

Approved: 3-3-99
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:00 p.m. on February 24, 1999 in Room 529-S of the Capitol.

All members were present except: Senator Vidricksen

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

Conferees appearing before the committee: Senator Laurie Bleeker

Others attending: See attached list

Chairman Hardenburger opened discussion on **SB 230 concerning election procedures**, which includes the dual nominations, and setting up the date of the caucus, the counting of the canvas after the election, and then setting up the time frame for the recount if there is one requested. It also refers to recall petitions.

Chairman Hardenburger presented to the Committee a letter from Melissa Wangemann, Legal Counsel for the Secretary of State, regarding recall petitions. (Attachment #1)

Senator Becker moved to approve the amendments on the bill, seconded by Senator Steineger. Motion carried.

Senator Becker moved that SB 230 be passed as amended, seconded by Senator Huelskamp. Motion carried.

Chairman Hardenburger opened discussion on **SB 319 concerning counties, relating to the enforcement of county resolutions**. She informed the Committee that this bill would allow the enforcement of any county resolutions by the same mechanism that county's who have a population in excess of 150,000.

Ken Wilke, Legislative Revisor, explained to the Committee the amendments to be made on the bill. (Attachment #2) (Attachment #3)

The Committee discussed if the population had to be in excess of 150,000, however, the bill should be amended to cover all counties.

Senator Lawrence moved to approve the amendments on the bill, seconded by Senator Becker. Motion carried.

Senator Lawrence moved that SB 319 be moved out favorably as amended, seconded by Senator Becker. Motion carried.

Chairman Hardenburger opened hearing on **SB 283 concerning campaign finance, relating to public funds.**

Senator Bleeker presented testimony in favor of **SB 283**, a bill that would address all counties. (Attachment #4)

The Committee discussed at length the limitations and boundaries of a school that is being used for campaign purposes.

CONTINUATION SHEET

Senator Lawrence moved to pass out SB 283 as amended, seconded by Senator Steineger. Motion carried.

Meeting was adjourned at 2:10 p.m. Next meeting scheduled for March 3, 1999.

Ron Thornburgh
Secretary of State



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STATE OF KANSAS

MEMO

TO: SENATOR JANICE HARDENBURGER, CHAIRMAN
SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

FROM: MELISSA WANGEMANN, COUNSEL

RE: SB 230

In response to Kenneth Clark's concerns raised in his testimony, I submit the following information.

1. Mr. Clark's first concern is about the affidavit that the circulators attach to the recall petition asserting the truthfulness of the grounds.

Current law requires the petition circulator to attach an affidavit attesting to the truth of the recall grounds to the recall petition, subjecting the person to the penalty of perjury. Once the petition is filed with the county clerk it cannot be rescinded or amended. Mr. Clark's proposed amendment is therefore unnecessary.

K.S.A. 25-4325 states ". . .the person signing the affidavit, being duly sworn, on oath states that the statements of grounds for recall contained in the recall petition are true."

In the 1996 case of Dusin v. Riggs the Kansas Court of Appeals upheld the requirement that a recall petition be signed under oath asserting that the grounds are true. 22 Kan. App. 2d 919. The Court stated:

"Under K.S.A. 25-4325, an affidavit supporting a petition to recall elected officials must place the affiant under possible penalty of perjury with regard to the absolute truth of the allegations in the recall petition."

According to his testimony submitted last week, Mr. Clark's amendment is directed to redress one court decision, Eveleigh v. Conness, 261 Kan. 970 (1997). In this case the wrong notarization was used on the affidavit. Instead of a verification, the petitioners used an acknowledgment. When a lawsuit was filed, the Trego County district court was required by precedent to review the case using a liberal standard favoring the constitutional right of recall.

Testimony from the petitioners demonstrated that they believed that they had signed under oath and that they had subjected themselves to the penalty of perjury when they signed the affidavit. The Court determined that the petition satisfied the requirements of K.S.A. 25-4325. The Kansas Supreme Court upheld the trial court's decision.

No matter what language the legislature chooses to add to the statute, it cannot dictate the standard of review used by the courts. Because the right of recall is considered a fundamental right, statutes restricting that right will be liberally construed by the courts to favor the right to exercise recall. This amendment will not change the precedent calling for liberal construction of recall statutes.

2. Mr. Clark also raises concerns about the county attorney's review of the recall petition. It is important to note that this is not a new provision in SB 230. Current law requires the county attorney to review the petition. SB 230 only clarifies that the review takes place before the petition is circulated, and adds a five-day limit on the review.

Prior to 1987, the county election officer determined the sufficiency of the recall petition. In 1987 the legislature, on advice of the Secretary of State, passed an amendment to assign that duty to the county attorney.

Legislative notes reflect that the reason for the amendment was to cut the number of lawsuits filed against the county clerk based on her determination of the petition's sufficiency.

The courts have opined that the county attorney's review of the petition saves the public and elected officials from fatally defective petitions, Cline v. Tittel, 20 Kan. App. 2d 695 (1995) and prevents undue harassment of elected officials, Baker v. Gibson, 22 Kan. App. 2d 36 (1995).

