

Approved: 3-23-98
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 19, 1998 in Room 529-S of the Capitol.

All members were present except: Senator Praeger

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: Carol Williams, Executive Director, KCGSC
Charlie Smithson, Legal Counsel, KCGSC (Written Testimony)
Wendy McFarland, ACLU

Others attending: See attached list

Chairman Hardenburger resumed hearing on HB 2662 concerning governmental ethics and elections.

Chairman Hardenburger continued explaining the bill to the Committee. (Attachment#1)

The Committee discussed \$2500 being spent on political campaign by an individual or a group.

Carol Williams, Executive Director, KCGSC gave testimony in favor of HB 2662 and also submitted testimony provided by Charlie Smithson, Legal Counsel of the KCGSC. (Attachment#2) (Attachment#3)

The Committee discussed what the definition of an unambiguous candidate and what constitutes a political action committees as defined in the bill.

Wendy McFarland, ACLU appeared before the Committee testifying as to the origin of HB 2662. She stated that HB 2662 was produced by certain legislators, member of special interest groups and state agency, prior to the bill being presented to the House Committee on Governmental Organization and Elections for consideration. She thought that this method undermined the democratic process.

Meeting was adjourned at 2:30 p.m.

Next meeting will be at 1:30 p.m. March 23, 1998.

HOUSE BILL 2662

Section 1:

Changes the name of the Kansas Commission on Governmental Standards and Conduct to the Governmental Ethics Commission.

Section 2:

As a result of Section 1, the Governmental Ethics Commission ~~fee~~ fund is created— and the Governmental Standards and Conduct fee fund is abolished.

Section 3:

Reconciles K.S.A. 25-4119f to allow deposit of filing fee funds to be deposited into the newly-named fee fund.

Section 4: Definitions in section of Campaign Finance Act:

(a) (3) --removal of purpose of influencing due to redundancy

(c) add “clearly identified candidate” definition to mean a candidate who has been identified by the:

(1) Use of the name of the candidate;

(2) use of a photograph or drawing of the candidate; or

(3) unambiguous reference to the candidate whether or not the name, photograph or drawing of such candidate is used.

(d) reconciling Commission name change.

(e) (A) Contribution definition changed in effort to comply with Buckley vs. Valejo decision: Contribution means : Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made for the purpose of

--remove “influencing the nomination or election of any individual”

-- replace with “expressly advocating the nomination, election or defeat of a clearly identified candidate.”

(e) (E) Contribution definition changed in effort to comply with Buckley vs Valejo decision: (Contribution means:) a mailing of materials designed to

--remove “influence the nomination or election”

--replace with “expressly advocate the nomination, election or defeat of a clearly identified”

(g) (1) Expenditure definition changed in (A)

Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made for the purpose of

--remove “influencing the nomination or election of any individual to

--replace with “expressly advocating the nomination, election or defeat of a clearly identified candidate

In the section Expenditures do not include:

(g) (2) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is to

Elec. & Local Gov.

Date: 3-19-98

Attachment: # /

--remove "influence the nomination or election"
--replace with "expressly advocate the nomination, election or defeat of a clearly identified candidate."

(h) Definition of "Expressly advocate the nomination, election or defeat of a clearly identified candidate" added:

← (1) Any communication which uses phrases including, but not limited to:

(2) Any communication of campaign slogans or individual words, which in context have no other reasonable meaning than to support or oppose the nomination, election or defeat of one or more clearly identified candidates, including, but not limited to, poster, bumper stickers and advertisements which state:

(k) Definition of Political Committee changed:

"Political committee" means any combination of two or more individuals or any person other than an individual, a major purpose of which is to

--remove "support or oppose any (candidate)

--replace with "expressly advocate the nomination, election or defeat of a clearly identified (candidate)

Section 5: Requires the name of each party and political committee to reflect the full name of the organization with which the committee is connected or affiliated or sufficiently describe such affiliation. If the political committee is not connected or affiliated with an organization, the name should reflect the trade, profession or primary interest.

