office or providing information~~
29 ~~which has the effect of directly or indirectly influencing the nomination~~
30 ~~or election of any individual to state or local office;]~~

(2) (A) "Expenditure" means: (i) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made for the purpose of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office or providing information which has the effect of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office;

- (ii) 31 ~~[(B)]~~ any contract to make an expenditure;
- (iii) 32 ~~[(C)]~~ a transfer of funds between any two or more candidate commit-
33 tees, party committees or political committees;
- (iv) 34 ~~[(D)]~~ payment of a candidate's filing fees.
- (B) 35 ~~[(B)]~~ "Expenditure" does not include:
 - (i) 36 ~~[(A)]~~ The value of volunteer services provided without compensation;
 - (ii) 37 ~~[(B)]~~ costs to a volunteer incidental to the rendering of volunteer serv-
38 ices not exceeding a fair market value of \$50 during an allocable election
39 period as provided in K.S.A. 25-4149 and amendments thereto;
 - (iii) 40 ~~[(C)]~~ payment by a candidate or candidate's spouse for personal meals,
41 lodging and travel by personal automobile of the candidate or candidate's
42 spouse while campaigning or payment of such costs by the treasurer of a
43 candidate or candidate committee;

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Attachment: #4

(j) 1 ~~(D)~~ the value of goods donated to events such as testimonial events,
 2 bake sales, garage sales and auctions by any person not exceeding fair
 3 market value of \$50 per event; ~~(F)~~

(v) 4 ~~(E)~~ any communication by an incumbent elected state or local officer
 5 with one or more individuals unless the primary purpose thereof is to
 6 directly or indirectly influence the nomination or election of a candidate
 7 or providing information which has the effect of directly or indirectly
 8 influencing the nomination or election of any individual to state or local
 9 office;

for the purpose of influencing or attempting
 to influence the nomination, election or
 defeat of any individual to state or local
 office

or attempting to influence

, election or defeat

(See attached insert #1)

the name of

10 (c) At least seven days prior to making an expenditure, any person
 11 shall make and file a statement prescribed by this section. Such statement
 12 shall be filed in the office of the secretary of state. If the expenditure is to
 13 support or oppose any candidate for local office, such statement shall be
 14 filed in the office of the county clerk of the county in which such person
 15 is on the ballot. Every statement shall include:

- 16 (1) The name and address of the person;
- 17 (2) the name and address of the chairperson of the organization, if
 18 the person is not an individual;
- 19 (3) the name and address of affiliated or connected organizations; and
- 20 (4) the full name of any organization with which the person is con-
 21 nected or affiliated or, name or description sufficiently describing the
 22 affiliation or, if the person is not connected or affiliated with any one
 23 organization, the trade, profession or primary interest of contributors of
 24 the person.

25 (d) Every person, other than a candidate or a candidate committee,
 26 party committee or political committee, who makes contributions or ex-
 27 penditures, other than by contribution to a candidate or a candidate com-
 28 mittee, party committee or political committee, ~~in an aggregate amount~~
 29 ~~of \$100 or more within a calendar year~~ shall make statements containing
 30 the information required by K.S.A. 25-4148, and amendments thereto,
 31 and file them in the office or offices required so that each such statement
 32 is in such office or offices on the day specified in K.S.A. 25-4148, and
 33 amendments thereto. If such contributions or expenditures are made to
 34 support or oppose a candidate for state office, other than that of an officer
 35 elected on a state-wide basis such statement shall be filed in both the
 36 office of the secretary of state and in the office of the county election
 37 officer of the county in which the candidate is a resident. If such contri-
 38 butions or expenditures are made to support or oppose a candidate for
 39 statewide office such statement shall be filed only in the office of the
 40 secretary of state. If such contributions or expenditures are made to sup-
 41 port or oppose a candidate for local office such statement shall be filed
 42 in the office of the county election officer of the county in which the
 43 candidate is a resident. Reports made under this section need not be

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(vi) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is influencing or attempting to influence the nomination or election of a candidate or providing information which has the effect of directly or indirectly influencing the nomination or election of any individual to state or local office;

(vii) costs associated with any news story, commentary or editorial distributed in the ordinary course of business by a broadcasting station, newspaper, other periodical publication or by internet communication;

(viii) costs associated with nonpartisan activities designed to encourage individuals to register to vote or to vote; or

(ix) costs associated with internal organizational communications of business, labor, professional or other associations.

(3) "Influencing or attempting to influence" means any communication containing express words of advocacy of nomination, election or defeat of a candidate, or any communication containing the name or picture of a candidate, or any communication where the identity of a candidate is apparent by unambiguous reference.

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1 cumulative.

2 (e) Any person required to file a report pursuant to this section shall
3 maintain, in such person's own records, the name and address of any
4 person, including an individual, who has made one or more contributions
5 to such person, together with the amount and date of such contributions,
6 regardless of whether such information is required to be reported.

7 (f) Any change in information previously reported pursuant to this
8 section shall be reported on a supplemental statement of intent and filed
9 not later than 10 days following the change.

10 Sec. 2. K.S.A. 1997 Supp. 25-4152 is hereby amended to read as
11 follows: 25-4152. (a) The commission shall send a notice by registered or
12 certified mail to any person failing to file any report or statement required
13 by K.S.A. 25-4144, 25-4145 ~~or~~, 25-4148 or 25-4150, and amendments
14 thereto, and to the candidate appointing any treasurer failing to file any
15 such report, within the time period prescribed therefor. The notice shall
16 state that the required report or statement has not been filed with either
17 the office of secretary of state or county election officer or both. The
18 person failing to file any report or statement, and the candidate appoint-
19 ing any such person, shall be responsible for the filing of such report or
20 statement. The notice *also* shall ~~also~~ state that such person shall have 15
21 days from the date such notice is deposited in the mail to comply with
22 the registration and reporting requirements before a civil penalty shall be
23 imposed for each day that the required documents remain unfiled. If such
24 person fails to comply within the prescribed period, such person shall pay
25 to the state a civil penalty of \$10 per day for each day that such report or
26 statement remains unfiled, except that no such civil penalty shall exceed
27 \$300. The commission may waive, for good cause, payment of any civil
28 penalty imposed by this section.