Court cases note that the requirement of grounds for recall demonstrates that the legislature intended the reasons for recall to meet some level of seriousness. If the grounds are not reviewed, or given merely a ministerial review, the grounds would appear to lose their significance. If no one is checking the grounds, why have any grounds? On the other hand, if the legislature deems the review to be an important deterrent to frivolous recall efforts the review is better left to the county attorney, who is better able to check the petition against the statutory requirements.

I hope this information is helpful. Please feel free to contact our office if you have any questions. Thank you for your consideration of SB 230.

SENATE BILL No. 319

By Committee on Federal and State Affairs

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9 AN ACT concerning counties; relating to the enforcement of county res-
10 olutions; amending K.S.A. 1998 Supp. 19-101d and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1998 Supp. 19-101d is hereby amended to read as
15 follows: 19-101d. (a) (1) The board of county commissioners of any county
16 shall have the power to enforce all resolutions passed pursuant to county
17 home rule powers, as designated by K.S.A. ~~19-101e~~ 19-101a, and amend-
18 ments thereto. Such resolutions may be enforced by enjoining violations
19 thereof or by prescribing penalties for violations of such resolutions, ei-
20 ther by fine, or by confinement in the county jail, or by both such fine
21 and confinement. Unless otherwise provided by the resolution that de-
22 fines and makes punishable the violation of such resolution, the penalty
23 imposed shall be in accordance with the penalties established by law for
24 conviction of a class C misdemeanor. In no event shall the penalty im-
25 posed for the violation of a resolution exceed the penalties established by
26 law for conviction of a class B misdemeanor.

27 (2) Prosecution for any such violation shall be commenced in the
28 district court in the name of the county and, except as provided in sub-
29 section (b), shall be conducted in the manner provided by law for the
30 prosecution of misdemeanor violations of state laws. Writs and process
31 necessary for the prosecution of such violations shall be in the form pre-
32 scribed by the judge or judges of the courts vested with jurisdiction of
33 such violations by this act, and shall be substantially in the form of writs
34 and process issued for the prosecution of misdemeanor violations of state
35 laws. Each county shall provide all necessary supplies, forms and records
36 at its own expense.

37 (b) (1) In addition to all other procedures authorized for the enforce-
38 ment of county codes and resolutions, ~~in any county with a population in~~
39 ~~excess of 150,000~~, the prosecution for violation of codes and resolutions
40 adopted by the board of county commissioners may be commenced in
41 the district court in the name of the county and may be conducted, except
42 as otherwise provided in this section, in the manner provided for and in
43 accordance with the provisions of the code for the enforcement of county

1 codes and resolutions.

2 (2) For the purposes of aiding in the enforcement of county codes
3 and resolutions, the board of county commissioners may employ or ap-
4 point code enforcement officers for the county who shall have power to
5 sign, issue and execute notices to appear and uniform citations or uniform
6 complaints and notices to appear, as provided in the appendix of forms
7 of the code contained in this act to enforce violations of county codes and
8 resolutions, but shall have no power to issue warrants or make arrests.
9 All warrants shall be issued and arrests made by law enforcement officers
10 pursuant to and in the manner provided in chapter 21 of the Kansas
11 Statutes Annotated.

12 (3) The board of county commissioners may employ or appoint at-
13 torneys for the purpose of prosecuting actions for the enforcement of
14 county codes and resolutions, and such attorneys shall have the duties,
15 powers and authorities provided by the board as necessary to prosecute
16 actions under the code.

17 (4) All costs for the enforcement and prosecution of violations of
18 county codes and resolutions, except for compensation and expenses of
19 the district court judge, shall be paid from the revenues of the county
20 and, the board of county commissioners may establish a special law en-
21 forcement fund for the purpose of paying for the costs of code enforce-
22 ment within the county. In addition, the board of county commissioners
23 is hereby authorized to levy a tax of not to exceed 1/2 mill upon all taxable
24 tangible property within such county to pay the costs of code
25 enforcement.

26 (c) Notwithstanding the provisions of subsection (b), any action com-
27 menced in the district court for the enforcement of county codes and
28 resolutions, wherein a person may be subject to detention or arrest or
29 wherein an accused person, if found guilty, would or might be deprived
30 of such person's liberty, shall be conducted in the manner provided by
31 law for the prosecution of misdemeanor violations of state laws under the
32 Kansas code of criminal procedure and not under the code for the en-
33 forcement of county codes and resolutions.

34 ~~[Sec. 2. K.S.A. 1998 Supp. 19-101d is hereby repealed.~~

35 ~~Sec. 3. This act shall take effect and be in force from and after its~~
36 ~~publication in the statute book.]~~

Section 2. K.S.A. 1998 Supp. 19-4707 is hereby amended to read as follows: 19-4707. (a) Except as provided in subsection (b), no person shall be assessed costs for enforcement and prosecution of violations of county codes and resolutions pursuant to this code, except for witness fees and mileage as set forth in K.S.A. 19-4726 and amendments thereto.