Section 6: Removal of a treasurer of a candidate, party or political committee.

Clarifying definition "the major purpose of which is to support or oppose" by replacing with "receiving contributions or making expenditures for" throughout the section/.

(c) Requires the appointment of a chairperson and treasurer of a party or political committee before each may receive contributions or make expenditures.

Section 7: Duties of the treasurer and reporting

(d) remove redundant language

(f) reconcile with Section 5 on name of party or political committee.

Section 8:

Requires reporting of a county candidate to be filed in the county in which the candidate is running rather than their resident county (county attorneys and county treasurers)

Definitions reconciled

Section 9: Reporting requirements:

Definitions reconciled

Section 11:

Regarding Corrupt political advertising:

(b) (1) Corrupt political advertising of a state or local office.

(A) Reconcile definition "change " designed or tends to aid, injure or defeat any candidate for nomination or election" to "expressly advocates the nomination, election or defeat of a clearly identified candidate for"

(B) same as (A)

(C) Added: publishing or causing to be published any brochure, flier or other political fact sheet which expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is followed by the name of the chairperson or treasurer of the political or other organization sponsoring the same or the name of the individual who is responsible therefor.

The provisions of this subsection (C) requiring the disclosure of the name of an individual shall not apply to individuals making expenditures in an aggregate amount of less than \$2,500 within a calendar year.

(3) severability clause.

Section 12:

Extends legitimate campaign purposes to:

(a)(4) any membership dues or donations paid to a community service or civic organization in the name of the candidate or candidate committee of any candidate;

(5) 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; or

(6) expenses incurred in the purchase and mailing of greeting cards to voters and constituents.

(b) No moneys received by any candidate or candidate committee of any candidate as a contribution shall be used to pay interest or any other finance charges upon moneys loaned to the campaign by such candidate or the spouse of such candidate.

All other sections are reconciled on definitions and technical changes

Section



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony Before Senate Elections and Local Government in Support of SubHB2662 by Carol Williams, Executive Director

Substitute for House Bill 2662, which is before you this afternoon, amends provisions of both the Campaign Finance Act and the Governmental Ethics Laws. The Commission supports the majority of the provisions of this bill.

Sections 1, 2, 3, 10, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 relate to changing the name of the Commission to the Governmental Ethics Commission. The Commission supports this name change.

Section 4 amends K.S.A. 1997 Supp. 25-4143 which is the definition section of the Act. Definitions for the terms "clearly identified candidate" and "expressly advocate the nomination, election or defeat of a clearly identified candidate" are added to this section. Although these definitions were not requested by the Commission, the Commission has no opposition to their use throughout the Act. It is staff understanding that the "express advocacy" language in this bill is copied from the Federal Election Commissions regulations on express advocacy.

Section 5 is a recommendation made by the Commission. This section would require political action committees to use names that reflect the full name of the organization with which the committee is connected or affiliated. Under current, law, a committee can adopt any name it wishes for its committee. Many PACs use acronyms. The public has no idea of the vested interest of many of the PACs since a PAC name does not have to reflect the organization, trade, profession, association, or affiliation of the committee. Although a candidate is required to report the PAC's affiliation or association on his or her report, this is frequently omitted or reported incorrectly. To assure adequate disclosure, PAC names should be identifiable. Since the 1994 election, all contributors to state candidates are on the Internet for viewing by the public. Now more than ever, the Commission believes that a PAC

Elec. & Local Gov.

Date: 3-19-98

Attachment: # 3

name should reflect the PACs primary interest.

Sections 6, 7 and 8 changes appear to be clean-up and were made by the House. The Commission has no objection to these changes.

The majority of changes in Section 9 are clean up to reflect the new language of “expressly advocate” as opposed to the phrase “support or oppose” which is current law. The other change in this section would require local reports to be filed in the county in which the candidate is on the ballot rather than in the county in which the local candidate resides. The Commission is in favor of this change.

