

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on February 14, 2000, in Room 529-S of the Capitol.

All members were present except: Senator Praeger
Senator Steineger

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: Vera Gannaway, General Counsel, KGEC
Bruce Dimmitt, Independent

Others attending: See attached list

Chairman Hardenburger opened the hearing on **SB 558 concerning governmental ethics; relating to contracts involving state officers or employees, and repealing the existing section.**

Vera Gannaway, General Counsel, Kansas Governmental Ethics Commission, presented testimony as a proponent of **SB 558**. She advised the Committee that K.S.A.46-233 (a) and (b) place limitations on who may participate in the making of contracts and who may take jobs with entities that have been awarded state contracts. She further advised the Committee that subsection (d) states that these prohibitions shall not apply to contracts which are let after a competitive bid procedure and which have been advertised for by published notice. She said **SB 558** amends this language to clarify that contracts that contain elements of negotiation do not fall within this exemption and are, therefore, subject to the prohibitions outlined in subsections (a) and (b). (Attachment #1)

The Committee discussed what the problem might be in the negotiation process of making contracts. Ms. Gannaway said that the bill would prevent an employee of the state from leaving state employment to take employment with the company who negotiated and received the contract for two years. She further said that section 1 page 1 of the statute does deal with the letting of contracts. She further stated, the issue being brought before the Committee is that there is a statute that prohibits people who are involved in the negotiation of contracts taking employment with the company receiving the bid. The third matter is, the person negotiating the contract should not take a job with that same company within two years after the negotiations if the employee was involved in negotiating the contract.

Chairman Hardenburger said the bill is applying the same rule to a competitive bid/negotiated contract, a so-called "hybrid" of competitive bidding combined with negotiated qualifications. Kansas Statutes do not apply to those instances.

Bruce Dimmitt, Independent, provided comments to the Committee.

Meeting was adjourned at 2:15 p.m. Next meeting is scheduled for February 15, 2000.



GOVERNMENTAL ETHICS COMMISSION

**Testimony before the Senate Committee on Elections and Local Government
as a proponent of Senate Bill 558**

**by
Vera May Gannaway
General Counsel, Kansas Governmental Ethics Commission
February 14, 2000**

Madam Chairwoman, members of the Committee.

On behalf of the Commission, Let me thank you for the opportunity to be here today to present you with testimony as a proponent of Senate Bill 558. Since the introduction of Senate Bill 558, the Commission's staff has taken the opportunity to contact the individual members of the Commission and discuss with them their stance on this Bill. All of the Commission members we spoke with indicated that they were in favor of this Bill.

As the Committee is aware, K.S.A. 46-233(a) and (b) place limitations on who may participate in the making of contracts and who may take jobs with entities that have been awarded state contracts. Subsection (d) states that these prohibitions shall not apply to contracts which are let after a competitive bid procedure and which have been advertised for by published notice. SB 558 amends this language to clarify that contracts that contain elements of negotiation do not fall within this exemption and are, therefore, subject to the prohibitions outlined in subsections (a) and (b).

For the Committee's convenience, I have attached a copy of the information provided to the Committee on January 26, 2000, when we first raised this issue with this Committee.

Senate Elections & Local Government
Date: 2-14-00
Attachment # 1-1

To: Members of Senate Elections and Local Government Committee
From: Vera May Gannaway,
General Counsel, Kansas Governmental Ethics Commission
Date: January 26, 2000
Re: K.S.A. 46-233(d)

Madam Chairwoman, members of the Committee.

On behalf of the Commission, Let me thank you for the opportunity to be here today to present you with some information on an issue the Commission thought you should be made aware of.

Issue:

K.S.A. 46-233(a) and (b) place limitations on who may participate in the making of contracts and who may take jobs with entities that have been awarded state contracts. Subsection (d) states that these prohibitions shall not apply to contracts which are let after a competitive bid procedure and which have been advertised for by published notice.

The question presented is whether the Legislature wishes contracts which are let after a competitive bid procedure and which have been advertised for by published notice, but which also contain elements of negotiation, to be subject to the prohibitions in K.S.A. 46-233(a) and (b).

Statute:

K.S.A. 1998 Supp. 46-233 involves participation by state employees in the making of contracts. It states in pertinent part:

"(a) (1) No state officer or employee shall . . . be substantially involved in the preparation of or participate in the making of a contract with any person or business by which such officer or employee is employed or in whose business such officer or employee or any member of such officer's or employee's immediate family has a substantial interest. . . .

"(2) . . . whenever any individual has participated as a state officer or employee in the making of any contract with any person or business, such individual shall not accept employment with such person or business as an employee, independent contractor or subcontractor until two years after performance of the contract is completed or until two years after the individual terminates employment as a state officer or employee, whichever is sooner. . . .

...
“(d) Subsections (a) and (b) shall not apply to the following:

“(1) Contracts let after competitive bidding has been advertised for by published notice. . . .”

Senate Elections & Local Government
Date: 2-14-00
Attachment # 1-2

History:

1974: The statutory provisions at issue were enacted in 1974. At that time, the state was involved with two types of contractual arrangements. These may be described as the sealed bid/lowest bid contracts and the sole source contracts, each of which is described below:

Sealed Bid/Lowest Bid: State puts out Request For Proposal or Bid (RFP) and advertises. Bids are opened in public and the lowest bid receives the contract. *See e.g.* K.S.A. 75-3739.

Sole Source: Individual negotiation. No Competitive bidding procedure or advertising required.

When K.S.A. 46-233 was enacted, only sole source contracts contained elements of negotiation and those contracts were subject to the prohibitions listed in subsections (a) and (b). Sealed bid/lowest bid contracts, however, were exempt from those prohibitions.

1987: As early as 1987, the Legislature enacted statutes which provided for a new contractual arrangement which can be described as competitively bid/negotiated contracts:

Competitively Bid/Negotiated: State puts out Request For Proposal or Bid (RFP) and advertises. Each bid is then analyzed, interpreted and negotiated individually, to produce the best value for the State. The lowest bid may not receive the contract.

These contracts are let after a competitive bid procedure and are required to be advertised for by published notice, but they also contain elements of negotiation. *See e.g.* K.S.A. 75-37,102.

Current Status of the Law:

In 1999, the Kansas Governmental Ethics Commission was asked to determine whether these competitively bid/negotiated contracts were exempt from the prohibitions contained in K.S.A. 46-233(a) and (b).

K.S.A. 46-233(d) contains two elements which must be met in order for the exemption to apply. The contract must be (1) let after a competitive bid procedure and (2) advertised for by published notice. Because these contracts meet both elements of the exemption as the statute is currently written, the Commission determined that competitively bid/negotiated contracts are exempt from the prohibitions listed in K.S.A. 46-233(a) and (b).

Therefore, as the law currently reads, a state employee would be permitted to participate in the making of a contract which contains elements of negotiation, even if that employee has a substantial interest in the business receiving the contract. In addition, if a state employee is involved in the making of a competitively bid/negotiated contract, that state employee may immediately accept employment with the business that received the contract.