(b) The court shall assess as a cost in each case filed for violations of county codes and resolutions; ~~a \$1 assessment~~ *an amount as determined by the board of county commissioners*. The judge or clerk of the court shall remit at least monthly to the state treasurer all such assessments received. The state treasurer shall deposit the entire amount of the remittance in the state treasury and credit 50% to the protection from abuse fund established pursuant to K.S.A. 74-7325 and amendments thereto and 50% to the crime victims assistance fund established pursuant to K.S.A. 74-7334 and amendments thereto.

Section 3. K.S.A. 20-310a is hereby amended to read as follows: 20-310a. (a) Upon the application of the administrative judge of a judicial district to the departmental justice of that district, for good cause shown, or in the absence, sickness or disability of a district judge or district magistrate judge in any judicial district, a judge pro tem may be appointed whenever the departmental justice for such judicial district has not assigned a district judge from another judicial district, as provided in K.S.A. 20-319, and amendments thereto.

(b) Any judge pro tem appointed pursuant to this section shall be a regularly admitted member of the bar of this state. The appointment of any such judge pro tem shall be made by the administrative judge or, in the absence of the administrative judge, by the departmental justice for the judicial district.

(c) Any judge pro tem appointed pursuant to this section shall have the full power and authority of a district judge with respect to any actions or proceedings before such judge pro tem, except that any judge pro tem appointed pursuant to subsection (d) or (e) shall have only such power and authority as provided therein. A judge pro tem shall receive such compensation as is prescribed by the district court, subject to the budget limitations of such district court.

(d) Subject to the budget limitations of the district court, the administrative judge of any judicial district may appoint one or more judges pro tem for the limited purpose of hearing the original trials of actions filed pursuant to the small claims procedures act or other action within the jurisdiction of a district magistrate judge as provided in K.S.A. 20-302b, and amendments thereto. Any such judge pro tem shall have only such judicial power and authority as is necessary to hear such actions. Any party aggrieved by any order of a judge pro tem under this subsection may appeal such order and such appeal shall be heard by a district judge de novo. If the appeal is a small claims action, the appeal shall be under K.S.A. 61-2709, and amendments thereto. If the appeal is an action within

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the jurisdiction of a district magistrate judge, the appeal shall be under K.S.A. 20-302b, and amendments thereto.

(e) Subject to the budget limitations of the district court, the administrative judge of any judicial district in which the board of county commissioners is authorized to use the code for the enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 19-101d, and amendments thereto, may appoint one or more judges pro tem for the limited purpose of hearing such cases. Any such judge pro tem shall have only such power and authority as is necessary to hear such actions, and shall have the power to compel appearances before the court, to hold persons in contempt for failure to appear, *to order abatements of nuisances resulting from a person's failure to comply with county codes or resolutions and to order such costs of abatement to be assessed against the parcel of property on which the nuisance was located*, and to issue bench warrants for appearances. Such judge pro tem shall receive the salary and other compensation set by resolution of the board of county commissioners which shall be paid from the revenues of the county general fund or other fund established for the purpose of financing code enforcement.

(f) The administrative judge of each judicial district shall report to the judicial administrator of the courts: (1) The dates on which any judge pro tem served in such district, (2) the compensation paid to any judge pro tem, and (3) such other information as the judicial administrator may request with regard to the appointment of judges pro tem. The reports shall be submitted annually on or before January 15 on forms provided by the judicial administrator.

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K.S.A. 20-310a and K.S.A. 1998 Supp. 19-101d and 19-4707

34 4 Sec. [2] K.S.A. [1998 Supp. 19-101d] is hereby repealed.
35 Sec. [3] This act shall take effect and be in force from and after its
36 publication in the statute book.

purposes. In no case shall the amount of no-fund warrants issued under this section exceed the amount deemed necessary for such purposes. Warrants issued under this section shall be issued, registered, redeemed and shall bear interest in the manner prescribed by K.S.A. 79-2940, and amendments thereto.

Prior to the issuance of any no-fund warrants under the authority of this section, the board of county commissioners shall cause to be published once in a newspaper of general circulation within the county a notice of the intention of such board to issue such no-fund warrants. If within 60 days after the publication of such notice, a petition requesting an election on the question of the issuance of the no-fund warrants signed by not less than 5% of the qualified electors residing within the county is filed with the county election officer, the board of county commissioners shall be required to submit the question of the issuance of such no-fund warrants at an election held under the provisions of the general bond law.

(b) Whenever no-fund warrants are issued under the authority of this section, the board of county commissioners each year shall make a tax levy, in addition to the tax levy authorized under K.S.A. 19-4606, and amendments thereto, sufficient to pay not less than 25% of the total amount of the warrants issued under this section and the interest thereon until all of the warrants and the interest thereon has been paid. If there is money available from the operation of the hospital over and above the amount needed for the adopted budget, such money shall be used to pay for such warrants and the interest thereon, and the tax levy shall be only the difference, if any, between the money available to pay for such warrants and the interest thereon each year and the amount of the warrants and interest thereon to be paid each year.

(c) The provisions of this section shall be deemed supplemental to K.S.A. 19-4601 *et seq.*, and amendments thereto.

History: L. 1988, ch. 370, § 1; July 1.