Section 11 was recommended by the Commission. This section would change the word “person” to “individual” in K.S.A. 25-4156 which requires the reporting of who is responsible for publishing or broadcasting political advertisements. Current law defines a person to be an individual, committee, corporation, partnership, trust, organization, or an association. Therefore, in certain circumstances, this change would result in the name of an individual being reported, rather than just the name of a group or organization. In addition, this section would require all brochures, fliers, or other political fact sheets which support or oppose a candidate for state or local office to have an attribution statement as to who is responsible for the printing of such literature. Individuals would be required to use this attribution statement if \$2500 or more was spent within a calendar year on brochures, fliers, or other political fact sheets which expressly advocate the nomination, election, or defeat of a clearly identified candidate for state or local office. Attribution statements would not be required on any brochures, etc. that dealt with supporting or opposing of any ballot question submitted to the voters. Current law requires this attribution statement to appear only on political advertisements which are published or broadcast. The Commission believes that political brochures that are mailed or distributed during an election that support or oppose a candidate for state or local office should disclose the name of the person paying to have the information printed and distributed.

The Commission does not take a position on Section 12.

Section 13 amends K.S.A. 25-4169a to bring continuity to the section due to the “express advocacy” language.

Section 14 is a recommendation made by the Commission. This section would require a candidate for local office that files an affidavit of exemption from filing

receipts and expenditures reports to file his or her affidavit with the county election officer in the county in which the candidate is on the ballot. Last year the Legislature changed the report filing location. The Commission believes this to be clean-up language to encompass all report and statement filings.

The remaining sections of the bill are clean-up to bring continuity for the new phrase "expressly advocate" and to change the name of the Commission.

The Commission urges your support of Substitute for HB 2662.

KS COMMISSION ON GOVERNMENTAL STANDARDS & CONDUCT

2-4

PAC NAME	AFFILIATION, TRADE, PRIMARY INTEREST OR CONTRIBUTOR
165 Club	KS Oil Marketers Assn
Agricultural Political Action Council of Kansas	Kansas Livestock Assn
Ark Valley PAC	Ark Valley Uniserv School Dist
Ashland KS-PAC	Ashland, Inc.
BUILD-PAC	Kansas City Home Builders
Campaign Kansas	Restore & protect autonomy of local government
CarePac of Kansas	Blue Cross & Blue Shield of KS, Inc
Club 64	International Assn of Fire Fighters Local #64
Club 83	International Assn of Firefighters Loc 83
Committee for Good Government	Brotherhood Bank & Trust Co. Employees KC, KS
Committee for Responsible Government	Kansas Wine & Spirits Wholesalers
Committee on Political Education of Topeka & Vicin	Various Local Unions
Concerned Educators PAC	NEA of Shawnee Mission
District #70 MNPL Pol Acct	Machinists Non-partisan Local Lodge
DRIVE For Kansas	Teamsters Loc Un 696, Intl Brotherhood of
Emporia PAC	Teamsters
Faculty Assn PAC	NEA
	Faculty Assn KC KS Community College

4-4

COMMISSION ON GOVERNMENTAL STANDARDS & CONDUCT

2-5

PAC NAME	AFFILIATION, TRADE, PRIMARY INTEREST OR CONTRIBUTOR
FAN PAC	Family Action Network
H-NEA PAC	KNEA
Haysville Local PAC	Haysville Education Assn
Heartland Apartment PAC	Apartment Assoc of KC
Kansans for Thorough Agricultural Political Educat	Associated Milk Producers
Kansas Agents PAC	Kansas Independent Insurance Agents
Kansas Agri Business Council	Kansas Grain & Feed Dealers Assn
Kansas American Family PAC	American Family Insurance Company
Kansas CRNA-PAC	Kansas Assn of Nurse Anesthetists
Kansas Dealers Election Action Committee	Kansas Automobile Dealers Assn
Kansas Economic Education Political Club	Martin Tractor Company
Kansas Environmental Energy Network (KEEN)	Interested in environmental jobs
Kansas HY-PAC	KS Dental Hygienists Assn
Kansas NOW PAC	KS Natl Organization for Women
Kansas Political Action Committee	KNEA
Kansas Political Action for Candidate Election	KS NASW, National Assn of Social Workers, Inc
Kansas State Council PAC	International Assn of Machinists & Aerospace Workers KNEA
Konza UNIPAC	KNEA

