

Approved: April 7, 2000

Date



MINUTES OF THE HOUSE KANSAS 2000 COMMITTEE.

The meeting was called to order by Chairperson Kenny Wilk at 1:45 p.m. on March 8, 2000 in Room 526-S of the Capitol.

All members were present except: Representative Tom Sloan - excused
Representative Susan Wagle - excused

Committee staff present: Alan Conroy, Legislative Research Department
Jim Wilson, Revisor of Statutes
Janet Mosser, Committee Secretary

Conferees appearing before the committee:
Representative Henry Helgerson
Shelby Smith, The Shelby Smith Group
Ed Flentje, Wichita State University
Burdett Loomis, University of Kansas

Others attending: See attached list.

Chairperson Wilk introduced Meagan Goddard and Ashley Lockhart, pages for Representative Barbara Ballard, who were helping at today's meeting.

Chairperson Wilk opened the hearing on **HCR 5047 - Constitutional amendment disqualifying legislators who are appointed, elected or employed by the judicial or executive branches.**

Representative Henry Helgerson, sponsor and proponent, was recognized to address the committee and explained the purpose of the bill. He reminded the committee of the strong history of separation of powers in Kansas and other states and deferred to others testifying to explain the nuances of the resolution.

Shelby Smith, The Shelby Smith Group, proponent, was recognized to address the committee (Attachment 1).

Ed Flentje, Wichita State University, proponent, was recognized to address the committee (Attachment 2).

Burdett Loomis, University of Kansas, proponent, was recognized to address the committee (Attachment 3).

Questions and discussion followed testimony.

Chairperson Wilk closed the hearing on **HCR 5047.**

Chairperson Wilk directed the committee's attention to **SB 460 - Office of state treasurer, designating certain positions in the unclassified service.** Representative Horst moved to pass favorably and put on the consent calendar. The motion was seconded by Representative Campbell. Discussion followed. Chairperson Wilk recognized Tim Shallenburger, State Treasurer, who assisted in answering questions. The motion carried.

Chairperson Wilk adjourned the meeting at 2:45 p.m.

The next meeting is scheduled for March 9, 2000.

KANSAS 2000 SELECT COMMITTEE GUEST LIST

DATE: 3.8.00

NAME	TITLE	REPRESENTING
Aroy Sanchez	Cobbyist/Rep	KAPF
Kathy Potts	Asst. Judicial Admin.	QSA
Kelly Wiese		AP
Jim Shallenbarger	State Treas	
Donna Wiese	State Treas	
Bell Henry		KS Gov. Consulting
SHELBY Smith	Private Citizen	—
Ed Hecht	Professor	Myself
Burdett Logmis	Professor	Myself
Jack Shovic	—	—

Testimony

**Shelby Smith
House Concurrent Resolution No. 5047**

**Kansas 2000 Select Committee
March 8, 2000**

Mr. Chairman and members of the Committee:

Blurring of the lines of separate and co-equal branches of government is the breeding ground for scandal.

I have said this before, in my history of the Kansas Department of Administration (Insiders Chronicle, December 1990) and again in my paper addressing Separation of Powers in late 1997. I warned against the undue influence, the **inefficiency** and **corruption** that come when elected lawmakers step across the line into administrative functions.

For a moment, reflect on last year's controversy surrounding a Juvenile Justice Authority grant in which the wives of legislators had an interest. From the press reports, one by one, all fundamental elements of the competitive bid process, public notice, specifications, RFPs, and a procurement negotiating committee were by-passed. Had the Governor drawn a clear line in his appointments, with no legislators on the Authority - no controversy would have emerged.

State agencies have two options in the dispersal of public money. Award a contract. Or award a grant. Procurement of commodities, professional services, and the leasing or acquisition of real estate stand as the exclusive prerogative of our government's executive branch. Any meddling, any interference, indeed any involvement in this dispersal process by a legislator inevitably leads to a perception of corruption. When a legislator touches contracts or grants, the process becomes immediately suspect.

In addition, last year the press and some legislators raised concerns regarding a legislator serving in the dual role of legislator and Executive Director of the Behavioral Science Regulatory Board. Those concerns would not have surfaced had the lines of demarcation been drawn.