**Article 47.—CODE FOR THE
ENFORCEMENT OF COUNTY CODES
AND RESOLUTIONS**

19-4701. Citation of act. The provisions of K.S.A. 19-4701 through 19-4738 may be cited

as the code for the enforcement of county codes and resolutions.

History: L. 1988, ch. 102, § 5; April 21.

Research and Practice Aids:

Counties = 21½.

C.J.S. Counties § 49.

19-4702. Scope. This code governs the practice and procedure for the law enforcement and prosecution of county codes and resolutions in the district court as authorized under the provisions of K.S.A. 19-101d and amendments thereto.

History: L. 1988, ch. 102, § 6; April 21.

19-4703. Intent; construction; procedure not provided for. This code is intended to provide for the just determination of violations of county codes and resolutions. Its provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. If no procedure is provided by this code, the court shall proceed in any lawful manner consistent with any applicable law and not inconsistent with this code.

History: L. 1988, ch. 102, § 7; April 21.

19-4704. District court; jurisdiction. The district court shall have jurisdiction to hear and determine cases under the procedures prescribed in this act for violation of all county codes and resolutions, but this code shall not apply to nor be utilized for the prosecution of any action which is defined as a traffic offense.

History: L. 1988, ch. 102, § 8; April 21.

19-4705. Presiding judge; compensation. Any action brought in accordance with the code shall be presided over by a district court judge designated by the administrative judge of the district court presiding in the county or a judge pro tem who shall be appointed by and serve at the pleasure of the administrative judge of the district court presiding in the county, in accordance with the provisions of subsection (e) of K.S.A. 20-310a and amendments thereto. If a judge pro tem presides over such action, such judge pro tem shall receive a salary and other compensation set by resolution of the board of county commissioners and paid from the revenues of the county general fund or other fund established for the purpose of financing the costs of enforcement and prosecution of violations of county codes and resolutions pursuant to the code. If a district court judge presides over such

action, such district court judge shall not be entitled to any additional compensation or expense payments.

History: L. 1988, ch. 102, § 9; April 21.

19-4706. Prosecution of actions. The county counselor, such counselor's designee or such other attorney as the board of county commissioners shall specifically designate shall prosecute all actions brought pursuant to the code.

History: L. 1988, ch. 102, § 10; April 21.

19-4707. Cost of enforcement not to be assessed; exceptions. (a) Except as provided in subsection (b), no person shall be assessed costs for enforcement and prosecution of violations of county codes and resolutions pursuant to this code, except for witness fees and mileage as set forth in K.S.A. 19-4726.

(b) During the period commencing July 1, 1994, and ending June 30, 1996, the court shall assess as a cost in each case filed for violations of county codes and resolutions, a \$1 assessment. The judge or clerk of the court shall remit at least monthly to the state treasurer all such assessments received. The state treasurer shall deposit the entire amount of the remittance in the state treasury and credit 50% to the protection from abuse fund established pursuant to K.S.A. 74-7325 and amendments thereto and 50% to the crime victims assistance fund established pursuant to K.S.A. 74-7334 and amendments thereto.

History: L. 1988, ch. 102, § 11; L. 1994, ch. 335, § 3; July 1.

19-4708. Definitions. As used in this act:

(a) "Accused person" means a person, corporation or other legal entity accused by a complaint of the violation of a county code or resolution.

(b) "Arraignment" means the formal act of calling the person accused of violating a county code or resolution before the district court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose fines and penalties.

(c) "Arrest" means the taking of a person into custody. The giving of a notice to appear is not an arrest.

(d) "Code enforcement officer" means any person who is appointed to administer or enforce county codes or resolutions adopted by the board of county commissioners and who are designated

by resolution of such board as responsible code enforcement officials.

(e) "Complaint" means a sworn written statement, or a written statement by a law enforcement officer or code enforcement officer, of the essential facts constituting a violation of a county code or resolution.

(f) "County counselor" is the county counselor as appointed by the board of county commissioners or the county counselor's designee, or for the purposes of this act, such attorney as the board of county commissioners shall specifically designate.

(g) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or resolutions of any county thereof, except such term shall not include code enforcement officers.

(h) "Notice to appear" is a written notice to a person accused by a complaint of having violated a county code or resolution to appear at a stated time and place to answer to the charge of the complaint.

(i) "Subpoena" is a process issued by the court to cause a witness to appear and give testimony at a time and place therein specified.

(j) "Traffic offense" is a violation of a county code or resolution that proscribes or requires the same behavior as that proscribed or required by the uniform act regulating traffic on highways, except such term shall not include any violation concerning parking in a prohibited area, abandonment of a motor vehicle or operation of a motor vehicle on property owned by the county.

(k) "Warrant" is a written order made by a judge directed to any law enforcement officer, commanding the officer to arrest the person named or described in it.

History: L. 1988, ch. 102, § 12; April 21.

19-4709. Commencement of prosecution. The prosecution for the violation of county codes and resolutions pursuant to this code shall be commenced by the filing of a complaint with the district court.

History: L. 1988, ch. 102, § 13; April 21.