2



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

TESTIMONY BEFORE SENATE ELECTIONS & LOCAL GOVERNMENT IN SUPPORT OF SUBSTITUTE FOR HB 2662 By W. Charles Smithson, Legal Counsel

Due to some of the constitutional questions that often arise in campaign finance bills, Carol has directed me to testify on this bill. Due to circumstances beyond our control, Carol is forced to read my testimony to you. Therefore, I will be extremely brief and to the point.

First, it is important to remember that to enact legislation that impacts first amendment rights, the State must show a "compelling state interest". The compelling state interest in campaign finance laws was first stated in the Buckley decision as: "corruption or the appearance of corruption".

With that in mind, courts have always drawn a distinction between "candidate elections" and "issue elections". Issue elections such as bond issues and tax referendums are not subject to the same regulation as candidate elections. The courts reason that issue elections are not subject to the compelling state interest as outlined in Buckley. However, candidate elections may be regulated under this compelling state interest.

What is important to remember about HB 2662, it applies to **candidate elections, and only candidate elections**. Now, K.S.A. 25-4180 does cover constitutional amendments, however, do not let this become a roadblock. It is insignificant in relation to the overall picture. I am not even sure how the court has ruled on constitutional amendment issues as far as this discussion is concerned. I bring this to your attention simply to be thorough.

In addition, courts have stated, repeatedly, that **express advocacy in candidate elections** can be regulated. Express advocacy being what I, and other attorneys who practice in this area, call the "magic words" which include: elect, vote for, defeat, support, oppose. You can find these terms on page 6 lines 8 through 20.

Now, I do have some concerns on lines 21 through 25. After expressing, somewhat to her dismay, these concerns to Carol, she called the Federal Election Commission for guidance. This language is from an FEC regulation (11 CAR 100.22). This regulation, I believe, was from a footnote in the Buckley decision, and was upheld in the Furgatch decision from the 9th

Elec. & Local Gov.

Date: 3-19-98

Attachment: # 3

circuit federal court of appeals.

Now, the FEC did tell me, and I then subsequently did my own research to confirm what I was told, that the 1st and 4th federal courts of appeal ruled these lines, or at least similar language, as unconstitutional. Therefore, out of the 10 circuits, two have ruled that lines 21 through 25 are unconstitutional and one circuit has ruled that this language is constitutional.

More important, the Supreme Court has denied certiorari (declined to hear the case) in all three instances. Thus, the Supreme Court has not ruled on these particular lines. The FEC still operates under this language. The 10th circuit which Kansas is a part of, has not ruled on this matter. The court in the Colorado Republican decision of 1996 would not hear this particular issue. Thus, in my humble opinion, this language is very defensible as constitutional.

The other section I want you to be aware of is on page 15 lines 13 through 21. Opponents of this section for the past three years have, again in my humble opinion, used the McIntyre decision and the Talley decision too broadly. Admittedly, both of those cases dealt with anonymous leaflets and brochures. However, neither case dealt with leaflets in a **candidate election**. Both dealt with handbills affecting **issue elections**.

Do not, I repeat, do not let anyone use McIntyre and Talley as chainsaws to cut a path through the constitutional jungle. That is not how court decisions are used by attorneys who are worth their salt. Court cases, especially Supreme Court cases, are very fact sensitive. Differences in fact are crucial. These two decisions simply did not apply to **candidate elections**.

In closing, I find it somewhat amusing when someone says that an issue is clearly unconstitutional or clearly constitutional. Only the Supreme Court can make such decisions. Everyone else can only say that an issue is arguably constitutional or unconstitutional based on past decisions. In my opinion, as an attorney licensed to practice law in two states and specializing in campaign finance laws, past court decisions allow me to argue that the language in HB 2662 is constitutional.

I urge your passage of HB 2662 as it is drafted in its current form.