29 (b) Civil penalties provided for by this section shall be paid to the
30 state treasurer, who shall deposit the same in the state treasury to the
31 credit of the Kansas commission on governmental standards and conduct
32 fee fund.

33 (c) If a person fails to pay a civil penalty provided for by this section,
34 it shall be the duty of the attorney general or county or district attorney
35 to bring an action to recover such civil penalty in the district court of the
36 county in which such person resides.

37 Sec. 3. K.S.A. 25-4150 and K.S.A. 1997 Supp. 25-4152 are hereby
38 repealed.

39 Sec. 4. This act shall take effect and be in force from and after its
40 publication in the statute book.

(g) If any provision of this section or
the application thereof to any person or
circumstances is held invalid the invalidity
does not affect other provisions or
applications of this section which can be
given effect without the invalid provisions
or application and to this end the provisions
of this section are severable.

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Petty Amendment to SB 430

CONCERN	ACTION
(b)(1) Amount of \$2,500 too high to be applicable to a local election.	(b)(1) Changed the amount applicable in local elections to \$1,000. The high expenditure threshold (\$1,000 and \$2,500) ensures that only someone truly intending to influence an election will be covered by these provisions.
(b)(2)(A) Definition of expenditure including funds, etc., expended to "directly or indirectly" influence the nomination or election of a candidate is too broad and may arguably include issue campaigning.	(b)(2)(A) Definition of expenditure is modified to strike the words "directly or indirectly" and substitute the terms "influencing or attempting to influence" the nomination or election of a candidate. This definition of expenditure is consistent with the definition held constitutional by the United States Supreme Court in Buckley v. Valeo in 1976. The addition of the definition of "influencing or attempting to influence" in paragraph (3) on page 2, provides further clarification and narrowing to the affect of the bill. The definition of influencing or attempting to influence incorporates the language used in the footnote of the Buckley case and the Federal Election Campaign Act. This is the language used by the Assistant Attorney General in her memo explaining what language would be constitutional.
	Additional expenditure exemptions are added in paragraphs (b)(2)(B), sub-paragraphs (vi) (vii) and (viii). These paragraphs currently apply to the provisions of the campaign finance act by rule and regulation. This modification continues to narrow the application of this bill.
Page 3, paragraph (c)(4) has been modified to address concerns about the language that a person would have to list all organizations to which a person had ever been affiliated.	The language "the full name of any organization with which the person is connected or affiliated or, name or description sufficiently describing the affiliation or, if the person is not connected or affiliated with any one organization" have been eliminated. The remaining requirement is for the statement to include the trade, profession or primary interest of contributors of the person.
	The modification to paragraph (d) on page 3 was made by the revisor to correct a technical error.
	A severability clause was added in New Sec. 5.

Marge Petty

Elec. & Local Gov.
Date: 3-4-98
Attachment: # 5

To: Attorney General Carla J. Stovall
From: Julene L. Miller
Subject: Expenditure Reporting Requirements
Date: February 16, 1998

MEMORANDUM

Senator Hardenburger questions whether the amendments in Senate Bills No. 432 and 391 are constitutional. It is my understanding that it is the definition of the term "expenditure" that is in question and that is the focus of my research and this memo.

The United States Supreme Court has held that required reporting or disclosure of independent expenditures is constitutional. *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). However, the Court placed specific limits on what could be required. *Id.* To avoid vagueness and overbreadth problems, the Court defined the term "expenditure" rather narrowly. The Court specifically excluded from the definition those expenditures made to influence issue elections and those expenditures which did not reference a specific candidate. My reading of *Buckley* would allow for the following definition of the term "expenditure":

- "'Expenditure' means: (A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value *that expressly advocates the nomination, election or defeat of a clearly identified candidate* to a state or local office;
- "(B) any contract to make an expenditure;
- "(C) a transfer of funds between any two or more candidate committees, party committees or political committees;
- "(D) payment of a candidate's filing fees."

[Clearly the Legislature could continue to define exceptions to the definition, thus further narrowing its meaning.]

A footnote in *Buckley* concedes that "this construction would restrict the application of [the provision] to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley*, 424 U.S. at 80, n. 108, citing n. 52. *See also F.E.C. v. Central Long Island Tax Reform Immediately Committee*, 616 F.2d 45, 52-53 (2d Cir. 1980). I note, however, that this is a footnote, not a holding of *Buckley* and the 2d Circuit case is not controlling in Kansas.

The Federal Election Campaign Act (FECA) was amended in 1976 to reflect the *Buckley* decision, thus rendering the definition of "independent expenditure" virtually identical to that quoted above. *See* 2 U.S.C.A. § 431(17). The term "clearly identified" is defined to mean that the name or picture of a candidate is used or the identity of a candidate is "apparent by unambiguous reference." 2 U.S.C.A. § 431(18).

Attorney General Carla J. Stovall

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While much narrower than the definition proposed in both bills, the definition quoted above is sure to be upheld if challenged. In addition, it appears to be an improvement over current law because it clearly includes expenditures that advocate the defeat of a candidate as well as those that advocate the election of a candidate. It may further be possible to clarify that the provision applies to more than just "vote for"-type expressions, as long as the language is clear enough to avoid a vagueness challenge and not too encompassing so as to avoid an overbreadth challenge.