19-4710. Complaint; sufficiency. A complaint shall be in writing and shall be signed by the complainant. More than one violation may be charged in the same complaint. A complaint shall be deemed sufficient if in substantially the form

of the complaint set forth in the appendix of forms contained in this act.

History: L. 1988, ch. 102, § 14; April 21.

19-4711. Service of complaint and notice to appear. A copy of the complaint shall be served, together with a notice to appear, by a law enforcement officer or code enforcement officer upon the accused person, and forthwith, the complaint shall be filed with the district court, except that a complaint may be filed initially with the district court pursuant to this code, and if so filed, a copy of the complaint shall forthwith be delivered to the county counselor. The county counselor shall cause to be issued a notice to appear.

If a county counselor fails to cause a notice to appear on a complaint initially filed with the district court pursuant to this code, the judge, upon affidavits filed with such judge alleging the violation of a county code or resolution, may order the county counselor to institute proceedings against any person.

History: L. 1988, ch. 102, § 15; April 21.

19-4712. Notice to appear; contents; sufficiency. A notice to appear shall describe the offense charged, shall summon the accused person to appear, shall contain a space in which the accused person may agree, in writing, to appear at a time not less than five days after such notice to appear is given, unless the accused person shall demand an earlier hearing. A notice to appear may be signed by a judge, the clerk of the district court, the county counselor, or any law enforcement officer or code enforcement officer.

A notice to appear shall be deemed sufficient if in substantially the form of the notice to appear set out in the appendix of forms contained in this act.

History: L. 1988, ch. 102, § 16; April 21.

19-4713. Uniform complaint and notice to appear; sufficiency. In all cases a complaint and notice to appear may be made in the form of the uniform complaint and notice to appear which shall be deemed sufficient if in substantially the form set out in the appendix of forms contained in this act.

History: L. 1988, ch. 102, § 17; April 21.

19-4714. Notice to appear; when used. A notice to appear shall be used in all cases involving the violation of a county code or resolution.

History: L. 1988, ch. 102, § 18; April 21.

19-4715. Same; service; return. The notice to appear shall be served upon the accused person by delivering a copy to such person personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of such person. A notice to appear may be served by any law enforcement officer or code enforcement officer within the state and, if mailed, shall be mailed by a law enforcement officer or code enforcement officer or the clerk of the district court. Upon service by mail, the law enforcement officer or code enforcement officer or the clerk of the district court shall execute a verification to be filed with a copy of the notice to appear. Such verification shall be deemed sufficient if in substantially the following form:

The undersigned hereby certifies that on the _____ day of _____, 19____, a copy of notice to appear was mailed to _____ at _____.

Signature of Law Enforcement Officer,
Code Enforcement Officer or
Clerk of District Court

History: L. 1988, ch. 102, § 19; April 21.

19-4716. Schedule of fines for violations; waiver of right to trial; voluntary appearance; plea of guilty or no contest. (a) The board of county commissioners shall establish a schedule of fines which shall be imposed for violations of county codes and resolutions. Any fine established shall be within the minimum and maximum allowable fines established by county resolutions for such offenses by the board of county commissioners.

(b) A person charged with the violation of a county code or resolution contained in a schedule of fines established under subsection (a) shall, except as provided in subsection (c), appear at the place and time specified in the notice to appear. If the person enters an appearance, waives right to trial, pleads guilty or no contest, the fine shall be no greater than that specified in the schedule.

(c) Prior to the time specified in the notice to appear, a person charged with the violation of a county code or resolution contained in a schedule of fines established under subsection (a) may enter an appearance, waive right to trial, plead guilty or no contest and pay the fine for the violation as specified in the schedule. At the election of the person charged, such appearance, waiver, plea

and payment may be made by mail or in person and payment may be by personal check. The complaint shall not have been complied with if a check is not honored for any reason, or the fine is not paid in full prior to the time specified in the notice to appear. When a person charged with violating a county code or resolution on a schedule of fines makes payment without executing a written waiver of right to trial and plea of guilty or no contest, the payment shall be deemed such an appearance, waiver of right to trial and plea of no contest.

The judge may authorize the clerk of the district court or some other person to accept by mail or in person such voluntary appearance, plea of guilty or no contest and payment of the fine imposed by the schedule.

The schedule of fines and persons authorized to accept such pleas shall be conspicuously displayed in the office where such voluntary appearance, plea of guilty and payment of fine occurs.

(d) No person who violates a county code or resolution and is prosecuted under this code shall be imprisoned for such violation.

History: L. 1988, ch. 102, § 20; April 21.

19-4717. Time of plea. Every person charged with violation of a county code or resolution shall receive a copy of the complaint, and shall not be required to plead until such person shall have had a reasonable time to examine such complaint, to obtain counsel and to determine such person's plea.

History: L. 1988, ch. 102, § 21; April 21.

19-4718. Appearance of accused person. (a) The judge may compel the appearance of an accused person. Upon verified application of the attorney prosecuting any complaint or upon a finding of cause by the court that any accused person has or will fail to appear on any summons and notice to appear, the judge may:

(1) Issue an order to appear in the manner provided in K.S.A. 19-4715, and amendments thereto, for notices to appear, which shall then be punishable by a contempt citation should the person fail to comply with the order;

(2) order the posting of an appearance bond in the manner provided under K.S.A. 12-4301 *et seq.* and amendments thereto; or

(3) issue a bench warrant compelling the appearance of the accused person before the court.