132 South Fountain
Wichita, Kansas 67218
316-684-1371

820 Quincy, Suite 310
Topeka, Kansas 66612
913-235-9034
FAX 913-235-8676

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PUBLIC AFFAIRS CONSULTANTS

Kansas 2000 Select
Committee
Meeting Date 3-8-00
Attachment 1

Now already this year, for the first time in history since the Kansas State Historical Society (KSHS) was formed in 1875, legislators have been appointed to the Executive Committee of KSHS, a state agency which is statutorily authorized and funded. With all due respect, the staffing of agencies, boards, and commissions is not your job. Before power can corrupt, it must accumulate.

EXAMPLES LEGISLATORS ON STATE BODIES

AGENCY/BOARD/COMMISSION	LEGISLATORS REQUIRED BY STATUTE	DISCRETIONARY APPOINTMENTS
Kansas State Historical Society Executive Committee	0	2
Kansas Children's Cabinet	0	2
University of Kansas Hospital Authority	2	1
Advisory Group on Juvenile Justice	0	0
Advisory Council on Aging	4	0
Citizens' Committee on Alcohol and Other Drug Abuse	0	1
Capitol Area Plaza Authority	2	0
Coordinating Council on Early Childhood Developmental Services	2	0
Emergency Medical Service Board	4	0
Kansas Film Services Commission	4	2
Kansas Board of Directors Guardianship Program	0	3
Health Care Data Governing Board	0	1
Health Care Stabilization Fund Oversight Committee	4	0
Kansas Judicial Council	2	0
Kansas Justice Commission	0	4
Kansas, Inc.	4	0
Kansas Technology Enterprise Corporation Board of Directors	4	0
State Rules and Regulations Board	2	0
Kansas Sentencing Commission	4	0
Council on Travel and Tourism	6	0
Kansas Turnpike Authority	2	0
Workers compensation Fund Oversight Committee	4	0

Checks and balances lie at the heart of our republic's functioning. But, by the very nature of its work and its influence, power seeps toward the Statehouse. Here's Jefferson on the subject, from his *Notes on Virginia*: "all the powers of government -- legislative, executive, and judicial -- result to the legislative body." Madison too had his fears: from the *Federalist Papers*, "The legislative group will draw everything into their impetuous vortex, where they ought not to be involved."

Two hundred years later, the early presidents are prophets still.

The policy direction could not be more straightforward - *if you serve in the Legislature, you do not serve on state boards, commissions, or authorities.* It's that simple.

My constitutional amendment marches in lockstep with Article 1, Section 6, of the U.S. Constitution, -- no U.S. Senator or Representative shall during the time for which they are elected ... hold any office under the United States.

In proposing House Concurrent Resolution No. 5047 to Amend Section 5, Article 2 in the Kansas Constitution, I cast no aspersions whatsoever upon the well-intentioned legislators who in innocence have sought only other ways to serve. All too often, legislators rationalize stepping across the line into micro-management as necessary for accountability. My amendment takes as its very direct and announced target the improper accumulation of power by the legislative branch.

I truly believe a vigorous debate on HCR 5047 will be instructive for all of us. It should make us more sensitive to the pitfalls **none** of us want. Additionally, I'm hopeful it will help bring into focus the every day problems of two subjects in a bill, and the proliferation of legislative oversight committees with their infernal micro-managing.

Kansas deserves our best vigilance, a careful response to an insidious threat. Look no further than the controversy over the Rhode Island Ethics Commission regulation banning legislators from serving on state boards and commissions, and the current FBI investigations of legislators in Missouri, Oklahoma, and Arkansas, where indictments and prison sentences are interrupting terms of office.

The timing in Kansas is right. No scandal. No court case. No better way to greet the new millennium than with a new page in our Constitution reinforcing the basic principle of separate and co-equal branches of government. We're so fortunate in Kansas to enjoy a clean political culture.

The clouds are gathering in our beloved Kansas. And I must tell you that I see more than the mere appearance of wrong-doing. I see an acid rain of undue legislative influence and inevitable conflicts of interest. I see the imminent possibility of corruption.

Thank you.

