

Approved: 3-27-98
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 24, 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: Harriet Lange, Kansas Association of Broadcasters
Charlie Smithson, Legal Counsel, Kansas Commission on
Governmental Standards and Conduct
Don Moler, Kansas League of Municipalities

Others attending: See attached list

Chairman Hardenburger closed the hearing on HB 2662 concerning governmental ethics and elections, which was heard previously on March 19. She then opened for discussion and possible action on HB2662.

Harriet Lange, Kansas Association of Broadcasters explained a suggested amendment to the Committee to comply with the FCC. (Attachment #1)

Chairman Hardenburger expressed concern to the Committee on the constitutionality in the definition of "express advocacy". (Attachment #2)

The Committee discussed the constitutionality of this definition.

Chairman Hardenburger requested Charlie Smithson, KCGSC, to present testimony that contained information on the constitutionality of "express advocacy" he had received from the FEC. (Attachment #3)

Senator Lawrence moved that Lines 21 through 29 be removed from HB 2662 seconded by Senator Huelskamp. This would remove language that the Committee had concerns as whether it was constitutional.

The Committee discussed the effects of removing the language in this bill and whether the bill should be passed unamended..

Motion failed.

Senator Becker moved that HB 2662 be passed out favorably, seconded by Senator Gooch. Motion carried.

Chairman Hardenburger opened discussion on HB 2759 concerning municipalities; relating to the powers and duties thereof.

Chairman Hardenburger recommended to the Committee to amend out the amendment that was placed on the House floor and then pass the bill out favorably for Representative Bill Mason.

Don Moler, Kansas League of Municipalities presented to the Committee a balloon with several small technical amendments. (Attachment #4)

Senator Praeger moved that the floor amendment by the House Committee of the Whole be deleted and the balloon proposed by the League of Municipalities be amended into HB 2759, seconded by Senator Becker. Motion carried.

Meeting was adjourned at 2:30 p.m.

1 tisement" or the abbreviation "adv." in a separate line together with the
2 name of the chairperson or treasurer of the political or other organization
3 ~~inserting~~ sponsoring the same or the name of the ~~person~~ individual who
4 is responsible therefor; ~~or~~

5 (B) broadcasting or causing to be broadcast by any radio or television
6 station any paid matter which is ~~designed or tends to aid, injure or defeat~~
7 ~~any candidate for nomination or election to expressly advocates the nomi-~~
8 ~~ination, election or defeat of a clearly identified candidate for a state or~~
9 ~~local office, unless such matter is followed by a statement~~~~that the pre-~~
10 ~~ceding was an advertisement together with~~ the name of the chairperson
11 or treasurer of the political or other organization sponsoring the same or
12 the name of the ~~person~~ individual who is responsible therefor; or

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

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

22 (2) Corrupt political advertising of a state or local office is a class C
23 misdemeanor.

24 (3) If any provision of this section or application thereof to any person
25 or circumstance is held invalid, such invalidity does not affect other pro-
26 visions or applications of this section which can be given effect without
27 the invalid application or provision, and to this end the provisions of this
28 section are declared to be severable.

29 Sec. 12. K.S.A. 1997 Supp. 25-4157a is hereby amended to read as
30 follows: 25-4157a. (a) No moneys received by any candidate or candi-
31 date committee of any candidate as a contribution under this act shall be
32 used or be made available for the personal use of the candidate and no
33 such moneys shall be used by such candidate or the candidate committee
34 of such candidate except for:

- 35 (1) Legitimate campaign purposes; ~~for~~;
- 36 (2) expenses of holding political office ~~or for~~;
- 37 (3) contributions to the party committees of the political party of
38 which such candidate is a member;
- 39 (4) any membership dues or donations paid to a community service
40 or civic organization in the name of the candidate or candidate committee
41 of any candidate;
- 42 (5) expenses incurred in the purchase of tickets to meals and special
43 events sponsored by any organization the major purpose of which is to

which states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and

- 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; or.
- 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 ~~influence the nomination or election of a~~ expressly advocate the nomi-
 7 nation, election or defeat of a clearly identified candidate.
- 8 (h) Expressly advocate the nomination, election or defeat of a clearly
 9 identified candidate means:
- 10 (1) Any communication which uses phrases including, but not limited
 11 to:
- 12 (A) "Vote for the secretary of state";
 13 (B) "re-elect your senator";
 14 (C) "support the democratic nominee";
 15 (D) "cast your ballot for the republican challenger for governor";
 16 (E) "Smith for senate";
 17 (F) "Bob Jones in '98";
 18 (G) "vote against Old Hickory";
 19 (H) "defeat" accompanied by a picture of one or more candidates; or
 20 (I) "reject the incumbents";
- 21 (2) any communication of campaign slogans or individual words,
 22 which in context have no other reasonable meaning than to support or
 23 oppose the nomination, election or defeat of one or more clearly identified
 24 candidates, including, but not limited to, posters, bumper stickers and
 25 advertisements which state:
- 26 (A) "Smith's the one";
 27 (B) "Jones '98";
 28 (C) "Smith/Jones"; or
 29 (D) "Jones".
- 30 (g) (i) "Party committee" means:
- 31 (1) The state committee of a political party regulated by article 3 of
 32 chapter 25 of the Kansas Statutes Annotated; or;
- 33 (2) the county central committee or the state committee of a political
 34 party regulated under article 38 of chapter 25 of the Kansas Statutes
 35 Annotated or;
- 36 (3) the bona fide national organization or committee of those political
 37 parties regulated by the Kansas Statutes Annotated; or;
- 38 (4) not more than one political committee established by the state
 39 committee of any such political party and designated as a recognized
 40 political committee for the senate or; or
- 41 (5) not more than one political committee established by the state
 42 committee of any such political party and designated as a recognized
 43 political committee for the house of representatives.

Elec. & Local Gov.

Date: 3-24-98

Attachment: # 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: 3-24-98

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.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1998

HOUSE BILL No. 2759

By Representative Mason

1-30

12 AN ACT concerning city [certain] elections; relating to qualified electors.
13 [AN ACT concerning municipalities; relating to the powers and
14 duties thereof; amending K.S.A. 12-3904 and repealing the ex-
15 isting section.]

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. In any election for city officers as defined by K.S.A. 25-
19 2105; and amendments thereto; in any city which has adopted subdivision
20 regulations enforcing building permits pursuant to K.S.A. 12-751; and
21 amendments thereto; a "qualified elector" shall include the qualified elec-
22 tors of such city and all registered voters residing within the unincorpor-
23 ated area lying within three miles of the corporate limits of such city.

24 [New] Section 1. (a) When used in this section:

25 (1) "City" means any city which has adopted an ordinance
26 which provides for the enforcement of a building code outside the
27 corporate limits of such city as authorized by K.S.A. 12-751, and
28 amendments thereto.

29 (2) "Ordinance" means an ordinance adopted by a city which
30 provides for the enforcement of a building code outside the cor-
31 porate limits of a city as authorized by K.S.A. 12-751, and amend-
32 ments thereto.

33 (3) "Qualified elector" means any registered voter required to
34 comply with an ordinance, who resides within the unincorporated
35 area lying within three miles of the corporate limits of a city.

36 (b) Within 30 days of the adoption of an ordinance, the city
37 clerk shall certify to the county election officer a legal description
38 of the area outside the corporate limits of the city governed by the
39 provisions of such ordinance and ~~names and addresses of any qual-
ified electors residing therein.~~

40 (c) Within 90 days after the effective date of this act or within
41 90 days after a city has adopted an ordinance, a petition signed by
42 at least 20% of the qualified electors protesting the enforcement
43

Proposed By League of Kansas Municipalities
March 23, 1998

Elec. & Local Gov.
Date: 3-24-98
Attachment: # 4

and map

the street

all real estate located