(b) In addition to the procedures provided in K.S.A. 19-4716, and amendments thereto, the

judge, upon request, may permit appearance, pleas and satisfaction of the judgment and sentence of the court by counsel or by mail.

History: L. 1988, ch. 102, § 22; L. 1992, ch. 83, § 1; April 23.

19-4719. Time of arraignment. Accused persons shall be arraigned:

(a) At the time specified in the notice to appear; or

(b) if no date be specified, then on the earliest date when the court convenes.

History: L. 1988, ch. 102, § 23; April 21.

19-4720. Arraignment. Arraignment shall be conducted in open court by stating to the accused person the substance of the charge and calling upon such person to plead thereto. Arraignment for purposes of accepting plea of not guilty may be accomplished by telephone, mail or appearance by counsel.

History: L. 1988, ch. 102, § 24; April 21.

19-4721. Pleas; refusal to plead. (a) A plea of guilty is an admission of the charge and every material fact alleged therein.

(b) A plea of no contest is a formal declaration that the accused person does not contest the charge. When such a plea is entered, a finding of guilty may be adjudged thereon. The plea cannot be used against the accused person as an admission in any other action based on the same act.

(c) A plea of not guilty denies and puts into issue every material fact alleged in the charge.

(d) If the accused person refuses to plead, the court shall enter a plea of not guilty.

History: L. 1988, ch. 102, § 25; April 21.

19-4722. Procedure upon plea of guilty. If the accused person pleads guilty, the judge may hear evidence touching on the nature of the case, or otherwise ascertain the facts thereof, and after such hearing, may refuse to accept the plea or may accept the plea, assess the punishment and enter the proper judgment.

History: L. 1988, ch. 102, § 26; April 21.

19-4723. Criminal procedure code, applicable; motions. The Kansas code of criminal procedure shall govern, insofar as applicable, the filing and disposition of motions. Motions may be oral or written.

History: L. 1988, ch. 102, § 27; April 21.

19-4724. Continuances. The judge may grant a continuance of the trial or any hearing

upon a showing of good cause, except as set out in K.S.A. 19-4727.

History: L. 1988, ch. 102, § 28; April 21.

19-4725. Discovery; depositions. The accused person shall be permitted to inspect all matters relevant to the case. Depositions shall not be taken or used except by written agreement of both parties filed with the court or by order of the court upon such conditions as the court may prescribe.

History: L. 1988, ch. 102, § 29; April 21.

19-4726. Subpoenas; witnesses' expenses; abuse of subpoenas. All parties shall be entitled to the use of subpoenas to compel attendance of witnesses within the state. The judge or clerk of the district court shall issue a subpoena which may be served by any law enforcement officer or code enforcement officer upon the named person. Disobedience may constitute contempt.

Fees and mileage of witnesses shall be \$2.50 per day or any part thereof for an appearance and \$.10 per mile actually driven beyond 10 miles. The fees and mileage for the attendance of witnesses shall be paid by the party calling the witnesses, except that if an accused person is found not guilty, the county shall pay all such expenses. The judge may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person, if the judge finds that there has been an abuse of the use of subpoenas by the accused person.

History: L. 1988, ch. 102, § 30; April 21.

19-4727. Plea of not guilty; trial; time; continuance. An accused person entering a plea of not guilty, or for whom the court entered a plea of not guilty, shall be tried on the earliest practical day set by the court, unless trial is continued for good cause.

History: L. 1988, ch. 102, § 31; April 21.

19-4728. Trial. All trials under this code shall be conducted before a judge and an accused person shall not have a right to have such person's trial conducted before a jury.

History: L. 1988, ch. 102, § 32; April 21.

19-4729. Same; order of presentation. The order of trial shall be:

- (a) Opening statement of prosecution, unless waived;
- (b) evidence by the prosecution;
- (c) opening statement of accused person, unless waived;

(d) evidence by the accused person, unless waived;

(e) rebuttal evidence, unless waived; and

(f) closing arguments, unless waived.

History: L. 1988, ch. 102, § 33; April 21.

19-4730. Evidence. The rules of evidence prescribed in the code of civil procedure shall apply to this code.

History: L. 1988, ch. 102, § 34; April 21.

19-4731. Amendments to complaint. Amendments to the complaint may be permitted by the court before trial. Once the trial commences, the court may permit a complaint to be amended before judgment, if no additional or different offense is charged, and if substantial rights of the accused person are not prejudiced.

History: L. 1988, ch. 102, § 35; April 21.

19-4732. Joinder of two or more accused persons. Where two or more persons are separately or jointly accused by a complaint of a violation of a county code or resolution arising from the same general state of circumstances, such persons may be tried separately or jointly, except that where an accused person requests, such person shall be tried separately.

History: L. 1988, ch. 102, § 36; April 21.