Testimony on H.C.R. 5047
Kansas 2000 Select Committee, Kansas House of Representatives
H. Edward Flentje¹
March 8, 2000

The principal question before your Committee concerning H.C.R. 5047 is simply this: **Should the Kansas Constitution be amended to prohibit members of the Kansas Legislature from serving in offices charged with the administration of executive agencies?**

The Kansas Constitution now has no such prohibition. H.C.R. 5047 would amend Article 2, Section 5, of the state constitution to preclude members of the Kansas Legislature from serving in any "office, membership or employment" of executive or judicial agencies.

The concept for this proposed amendment is taken from the U.S. Constitution, Article I, Section 6, which says in prescribing eligibility for membership in the U.S. Congress that "no person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." After significant debate this provision was inserted in the constitution to enforce separation of powers and prevent corruption resulting from the intermingling of legislative and executive powers. The framers of the U.S. Constitution believed that a separation of powers was essential to the preservation of liberty and protection against tyranny by one branch of government over another. The framers had observed the blending of powers—and the consequent intrigues and corruption—in the British government and in most state governments at the time and wanted to avoid this pitfall.

U.S. Supreme Court Justice Joseph Story concluded in 1833 that this clause has been "universally applauded; and has been vindicated upon the highest grounds of public policy." Most constitutional scholars agree that this provision has been effective in enforcing the separation of powers and enhancing the independence of both legislative and executive branches at the national level.

I agree with these observations and believe that the proposed amendment to our state constitution would further strengthen our distinct, separate, and independent legislative and executive branches of state government. In considering this proposal, I would ask you to think through the following questions:

What public purpose is served by the appointment of legislators to offices charged with the administration of executive agencies? Under what conditions is a public purpose served by the appointment of legislators to executive offices?

If there is a public purpose served by legislators being actively engaged in the administration of executive agencies, should this practice be extended all executive agencies? To all boards and commissions in state government?

Does the practice of intermingling legislative and executive powers in Kansas provide compelling justification for the proposed constitutional amendment? Is it possible that the practice of intermingling could result in corruption today?

I wish you well in your deliberations and would welcome questions.

¹ Flentje is director and professor, Hugo Wall School of Urban and Public Affairs, Wichita State University.

Testimony of Burdett Loomis

Kansas 2000 Select Committee

March 7, 2000

Thanks very much for inviting me to testify. My remarks will be brief, and I'll be happy to respond to questions. Although I'm familiar with Kansas government, my framework today comes from the U.S. national experience, in which the separation of powers has served as a core element of the federal government for more than 210 years.

The Framers of the Constitution made it crystal clear, time after time, that the separation of powers was essential to their vision of limited government. For example, only an independent judiciary could, as Hamilton articulated in *Federalist 78*, guarantee that limitations on the legislature (like the prohibition on *ex post facto* laws) would be upheld. It follows directly that a no individual should be able to hold a position in both the judiciary and the legislature.

In a similar vein, the Framers argued against the executive exercising any legislative prerogative, or vice-versa. That did not mean that the legislature should have no control over the executive, or vice versa. Clearly, the executive must have latitude to interpret legislation, and the legislature must be able to oversee the execution of the laws. But the Framers drew from the experience of the states – which did not maintain complete separation between the branches – to conclude that firm, principled separation was crucial to making the system work. New York, for example, gave an executive magistrate at least partial control over both a legislative agency and a judicial department.

This they found unacceptable, in that the executive and the legislature (or judiciary) would be compromised.

Legislatures in the United States are not parliaments. We do not select our executives from the ranks of legislators, as parliaments do. All in all, this has worked out well at the federal level, and it is the appropriate model for the states as well. The Supreme Court has continually protected the distinct roles of the three branches. For example, in 1983 the Court ruled that the so-called “legislative veto” violated the separation of powers by investing executive power in the legislature. Likewise on the original drafting of budget reforms in the 1970s.

In regard to the specific proposal at hand, the federal experience is clear: legislators cannot take up executive or judicial service without resigning their initial office. The idea of the separation of powers is profound – that power should balance power, within a constrained system. The talent pool within the state of Kansas is adequate to appoint qualified persons from outside the legislature to executive or judicial positions. Legislators must be responsible to their own constituents and to the legislature itself – and not hold some shared allegiance to a different branch of government. This constitutional change is straightforward, modest, and overdue. I urge that you consider placing it before the people of Kansas.