19-4733. Judgment. If the accused person is found not guilty, judgment shall be rendered immediately. If the accused person is found guilty, the court shall render judgment without unreasonable delay, assess fines or penalties and provide for immediate payment of such fines or penalties or for not more than 24 hours from the time that judgment is rendered.

History: L. 1988, ch. 102, § 37; April 21.

19-4734. Judgment entered on docket. When a judgment is rendered, the judge or clerk of the district court shall enter such judgment on the docket. The omission of this duty shall not affect the validity of the judgment.

History: L. 1988, ch. 102, § 38; April 21.

19-4735. Fine; statement of amount and manner of payment; failure to pay. When a fine is levied as punishment, the judge or clerk of the district court shall issue a statement setting forth the amount of the fine and the manner of payment. Failure to pay in the manner specified may constitute contempt of court.

History: L. 1988, ch. 102, § 39; April 21.

19-4736. Judgment set aside, when; correction of errors. The judge, on motion of the accused person or on the judge's own motion, shall set aside a judgment if the complaint does not charge a violation of a county code or resolution, or if the court was without jurisdiction of the offense. The motion for setting aside the judgment shall be made within 10 days after the finding of guilty, or within such further time as the court may fix during the ten-day period. Clerical mistakes in judgments or orders may be corrected by the court at any time.

History: L. 1988, ch. 102, § 40; April 21.

19-4737. Appeal; procedure. (a) An appeal may be taken from any judgment under the code for the enforcement of county codes and resolutions. All appeals shall be by notice of appeal specifying the party or parties taking the appeal and the order, ruling, decision or judgment complained of and shall be filed with the clerk of the district court within 10 days after entry of judgment. All appeals shall be tried and determined *de novo* before a district judge, other than the judge from which the appeal is taken. The provisions of K.S.A. 60-2001 and 61-1716, and amendments thereto, shall be applicable to actions appealed pursuant to this subsection. The appealing party shall cause notice of the appeal to be served upon all other parties to the action in accordance with the provisions of K.S.A. 60-205 and amendments thereto. An appeal shall be perfected upon the filing of the notice of appeal. When the appeal is perfected, the clerk of the court or the judge from which the appeal is taken shall refer the case to the administrative judge for assignment in accordance with this section. All proceedings for the enforcement of any judgment under the code for the enforcement of county codes and resolutions shall be stayed during the time within which an appeal may be taken and during the pendency of an appeal, without the necessity of the appellant filing a supersedeas bond.

(b) Any order, ruling, decision or judgment rendered by a district judge on an appeal taken pursuant to subsection (a) may be appealed in the manner provided in article 21 of chapter 60 of the Kansas Statutes Annotated.

History: L. 1988, ch. 102, § 41; April 21.

19-4738. Appendix of forms. The forms contained in the appendix of forms are sufficient under this act and are intended to indicate the

simplicity and brevity of statement which this act contemplates.

**APPENDIX OF FORMS
INTRODUCTORY**

The following forms are intended for illustration only, but they are expressly declared by K.S.A. 19-4738 to be sufficient.

**Form No. 1: FORM FOR COMPLAINT
IN THE DISTRICT COURT
OF _____, KANSAS**

The County of _____, Kansas,
vs.

(Accused person)
_____, the undersigned, complains that on or
about the _____ day of _____, 19____,
in the County of _____, and State of Kansas,

_____ did then and there unlawfully _____

_____ in violation of Resolution No. _____ of the
County of _____, Kansas.

Signature of Officer or Complainant _____
No. _____

* Sworn to positively before me this _____ day of
_____, 19____.

Officer authorized to administer oaths

* This complaint is not required to be sworn if it is signed
by a law enforcement officer or a code enforcement officer.

**Form No. 2: FORM FOR NOTICE TO APPEAR
IN THE DISTRICT COURT
OF _____, KANSAS**

The County of _____, Kansas,
vs.

(Accused person)

(Address)

NOTICE TO APPEAR

The County of _____, Kansas, to the above
named accused person:

You are hereby summoned to appear before the District
Court of _____, Kansas, on the _____ day
of _____, 19____, at _____ o'clock,
____ m., to answer a complaint charging you with _____

If you fail to appear a warrant will be issued for your arrest.
Dated _____, 19____.

Signature of Official

Title of Official

I agree to appear in the Court at the stated time and place.

Signature of Accused Person

RETURN

The undersigned hereby certifies that on the _____
day of _____, 19____, the notice to appear was

served, mailed or delivered.

Law Enforcement Officer or Code Enforcement Officer

Form No. 3: FORM FOR UNIFORM COMPLAINT AND NOTICE TO APPEAR

UNIFORM COMPLAINT AND NOTICE TO APPEAR

State of Kansas
County of
The undersigned complains that on the day of 19 at p.m. (a.m.)

Name
Street Address
County State
Birth Date Sex
Did unlawfully at

All in violation of Section(s) of Resolution No. of County, Kansas.

Signature of Officer or Complainant No.

*Sworn to positively before me this day of 19

Judge

* This complaint is not required to be sworn if it is signed by a law enforcement officer or code enforcement officer.

NOTICE TO APPEAR

The County of Kansas, to the above-named person:

You are hereby summoned to appear before the District Court of Kansas, at on the day of 19 at o'clock m., to answer the above complaint.

If you fail to appear a warrant will be issued for your arrest. Dated 19

Signature of Official
Title of Official

I agree to appear in the Court at the stated time and place.

Signature of Accused Person

RETURN

The undersigned hereby certifies that on the day of 19, the notice to appear was served, mailed or delivered.

Law Enforcement Officer or Code Enforcement Officer

History: L. 1988, ch. 102, § 42; April 21.

19-4739. Contempt of court order for failing to appear after service of notice; bench warrant issued and served; appearance bond. If a person who is a resident of this

state is charged with a violation of a county code or resolution and such person fails to appear after service of notice to appear, then the judge having jurisdiction to hear the complaint may apply in the district court of the county to cite the accused person with contempt of court and may issue or have issued a bench warrant compelling the accused person to appear before the court to plead upon the charge and the citation for contempt. Any law enforcement officer of any county or any city in this state may serve the bench warrant issued for the person and may collect from the person a cash appearance bond in the amount stated in the warrant upon the request of the law enforcement agency of the county in which the warrant was issued. Any appearance bond collected pursuant to this section shall be forwarded to the clerk of the court in the county in which the alleged violation was committed.

History: L. 1992, ch. 83, § 3; April 23.

Article 48.—CRIME VICTIMS RESTITUTION

19-4801. Short title. The provisions of K.S.A. 19-4801 through 19-4811 and 74-7305[*] may be cited as the property crime restitution and compensation act.

History: L. 1990, ch. 321, § 2; July 1.

* Reference to 74-7305 is apparently erroneous; remainder should presumably refer to K.S.A. 19-4801 through 19-4812.

19-4802. Definitions. As used in K.S.A. 19-4801 through 19-4811 and 74-7305[*]:

(a) "Commission" means board of county commissioners;

(b) "crime" or "property crime" means an act made criminal by state, county or municipal penal codes and which does not constitute criminally injurious conduct as defined in subsection (e) of K.S.A. 74-7301 and amendments thereto;

(c) "collateral source" means the same as defined in subsection (d) of K.S.A. 74-7301 and amendments thereto;

(d) "local board" means a county property crime compensation board;

(e) "local fund" means a county property crime compensation fund;

(f) "loss" means out of pocket damage sustained by a victim against whom a crime has been committed, but does not include collateral sources;

19-4707. Cost of enforcement not to be assessed; exceptions. (a) Except as provided in subsection (b), no person shall be assessed costs for enforcement and prosecution of violations of county codes and resolutions pursuant to this code, except for witness fees and mileage as set forth in K.S.A. 19-4726 and amendments thereto.

(b) The court shall assess as a cost in each case filed for violations of county codes and resolutions, a \$1 assessment. The judge or clerk of the court shall remit at least monthly to the state treasurer all such assessments received. The state

COUNTY OFFICERS

treasurer shall deposit the entire amount of the remittance in the state treasury and credit 50% to the protection from abuse fund established pursuant to K.S.A. 74-7325 and amendments thereto and 50% to the crime victims assistance fund established pursuant to K.S.A. 74-7334 and amendments thereto.

History: L. 1988, ch. 102, § 11; L. 1994, ch. 335, § 3; L. 1996, ch. 234, § 8; July 1.

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EDUCATION

FEDERAL & STATE AFFAIRS

JOINT COMMITTEE ON ARTS
& CULTURAL RESOURCES

PUBLIC HEALTH AND WELFARE



TOPEKA

SENATE CHAMBER

LAURIE BLEEKER

SENATOR, 33RD DISTRICT

5948 16TH ST. TERRACE
GREAT BEND, KANSAS 67530
(316) 793-3839STATE CAPITOL, ROOM 460 EAST
TOPEKA, KANSAS 66612
(913) 296-7394

Testimony Before the Committee on Elections and Local Government
February 24, 1999

Re: Senate Bill 283

Submitted by:
Sen. Laurie Bleeker

Thank you for the opportunity to appear before you and present the case in support of Senate Bill 283. The purpose of SB283 is to address a gap in legislation not covered by Kansas statute. Currently, it is illegal to utilize public money, property, or compensated time for the purpose of endorsing a political candidate or influencing the candidate's race. Existing statute K.S.A. 25-4169a speaks to this issue with the exception that school districts having less than 35,000 pupils are exempted from this campaign law. So the part of this statute addressing school districts 35,000 and larger applies only to the Wichita School district where it has been illegal to campaign through the schools.

SB283 simply sets out language that makes this kind of unethical campaign activity unlawful in school districts having less than 35,000 students as well. There is no valid reason to allow in the smaller school districts campaign practices that have not been tolerated in larger public schools and other public places.

Is it fair for government to order every taxpayer to support the institution's favored candidate? That has the effect of letting government promote candidates. Taxpayer dollars should not be utilized to support candidates for elected office. This negates the fairness and accuracy of the electoral process. For that reason this kind of questionable practice has been rejected at every other level of government and should be rejected in our smaller school districts as well.

Senate Elections & Local Government

Attachment: # 4-1

Date: 2-23-99